

COMMUNITY BANK REGULATORY TAILORING ACT

MARCH 19, 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

together with

MINORITY VIEWS

[To accompany H.R. 7056]

The Committee on Financial Services, to whom was referred the bill (H.R. 7056) to index statutory thresholds, 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 “Community Bank Regulatory Tailoring Act”.

SEC. 2. THRESHOLD ADJUSTMENTS TO ACCOUNT FOR HISTORICAL INCREASES IN CURRENT-DOLLAR UNITED STATES GROSS DOMESTIC PRODUCT.

(a) **BANK HOLDING COMPANY ACT OF 1956.**—The Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) is amended—

(1) in section 5(c)(3)(C)(ii) (12 U.S.C. 1844(c)(3)(C)(ii)), by striking “\$1,000,000” and inserting “\$3,000,000”; and

(2) in section 13(h)(1)(B)(i) (12 U.S.C. 1851(h)(1)(B)(i)), by striking “\$10,000,000,000” and inserting “\$15,000,000,000”.

(b) **COMMUNITY REINVESTMENT ACT OF 1977.**—Section 809(a) of the Community Reinvestment Act of 1977 (12 U.S.C. 2908(a)) is amended by striking “\$250,000,000” and inserting “\$800,000,000”.

(c) **DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.**—The Depository Institution Management Interlocks Act (12 U.S.C. 3201 et seq.) is amended—

(1) in section 202(4) (12 U.S.C. 3201(4)), by striking “\$100,000,000” and inserting “\$600,000,000”; and

(2) in section 203(1) (12 U.S.C. 3202(1)), by striking “\$50,000,000” and inserting “\$110,000,000”; and

(3) in section 204 (12 U.S.C. 3203)—

(A) by striking “\$2,500,000,000” and inserting “\$10,000,000,000”; and

(B) by striking “\$1,500,000,000” and inserting “\$10,000,000,000”.

(d) **DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.**—The Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301 et seq.) is amended—

(1) in section 210 (12 U.S.C. 5390)—

(A) in subsection (o), by striking “\$50,000,000,000” in each place it appears and inserting “\$105,000,000,000”; and

(B) in subsection (r), by striking “\$1,000,000” and inserting “\$5,000,000”; and

(2) in section 956(f) (12 U.S.C. 5641(f)), by striking “\$1,000,000,000” and inserting “\$3,000,000,000”.

(e) **FEDERAL CREDIT UNION ACT.**—The Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended—

(1) in section 202 (12 U.S.C. 1782)—

(A) in subsection (a)(6)(C)(iii)—

(i) in the heading, by striking “DE MINIMUS” and inserting “DE MINIMIS”; and

(ii) by striking “\$10,000,000” and inserting “\$34,000,000”; and

(B) in subsection (a)(6)(D)—

(i) by striking “\$500,000,000” and inserting “\$2,000,000,000”; and

(ii) by striking “\$10,000,000” and inserting “\$34,000,000”; and

(C) in subsection (b)(1)(A), by striking “\$50,000,000” each place that term appears and inserting “\$170,000,000”; and

(D) in subsection (c)(1)(A)(iii), by striking “\$50,000,000” each place that term appears and inserting “\$170,000,000”; and

(2) in section 216 (12 U.S.C. 1790d)—

(A) in subsection (f)(2), by striking “\$10,000,000” and inserting “\$34,000,000”; and

(B) in subsection (i)(4)(B), by striking “\$5,000,000” and inserting “\$17,000,000”; and

(C) in subsection (j)(2)(A), by striking “\$25,000,000” and inserting “\$51,000,000”; and

(D) in subsection (o)(4), by striking “\$10,000,000” and inserting “\$34,000,000”.

(f) **FEDERAL DEPOSIT INSURANCE ACT.**—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

(1) in section 7(a)(12) (12 U.S.C. 1817(a)(12)), by striking “\$5,000,000,000” and inserting “\$8,000,000,000”; and

(2) in section 11(p)(1)(A)(i) (12 U.S.C. 1821(p)(1)(A)(i)), by striking “\$1,000,000” and inserting “\$5,000,000”; and

(3) in section 36 (12 U.S.C. 1831m)—

(A) in subsection (i), by striking “\$5,000,000,000” each place that term appears and inserting “\$21,000,000,000”; and

(B) in subsection (j), by striking “\$150,000,000” each place that term appears and inserting “\$800,000,000”; and

(4) in section 38 (12 U.S.C. 1831o)—

- (A) in subsection (b), by striking “\$300,000,000” and inserting “\$2,000,000,000”; and
- (B) in subsection (k)—
 - (i) by striking “\$50,000,000” and inserting “\$110,000,000”; and
 - (ii) by striking “\$75,000,000” and inserting “\$150,000,000”.
- (g) FEDERAL HOME LOAN BANK ACT.—Section 2(10) of the Federal Home Loan Bank Act (12 U.S.C. 1422(10)) is amended by striking “\$1,000,000,000” each place that term appears and inserting “\$3,000,000,000”.
- (h) FEDERAL RESERVE ACT.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended—
 - (1) in section 7(a)(1) (12 U.S.C. 289) by striking “\$10,000,000,000” each place that term appears and inserting “\$17,000,000,000”; and
 - (2) in section 22(h)(5)(C) (12 U.S.C. 375b(h)(5)(C)) by striking “\$100,000,000” and inserting “\$500,000,000”.
- (i) HOME MORTGAGE DISCLOSURE ACT OF 1975.—The Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2801 et seq.) is amended—
 - (1) in the second paragraph (3) of section 304(i) (12 U.S.C. 2803(i)(3)); relating to “Exemption from certain disclosure requirements”, by striking “\$30,000,000” and inserting “\$160,000,000”; and
 - (2) in section 309(a) (12 U.S.C. 2808(a)), by striking “\$10,000,000” and inserting “\$180,000,000”.
- (j) HOME OWNERS’ LOAN ACT.—Section 5(u) of the Home Owners’ Loan Act (12 U.S.C. 1464(u)) is amended—
 - (1) in paragraph (2)(A)(i), by striking “\$500,000” and inserting “\$3,000,000”; and
 - (2) in paragraph (2)(A)(ii), by striking “\$30,000,000” and inserting “\$160,000,000”.
- (k) INTERNATIONAL LENDING SUPERVISION ACT OF 1983.—Section 909(a)(1) of the International Lending Supervision Act of 1983 (12 U.S.C. 3908(a)(1)) is amended by striking “\$20,000,000” and inserting “\$160,000,000”.
- (l) REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974.—Section 3(1)(B)(iv) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602(1)(B)(iv)) is amended by striking “\$1,000,000” and inserting “\$19,000,000”.
- (m) REVISED STATUTES OF THE UNITED STATES.—Section 5136A(a)(2)(D)(ii) of the Revised Statutes of the United States (12 U.S.C. 24a(a)(2)(D)(ii)) is amended by striking “\$50,000,000,000” and inserting “\$175,000,000,000”.
- (n) TRUTH IN LENDING ACT.—Section 129C(b)(2)(F)(i) of the Truth in Lending Act (15 U.S.C. 1639c(b)(2)(F)(i)) is amended by striking “\$10,000,000,000” and inserting “\$15,000,000,000”.

SEC. 3. PERIODIC ADJUSTMENTS TO THRESHOLDS TO ACCOUNT FOR FUTURE INCREASES IN CURRENT-DOLLAR UNITED STATES GROSS DOMESTIC PRODUCT.

(a) **IN GENERAL.**—By April 1, 2031, and the 1st day of each subsequent 5-year period, the Board of Governors of the Federal Reserve System shall prescribe the amount by which each dollar amount described in section 2 of this Act shall be increased by the ratio, if greater than 1, of the annual value of current-dollar United States gross domestic product, published by the Department of Commerce, for the calendar year preceding the year in which the adjustment is calculated under this section, to the published annual value of current-dollar United States gross domestic product for the calendar year preceding April 1, 2026.

(b) **CURRENCY OF INFORMATION.**—The values used in the calculation under subsection (a) shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

(c) **ROUNDING.**—

(1) If any amount equal to or greater than \$100,000,000,000 determined under subsection (a) for any period is not a multiple of \$50,000,000,000, the amount shall be rounded up to the nearest \$50,000,000,000.

(2) If any amount less than \$100,000,000,000 but equal to or greater than \$10,000,000,000 determined under subsection (a) for any period is not a multiple of \$5,000,000,000, the amount shall be rounded up to the nearest \$5,000,000,000.

(3) If any amount less than \$10,000,000,000 but equal to or greater than \$1,000,000,000 determined under subsection (a) for any period is not a multiple of \$500,000,000, the amount shall be rounded up to the nearest \$500,000,000.

(4) If any amount less than \$1,000,000,000 but equal to or greater than \$100,000,000 determined under subsection (a) for any period is not a multiple of \$50,000,000, the amount shall be rounded up to the nearest \$50,000,000.

(5) If any amount less than \$100,000,000 but equal to or greater than \$10,000,000 determined under subsection (a) for any period is not a multiple of \$5,000,000, the amount shall be rounded up to the nearest \$5,000,000.

(6) If any amount less than \$10,000,000 but equal to or greater than \$1,000,000 determined under subsection (a) for any period is not a multiple of \$500,000, the amount shall be rounded up to the nearest \$500,000.

(7) If any amount less than \$1,000,000 but equal to or greater than \$100,000 determined under subsection (a) for any period is not a multiple of \$50,000, the amount shall be rounded up to the nearest \$50,000.

(8) If any amount less than \$100,000 but equal to or greater than \$10,000 determined under subsection (a) for any period is not a multiple of \$5,000, the amount shall be rounded up to the nearest \$5,000.

(9) If any amount less than \$10,000 but equal to or greater than \$1,000 determined under subsection (a) for any period is not a multiple of \$500, the amount shall be rounded up to the nearest \$500.

(10) If any amount less than \$1,000 but equal to or greater than \$100 determined under subsection (a) for any period is not a multiple of \$50, the amount shall be rounded up to the nearest \$50.

(11) If any amount less than \$100 but equal to or greater than \$10 determined under subsection (a) for any period is not a multiple of \$5, the amount shall be rounded up to the nearest \$5.

(12) If any amount less than \$10 but equal to or greater than \$1 determined under subsection (a) for any period is not a multiple of \$0.50, the amount shall be rounded up to the nearest \$0.50.

(d) PUBLICATION.—Not later than April 5 of any calendar year in which an adjustment is required to be calculated under subsection (a), the Board of Governors of the Federal Reserve System shall publish in the Federal Register the dollar amounts as so calculated.

(e) IMPLEMENTATION PERIOD.—The increase in the dollar amounts shall take effect on January 1 of the year immediately succeeding any calendar year in which an adjustment is required to be calculated under subsection (a).

PURPOSE AND SUMMARY

H.R. 7056, the *Community Bank Regulatory Tailoring Act*, was introduced on January 14, 2026, by Republican Representative Andy Barr (KY–06). This bill indexes various asset-based thresholds for bank regulations to nominal GDP for community banks and small credit unions. Thresholds raised under this bill include the qualified mortgage rule, Volcker rule, and additional thresholds related to annual independent audit requirements for small banks.

BACKGROUND AND NEED FOR LEGISLATION

Federal financial regulators typically use asset-size thresholds to determine when specific compliance requirements apply, with the goal of directing the most rigorous supervision towards the largest and most complex institutions while conserving resources for small institutions. However, these thresholds are often set as static dollar figures that do not change as the economy and covered institutions change and grow.

While fixed thresholds offer institutions predictability regarding their regulatory obligations, their rigid nature creates significant market distortions. Without indexing these regulations, institutions are subject to “bracket creep.” As the economy expands and inflation rises, the nominal value of bank assets rises despite being the same size relative to the wider economy in real inflation-adjusted terms. Under the current framework, community banks and small credit unions are being pushed into higher regulatory classifications not because they have become riskier or more complex, but because they have grown organically. This misalignment results in a misallocation of supervisory resources by capturing institutions that have only grown on paper and diverts the focus of real risks while imposing unwarranted compliance costs on small, noncomplex financial institutions.

H.R. 7056 adjusts thresholds for community banks and small credit unions to account for the effects of economic growth and inflation that have occurred since the threshold was initially set. Additionally, this bill codifies automatic adjustments on a permanent basis by indexing the new thresholds to nominal GDP.

COMMITTEE CONSIDERATION

119TH CONGRESS

On January 14, 2026, Representative Barr introduced H.R. 7056, the *Community Bank Regulatory Tailoring Act*. Representatives Josh Gottheimer (D–NJ) and Dan Meuser (R–PA) were added subsequently as cosponsors.

The bill was referred solely to the Committee on Financial Services. The bill was attached to the January 21, 2026, hearing titled “Oversight of the Department of Housing and Urban Development and the Federal Housing Administration.”

On January 22, 2026, the Committee on Financial Services met in open session to consider, among others, H.R. 7056. The Committee ordered H.R. 7056, as amended, to be reported with a favorable recommendation 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. 7056:

On April 29, 2025, the Subcommittee on Financial Institutions of the Committee on Financial Services held a hearing titled, “Regulatory Overreach: The Price Tag on American Prosperity.” The Subcommittee heard testimony from: Ms. Sarah Christine Flowers, Senior Vice President, Associate General Counsel, Bank Policy Institute; Mr. J. Michael Radcliffe, Chairman and Chief Executive Officer, Community Financial Services Bank; Mrs. Margaret E. Tahyar, Partner, Head of Financial Institutions Group, Davis Polk & Wardwell LLP; and The Honorable Graham Steele, Academic Fellow, Rock Center for Corporate Governance, Stanford Law School.

On May 14, 2025, the Subcommittee on Financial Institutions of the Committee on Financial Services held a hearing titled, “Enhancing Competition: Shaping the Future of Bank Mergers and De Novo Formation.” The Subcommittee heard testimony from: Mr. Keith Costello, President and Chief Executive Officer, Locality Bank; Ms. Mary Usategui, President and Chief Executive Officer, BankMiami; Ms. Amanda Allexon, Partner, Simpson Thacher & Bartlett LLP; Mr. John Berlau, Senior Fellow and Director of Finance Policy, Competitive Enterprise Institute; and Mrs. ReShonda Young, Founder, Jabez Inc.

On December 11, 2025, the Subcommittee on Financial Institutions of the Committee on Financial Services held a hearing titled, “Right-Sizing the U.S. Bank Capital Framework: A Return to Tailoring, Economic Growth, and Competitiveness.” The Subcommittee heard testimony from: Mrs. Margaret Tahyar, Head of Financial Institutions, Davis Polk & Wardwell LLP; Mrs. Amanda Eversole, President and Chief Executive Officer, Financial Services Forum; Mr. Andrew Olmem, Managing Partner and Co-Leader of the Fi-

nancial Services Group, Mayer Brown; Mr. Mike Flood, Head of Center for Capital Markets Competitiveness, U.S. Chamber of Commerce; and Mr. Simon Johnson, Professor of Entrepreneurship, MIT Sloan School of Management.

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 January 22, 2026, the Committee ordered H.R. 7056, as amended, to be reported with a favorable recommendation to the House by a recorded vote of 33 yeas and 21 nays, a quorum being present. (Record Vote No. FC-236).

The Committee considered the following amendments to H.R. 7056:

- Representative Barr offered an amendment in the nature of a substitute, which made technical changes. This amendment was adopted by a voice vote.
- Ranking Member Maxine Waters (D-CA) offered an amendment (No. 3), designated HR7056__03. This amendment caps the annual percentage rate applicable to an extension of credit obtained by use of a credit card at 10 percentage points. This amendment was ruled not germane.
- Ranking Member Waters offered an amendment (No. 4), designated WATERS__136. This amendment increases the FDIC deposit insurance limit and NCUA share insurance limit to \$550,000 per account. The amendment also prohibits the sale of assets of a failed bank by the FDIC to a person who has previously defaulted on an obligation owed to the FDIC. This amendment was defeated by a voice vote.

Committee on Financial Services

Markup 10

Bill: H.R. 7056

January 22, 2026

Measure: H.R. 7056 (as amended)

Amdt/Designated:

Record Vote No.

Motion: to report favorably

FC-236

Disposition:

AGREED TO (33-21)

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						
	30	0	0		3	21	0

Committee Totals:

33	21	0
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. 7056 is to index various asset-based regulatory thresholds to nominal GDP for community banks and credit unions.

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. 7056. 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 “*Community Bank Regulatory Tailoring Act*”.

Section 2. Threshold adjustments to account for historical increases in current-dollar United States gross domestic product

Section 2 provides numerous amendments to thresholds applicable to financial institutions:

Section 2(a) increases two thresholds in the Bank Holding Company Act of 1956:

(1) in section 5(c)(3)(C)(ii) (12 U.S.C. 1844(c)(3)(C)(ii)) from \$1,000,000 to \$3,000,000 the maximum market value of shares in an investment company that a bank holding company may own and have the activities of that investment company be exempt from capital adequacy rules, guidance, standards, or requirements; and

(2) in section 13(h)(1)(B)(i) (the Volcker Rule, 12 U.S.C. 1851(h)(1)(B)(i)) from \$10,000,000 to \$15,000,000 the maximum total consolidated assets which a Bank Holding Company of an insured depository institution may hold and be exempted from the definition of a “banking entity” under the Volcker Rule.

Section 2(b) amends section 809(a) of the Community Reinvestment Act of 1977 (12 U.S.C. 2908(a)), the bill strikes the current threshold of \$250,000,000 and inserts \$800,000,000, thereby increasing the asset-size threshold that defines which financial institutions are subject to certain CRA regulatory requirements and examinations.

Section 2(c) adjusts three statutory thresholds in the Depository Institution Management Interlocks Act regarding when executives or directors of depository institutions may serve at two competing institutions simultaneously:

(1) In section 202(4) (12 U.S.C. 3201(4)), the asset-size threshold defining when management interlock restrictions apply is increased from \$100,000,000 to \$600,000,000.

(2) In section 203(1) (12 U.S.C. 3202(1)), the smaller asset threshold used for certain monitoring or notification requirements is raised from \$50,000,000 to \$110,000,000.

(3) In section 204 (12 U.S.C. 3203), two large-institution thresholds are both amended: the former \$2,500,000,000 and \$1,500,000,000 asset levels each become \$10,000,000,000.

Section 2(d) increases several Dodd-Frank Act thresholds:

(1) In section 210 (12 U.S.C. 5390(o)), raises the asset threshold used in Title II (orderly liquidation authority) for covered financial companies from \$50,000,000,000 to \$105,000,000,000.

(2) In section 210(r) (12 U.S.C. 5390(r)), the maximum amount a person may have defaulted on an obligation increases from \$1,000,000 to \$5,000,000 and still purchase assets of a covered financial company.

(3) In section 956(f) (12 U.S.C. 5641(f)), raises from \$1,000,000,000 to \$3,000,000,000 the exemption from incentive-based compensation provisions.

Section 2(e) updates multiple asset thresholds in the Federal Credit Union Act (12 U.S.C. 1751 et seq.; 12 U.S.C. 1790d), which determines when credit unions become subject to enhanced supervisory, audit, governance, and prompt-corrective-action requirements:

(1) Section 202(a)(6)(C)(iii) (12 U.S.C. 1782(a)(6)(C)(iii))—by increasing the de minimis asset threshold from \$10,000,000 to \$34,000,000, the bill expands the number of very small credit unions eligible for lighter regulatory treatment and statutory exemptions tied to minimal asset size.

(2) Section 202(a)(6)(D) (12 U.S.C. 1782(a)(6)(D))—by raising the large-credit-union threshold from \$500,000,000 to \$2,000,000,000, the bill limits heightened audit, reporting, and supervisory obligations to substantially larger institutions.

(3) Sections 202(b)(1)(A) (12 U.S.C. 1782(b)(1)(A)) and 202(c)(1)(A)(iii) (12 U.S.C. 1782(c)(1)(A)(iii))—by increasing asset triggers from \$50,000,000 to \$170,000,000, the bill raises the level at which a federally insured credit union becomes subject to: (1) expanded financial reporting requirements to the NCUA Board regarding its condition and operations; and (2) specified Share Insurance Fund assessment calculations or contribution requirements that apply to larger insured credit unions.

(4) Section 216 (12 U.S.C. 1790d)—by raising several prompt-corrective-action and capital-related thresholds: (1) \$10,000,000 to \$34,000,000; (2) \$5,000,000 to \$17,000,000; and (3) \$25,000,000 to \$51,000,000. The bill recalibrates when capital restoration plans, restrictions on activities, and supervisory interventions apply to smaller credit unions, thereby reducing regulatory burden at lower asset levels while preserving the PCA framework for larger institutions.

Section 2(f) amends multiple thresholds in the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) that determine when insured depository institutions become subject to enhanced supervisory, reporting, assessment, and prompt-corrective-action requirements administered by the FDIC:

(1) Section 7(a)(12) (12 U.S.C. 1817(a)(12))—by increasing the deposit-insurance-related asset threshold from \$5,000,000,000 to

\$8,000,000,000, the bill raises the level at which certain statutory definitions and insurance-fund calculations apply.

(2) Section 11(p)(1)(A)(i) (12 U.S.C. 1821(p)(1)(A)(i))—by raising the threshold from \$1,000,000 to \$5,000,000, the bill updates the maximum amount a person may have defaulted on an obligation increases from \$1,000,000 to \$5,000,000 and still purchase assets of a failed institution.

(3) Section 36 (12 U.S.C. 1831m)—by increasing two asset-size thresholds from \$5,000,000,000 to \$21,000,000,000 and from \$150,000,000 to \$800,000,000, the bill adjusts when institutions become subject to the FDIC’s independent audit-committee and internal-control reporting requirements applicable to large insured depository institutions.

(4) Section 38 (12 U.S.C. 1831o)—by raising several prompt-corrective-action and supervisory-category thresholds from \$300,000,000 to \$2,000,000,000, \$50,000,000 to \$110,000,000, and \$75,000,000 to \$150,000,000, the bill adjusts when certain supervisory restrictions, capital-restoration obligations, and activity limitations attach to troubled institutions.

Section 2(g) amends section 2(10) (12 U.S.C. 1422(10)) to replace \$1,000,000,000 with \$3,000,000,000 wherever that term appears in the Act. This substitution raises the statutory asset or requirement limit within the Federal Home Loan Bank system, which can affect membership criteria or transaction caps tied to Home Loan Banks.

Section 2(h) updates two Federal Reserve Act thresholds (12 U.S.C. 221 et seq. and 12 U.S.C. 375b):

(1) In section 7(a)(1) (12 U.S.C. 289)—The \$10,000,000,000 asset threshold is increased to \$17,000,000,000 which raises the point at which a stockholder’s dividends are capped at the 10-year Treasury note.

(2) In section 22(h)(5)(C) (12 U.S.C. 375b(h)(5)(C))—The bill raises from \$100,000,000 to \$500,000,000 the dollar amount at which additional quantitative limits and Federal Reserve restrictions on loans and extensions of credit to executive officers, directors, and principal shareholders apply.

Section 2(i) amends two thresholds in the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) that determine when depository institutions and mortgage lenders must collect, report, and publicly disclose detailed mortgage-lending data:

(1) Section 304(i)(3) (12 U.S.C. 2803(i)(3))—by increasing the exemption threshold from \$30,000,000 to \$160,000,000, the bill expands the class of smaller depository institutions that are exempt from HMDA data-collection and reporting requirements.

(2) Section 309(a) (12 U.S.C. 2808(a))—by increasing the reporting trigger from \$10,000,000 to \$180,000,000, the bill raises the asset-size level at which institutions become subject to HMDA-related reporting or recordkeeping obligations administered by the CFPB and Federal banking agencies.

Section 2(j) amends sections 5(u)(2)(A)(i) and (ii) of the Home Owners’ Loan Act (12 U.S.C. 1464(u))—by increasing the threshold in paragraph (2)(A)(i) from \$500,000 to \$3,000,000 and in paragraph (2)(A)(ii) from \$30,000,000 to \$160,000,000, the bill raises the asset-size levels that determine when certain statutory conditions related to the origination and servicing of Federal savings

and loan charters apply, including eligibility criteria and exemption points for regulatory requirements governing savings associations.

Section 2(k) amends section 909(a)(1) of the International Lending Supervision Act of 1983 (12 U.S.C. 3908(a)(1))—by striking \$20,000,000 and inserting \$160,000,000, the bill raises the size threshold for when certain international lending supervisory provisions apply to banks and financial institutions engaged in cross-border credit activities.

Section 2(l) amends Section 3(1)(B)(iv) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602(1)(B)(iv))—by increasing the monetary threshold from \$1,000,000 to \$19,000,000, the bill raises the point at which a mortgage loan is subject to the provisions of the Real Estate Settlement Procedures Act.

Section 2(m) amends Section 5136A(a)(2)(D)(ii) of the Revised Statutes of the United States (12 U.S.C. 24a(a)(2)(D)(ii))—by striking \$50,000,000,000 and inserting \$175,000,000,000, the bill raises the maximum consolidated total assets of all financial subsidiaries a national bank may control or hold interest in.

Section 2(n) amends Section 129C(b)(2)(F)(i) of the Truth in Lending Act (15 U.S.C. 1639c(b)(2)(F)(i))—by striking \$10,000,000,000 and inserting \$15,000,000,000, the bill raises the total asset threshold used to define larger mortgage lenders or servicers for certain Truth in Lending Act mortgage servicing and disclosure obligations.

Section 3. Periodic adjustments to thresholds to account for future increases in current-dollar United States gross domestic product

Section 3 establishes an automatic mechanism for periodically increasing every dollar threshold amended in Section 2 of the Act so that those amounts keep pace with growth in the U.S. economy, rather than remaining fixed in nominal terms over time. The adjustments begin April 1, 2031, and adjust every five years thereafter. The adjustments must increase based on the ratio, if greater than one, of the annual value of current-dollar U.S. gross domestic product as compared to the published annual GDP for the year preceding April 1, 2026. The section also provides certain rounding rules for such determinations, a publication requirement, and implementation requirement.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

BANK HOLDING COMPANY ACT OF 1956

* * * * *

ADMINISTRATION

SEC. 5. (a) Within one hundred and eighty days after the date of enactment of this Act, or within one hundred and eighty days after becoming a bank holding company, whichever is later, each bank holding company shall register with the Board on forms prescribed by the Board, which shall include such information with respect to the financial condition and operations, management, and intercompany relationships of the bank holding company and its subsidiaries, and related matters, as the Board may deem necessary or appropriate to carry about the purposes of this Act. The Board may, in its discretion, extend the time within which a bank holding company shall register and file the requisite information. A declaration filed in accordance with section 4(I)(1)(C) shall satisfy the requirements of this subsection with regard to the registration of a bank holding company but not any requirement to file an application to acquire a bank pursuant to section 3.

(b) The Board is authorized to issue such regulations and orders, including regulations and orders relating to the capital requirements for bank holding companies, as may be necessary to enable it to administer and carry out the purposes of this Act and prevent evasions thereof. In establishing capital regulations pursuant to this subsection, the Board shall seek to make such requirements countercyclical, so that the amount of capital required to be maintained by a company increases in times of economic expansion and decreases in times of economic contraction, consistent with the safety and soundness of the company.

(c) REPORTS AND EXAMINATIONS.—

(1) REPORTS.—

(A) IN GENERAL.—The Board, from time to time, may require a bank holding company and any subsidiary of such company to submit reports under oath to keep the Board informed as to—

(i) its financial condition, systems for monitoring and controlling financial and operating risks, and transactions with depository institution subsidiaries of the bank holding company; and

(ii) compliance by the bank holding company or subsidiary with—

(I) this Act;

(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provision of Federal law.

(B) USE OF EXISTING REPORTS AND OTHER SUPERVISORY INFORMATION.—The Board shall, to the fullest extent possible, use—

(i) reports and other supervisory information that the bank holding company or any subsidiary thereof has been required to provide to other Federal or State regulatory agencies;

- (ii) externally audited financial statements of the bank holding company or subsidiary;
- (iii) information otherwise available from Federal or State regulatory agencies; and
- (iv) information that is otherwise required to be reported publicly.

(C) AVAILABILITY.—Upon the request of the Board, the bank holding company or a subsidiary of the bank holding company shall promptly provide to the Board any information described in clauses (i) through (iii) of subparagraph (B).

(2) EXAMINATIONS.—

(A) IN GENERAL.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board may make examinations of a bank holding company and each subsidiary of a bank holding company in order to—

(i) inform the Board of—

(I) the nature of the operations and financial condition of the bank holding company and the subsidiary;

(II) the financial, operational, and other risks within the bank holding company system that may pose a threat to—

(aa) the safety and soundness of the bank holding company or of any depository institution subsidiary of the bank holding company; or

(bb) the stability of the financial system of the United States; and

(III) the systems of the bank holding company for monitoring and controlling the risks described in subclause (II); and

(ii) monitor the compliance of the bank holding company and the subsidiary with—

(I) this Act;

(II) Federal laws that the Board has specific jurisdiction to enforce against the company or subsidiary; and

(III) other than in the case of an insured depository institution or functionally regulated subsidiary, any other applicable provisions of Federal law.

(B) USE OF REPORTS TO REDUCE EXAMINATIONS.—For purposes of this paragraph, the Board shall, to the fullest extent possible, rely on—

(i) examination reports made by other Federal or State regulatory agencies relating to a bank holding company and any subsidiary of a bank holding company; and

(ii) the reports and other information required under paragraph (1).

(C) COORDINATION WITH OTHER REGULATORS.—The Board shall—

(i) provide reasonable notice to, and consult with, the appropriate Federal banking agency, the Securi-

ties and Exchange Commission, the Commodity Futures Trading Commission, or State regulatory agency, as appropriate, for a subsidiary that is a depository institution or a functionally regulated subsidiary of a bank holding company before commencing an examination of the subsidiary under this section; and

(ii) to the fullest extent possible, avoid duplication of examination activities, reporting requirements, and requests for information.

(3) CAPITAL.—

(A) IN GENERAL.—The Board may not, by regulation, guideline, order, or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any functionally regulated subsidiary of a bank holding company that—

(i) is not a depository institution; and

(ii) is—

(I) in compliance with the applicable capital requirements of its Federal regulatory authority (including the Securities and Exchange Commission) or State insurance authority;

(II) properly registered as an investment adviser under the Investment Advisers Act of 1940, or with any State; or

(III) is licensed as an insurance agent with the appropriate State insurance authority.

(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as preventing the Board from imposing capital or capital adequacy rules, guidelines, standards, or requirements with respect to—

(i) activities of a registered investment adviser other than with respect to investment advisory activities or activities incidental to investment advisory activities; or

(ii) activities of a licensed insurance agent other than insurance agency activities or activities incidental to insurance agency activities.

(C) LIMITATIONS ON INDIRECT ACTION.—In developing, establishing, or assessing bank holding company capital or capital adequacy rules, guidelines, standards, or requirements for purposes of this paragraph, the Board may not take into account the activities, operations, or investments of an affiliated investment company registered under the Investment Company Act of 1940, unless the investment company is—

(i) a bank holding company; or

(ii) controlled by a bank holding company by reason of ownership by the bank holding company (including through all of its affiliates) of 25 percent or more of the shares of the investment company, and the shares owned by the bank holding company have a market value equal to more than ~~【\$1,000,000】~~ \$3,000,000.

(4) FUNCTIONAL REGULATION OF SECURITIES AND INSURANCE ACTIVITIES.—

(A) SECURITIES ACTIVITIES.—Securities activities conducted in a functionally regulated subsidiary of a depository institution shall be subject to regulation by the Securities and Exchange Commission, and by relevant State securities authorities, as appropriate, subject to section 104 of the Gramm-Leach-Bliley Act, to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company.

(B) INSURANCE ACTIVITIES.—Subject to section 104 of the Gramm-Leach-Bliley Act, insurance agency and brokerage activities and activities as principal conducted in a functionally regulated subsidiary of a depository institution shall be subject to regulation by a State insurance authority to the same extent as if they were conducted in a nondepository institution subsidiary of a bank holding company.

(5) DEFINITION.—For purposes of this subsection, the term “functionally regulated subsidiary” means any company—

(A) that is not a bank holding company or a depository institution; and

(B) that is—

(i) a broker or dealer that is registered under the Securities Exchange Act of 1934;

(ii) a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities;

(iii) an investment company that is registered under the Investment Company Act of 1940;

(iv) an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator; or

(v) an entity that is subject to regulation by, or registration with, the Commodity Futures Trading Commission, with respect to activities conducted as a futures commission merchant, commodity trading adviser, commodity pool, commodity pool operator, swap execution facility, swap data repository, swap dealer, major swap participant, and activities that are incidental to such commodities and swaps activities.

(d) Before the expiration of two years following the date of enactment of this Act, and each year thereafter in the Board’s annual report to the Congress, the Board shall report to the Congress the results of the administration of this Act, stating what, if any, substantial difficulties have been encountered in carrying out the purposes of this Act, and any recommendations as to changes in the law which in the opinion of the Board would be desirable.

(e)(1) Notwithstanding any other provision of this Act, the Board may, whenever it has reasonable cause to believe that the continuation by a bank holding company of any activity or of ownership or control of any of its nonbank subsidiaries, other than a nonbank subsidiary of a bank, constitutes a serious risk to the financial

safety, soundness, or stability of a bank holding company subsidiary bank and is inconsistent with sound banking principles or with the purposes of this Act or with the Financial Institutions Supervisory Act of 1966, at the election of the bank holding company—

(A) order the bank holding company or any such nonbank subsidiaries, after due notice and opportunity for hearing, and after considering the views of the bank's primary supervisor, which shall be the Comptroller of the Currency in the case of a national bank or the Federal Deposit Insurance Corporation and the appropriate State supervisory authority in the case of an insured nonmember bank, to terminate such activities or to terminate (within one hundred and twenty days or such longer period as the Board may direct in unusual circumstances) its ownership or control of any such subsidiary either by sale or by distribution of the shares of the subsidiary to the shareholders of the bank holding company; or

(B) order the bank holding company, after due notice and opportunity for hearing, and after consultation with the primary supervisor for the bank, which shall be the Comptroller of the Currency in the case of a national bank, and the Federal Deposit Insurance Corporation and the appropriate State supervisor in the case of an insured nonmember bank, to terminate (within 120 days or such longer period as the Board may direct) the ownership or control of any such bank by such company.

The distribution referred to in subparagraph (A) shall be pro rata with respect to all of the shareholders of the distributing bank holding company, and the holding company shall not make any charge to its shareholders arising out of such a distribution.

(2) The Board may in its discretion apply to the United States district court within the jurisdiction of which the principal office of the holding company is located, for the enforcement of any effective and outstanding order issued under this section, and such court shall have jurisdiction and power to order and require compliance therewith, but except as provided in section 9 of this Act, no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(f) In the course of or in connection with an application, examination, investigation or other proceeding under this Act, the Board, or any member or designated representative thereof, including any person designated to conduct any hearing under this Act, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and the Board is empowered to make rules and regulations to effectuate the purposes of this subsection. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this Act may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial

district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for the enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any service required under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide. Any court having jurisdiction of any proceeding instituted under this subsection may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the Board, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year or both.

(g) AUTHORITY OF STATE INSURANCE REGULATOR AND THE SECURITIES AND EXCHANGE COMMISSION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any regulation, order, or other action of the Board that requires a bank holding company to provide funds or other assets to a subsidiary depository institution shall not be effective nor enforceable with respect to an entity described in subparagraph (A) if—

(A) such funds or assets are to be provided by—

(i) a bank holding company that is an insurance company, a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; or

(ii) an affiliate of the depository institution that is an insurance company or a broker or dealer registered under the Securities Exchange Act of 1934, an investment company registered under the Investment Company Act of 1940, or an investment adviser registered by or on behalf of either the Securities and Exchange Commission or any State; and

(B) the State insurance authority for the insurance company or the Securities and Exchange Commission for the registered broker, dealer, investment adviser (solely with respect to investment advisory activities or activities incidental thereto), or investment company, as the case may be, determines in writing sent to the holding company and the Board that the holding company shall not provide such funds or assets because such action would have a material adverse effect on the financial condition of the insurance company or the broker, dealer, investment company, or investment adviser, as the case may be.

(2) NOTICE TO STATE INSURANCE AUTHORITY OR SEC REQUIRED.—If the Board requires a bank holding company, or an affiliate of a bank holding company, that is an insurance company or a broker, dealer, investment company, or investment adviser described in paragraph (1)(A) to provide funds or assets to a depository institution subsidiary of the holding company pursuant to any regulation, order, or other action of the Board referred to in paragraph (1), the Board shall promptly notify the State insurance authority for the insurance company, the Securities and Exchange Commission, or State securities regulator, as the case may be, of such requirement.

(3) DIVESTITURE IN LIEU OF OTHER ACTION.—If the Board receives a notice described in paragraph (1)(B) from a State insurance authority or the Securities and Exchange Commission with regard to a bank holding company or affiliate referred to in that paragraph, the Board may order the bank holding company to divest the depository institution not later than 180 days after receiving the notice, or such longer period as the Board determines consistent with the safe and sound operation of the depository institution.

(4) CONDITIONS BEFORE DIVESTITURE.—During the period beginning on the date an order to divest is issued by the Board under paragraph (3) to a bank holding company and ending on the date the divestiture is completed, the Board may impose any conditions or restrictions on the holding company's ownership or operation of the depository institution, including restricting or prohibiting transactions between the depository institution and any affiliate of the institution, as are appropriate under the circumstances.

(5) RULE OF CONSTRUCTION.—No provision of this subsection may be construed as limiting or otherwise affecting, except to the extent specifically provided in this subsection, the regulatory authority, including the scope of the authority, of any Federal agency or department with regard to any entity that is within the jurisdiction of such agency or department.

(h) DATA STANDARDS.—

(1) REQUIREMENT.—The Board shall adopt data standards for all information that, through a collection of information, is regularly filed with or submitted to the Board by any bank holding company in a report under subsection (c).

(2) CONSISTENCY.—The data standards required under paragraph (1) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 124 of the Financial Stability Act of 2010, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of such section 124.

* * * * *

SEC. 13. PROHIBITIONS ON PROPRIETARY TRADING AND CERTAIN RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.

(a) IN GENERAL.—

(1) PROHIBITION.—Unless otherwise provided in this section, a banking entity shall not—

(A) engage in proprietary trading; or

(B) acquire or retain any equity, partnership, or other ownership interest in or sponsor a hedge fund or a private equity fund.

(2) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—Any nonbank financial company supervised by the Board that engages in proprietary trading or takes or retains any equity, partnership, or other ownership interest in or sponsors a hedge fund or a private equity fund shall be subject, by rule, as provided in subsection (b)(2), to additional capital requirements for and additional quantitative limits with regards to such proprietary trading and taking or retaining any equity, partnership, or other ownership interest in or sponsorship of a hedge fund or a private equity fund, except that permitted activities as described in subsection (d) shall not be subject to the additional capital and additional quantitative limits except as provided in subsection (d)(3), as if the nonbank financial company supervised by the Board were a banking entity.

(b) STUDY AND RULEMAKING.—

(1) STUDY.—Not later than 6 months after the date of enactment of this section, the Financial Stability Oversight Council shall study and make recommendations on implementing the provisions of this section so as to—

(A) promote and enhance the safety and soundness of banking entities;

(B) protect taxpayers and consumers and enhance financial stability by minimizing the risk that insured depository institutions and the affiliates of insured depository institutions will engage in unsafe and unsound activities;

(C) limit the inappropriate transfer of Federal subsidies from institutions that benefit from deposit insurance and liquidity facilities of the Federal Government to unregulated entities;

(D) reduce conflicts of interest between the self-interest of banking entities and nonbank financial companies supervised by the Board, and the interests of the customers of such entities and companies;

(E) limit activities that have caused undue risk or loss in banking entities and nonbank financial companies supervised by the Board, or that might reasonably be expected to create undue risk or loss in such banking entities and nonbank financial companies supervised by the Board;

(F) appropriately accommodate the business of insurance within an insurance company, subject to regulation in accordance with the relevant insurance company investment laws, while protecting the safety and soundness of any banking entity with which such insurance company is affiliated and of the United States financial system; and

(G) appropriately time the divestiture of illiquid assets that are affected by the implementation of the prohibitions under subsection (a).

(2) RULEMAKING.—

(A) IN GENERAL.—Unless otherwise provided in this section, not later than 9 months after the completion of the study under paragraph (1), the appropriate Federal banking agencies, the Securities and Exchange Commission,

and the Commodity Futures Trading Commission, shall consider the findings of the study under paragraph (1) and adopt rules to carry out this section, as provided in subparagraph (B).

(B) COORDINATED RULEMAKING.—

(i) REGULATORY AUTHORITY.—The regulations issued under this paragraph shall be issued by—

(I) the appropriate Federal banking agencies, jointly, with respect to insured depository institutions;

(II) the Board, with respect to any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act, any nonbank financial company supervised by the Board, and any subsidiary of any of the foregoing (other than a subsidiary for which an agency described in subclause (I), (III), or (IV) is the primary financial regulatory agency);

(III) the Commodity Futures Trading Commission, with respect to any entity for which the Commodity Futures Trading Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(IV) the Securities and Exchange Commission, with respect to any entity for which the Securities and Exchange Commission is the primary financial regulatory agency, as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(ii) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In developing and issuing regulations pursuant to this section, the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall consult and coordinate with each other, as appropriate, for the purposes of assuring, to the extent possible, that such regulations are comparable and provide for consistent application and implementation of the applicable provisions of this section to avoid providing advantages or imposing disadvantages to the companies affected by this subsection and to protect the safety and soundness of banking entities and nonbank financial companies supervised by the Board.

(iii) COUNCIL ROLE.—The Chairperson of the Financial Stability Oversight Council shall be responsible for coordination of the regulations issued under this section.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), this section shall take effect on the earlier of—

(A) 12 months after the date of the issuance of final rules under subsection (b); or

(B) 2 years after the date of enactment of this section.

(2) CONFORMANCE PERIOD FOR DIVESTITURE.—A banking entity or nonbank financial company supervised by the Board shall bring its activities and investments into compliance with the requirements of this section not later than 2 years after the date on which the requirements become effective pursuant to this section or 2 years after the date on which the entity or company becomes a nonbank financial company supervised by the Board. The Board may, by rule or order, extend this two-year period for not more than one year at a time, if, in the judgment of the Board, such an extension is consistent with the purposes of this section and would not be detrimental to the public interest. The extensions made by the Board under the preceding sentence may not exceed an aggregate of 3 years.

(3) EXTENDED TRANSITION FOR ILLIQUID FUNDS.—

(A) APPLICATION.—The Board may, upon the application of a banking entity, extend the period during which the banking entity, to the extent necessary to fulfill a contractual obligation that was in effect on May 1, 2010, may take or retain its equity, partnership, or other ownership interest in, or otherwise provide additional capital to, an illiquid fund.

(B) TIME LIMIT ON APPROVAL.—The Board may grant 1 extension under subparagraph (A), which may not exceed 5 years.

(4) DIVESTITURE REQUIRED.—Except as otherwise provided in subsection (d)(1)(G), a banking entity may not engage in any activity prohibited under subsection (a)(1)(B) after the earlier of—

(A) the date on which the contractual obligation to invest in the illiquid fund terminates; and

(B) the date on which any extensions granted by the Board under paragraph (3) expire.

(5) ADDITIONAL CAPITAL DURING TRANSITION PERIOD.—Notwithstanding paragraph (2), on the date on which the rules are issued under subsection (b)(2), the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue rules, as provided in subsection (b)(2), to impose additional capital requirements, and any other restrictions, as appropriate, on any equity, partnership, or ownership interest in or sponsorship of a hedge fund or private equity fund by a banking entity.

(6) SPECIAL RULEMAKING.—Not later than 6 months after the date of enactment of this section, the Board shall issue rules to implement paragraphs (2) and (3).

(d) PERMITTED ACTIVITIES.—

(1) IN GENERAL.—Notwithstanding the restrictions under subsection (a), to the extent permitted by any other provision of Federal or State law, and subject to the limitations under paragraph (2) and any restrictions or limitations that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, may determine, the following activities (in this section referred to as “permitted activities”) are permitted:

(A) The purchase, sale, acquisition, or disposition of obligations of the United States or any agency thereof, obligations, participations, or other instruments of or issued by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation, or a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), and obligations of any State or of any political subdivision thereof.

(B) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) in connection with underwriting or market-making-related activities, to the extent that any such activities permitted by this subparagraph are designed not to exceed the reasonably expected near term demands of clients, customers, or counterparties.

(C) Risk-mitigating hedging activities in connection with and related to individual or aggregated positions, contracts, or other holdings of a banking entity that are designed to reduce the specific risks to the banking entity in connection with and related to such positions, contracts, or other holdings.

(D) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) on behalf of customers.

(E) Investments in one or more small business investment companies, as defined in section 102 of the Small Business Investment Act of 1958 (15 U.S.C. 662), investments designed primarily to promote the public welfare, of the type permitted under paragraph (11) of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24), or investments that are qualified rehabilitation expenditures with respect to a qualified rehabilitated building or certified historic structure, as such terms are defined in section 47 of the Internal Revenue Code of 1986 or a similar State historic tax credit program.

(F) The purchase, sale, acquisition, or disposition of securities and other instruments described in subsection (h)(4) by a regulated insurance company directly engaged in the business of insurance for the general account of the company and by any affiliate of such regulated insurance company, provided that such activities by any affiliate are solely for the general account of the regulated insurance company, if—

(i) the purchase, sale, acquisition, or disposition is conducted in compliance with, and subject to, the insurance company investment laws, regulations, and written guidance of the State or jurisdiction in which each such insurance company is domiciled; and

(ii) the appropriate Federal banking agencies, after consultation with the Financial Stability Oversight Council and the relevant insurance commissioners of the States and territories of the United States, have

not jointly determined, after notice and comment, that a particular law, regulation, or written guidance described in clause (i) is insufficient to protect the safety and soundness of the banking entity, or of the financial stability of the United States.

(G) Organizing and offering a private equity or hedge fund, including serving as a general partner, managing member, or trustee of the fund and in any manner selecting or controlling (or having employees, officers, directors, or agents who constitute) a majority of the directors, trustees, or management of the fund, including any necessary expenses for the foregoing, only if—

(i) the banking entity provides bona fide trust, fiduciary, or investment advisory services;

(ii) the fund is organized and offered only in connection with the provision of bona fide trust, fiduciary, or investment advisory services and only to persons that are customers of such services of the banking entity;

(iii) the banking entity does not acquire or retain an equity interest, partnership interest, or other ownership interest in the funds except for a de minimis investment subject to and in compliance with paragraph (4);

(iv) the banking entity complies with the restrictions under paragraphs (1) and (2) of subparagraph (f);

(v) the banking entity does not, directly or indirectly, guarantee, assume, or otherwise insure the obligations or performance of the hedge fund or private equity fund or of any hedge fund or private equity fund in which such hedge fund or private equity fund invests;

(vi) the banking entity does not share with the hedge fund or private equity fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except that the hedge fund or private equity fund may share the same name or a variation of the same name as a banking entity that is an investment adviser to the hedge fund or private equity fund, if—

(I) such investment adviser is not an insured depository institution, a company that controls an insured depository institution, or a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106);

(II) such investment adviser does not share the same name or a variation of the same name as an insured depository institution, any company that controls an insured depository institution, or any company that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978 (12 U.S.C. 3106); and

(III) such name does not contain the word “bank”;

(vii) no director or employee of the banking entity takes or retains an equity interest, partnership interest, or other ownership interest in the hedge fund or private equity fund, except for any director or employee of the banking entity who is directly engaged in providing investment advisory or other services to the hedge fund or private equity fund; and

(viii) the banking entity discloses to prospective and actual investors in the fund, in writing, that any losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity, and otherwise complies with any additional rules of the appropriate Federal banking agencies, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as provided in subsection (b)(2), designed to ensure that losses in such hedge fund or private equity fund are borne solely by investors in the fund and not by the banking entity.

(H) Proprietary trading conducted by a banking entity pursuant to paragraph (9) or (13) of section 4(c), provided that the trading occurs solely outside of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

(I) The acquisition or retention of any equity, partnership, or other ownership interest in, or the sponsorship of, a hedge fund or a private equity fund by a banking entity pursuant to paragraph (9) or (13) of section 4(c) solely outside of the United States, provided that no ownership interest in such hedge fund or private equity fund is offered for sale or sold to a resident of the United States and that the banking entity is not directly or indirectly controlled by a banking entity that is organized under the laws of the United States or of one or more States.

(J) Such other activity as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine, by rule, as provided in subsection (b)(2), would promote and protect the safety and soundness of the banking entity and the financial stability of the United States.

(2) LIMITATION ON PERMITTED ACTIVITIES.—

(A) IN GENERAL.—No transaction, class of transactions, or activity may be deemed a permitted activity under paragraph (1) if the transaction, class of transactions, or activity—

(i) would involve or result in a material conflict of interest (as such term shall be defined by rule as provided in subsection (b)(2)) between the banking entity and its clients, customers, or counterparties;

(ii) would result, directly or indirectly, in a material exposure by the banking entity to high-risk assets or high-risk trading strategies (as such terms shall be defined by rule as provided in subsection (b)(2));

(iii) would pose a threat to the safety and soundness of such banking entity; or

(iv) would pose a threat to the financial stability of the United States.

(B) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations to implement subparagraph (A), as part of the regulations issued under subsection (b)(2).

(3) CAPITAL AND QUANTITATIVE LIMITATIONS.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall, as provided in subsection (b)(2), adopt rules imposing additional capital requirements and quantitative limitations, including diversification requirements, regarding the activities permitted under this section if the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission determine that additional capital and quantitative limitations are appropriate to protect the safety and soundness of banking entities engaged in such activities.

(4) DE MINIMIS INVESTMENT.—

(A) IN GENERAL.—A banking entity may make and retain an investment in a hedge fund or private equity fund that the banking entity organizes and offers, subject to the limitations and restrictions in subparagraph (B) for the purposes of—

(i) establishing the fund and providing the fund with sufficient initial equity for investment to permit the fund to attract unaffiliated investors; or

(ii) making a de minimis investment.

(B) LIMITATIONS AND RESTRICTIONS ON INVESTMENTS.—

(i) REQUIREMENT TO SEEK OTHER INVESTORS.—A banking entity shall actively seek unaffiliated investors to reduce or dilute the investment of the banking entity to the amount permitted under clause (ii).

(ii) LIMITATIONS ON SIZE OF INVESTMENTS.—Notwithstanding any other provision of law, investments by a banking entity in a hedge fund or private equity fund shall—

(I) not later than 1 year after the date of establishment of the fund, be reduced through redemption, sale, or dilution to an amount that is not more than 3 percent of the total ownership interests of the fund;

(II) be immaterial to the banking entity, as defined, by rule, pursuant to subsection (b)(2), but in no case may the aggregate of all of the interests of the banking entity in all such funds exceed 3 percent of the Tier 1 capital of the banking entity.

(iii) CAPITAL.—For purposes of determining compliance with applicable capital standards under paragraph (3), the aggregate amount of the outstanding investments by a banking entity under this paragraph, including retained earnings, shall be deducted from

the assets and tangible equity of the banking entity, and the amount of the deduction shall increase commensurate with the leverage of the hedge fund or private equity fund.

(C) EXTENSION.—Upon an application by a banking entity, the Board may extend the period of time to meet the requirements under subparagraph (B)(ii)(I) for 2 additional years, if the Board finds that an extension would be consistent with safety and soundness and in the public interest.

(e) ANTI-EVASION.—

(1) RULEMAKING.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall issue regulations, as part of the rulemaking provided for in subsection (b)(2), regarding internal controls and recordkeeping, in order to insure compliance with this section.

(2) TERMINATION OF ACTIVITIES OR INVESTMENT.—Notwithstanding any other provision of law, whenever an appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, has reasonable cause to believe that a banking entity or nonbank financial company supervised by the Board under the respective agency's jurisdiction has made an investment or engaged in an activity in a manner that functions as an evasion of the requirements of this section (including through an abuse of any permitted activity) or otherwise violates the restrictions under this section, the appropriate Federal banking agency, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as appropriate, shall order, after due notice and opportunity for hearing, the banking entity or nonbank financial company supervised by the Board to terminate the activity and, as relevant, dispose of the investment. Nothing in this paragraph shall be construed to limit the inherent authority of any Federal agency or State regulatory authority to further restrict any investments or activities under otherwise applicable provisions of law.

(f) LIMITATIONS ON RELATIONSHIPS WITH HEDGE FUNDS AND PRIVATE EQUITY FUNDS.—

(1) IN GENERAL.—No banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), and no affiliate of such entity, may enter into a transaction with the fund, or with any other hedge fund or private equity fund that is controlled by such fund, that would be a covered transaction, as defined in section 23A of the Federal Reserve Act (12 U.S.C. 371c), with the hedge fund or private equity fund, as if such banking entity and the affiliate thereof were a member bank and the hedge fund or private equity fund were an affiliate thereof.

(2) TREATMENT AS MEMBER BANK.—A banking entity that serves, directly or indirectly, as the investment manager, investment adviser, or sponsor to a hedge fund or private equity

fund, or that organizes and offers a hedge fund or private equity fund pursuant to paragraph (d)(1)(G), shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c-1), as if such banking entity were a member bank and such hedge fund or private equity fund were an affiliate thereof.

(3) PERMITTED SERVICES.—

(A) IN GENERAL.—Notwithstanding paragraph (1), the Board may permit a banking entity to enter into any prime brokerage transaction with any hedge fund or private equity fund in which a hedge fund or private equity fund managed, sponsored, or advised by such banking entity has taken an equity, partnership, or other ownership interest, if—

(i) the banking entity is in compliance with each of the limitations set forth in subsection (d)(1)(G) with regard to a hedge fund or private equity fund organized and offered by such banking entity;

(ii) the chief executive officer (or equivalent officer) of the banking entity certifies in writing annually (with a duty to update the certification if the information in the certification materially changes) that the conditions specified in subsection (d)(1)(g)(v) are satisfied; and

(iii) the Board has determined that such transaction is consistent with the safe and sound operation and condition of the banking entity.

(B) TREATMENT OF PRIME BROKERAGE TRANSACTIONS.—

For purposes of subparagraph (A), a prime brokerage transaction described in subparagraph (A) shall be subject to section 23B of the Federal Reserve Act (12 U.S.C. 371c-1) as if the counterparty were an affiliate of the banking entity.

(4) APPLICATION TO NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD.—The appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission shall adopt rules, as provided in subsection (b)(2), imposing additional capital charges or other restrictions for nonbank financial companies supervised by the Board to address the risks to and conflicts of interest of banking entities described in paragraphs (1), (2), and (3) of this subsection.

(g) RULES OF CONSTRUCTION.—

(1) LIMITATION ON CONTRARY AUTHORITY.—Except as provided in this section, notwithstanding any other provision of law, the prohibitions and restrictions under this section shall apply to activities of a banking entity or nonbank financial company supervised by the Board, even if such activities are authorized for a banking entity or nonbank financial company supervised by the Board.

(2) SALE OR SECURITIZATION OF LOANS.—Nothing in this section shall be construed to limit or restrict the ability of a banking entity or nonbank financial company supervised by the Board to sell or securitize loans in a manner otherwise permitted by law.

(3) **AUTHORITY OF FEDERAL AGENCIES AND STATE REGULATORY AUTHORITIES.**—Nothing in this section shall be construed to limit the inherent authority of any Federal agency or State regulatory authority under otherwise applicable provisions of law.

(h) **DEFINITIONS.**—In this section, the following definitions shall apply:

(1) **BANKING ENTITY.**—The term “banking entity” means any insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), any company that controls an insured depository institution, or that is treated as a bank holding company for purposes of section 8 of the International Banking Act of 1978, and any affiliate or subsidiary of any such entity. For purposes of this paragraph, the term “insured depository institution” does not include an institution—

(A) that functions solely in a trust or fiduciary capacity, if—

(i) all or substantially all of the deposits of such institution are in trust funds and are received in a bona fide fiduciary capacity;

(ii) no deposits of such institution which are insured by the Federal Deposit Insurance Corporation are offered or marketed by or through an affiliate of such institution;

(iii) such institution does not accept demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others or make commercial loans; and

(iv) such institution does not—

(I) obtain payment or payment related services from any Federal Reserve bank, including any service referred to in section 11A of the Federal Reserve Act (12 U.S.C. 248a); or

(II) exercise discount or borrowing privileges pursuant to section 19(b)(7) of the Federal Reserve Act (12 U.S.C. 461(b)(7)); or

(B) that does not have and is not controlled by a company that has—

(i) more than **[\$10,000,000,000]** *\$15,000,000,000* in total consolidated assets; and

(ii) total trading assets and trading liabilities, as reported on the most recent applicable regulatory filing filed by the institution, that are more than 5 percent of total consolidated assets.

(2) **HEDGE FUND; PRIVATE EQUITY FUND.**—The terms “hedge fund” and “private equity fund” mean an issuer that would be an investment company, as defined in the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), but for section 3(c)(1) or 3(c)(7) of that Act, or such similar funds as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule, as provided in subsection (b)(2), determine.

(3) **NONBANK FINANCIAL COMPANY SUPERVISED BY THE BOARD.**—The term “nonbank financial company supervised by

the Board” means a nonbank financial company supervised by the Board of Governors, as defined in section 102 of the Financial Stability Act of 2010.

(4) PROPRIETARY TRADING.—The term “proprietary trading”, when used with respect to a banking entity or nonbank financial company supervised by the Board, means engaging as a principal for the trading account of the banking entity or nonbank financial company supervised by the Board in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

(5) SPONSOR.—The term to “sponsor” a fund means—

(A) to serve as a general partner, managing member, or trustee of a fund;

(B) in any manner to select or to control (or to have employees, officers, or directors, or agents who constitute) a majority of the directors, trustees, or management of a fund; or

(C) to share with a fund, for corporate, marketing, promotional, or other purposes, the same name or a variation of the same name, except as permitted under subsection (d)(1)(G)(vi).

(6) TRADING ACCOUNT.—The term “trading account” means any account used for acquiring or taking positions in the securities and instruments described in paragraph (4) principally for the purpose of selling in the near term (or otherwise with the intent to resell in order to profit from short-term price movements), and any such other accounts as the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission may, by rule as provided in subsection (b)(2), determine.

(7) ILLIQUID FUND.—

(A) IN GENERAL.—The term “illiquid fund” means a hedge fund or private equity fund that—

(i) as of May 1, 2010, was principally invested in, or was invested and contractually committed to principally invest in, illiquid assets, such as portfolio companies, real estate investments, and venture capital investments; and

(ii) makes all investments pursuant to, and consistent with, an investment strategy to principally invest in illiquid assets. In issuing rules regarding this subparagraph, the Board shall take into consideration the terms of investment for the hedge fund or private equity fund, including contractual obligations, the ability of the fund to divest of assets held by the fund, and any other factors that the Board determines are appropriate.

(B) HEDGE FUND.—For the purposes of this paragraph, the term “hedge fund” means any fund identified under

subsection (h)(2), and does not include a private equity fund, as such term is used in section 203(m) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(m)).

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COMMUNITY REINVESTMENT ACT OF 1977

TITLE VIII—COMMUNITY REINVESTMENT

* * * * *

SEC. 809. SMALL BANK REGULATORY RELIEF.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), any regulated financial institution with aggregate assets of not more than ~~[\$250,000,000]~~ \$800,000,000 shall be subject to routine examination under this title—

(1) not more than once every 60 months for an institution that has achieved a rating of “outstanding record of meeting community credit needs” at its most recent examination under section 804;

(2) not more than once every 48 months for an institution that has received a rating of “satisfactory record of meeting community credit needs” at its most recent examination under section 804; and

(3) as deemed necessary by the appropriate Federal financial supervisory agency, for an institution that has received a rating of less than “satisfactory record of meeting community credit needs” at its most recent examination under section 804.

(b) NO EXCEPTION FROM CRA EXAMINATIONS IN CONNECTION WITH APPLICATIONS FOR DEPOSIT FACILITIES.—A regulated financial institution described in subsection (a) shall remain subject to examination under this title in connection with an application for a deposit facility.

(c) DISCRETION.—A regulated financial institution described in subsection (a) may be subject to more frequent or less frequent examinations for reasonable cause under such circumstances as may be determined by the appropriate Federal financial supervisory agency.

DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT

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TITLE II—INTERLOCKING DIRECTORS

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SEC. 202. As used in this title—

(1) the term “depository institution” means a commercial bank, a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union;

(2) the term “depository holding company” means a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956, a company which would be a bank hold-

ing company as defined in section 2(a) of the Bank Holding Company Act of 1956 but for the exemption contained in section 2(a)(5)(F) thereof, or a savings and loan holding company as defined in section 408(a)(1)(I) of the National Housing Act;

(3) the characterization of any corporation (including depository institutions and depository holding companies), as an “affiliate of,” or as “affiliated” with any other corporation means that—

(A) one of the corporations is a depository holding company and the other is a subsidiary thereof, or both corporations are subsidiary of the same depository holding company, as the term “subsidiary” is defined in either section 2(d) of the Bank Holding Company Act of 1956 in the case of a bank holding company or section 408(a)(1)(II) of the National Housing Act in the case of a savings and loan holding company; or

(B) more than 25 percent of the voting stock of one corporation is beneficially owned in the aggregate by one or more persons who also beneficially own in the aggregate more than 25 percent of the voting stock of the other corporation; or

(C) one of the corporations is a trust company all of the stock of which, except for directors qualifying shares, was owned by one or more mutual savings banks on the date of enactment of this Act, and the other corporation is a mutual savings bank; or

(D) one of the corporations is a bank, insured by the Federal Deposit Insurance Corporation and chartered under State law, and is a bankers’ bank, described in Paragraph Seventh of section 5136 of the Revised Statutes; or

(E) one of the corporations is a bank, chartered under State law and insured by the Federal Deposit Insurance Corporation, the voting securities of which are held only by persons who are officers of other banks, as permitted by State law, and which bank is primarily engaged in providing banking services for other banks and not the public: *Provided, however,* That in no case shall the voting securities of such corporation be held by such officers of other banks in excess of 6 per centum of the paid-in capital and 6 per centum of the surplus of such a bank.

(4) the term “management official” means an employee or officer with management functions, a director (including an advisory or honorary director, except in the case of a depository institution with total assets of less than **[\$100,000,000]** **\$600,000,000**), a trustee of a business organization under the control of trustee, or any person who has a representative or nominee serving in any such capacity: *Provided,* That if a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank in specifically authorized under the laws of the State in which said institution is located to serve as a trustee, director, or other officer of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings from natural persons, then, for the purposes of this title, such corporator, trustee, director,

or other officer shall not be deemed to be a management official of such trust company; *And provided further*, That if a management official of a State-chartered trust company which does not make real estate mortgage loans and does not accept savings deposits from natural persons is specifically authorized under the laws of the State in which said institution is located to serve as a corporator, trustee, director, or other officer of a State-chartered savings bank or cooperative bank, then, for the purposes of this title, such management official shall not be deemed to be a management official of any such savings bank or cooperative bank;

(5) the term “office” used with reference to a depository institution means either a principal office or a branch; and

(6) the term “appropriate Federal depository institutions regulatory agency” means, with respect to any depository institution or depository holding company, the agency referred to in section 209 in connection with such institution or company.

SEC. 203. A management official of a depository institution or a depository holding company may not serve as a management official of any other depository institution or depository holding company not affiliated therewith if an office of one of the institutions or any depository institution that is an affiliate of such institutions is located within either—

(1) the same primary metropolitan statistical area, the same metropolitan statistical area, or the same consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas as defined by the Office of Management and Budget, except in the case of depository institutions with less than ~~【\$50,000,000】~~ *\$110,000,000* in assets in which case the provision of paragraph (2) shall apply, as that in which an office of the other institution or any depository institution that is an affiliate of such institution is located, or

(2) the same city, town, or village as that in which an office of the other institution or any depository institution that is an affiliate of such other institution is located, or in any city, town, or village contiguous or adjacent thereto.

SEC. 204. If a depository institution or a depository holding company has total assets exceeding ~~【\$2,500,000,000】~~ *\$10,000,000,000*, a management official of such institution or any affiliate thereof may not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding ~~【\$1,500,000,000】~~ *\$10,000,000,000* or as a management official of any affiliate of such other institution. In order to allow for inflation or market changes, the appropriate Federal depository institutions regulatory agencies may, by regulation, adjust, as necessary, the amount of total assets required for depository institutions or depository holding companies under this section.

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DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

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TITLE II—ORDERLY LIQUIDATION AUTHORITY

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SEC. 210. POWERS AND DUTIES OF THE CORPORATION.

(a) POWERS AND AUTHORITIES.—

(1) GENERAL POWERS.—

(A) SUCCESSOR TO COVERED FINANCIAL COMPANY.—The Corporation shall, upon appointment as receiver for a covered financial company under this title, succeed to—

(i) all rights, titles, powers, and privileges of the covered financial company and its assets, and of any stockholder, member, officer, or director of such company; and

(ii) title to the books, records, and assets of any previous receiver or other legal custodian of such covered financial company.

(B) OPERATION OF THE COVERED FINANCIAL COMPANY DURING THE PERIOD OF ORDERLY LIQUIDATION.—The Corporation, as receiver for a covered financial company, may—

(i) take over the assets of and operate the covered financial company with all of the powers of the members or shareholders, the directors, and the officers of the covered financial company, and conduct all business of the covered financial company;

(ii) collect all obligations and money owed to the covered financial company;

(iii) perform all functions of the covered financial company, in the name of the covered financial company;

(iv) manage the assets and property of the covered financial company, consistent with maximization of the value of the assets in the context of the orderly liquidation; and

(v) provide by contract for assistance in fulfilling any function, activity, action, or duty of the Corporation as receiver.

(C) FUNCTIONS OF COVERED FINANCIAL COMPANY OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The Corporation may provide for the exercise of any function by any member or stockholder, director, or officer of any covered financial company for which the Corporation has been appointed as receiver under this title.

(D) ADDITIONAL POWERS AS RECEIVER.—The Corporation shall, as receiver for a covered financial company, and subject to all legally enforceable and perfected security interests and all legally enforceable security entitlements in respect of assets held by the covered financial company, liquidate, and wind-up the affairs of a covered financial company, including taking steps to realize upon the assets of the covered financial company, in such manner as the Corporation deems appropriate, including through the sale of assets, the transfer of assets to a bridge financial company

established under subsection (h), or the exercise of any other rights or privileges granted to the receiver under this section.

(E) ADDITIONAL POWERS WITH RESPECT TO FAILING SUBSIDIARIES OF A COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—In any case in which a receiver is appointed for a covered financial company under section 202, the Corporation may appoint itself as receiver of any covered subsidiary of the covered financial company that is organized under Federal law or the laws of any State, if the Corporation and the Secretary jointly determine that—

(I) the covered subsidiary is in default or in danger of default;

(II) such action would avoid or mitigate serious adverse effects on the financial stability or economic conditions of the United States; and

(III) such action would facilitate the orderly liquidation of the covered financial company.

(ii) TREATMENT AS COVERED FINANCIAL COMPANY.—If the Corporation is appointed as receiver of a covered subsidiary of a covered financial company under clause (i), the covered subsidiary shall thereafter be considered a covered financial company under this title, and the Corporation shall thereafter have all the powers and rights with respect to that covered subsidiary as it has with respect to a covered financial company under this title.

(F) ORGANIZATION OF BRIDGE COMPANIES.—The Corporation, as receiver for a covered financial company, may organize a bridge financial company under subsection (h).

(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

(i) IN GENERAL.—Subject to clauses (ii) and (iii), the Corporation, as receiver for a covered financial company, may—

(I) merge the covered financial company with another company; or

(II) transfer any asset or liability of the covered financial company (including any assets and liabilities held by the covered financial company for security entitlement holders, any customer property, or any assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—With respect to a transaction described in clause (i)(I) that requires approval by a Federal agency—

(I) the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval;

(II) if, in connection with any such approval, a report on competitive factors is required, the Fed-

eral agency responsible for such approval shall promptly notify the Attorney General of the United States of the proposed transaction, and the Attorney General shall provide the required report not later than 10 days after the date of the request; and

(III) if notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under subsection (b)(2) of such section 7A, or is extended pursuant to subsection (e)(2) of such section 7A.

(iii) SETOFF.—Subject to the other provisions of this title, any transferee of assets from a receiver, including a bridge financial company, shall be subject to such claims or rights as would prevail over the rights of such transferee in such assets under applicable non-insolvency law.

(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as receiver for a covered financial company, shall, to the extent that funds are available, pay all valid obligations of the covered financial company that are due and payable at the time of the appointment of the Corporation as receiver, in accordance with the prescriptions and limitations of this title.

(I) APPLICABLE NONINSOLVENCY LAW.—Except as may otherwise be provided in this title, the applicable noninsolvency law shall be determined by the noninsolvency choice of law rules otherwise applicable to the claims, rights, titles, persons, or entities at issue.

(J) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation, as receiver for a covered financial company, may, for purposes of carrying out any power, authority, or duty with respect to the covered financial company (including determining any claim against the covered financial company and determining and realizing upon any asset of any person in the course of collecting money due the covered financial company), exercise any power established under section 8(n) of the Federal Deposit Insurance Act, as if the Corporation were the appropriate Federal banking agency for the covered financial company, and the covered financial company were an insured depository institution.

(ii) RULE OF CONSTRUCTION.—This subparagraph may not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have to exercise any powers described in clause (i) or under any other provision of law.

(K) INCIDENTAL POWERS.—The Corporation, as receiver for a covered financial company, may exercise all powers and authorities specifically granted to receivers under this

title, and such incidental powers as shall be necessary to carry out such powers under this title.

(L) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from the covered financial company, the Corporation, as receiver for a covered financial company, may utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, if such services are available in the private sector, and the Corporation determines that utilization of such services is practicable, efficient, and cost effective.

(M) SHAREHOLDERS AND CREDITORS OF COVERED FINANCIAL COMPANY.—Notwithstanding any other provision of law, the Corporation, as receiver for a covered financial company, shall succeed by operation of law to the rights, titles, powers, and privileges described in subparagraph (A), and shall terminate all rights and claims that the stockholders and creditors of the covered financial company may have against the assets of the covered financial company or the Corporation arising out of their status as stockholders or creditors, except for their right to payment, resolution, or other satisfaction of their claims, as permitted under this section. The Corporation shall ensure that shareholders and unsecured creditors bear losses, consistent with the priority of claims provisions under this section.

(N) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The Corporation, as receiver for a covered financial company, shall coordinate, to the maximum extent possible, with the appropriate foreign financial authorities regarding the orderly liquidation of any covered financial company that has assets or operations in a country other than the United States.

(O) RESTRICTION ON TRANSFERS.—

(i) SELECTION OF ACCOUNTS FOR TRANSFER.—If the Corporation establishes one or more bridge financial companies with respect to a covered broker or dealer, the Corporation shall transfer to one of such bridge financial companies, all customer accounts of the covered broker or dealer, and all associated customer name securities and customer property, unless the Corporation, after consulting with the Commission and SIPC, determines that—

(I) the customer accounts, customer name securities, and customer property are likely to be promptly transferred to another broker or dealer that is registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 73o(b)) and is a member of SIPC; or

(II) the transfer of the accounts to a bridge financial company would materially interfere with the ability of the Corporation to avoid or mitigate serious adverse effects on financial stability or economic conditions in the United States.

(ii) TRANSFER OF PROPERTY.—SIPC, as trustee for the liquidation of the covered broker or dealer, and the Commission shall provide any and all reasonable assistance necessary to complete such transfers by the Corporation.

(iii) CUSTOMER CONSENT AND COURT APPROVAL NOT REQUIRED.—Neither customer consent nor court approval shall be required to transfer any customer accounts or associated customer name securities or customer property to a bridge financial company in accordance with this section.

(iv) NOTIFICATION OF SIPC AND SHARING OF INFORMATION.—The Corporation shall identify to SIPC the customer accounts and associated customer name securities and customer property transferred to the bridge financial company. The Corporation and SIPC shall cooperate in the sharing of any information necessary for each entity to discharge its obligations under this title and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.) including by providing access to the books and records of the covered financial company and any bridge financial company established in accordance with this title.

(2) DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company, shall report on claims, as set forth in section 203(c)(3). Subject to paragraph (4) of this subsection, the Corporation, as receiver for a covered financial company, shall determine claims in accordance with the requirements of this subsection and regulations prescribed under section 209.

(B) NOTICE REQUIREMENTS.—The Corporation, as receiver for a covered financial company, in any case involving the liquidation or winding up of the affairs of a covered financial company, shall—

(i) promptly publish a notice to the creditors of the covered financial company to present their claims, together with proof, to the receiver by a date specified in the notice, which shall be not earlier than 90 days after the date of publication of such notice; and

(ii) republish such notice 1 month and 2 months, respectively, after the date of publication under clause (i).

(C) MAILING REQUIRED.—The Corporation as receiver shall mail a notice similar to the notice published under clause (i) or (ii) of subparagraph (B), at the time of such publication, to any creditor shown on the books and records of the covered financial company—

(i) at the last address of the creditor appearing in such books;

(ii) in any claim filed by the claimant; or

(iii) upon discovery of the name and address of a claimant not appearing on the books and records of the covered financial company, not later than 30 days

after the date of the discovery of such name and address.

(3) PROCEDURES FOR RESOLUTION OF CLAIMS.—

(A) DECISION PERIOD.—

(i) IN GENERAL.—Prior to the 180th day after the date on which a claim against a covered financial company is filed with the Corporation as receiver, or such later date as may be agreed as provided in clause (ii), the Corporation shall notify the claimant whether it allows or disallows the claim, in accordance with subparagraphs (B), (C), and (D).

(ii) EXTENSION OF TIME.—By written agreement executed not later than 180 days after the date on which a claim against a covered financial company is filed with the Corporation, the period described in clause (i) may be extended by written agreement between the claimant and the Corporation. Failure to notify the claimant of any disallowance within the time period set forth in clause (i), as it may be extended by agreement under this clause, shall be deemed to be a disallowance of such claim, and the claimant may file or continue an action in court, as provided in paragraph (4).

(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any decision with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the books, records, or both of the covered financial company;

(II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If the Corporation as receiver disallows any claim filed under clause (i), the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures required to file or continue an action in court, as provided in paragraph (4).

(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received by the receiver on or before the date specified in the notice under paragraph (2)(B)(i), which is proved to the satisfaction of the receiver.

(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (2)(B)(i) shall be disallowed, and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by a claimant after the date specified in the notice published under paragraph

(2)(B)(i), and such claim may be considered by the receiver under subparagraph (B), if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The Corporation may disallow any portion of any claim by a creditor or claim of a security, preference, setoff, or priority which is not proved to the satisfaction of the Corporation.

(ii) PAYMENTS TO UNDERSECURED CREDITORS.—In the case of a claim against a covered financial company that is secured by any property or other asset of such covered financial company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim; and

(II) may not make any payment with respect to such unsecured portion of the claim, other than in connection with the disposition of all claims of unsecured creditors of the covered financial company.

(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal reserve bank, or the Corporation, to any covered financial company; or

(II) subject to clause (ii), any legally enforceable and perfected security interest in the assets of the covered financial company securing any such extension of credit.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATIONS TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of appointment of the receiver for the covered financial company.

(4) JUDICIAL DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (B), a claimant may file suit on a claim (or continue an action commenced before the date of appointment of the Corporation as receiver) in the district or territorial court of the United States for the district within which the principal place of business of the covered financial company is located (and such court shall have jurisdiction to hear such claim).

(B) TIMING.—A claim under subparagraph (A) may be filed before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (3)(A)(i) (or, if extended by agreement of the Corporation and the claimant, the period described in paragraph (3)(A)(ii)) with respect to any claim against a covered financial company for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (3)(A)(i).

(C) STATUTE OF LIMITATIONS.—If any claimant fails to file suit on such claim (or to continue an action on such claim commenced before the date of appointment of the Corporation as receiver) prior to the end of the 60-day period described in subparagraph (B), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(5) EXPEDITED DETERMINATION OF CLAIMS.—

(A) PROCEDURE REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the claims process established under paragraph (3), for any claimant that alleges—

(i) having a legally valid and enforceable or perfected security interest in property of a covered financial company or control of any legally valid and enforceable security entitlement in respect of any asset held by the covered financial company for which the Corporation has been appointed receiver; and

(ii) that irreparable injury will occur if the claims procedure established under paragraph (3) is followed.

(B) DETERMINATION PERIOD.—Prior to the end of the 90-day period beginning on the date on which a claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim, or any portion thereof; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (3);

(ii) notify the claimant of the determination; and

(iii) if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining a judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file suit (or continue a suit filed before the date of appointment of the Corporation as receiver seeking a determination of the rights of the claimant with respect to such security interest (or such security entitlement) after the earlier of—

- (i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or
- (ii) the date on which the Corporation denies the claim or a portion thereof.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (C), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATIONS TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (8), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Corporation as receiver for the covered financial company.

(6) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—No agreement that tends to diminish or defeat the interest of the Corporation as receiver in any asset acquired by the receiver under this section shall be valid against the receiver, unless such agreement—

(A) is in writing;

(B) was executed by an authorized officer or representative of the covered financial company, or confirmed in the ordinary course of business by the covered financial company; and

(C) has been, since the time of its execution, an official record of the company or the party claiming under the agreement provides documentation, acceptable to the receiver, of such agreement and its authorized execution or confirmation by the covered financial company.

(7) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Corporation as receiver may, in its discretion and to the extent that funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the receiver pursuant to a final determination pursuant to paragraph (3) or (5), as applicable; or

(iii) determined by the final judgment of a court of competent jurisdiction.

(B) LIMITATION.—A creditor shall, in no event, receive less than the amount that the creditor is entitled to re-

ceive under paragraphs (2) and (3) of subsection (d), as applicable.

(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The Corporation as receiver may, in its sole discretion, and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Corporation as receiver, by reason of any such payment or for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(D) RULEMAKING BY THE CORPORATION.—The Corporation may prescribe such rules, including definitions of terms, as the Corporation deems appropriate to establish an interest rate for or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estate of a covered financial company, except that no such interest shall be paid until the Corporation as receiver has satisfied the principal amount of all creditor claims.

(8) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of the Corporation as receiver for a covered financial company, the Corporation may request a stay in any judicial action or proceeding in which such covered financial company is or becomes a party, for a period of not to exceed 90 days.

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Corporation pursuant to subparagraph (A), the court shall grant such stay as to all parties.

(9) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final, non-appealable judgment of any court of competent jurisdiction that was rendered before the appointment of the Corporation as receiver.

(B) RIGHTS AND REMEDIES OF RECEIVER.—In the event of any appealable judgment, the Corporation as receiver shall—

(i) have all the rights and remedies available to the covered financial company (before the date of appointment of the Corporation as receiver under section 202) and the Corporation, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may be issued by any court upon assets in the possession of the Corporation as receiver for a covered financial company.

(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this title, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any covered financial company for which the Corporation has been appointed receiver, including

any assets which the Corporation may acquire from itself as such receiver; or

(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as receiver in connection with any covered financial company for which the Corporation is acting as receiver under this section, the Corporation shall, to the greatest extent practicable, conduct its operations in a manner that—

(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) mitigates the potential for serious adverse effects to the financial system;

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

(v) prohibits discrimination on the basis of race, sex, or ethnic group in the solicitation and consideration of offers.

(10) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY RECEIVER.—

(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as receiver for a covered financial company shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law; and

(ii) in the case of any tort claim, the longer of—

(I) the 3-year period beginning on the date on which the claim accrues; or

(II) the period applicable under State law.

(B) DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in subparagraph (A) shall be the later of—

(i) the date of the appointment of the Corporation as receiver under this title; or

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the applicable statute of limitations under State law has expired not more than 5 years before the date of appointment of the Corporation as receiver for a covered financial company, the Corporation may bring an action as receiver on such claim without regard to the expiration of the statute of limitations.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered financial company.

(11) AVOIDABLE TRANSFERS.—

(A) FRAUDULENT TRANSFERS.—The Corporation, as receiver for any covered financial company, may avoid a transfer of any interest of the covered financial company in property, or any obligation incurred by the covered financial company, that was made or incurred at or within 2 years before the date on which the Corporation was appointed receiver, if—

(i) the covered financial company voluntarily or involuntarily—

(I) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the covered financial company was or became, on or after the date on which such transfer was made or such obligation was incurred, indebted; or

(II) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(ii) the covered financial company voluntarily or involuntarily—

(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the covered financial company was an unreasonably small capital;

(III) intended to incur, or believed that the covered financial company would incur, debts that would be beyond the ability of the covered financial company to pay as such debts matured; or

(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.

(B) PREFERENTIAL TRANSFERS.—The Corporation as receiver for any covered financial company may avoid a transfer of an interest of the covered financial company in property—

(i) to or for the benefit of a creditor;

(ii) for or on account of an antecedent debt that was owed by the covered financial company before the transfer was made;

(iii) that was made while the covered financial company was insolvent;

(iv) that was made—

(I) 90 days or less before the date on which the Corporation was appointed receiver; or

(II) more than 90 days, but less than 1 year before the date on which the Corporation was appointed receiver, if such creditor at the time of the transfer was an insider; and

(v) that enables the creditor to receive more than the creditor would receive if—

(I) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code;

(II) the transfer had not been made; and

(III) the creditor received payment of such debt to the extent provided by the provisions of chapter 7 of the Bankruptcy Code.

(C) POST-RECEIVERSHIP TRANSACTIONS.—The Corporation as receiver for any covered financial company may avoid a transfer of property of the receivership that occurred after the Corporation was appointed receiver that was not authorized under this title by the Corporation as receiver.

(D) RIGHT OF RECOVERY.—To the extent that a transfer is avoided under subparagraph (A), (B), or (C), the Corporation may recover, for the benefit of the covered financial company, the property transferred or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(E) RIGHTS OF TRANSFeree OR OBLIGEE.—The Corporation may not recover under subparagraph (D)(ii) from—

(i) any transferee that takes for value, including in satisfaction of or to secure a present or antecedent debt, in good faith, and without knowledge of the voidability of the transfer avoided; or

(ii) any immediate or mediate good faith transferee of such transferee.

(F) DEFENSES.—Subject to the other provisions of this title—

(i) a transferee or obligee from which the Corporation seeks to recover a transfer or to avoid an obligation under subparagraph (A), (B), (C), or (D) shall have the same defenses available to a transferee or obligee from which a trustee seeks to recover a transfer or avoid an obligation under sections 547, 548, and 549 of the Bankruptcy Code; and

(ii) the authority of the Corporation to recover a transfer or avoid an obligation shall be subject to subsections (b) and (c) of section 546, section 547(c), and section 548(c) of the Bankruptcy Code.

(G) RIGHTS UNDER THIS SECTION.—The rights of the Corporation as receiver under this section shall be superior to any rights of a trustee or any other party (other than a Federal agency) under the Bankruptcy Code.

(H) RULES OF CONSTRUCTION; DEFINITIONS.—For purposes of—

(i) subparagraphs (A) and (B)—

(I) the term “insider” has the same meaning as in section 101(31) of the Bankruptcy Code;

(II) a transfer is made when such transfer is so perfected that a bona fide purchaser from the cov-

ered financial company against whom applicable law permits such transfer to be perfected cannot acquire an interest in the property transferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the date on which the Corporation is appointed as receiver for the covered financial company, such transfer is made immediately before the date of such appointment; and

(III) the term “value” means property, or satisfaction or securing of a present or antecedent debt of the covered financial company, but does not include an unperformed promise to furnish support to the covered financial company; and

(ii) subparagraph (B)—

(I) the covered financial company is presumed to have been insolvent on and during the 90-day period immediately preceding the date of appointment of the Corporation as receiver; and

(II) the term “insolvent” has the same meaning as in section 101(32) of the Bankruptcy Code.

(12) SETOFF.—

(A) GENERALLY.—Except as otherwise provided in this title, any right of a creditor to offset a mutual debt owed by the creditor to any covered financial company that arose before the Corporation was appointed as receiver for the covered financial company against a claim of such creditor may be asserted if enforceable under applicable noninsolvency law, except to the extent that—

(i) the claim of the creditor against the covered financial company is disallowed;

(ii) the claim was transferred, by an entity other than the covered financial company, to the creditor—

(I) after the Corporation was appointed as receiver of the covered financial company; or

(II)(aa) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company; and

(bb) while the covered financial company was insolvent (except for a setoff in connection with a qualified financial contract); or

(iii) the debt owed to the covered financial company was incurred by the covered financial company—

(I) after the 90-day period preceding the date on which the Corporation was appointed as receiver for the covered financial company;

(II) while the covered financial company was insolvent; and

(III) for the purpose of obtaining a right of setoff against the covered financial company (except for a setoff in connection with a qualified financial contract).

(B) INSUFFICIENCY.—

(i) IN GENERAL.—Except with respect to a setoff in connection with a qualified financial contract, if a

creditor offsets a mutual debt owed to the covered financial company against a claim of the covered financial company on or within the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company, the Corporation may recover from the creditor the amount so offset, to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(I) the date that is 90 days before the date on which the Corporation is appointed as receiver for the covered financial company; or

(II) the first day on which there is an insufficiency during the 90-day period preceding the date on which the Corporation is appointed as receiver for the covered financial company.

(ii) DEFINITION OF INSUFFICIENCY.—In this subparagraph, the term “insufficiency” means the amount, if any, by which a claim against the covered financial company exceeds a mutual debt owed to the covered financial company by the holder of such claim.

(C) INSOLVENCY.—The term “insolvent” has the same meaning as in section 101(32) of the Bankruptcy Code.

(D) PRESUMPTION OF INSOLVENCY.—For purposes of this paragraph, the covered financial company is presumed to have been insolvent on and during the 90-day period preceding the date of appointment of the Corporation as receiver.

(E) LIMITATION.—Nothing in this paragraph (12) shall be the basis for any right of setoff where no such right exists under applicable noninsolvency law.

(F) PRIORITY CLAIM.—Except as otherwise provided in this title, the Corporation as receiver for the covered financial company may sell or transfer any assets free and clear of the setoff rights of any party, except that such party shall be entitled to a claim, subordinate to the claims payable under subparagraphs (A), (B), (C), and (D) of subsection (b)(1), but senior to all other unsecured liabilities defined in subsection (b)(1)(E), in an amount equal to the value of such setoff rights.

(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (14), any court of competent jurisdiction may, at the request of the Corporation as receiver for a covered financial company, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation under the control of the court and appointing a trustee to hold such assets.

(14) STANDARDS.—

(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (13), without regard to the requirement that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of the State provide substantially similar protections of the right of the parties to due process as provided under Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation pursuant to paragraph (14) may be requested under the laws of such State.

(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER.—Notwithstanding any other provision of this title, any final and non-appealable judgment for monetary damages entered against the Corporation as receiver for a covered financial company for the breach of an agreement executed or approved by the Corporation after the date of its appointment shall be paid as an administrative expense of the receiver. Nothing in this paragraph shall be construed to limit the power of a receiver to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as receiver for a covered financial company shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each receivership or other disposition of any covered financial company.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each receivership to which the Corporation is appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) and section 203(c)(3) shall be made available to the public by the Corporation.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—The Corporation shall prescribe such regulations and establish such retention schedules as are necessary to maintain the documents and records of the Corporation generated in exercising the authorities of this title and the records of a covered financial company for which the Corporation is appointed receiver, with due regard for—

(I) the avoidance of duplicative record retention; and

(II) the expected evidentiary needs of the Corporation as receiver for a covered financial company and the public regarding the records of covered financial companies.

(ii) RETENTION OF RECORDS.—Unless otherwise required by applicable Federal law or court order, the Corporation may not, at any time, destroy any records that are subject to clause (i).

(iii) RECORDS DEFINED.—As used in this subparagraph, the terms “records” and “records of a covered fi-

nancial company” mean any document, book, paper, map, photograph, microfiche, microfilm, computer or electronically-created record generated or maintained by the covered financial company in the course of and necessary to its transaction of business.

(b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

(1) IN GENERAL.—Unsecured claims against a covered financial company, or the Corporation as receiver for such covered financial company under this section, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any amounts owed to the United States, unless the United States agrees or consents otherwise.

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of 11,725 for each individual (as indexed for inflation, by regulation of the Corporation) earned not later than 180 days before the date of appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the extent of the number of employees covered by each such plan, multiplied by 11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

(E) Any other general or senior liability of the covered financial company (which is not a liability described under subparagraph (F), (G), or (H)).

(F) Any obligation subordinated to general creditors (which is not an obligation described under subparagraph (G) or (H)).

(G) Any wages, salaries, or commissions, including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

(H) Any obligation to shareholders, members, general partners, limited partners, or other persons, with interests in the equity of the covered financial company arising as a result of their status as shareholders, members, general partners, limited partners, or other persons with interests in the equity of the covered financial company.

(2) POST-RECEIVERSHIP FINANCING PRIORITY.—In the event that the Corporation, as receiver for a covered financial company, is unable to obtain unsecured credit for the covered financial company from commercial sources, the Corporation as receiver may obtain credit or incur debt on the part of the covered financial company, which shall have priority over any or all administrative expenses of the receiver under paragraph (1)(A).

(3) CLAIMS OF THE UNITED STATES.—Unsecured claims of the United States shall, at a minimum, have a higher priority than

liabilities of the covered financial company that count as regulatory capital.

(4) CREDITORS SIMILARLY SITUATED.—All claimants of a covered financial company that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(D)(i)) that does not comply with this subsection, if—

(A) the Corporation determines that such action is necessary—

(i) to maximize the value of the assets of the covered financial company;

(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

(iii) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

(iv) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in paragraphs (2) and (3) of subsection (d).

(5) SECURED CLAIMS UNAFFECTED.—This section shall not affect secured claims or security entitlements in respect of assets or property held by the covered financial company, except to the extent that the security is insufficient to satisfy the claim, and then only with regard to the difference between the claim and the amount realized from the security.

(6) PRIORITY OF EXPENSES AND UNSECURED CLAIMS IN THE ORDERLY LIQUIDATION OF SIPC MEMBER.—Where the Corporation is appointed as receiver for a covered broker or dealer, unsecured claims against such covered broker or dealer, or the Corporation as receiver for such covered broker or dealer under this section, that are proven to the satisfaction of the receiver under section 205(e), shall have the priority prescribed in paragraph (1), except that—

(A) SIPC shall be entitled to recover administrative expenses incurred in performing its responsibilities under section 205 on an equal basis with the Corporation, in accordance with paragraph (1)(A);

(B) the Corporation shall be entitled to recover any amounts paid to customers or to SIPC pursuant to section 205(f), in accordance with paragraph (1)(B);

(C) SIPC shall be entitled to recover any amounts paid out of the SIPC Fund to meet its obligations under section 205 and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), which claim shall be subordinate to the claims payable under subparagraphs (A) and (B) of paragraph (1), but senior to all other claims; and

(D) the Corporation may, after paying any proven claims to customers under section 205 and the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), and as provided above, pay dividends on other proven claims, in

its discretion, and to the extent that funds are available, in accordance with the priorities set forth in paragraph (1).
 (c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF RECEIVER.—

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights that a receiver may have, the Corporation as receiver for any covered financial company may disaffirm or repudiate any contract or lease—

(A) to which the covered financial company is a party;

(B) the performance of which the Corporation as receiver, in the discretion of the Corporation, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the Corporation as receiver determines, in the discretion of the Corporation, will promote the orderly administration of the affairs of the covered financial company.

(2) TIMING OF REPUDIATION.—The Corporation, as receiver for any covered financial company, shall determine whether or not to exercise the rights of repudiation under this section within a reasonable period of time.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

(A) IN GENERAL.—Except as provided in paragraphs (4), (5), and (6) and in subparagraphs (C), (D), and (E) of this paragraph, the liability of the Corporation as receiver for a covered financial company for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the Corporation as receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term “actual direct compensatory damages” does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this paragraph and subsection (d), except as otherwise specifically provided in this subsection.

(D) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF DEBT OBLIGATION.—In the case of any

debt for borrowed money or evidenced by a security, actual direct compensatory damages shall be no less than the amount lent plus accrued interest plus any accreted original issue discount as of the date the Corporation was appointed receiver of the covered financial company and, to the extent that an allowed secured claim is secured by property the value of which is greater than the amount of such claim and any accrued interest through the date of repudiation or disaffirmance, such accrued interest pursuant to paragraph (1).

(E) MEASURE OF DAMAGES FOR REPUDIATION OR DISAFFIRMANCE OF CONTINGENT OBLIGATION.—In the case of any contingent obligation of a covered financial company consisting of any obligation under a guarantee, letter of credit, loan commitment, or similar credit obligation, the Corporation may, by rule or regulation, prescribe that actual direct compensatory damages shall be no less than the estimated value of the claim as of the date the Corporation was appointed receiver of the covered financial company, as such value is measured based on the likelihood that such contingent claim would become fixed and the probable magnitude thereof.

(4) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSEE.—

(A) IN GENERAL.—If the Corporation as receiver disaffirms or repudiates a lease under which the covered financial company is the lessee, the receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which subparagraph (A) would otherwise apply shall—

(i) be entitled to the contractual rent accruing before the later of the date on which—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this paragraph and subsection (d).

(5) LEASES UNDER WHICH THE COVERED FINANCIAL COMPANY IS THE LESSOR.—

(A) IN GENERAL.—If the Corporation as receiver for a covered financial company repudiates an unexpired written lease of real property of the covered financial company under which the covered financial company is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

- (i) treat the lease as terminated by such repudiation; or
- (ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of subparagraph (A)—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the covered financial company under the lease after such date; and

(ii) the Corporation as receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II).

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the receiver repudiates any contract (which meets the requirements of subsection (a)(6)) for the sale of real property, and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of subparagraph (A)—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the covered financial company under the contract; and

(ii) the Corporation as receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation, other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the Corporation as receiver to assign the contract described in subparagraph (A) and sell the property, subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is consummated, the Corporation as receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any covered financial company for which the Corporation has been appointed receiver, any claim of such person for services performed before the date of appointment shall be—

(i) a claim to be paid in accordance with subsections (a), (b), and (d); and

(ii) deemed to have arisen as of the date on which the receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the Corporation as receiver accepts performance by the other person before making any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by the Corporation as receiver for services referred to in subparagraph (B) in connection with a contract described in subparagraph (B) shall not affect the right of the Corporation as receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to subsection (a)(8) and paragraphs (9) and (10) of this subsection, and notwithstanding any other provision of this section, any other provision of Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right that such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered financial company which arises upon the date of appointment of the Cor-

poration as receiver for such covered financial company or at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i); or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts or agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (a)(8) shall apply in the case of any judicial action or proceeding brought against the Corporation as receiver referred to in subparagraph (A), or the subject covered financial company, by any party to a contract or agreement described in subparagraph (A)(i) with such covered financial company.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding subsection (a)(11), (a)(12), or (c)(12), section 5242 of the Revised Statutes of the United States, or any other provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as the Corporation or as receiver for a covered financial company, may not avoid any transfer of money or other property in connection with any qualified financial contract with a covered financial company.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a covered financial company if the transferee had actual intent to hinder, delay, or defraud such company, the creditors of such company, or the Corporation as receiver appointed for such company.

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

(i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified financial contract” means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term “securities contract”—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or any option on any of the foregoing, includ-

ing any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

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

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or an option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (X), other than subclause (II), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement

shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (X), other than subclause (II); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term “commodity contract” means—

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

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

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

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

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

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

(IX) a master agreement that provides for an agreement or transaction referred to in any of subclauses (I) through (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in any of subclauses (I) through (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obliga-

tion in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date that is more than 2 days after the date on which the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

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

(IV) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as such term is defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities (which, for purposes of this clause, means a security that is a direct obligation of, or that is fully guaranteed by, the cen-

tral government of a member of the Organization for Economic Cooperation and Development, as determined by regulation or order adopted by the Board of Governors), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan, unless the Corporation determines, by regulation, resolution, or order to include any such participation within the meaning of such term;

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

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(vi) SWAP AGREEMENT.—The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity

agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

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

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in any of subclauses (I) through (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such clause.

(vii) DEFINITIONS RELATING TO DEFAULT.—When used in this paragraph and paragraphs (9) and (10)—

(I) the term “default” means, with respect to a covered financial company, any adjudication or other official decision by any court of competent

jurisdiction, or other public authority pursuant to which the Corporation has been appointed receiver; and

(II) the term “in danger of default” means a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

(aa) in the opinion of the Corporation or such authority—

(AA) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

(BB) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

(bb) in the opinion of the Corporation or such authority—

(AA) the covered financial company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(BB) there is no reasonable prospect that the capital will be replenished without Federal assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any of clauses (i) through (vi) (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(ix) TRANSFER.—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the equity of redemption of the covered financial company.

(x) PERSON.—The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1, title 1, United States Code.

(E) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract or to disaffirm or repudiate any such contract in accordance with this subsection.

(F) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) of this paragraph and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time at which the Corporation is appointed as receiver until the earlier of—

(I) the time at which such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of the status of such party as a nondefaulting party in connection with the insolvency of a covered financial company that is a party to the contract or the appointment of or the exercise of rights or powers by the Corporation as receiver for such covered financial company, and not as a result of the exercise by a party of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(G) CERTAIN OBLIGATIONS TO CLEARING ORGANIZATIONS.—In the event that the Corporation has been appointed as receiver for a covered financial company which is a party to any qualified financial contract cleared by or subject to the rules of a clearing organization (as defined in paragraph (9)(D)), the receiver shall use its best efforts to meet all margin, collateral, and settlement obligations of the covered financial company that arise under qualified financial contracts (other than any margin, collateral, or settlement obligation that is not enforceable against the receiver under paragraph (8)(F)(i) or paragraph (10)(B)), as required by the rules of the clearing organization when due. Notwithstanding any other provision of this title, if the receiver fails to satisfy any such margin, collateral, or settlement obligations under the rules of the clearing organization, the clearing organization shall have the immediate right to exercise, and shall not be stayed from exercising, all of its rights and remedies under its rules and applicable law with respect to any qualified financial contract of the covered financial company, including, without

limitation, the right to liquidate all positions and collateral of such covered financial company under the company's qualified financial contracts, and suspend or cease to act for such covered financial company, all in accordance with the rules of the clearing organization.

(H) RECORDKEEPING.—

(i) JOINT RULEMAKING.—The Federal primary financial regulatory agencies shall jointly prescribe regulations requiring that financial companies maintain such records with respect to qualified financial contracts (including market valuations) that the Federal primary financial regulatory agencies determine to be necessary or appropriate in order to assist the Corporation as receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

(ii) TIME FRAME.—The Federal primary financial regulatory agencies shall prescribe joint final or interim final regulations not later than 24 months after the date of enactment of this Act.

(iii) BACK-UP RULEMAKING AUTHORITY.—If the Federal primary financial regulatory agencies do not prescribe joint final or interim final regulations within the time frame in clause (ii), the Chairperson of the Council shall prescribe, in consultation with the Corporation, the regulations required by clause (i).

(iv) CATEGORIZATION AND TIERING.—The joint regulations prescribed under clause (i) shall, as appropriate, differentiate among financial companies by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of qualified financial contracts, interconnectedness to the financial system, and any other factors deemed appropriate.

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a covered financial company in default, which includes any qualified financial contract, the Corporation as receiver for such covered financial company shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the covered financial company in default;

(II) all claims of such person or any affiliate of such person against such covered financial company under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such company);

(III) all claims of such covered financial company against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the Corporation as receiver for the covered financial company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that the Corporation as receiver for a financial institution transfers any qualified financial contract and related claims, property, or credit enhancement pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph—

(i) the term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, a bridge financial company, or any other institution determined by the Corporation, by regulation, to be a financial institution; and

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

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—

(i) NOTICE.—The Corporation shall provide notice in accordance with clause (ii), if—

(I) the Corporation as receiver for a covered financial company in default or in danger of default transfers any assets or liabilities of the covered financial company; and

(II) the transfer includes any qualified financial contract.

(ii) TIMING.—The Corporation as receiver for a covered financial company shall notify any person who is a party to any contract described in clause (i) of such transfer not later than 5:00 p.m. (eastern time) on the business day following the date of the appointment of the Corporation as receiver.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a covered financial company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) solely by reason of or incidental to the appointment under this section of the Corporation as receiver for the covered financial company (or the insolvency or financial condition of the covered financial company for which the Corporation has been appointed as receiver)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) NOTICE.—For purposes of this paragraph, the Corporation as receiver for a covered financial company shall be deemed to have notified a person who is a party to a qualified financial contract with such covered financial company, if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—For purposes of paragraph (9), a bridge financial company shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of the Corporation as receiver with respect to any qualified financial contract to which a covered financial company is a party, the Corporation shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the covered financial company in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any—

(A) legally enforceable or perfected security interest in any of the assets of any covered financial company, except in accordance with subsection (a)(11); or

(B) legally enforceable interest in customer property, security entitlements in respect of assets or property held by the covered financial company for any security entitlement holder.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company, may enforce any contract, other than a liability insurance contract of a director or officer, a financial institution bond entered into by the covered financial company, notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency, the appointment of or the exercise of rights or powers by the Corporation as receiver, the filing of the petition pursuant to section 202(a)(1), or the issuance of the recommendations or determination, or any actions or events occurring in connection therewith or as a result thereof, pursuant to section 203.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the Corporation as receiver to enforce or recover under a liability insurance contract of a director or officer or financial institution bond under other applicable law.

(C) CONSENT REQUIREMENT AND IPSO FACTO CLAUSES.—

(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the covered financial company is a party (and no provision in any such contract providing for such default, termination, or acceleration shall be enforceable), or to obtain possession of or exercise control over any property of the covered financial company or affect any contractual rights of the covered financial company, without the consent of the Corporation as receiver for the covered financial company during the 90 day period beginning from the appointment of the Corporation as receiver.

(ii) EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a financial institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the Corporation as receiver to fail to comply with otherwise enforceable provisions of such contract.

(D) CONTRACTS TO EXTEND CREDIT.—Notwithstanding any other provision in this title, if the Corporation as receiver enforces any contract to extend credit to the covered financial company or bridge financial company, any valid and enforceable obligation to repay such debt shall be paid by the Corporation as receiver, as an administrative expense of the receivership.

(14) EXCEPTION FOR FEDERAL RESERVE BANKS AND CORPORATION SECURITY INTEREST.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal reserve bank or the Corporation to any covered financial company; or

(B) any security interest in the assets of the covered financial company securing any such extension of credit.

(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(16) ENFORCEMENT OF CONTRACTS GUARANTEED BY THE COVERED FINANCIAL COMPANY.—

(A) IN GENERAL.—The Corporation, as receiver for a covered financial company or as receiver for a subsidiary of a covered financial company (including an insured depository institution) shall have the power to enforce contracts of subsidiaries or affiliates of the covered financial company, the obligations under which are guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of the covered financial company, if—

(i) such guaranty or other support and all related assets and liabilities are transferred to and assumed by a bridge financial company or a third party (other than a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding) within the same period of time as the Corporation is entitled to transfer the qualified financial contracts of such covered financial company; or

(ii) the Corporation, as receiver, otherwise provides adequate protection with respect to such obligations.

(B) RULE OF CONSTRUCTION.—For purposes of this paragraph, a bridge financial company shall not be considered to be a third party for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed, or which is otherwise the subject of a bankruptcy or insolvency proceeding.

(d) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method utilized by the Corporation for a covered financial company, including transactions authorized under subsection (h), this subsection shall govern the rights of the creditors of any such covered financial company.

(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver for a covered financial company or in any other capacity, to any person having a claim against the Corporation as receiver or the covered financial company for which the Corporation is appointed shall equal the amount that such claimant would have received if—

(A) the Corporation had not been appointed receiver with respect to the covered financial company; and

(B) the covered financial company had been liquidated under chapter 7 of the Bankruptcy Code, or any similar provision of State insolvency law applicable to the covered financial company.

(3) SPECIAL PROVISION FOR ORDERLY LIQUIDATION BY SIPC.—The maximum liability of the Corporation, acting as receiver or in its corporate capacity for any covered broker or dealer to any customer of such covered broker or dealer, with respect to customer property of such customer, shall be—

(A) equal to the amount that such customer would have received with respect to such customer property in a case initiated by SIPC under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.); and

(B) determined as of the close of business on the date on which the Corporation is appointed as receiver.

(4) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—Subject to subsection (o)(1)(D)(i), the Corporation, with the approval of the Secretary, may make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of the covered financial company, if the Corporation determines that such payments or credits are necessary or appropriate to minimize losses to the Corporation as receiver from the orderly liquidation of the covered financial company under this section.

(B) LIMITATIONS.—

(i) PROHIBITION.—The Corporation shall not make any payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of any claim that is proven to the satisfaction of the Corporation.

(ii) NO OBLIGATION.—Notwithstanding any other provision of Federal or State law, or the Constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to, or for the account, of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(C) MANNER OF PAYMENT.—The Corporation may make payments or credit amounts under subparagraph (A) directly to the claimants or may make such payments or credit such amounts to a company other than a covered financial company or a bridge financial company established with respect thereto in order to induce such other company to accept liability for such claims.

(e) LIMITATION ON COURT ACTION.—Except as provided in this title, no court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder, and any remedy against the Corporation or receiver shall be limited to money damages determined in accordance with this title.

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered financial company may be held personally liable for monetary damages in any civil action described in paragraph (2) by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

(A) acting as receiver for such covered financial company;

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by the Corporation as receiver; or

(C) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by a covered financial company or its affiliate in connection with assistance provided under this title.

(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Corporation under other applicable law.

(g) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company, or any other party employed by or providing services to a covered financial company, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the covered financial company shall include principal losses and appropriate interest.

(h) BRIDGE FINANCIAL COMPANIES.—

(1) ORGANIZATION.—

(A) PURPOSE.—The Corporation, as receiver for one or more covered financial companies or in anticipation of being appointed receiver for one or more covered financial companies, may organize one or more bridge financial companies in accordance with this subsection.

(B) AUTHORITIES.—Upon the creation of a bridge financial company under subparagraph (A) with respect to a

covered financial company, such bridge financial company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business, but excluding any liabilities that count as regulatory capital) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate;

(ii) purchase such assets (including assets associated with any trust or custody business) of such covered financial company as the Corporation may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—Except as provided in subparagraph (H), where the covered financial company is a covered broker or dealer, the Corporation, as receiver for a covered financial company, may grant a Federal charter to and approve articles of association for one or more bridge financial company or companies, with respect to such covered financial company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge financial company shall be under the management of a board of directors appointed by the Corporation.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge financial company shall have such terms as the Corporation may provide, and shall be executed by such representatives as the Corporation may designate.

(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—Subject to and in accordance with the provisions of this subsection, the Corporation shall—

(i) establish the terms of the charter of a bridge financial company and the rights, powers, authorities, and privileges of a bridge financial company granted by the charter or as an incident thereto; and

(ii) provide for, and establish the terms and conditions governing, the management (including the bylaws and the number of directors of the board of directors) and operations of the bridge financial company.

(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED FINANCIAL COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal or State law, the Corporation may provide for a bridge financial company to succeed to and assume any rights, powers, authorities, or privileges of the covered financial company with respect to which the bridge financial company was established and, upon such determination by the Corporation, the bridge financial company shall immediately and by op-

eration of law succeed to and assume such rights, powers, authorities, and privileges.

(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or assumption by a bridge financial company of rights, powers, authorities, or privileges of a covered financial company under clause (i) or otherwise shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY OF LAW.—To the extent permitted by the Corporation and consistent with this section and any rules, regulations, or directives issued by the Corporation under this section, a bridge financial company may elect to follow the corporate governance practices and procedures that are applicable to a corporation incorporated under the general corporation law of the State of Delaware, or the State of incorporation or organization of the covered financial company with respect to which the bridge financial company was established, as such law may be amended from time to time.

(G) CAPITAL.—

(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision of Federal or State law, a bridge financial company may, if permitted by the Corporation, operate without any capital or surplus, or with such capital or surplus as the Corporation may in its discretion determine to be appropriate.

(ii) NO CONTRIBUTION BY THE CORPORATION REQUIRED.—The Corporation is not required to pay capital into a bridge financial company or to issue any capital stock on behalf of a bridge financial company established under this subsection.

(iii) AUTHORITY.—If the Corporation determines that such action is advisable, the Corporation may cause capital stock or other securities of a bridge financial company established with respect to a covered financial company to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(iv) OPERATING FUNDS IN LIEU OF CAPITAL AND IMPLEMENTATION PLAN.—Upon the organization of a bridge financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge financial company, subject to the plan described in subsection (n)(9), funds for the operation of the bridge financial company in lieu of capital.

(H) BRIDGE BROKERS OR DEALERS.—

(i) IN GENERAL.—The Corporation, as receiver for a covered broker or dealer, may approve articles of association for one or more bridge financial companies with respect to such covered broker or dealer, which bridge financial company or companies shall, by oper-

ation of law and immediately upon approval of its articles of association—

(I) be established and deemed registered with the Commission under the Securities Exchange Act of 1934 and a member of SIPC;

(II) operate in accordance with such articles and this section; and

(III) succeed to any and all registrations and memberships of the covered financial company with or in any self-regulatory organizations.

(ii) OTHER REQUIREMENTS.—Except as provided in clause (i), and notwithstanding any other provision of this section, the bridge financial company shall be subject to the Federal securities laws and all requirements with respect to being a member of a self-regulatory organization, unless exempted from any such requirements by the Commission, as is necessary or appropriate in the public interest or for the protection of investors.

(iii) TREATMENT OF CUSTOMERS.—Except as otherwise provided by this title, any customer of the covered broker or dealer whose account is transferred to a bridge financial company shall have all the rights, privileges, and protections under section 205(f) and under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.), that such customer would have had if the account were not transferred from the covered financial company under this subparagraph.

(iv) OPERATION OF BRIDGE BROKERS OR DEALERS.—Notwithstanding any other provision of this title, the Corporation shall not operate any bridge financial company created by the Corporation under this title with respect to a covered broker or dealer in such a manner as to adversely affect the ability of customers to promptly access their customer property in accordance with applicable law.

(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED FINANCIAL COMPANY.—Notwithstanding paragraph (1) or (2) or any other provision of law—

(A) a bridge financial company shall assume, acquire, or succeed to the assets or liabilities of a covered financial company (including the assets or liabilities associated with any trust or custody business) only to the extent that such assets or liabilities are transferred by the Corporation to the bridge financial company in accordance with, and subject to the restrictions set forth in, paragraph (1)(B); and

(B) a bridge financial company shall not assume, acquire, or succeed to any obligation that a covered financial company for which the Corporation has been appointed receiver may have to any shareholder, member, general partner, limited partner, or other person with an interest in the equity of the covered financial company that arises as a result of the status of that person having an equity claim in the covered financial company.

(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge financial company shall be treated as a covered financial company in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(5) TRANSFER OF ASSETS AND LIABILITIES.—

(A) AUTHORITY OF CORPORATION.—The Corporation, as receiver for a covered financial company, may transfer any assets and liabilities of a covered financial company (including any assets or liabilities associated with any trust or custody business) to one or more bridge financial companies, in accordance with and subject to the restrictions of paragraph (1).

(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a bridge financial company with respect to a covered financial company, the Corporation, as receiver, may transfer any assets and liabilities of such covered financial company as the Corporation may, in its discretion, determine to be appropriate in accordance with and subject to the restrictions of paragraph (1).

(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—For purposes of this paragraph, the trust or custody business, including fiduciary appointments, held by any covered financial company is included among its assets and liabilities.

(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust or custody business of a covered financial company, to a bridge financial company shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Corporation shall treat all creditors of a covered financial company that are similarly situated under subsection (b)(1), in a similar manner in exercising the authority of the Corporation under this subsection to transfer any assets or liabilities of the covered financial company to one or more bridge financial companies established with respect to such covered financial company, except that the Corporation may take any action (including making payments, subject to subsection (o)(1)(D)(i)) that does not comply with this subparagraph, if—

(i) the Corporation determines that such action is necessary—

(I) to maximize the value of the assets of the covered financial company;

(II) to maximize the present value return from the sale or other disposition of the assets of the covered financial company; or

(III) to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered financial company; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided under paragraphs (2) and (3) of subsection (d).

(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other provision of law, the aggregate amount of liabilities of a covered financial company that are transferred to, or assumed by, a bridge financial company from a covered financial company may not exceed the aggregate amount of the assets of the covered financial company that are transferred to, or purchased by, the bridge financial company from the covered financial company.

(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a bridge financial company becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a covered financial company shall be stayed from further proceedings for a period of not longer than 45 days (or such longer period as may be agreed to upon the consent of all parties) at the request of the bridge financial company.

(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE FINANCIAL COMPANY.—No agreement that tends to diminish or defeat the interest of the bridge financial company in any asset of a covered financial company acquired by the bridge financial company shall be valid against the bridge financial company, unless such agreement—

(A) is in writing;

(B) was executed by an authorized officer or representative of the covered financial company or confirmed in the ordinary course of business by the covered financial company; and

(C) has been on the official record of the company, since the time of its execution, or with which, the party claiming under the agreement provides documentation of such agreement and its authorized execution or confirmation by the covered financial company that is acceptable to the receiver.

(8) NO FEDERAL STATUS.—

(A) AGENCY STATUS.—A bridge financial company is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge financial company are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge financial company shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge financial company in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(9) FUNDING AUTHORIZED.—The Corporation may, subject to the plan described in subsection (n)(9), provide funding to facilitate any transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13) with respect to any bridge financial company, or facilitate the acquisition by a bridge financial company of any assets, or the assumption of any liabilities, of a covered financial company for which the Corporation has been appointed receiver.

(10) EXEMPT TAX STATUS.—Notwithstanding any other provision of Federal or State law, a bridge financial company, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—If a transaction involving the merger or sale of a bridge financial company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a notification is required under section 7A of the Clayton Act with respect to such transaction, the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under section 7A(b)(2) of the Clayton Act, or extended under section 7A(e)(2) of that Act.

(12) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to paragraphs (13) and (14), the status of a bridge financial company as such shall terminate at the end of the 2-year period following the date on which it was granted a charter. The Corporation may, in its discretion, extend the status of the bridge financial company as such for no more than 3 additional 1-year periods.

(13) TERMINATION OF BRIDGE FINANCIAL COMPANY STATUS.—The status of any bridge financial company as such shall terminate upon the earliest of—

(A) the date of the merger or consolidation of the bridge financial company with a company that is not a bridge financial company;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge financial company to a company other than the Corporation and other than another bridge financial company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge financial company to a person other than the Corporation and other than another bridge financial company;

(D) at the election of the Corporation, either the assumption of all or substantially all of the liabilities of the bridge

financial company by a company that is not a bridge financial company, or the acquisition of all or substantially all of the assets of the bridge financial company by a company that is not a bridge financial company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (12), or the earlier dissolution of the bridge financial company, as provided in paragraph (15).

(14) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A merger or consolidation, described in paragraph (13)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge financial company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge financial company in accordance with paragraph (2)(F)), and the Corporation shall be treated as the sole shareholder thereof, notwithstanding any other provision of State or Federal law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge financial company, as provided in paragraph (13)(B), the Corporation may amend the charter of the bridge financial company to reflect the termination of the status of the bridge financial company as such, whereupon the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, such State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers, and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge financial company, as provided in paragraph (13)(C), the company shall have all of the rights, powers, and privileges under its constituent documents and applicable Federal or State law. In connection therewith, the Corporation may take such steps as may be necessary or convenient to reincorporate the bridge financial company under the laws of a State and, notwithstanding any provisions of Federal or State law, the State-chartered corporation shall be deemed to succeed by operation of law to such rights, titles, powers and interests of the bridge financial company as the Corporation may provide, with the same effect as if the bridge financial company had merged with the State-chartered corporation under provisions of the corporate laws of such State.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the

liabilities of the bridge financial company, or the sale of all or substantially all of the assets of the bridge financial company, as provided in paragraph (13)(D), at the election of the Corporation, the bridge financial company may retain its status as such for the period provided in paragraph (12) or may be dissolved at the election of the Corporation.

(E) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (13), the charter of the resulting company shall be amended to reflect the termination of bridge financial company status, if appropriate.

(15) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

(A) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if the status of a bridge financial company as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (13)—

(i) the Corporation may, in its discretion, dissolve the bridge financial company in accordance with this paragraph at any time; and

(ii) the Corporation shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date on which the bridge financial company was chartered, or any extension thereof, as provided in paragraph (12).

(B) PROCEDURES.—The Corporation shall remain the receiver for a bridge financial company for the purpose of dissolving the bridge financial company. The Corporation as receiver for a bridge financial company shall wind up the affairs of the bridge financial company in conformity with the provisions of law relating to the liquidation of covered financial companies under this title. With respect to any such bridge financial company, the Corporation as receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to the Corporation as receiver for a covered financial company under this title and, notwithstanding any other provision of law, in the exercise of such rights, powers, and privileges, the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(16) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge financial company may obtain unsecured credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial company is unable to obtain unsecured credit or issue unsecured debt, the Corporation may authorize the obtaining of credit or the issuance of debt by the bridge financial company—

(i) with priority over any or all of the obligations of the bridge financial company;

(ii) secured by a lien on property of the bridge financial company that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the bridge financial company that is subject to a lien.

(C) LIMITATIONS.—

(i) IN GENERAL.—The Corporation, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge financial company that is secured by a senior or equal lien on property of the bridge financial company that is subject to a lien, only if—

(I) the bridge financial company is unable to otherwise obtain such credit or issue such debt; and

(II) there is adequate protection of the interest of the holder of the lien on the property with respect to which such senior or equal lien is proposed to be granted.

(ii) HEARING.—The hearing required pursuant to this subparagraph shall be before a court of the United States, which shall have jurisdiction to conduct such hearing and to authorize a bridge financial company to obtain secured credit under clause (i).

(D) BURDEN OF PROOF.—In any hearing under this paragraph, the Corporation has the burden of proof on the issue of adequate protection.

(E) QUALIFIED FINANCIAL CONTRACTS.—No credit or debt obtained or issued by a bridge financial company may contain terms that impair the rights of a counterparty to a qualified financial contract upon a default by the bridge financial company, other than the priority of such counterparty's unsecured claim (after the exercise of rights) relative to the priority of the bridge financial company's obligations in respect of such credit or debt, unless such counterparty consents in writing to any such impairment.

(17) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this subsection to obtain credit or issue debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so issued, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the issuance of such debt, or the granting of such priority or lien, were stayed pending appeal.

(i) SHARING RECORDS.—If the Corporation has been appointed as receiver for a covered financial company, other Federal regulators shall make all records relating to the covered financial company available to the Corporation, which may be used by the Corporation in any manner that the Corporation determines to be appropriate.

(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of the covered financial company, or any other person employed by or providing services to a covered financial company, shall be filed

not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—The court shall expedite the consideration of any case brought by the Corporation against a director, officer, employee, agent, attorney, accountant, or appraiser of a covered financial company or any other person employed by or providing services to a covered financial company. As far as practicable, the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(k) FOREIGN INVESTIGATIONS.—The Corporation, as receiver for any covered financial company, and for purposes of carrying out any power, authority, or duty with respect to a covered financial company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act, as if the covered financial company were an insured depository institution, the Corporation were the appropriate Federal banking agency for the company, and any foreign financial authority were the foreign banking authority; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign financial authorities.

(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as receiver for a covered financial company.

(m) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES OR BRIDGE FINANCIAL COMPANIES.—

(1) IN GENERAL.—Except as specifically provided in this section, and notwithstanding any other provision of law, the Corporation, in connection with the liquidation of any covered financial company or bridge financial company with respect to which the Corporation has been appointed as receiver, shall—

(A) in the case of any covered financial company or bridge financial company that is a stockbroker, but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of the Bankruptcy Code, in respect of the distribution to any customer of all customer name security and customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter; or

(B) in the case of any covered financial company or bridge financial company that is a commodity broker, apply the provisions of subchapter IV of chapter 7 the Bankruptcy Code, in respect of the distribution to any customer of all customer property and member property, as if such covered financial company or bridge financial company were a debtor for purposes of such subchapter.

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

(A) the terms “customer”, “customer name security”, and “customer property and member property” have the same meanings as in sections 741 and 761 of title 11, United States Code; and

(B) the terms “commodity broker” and “stockbroker” have the same meanings as in section 101 of the Bankruptcy Code.

(n) ORDERLY LIQUIDATION FUND.—

(1) ESTABLISHMENT.—There is established in the Treasury of the United States a separate fund to be known as the “Orderly Liquidation Fund”, which shall be available to the Corporation to carry out the authorities contained in this title, for the cost of actions authorized by this title, including the orderly liquidation of covered financial companies, payment of administrative expenses, the payment of principal and interest by the Corporation on obligations issued under paragraph (5), and the exercise of the authorities of the Corporation under this title.

(2) PROCEEDS.—Amounts received by the Corporation, including assessments received under subsection (o), proceeds of obligations issued under paragraph (5), interest and other earnings from investments, and repayments to the Corporation by covered financial companies, shall be deposited into the Fund.

(3) MANAGEMENT.—The Corporation shall manage the Fund in accordance with this subsection and the policies and procedures established under section 203(d).

(4) INVESTMENTS.—At the request of the Corporation, the Secretary may invest such portion of amounts held in the Fund that are not, in the judgment of the Corporation, required to meet the current needs of the Corporation, in obligations of the United States having suitable maturities, as determined by the Corporation. The interest on and the proceeds from the sale or redemption of such obligations shall be credited to the Fund.

(5) AUTHORITY TO ISSUE OBLIGATIONS.—

(A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—Upon appointment by the Secretary of the Corporation as receiver for a covered financial company, the Corporation is authorized to issue obligations to the Secretary.

(B) SECRETARY AUTHORIZED TO PURCHASE OBLIGATIONS.—The Secretary may, under such terms and conditions as the Secretary may require, purchase or agree to purchase any obligations issued under subparagraph (A), and for such purpose, the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be

issued under chapter 31 of title 31, United States Code, are extended to include such purchases.

(C) INTEREST RATE.—Each purchase of obligations by the Secretary under this paragraph shall be upon such terms and conditions as to yield a return at a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity, plus an interest rate surcharge to be determined by the Secretary, which shall be greater than the difference between—

(i) the current average rate on an index of corporate obligations of comparable maturity; and

(ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.

(D) SECRETARY AUTHORIZED TO SELL OBLIGATIONS.—The Secretary may sell, upon such terms and conditions as the Secretary shall determine, any of the obligations acquired under this paragraph.

(E) PUBLIC DEBT TRANSACTIONS.—All purchases and sales by the Secretary of such obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be deposited into the Treasury of the United States as miscellaneous receipts.

(6) MAXIMUM OBLIGATION LIMITATION.—The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding under this subsection for each covered financial company would exceed—

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

(B) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each covered financial company that are available for repayment, after the time period described in subparagraph (A).

(7) RULEMAKING.—The Corporation and the Secretary shall jointly, in consultation with the Council, prescribe regulations governing the calculation of the maximum obligation limitation defined in this paragraph.

(8) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—Nothing in this section shall be construed to affect the authority of the Corporation under subsection (a) or (b) of section 14 or section 15(c)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1824, 1825(c)(5)), the management of the Deposit Insurance Fund by the Corporation, or the resolution of insured depository institutions, provided that—

(i) the authorities of the Corporation contained in this title shall not be used to assist the Deposit Insurance Fund or to assist any financial company under applicable law other than this Act;

(ii) the authorities of the Corporation relating to the Deposit Insurance Fund, or any other responsibilities of the Corporation under applicable law other than this title, shall not be used to assist a covered financial company pursuant to this title; and

(iii) the Deposit Insurance Fund may not be used in any manner to otherwise circumvent the purposes of this title.

(B) VALUATION.—For purposes of determining the amount of obligations under this subsection—

(i) the Corporation shall include as an obligation any contingent liability of the Corporation pursuant to this title; and

(ii) the Corporation shall value any contingent liability at its expected cost to the Corporation.

(9) ORDERLY LIQUIDATION AND REPAYMENT PLANS.—

(A) ORDERLY LIQUIDATION PLAN.—Amounts in the Fund shall be available to the Corporation with regard to a covered financial company for which the Corporation is appointed receiver after the Corporation has developed an orderly liquidation plan that is acceptable to the Secretary with regard to such covered financial company, including the provision and use of funds, including taking any actions specified under section 204(d) and subsection (h)(2)(G)(iv) and (h)(9) of this section, and payments to third parties. The orderly liquidation plan shall take into account actions to avoid or mitigate potential adverse effects on low income, minority, or underserved communities affected by the failure of the covered financial company, and shall provide for coordination with the primary financial regulatory agencies, as appropriate, to ensure that such actions are taken. The Corporation may, at any time, amend any orderly liquidation plan approved by the Secretary with the concurrence of the Secretary.

(B) MANDATORY REPAYMENT PLAN.—

(i) IN GENERAL.—No amount authorized under paragraph (6)(B) may be provided by the Secretary to the Corporation under paragraph (5), unless an agreement is in effect between the Secretary and the Corporation that—

(I) provides a specific plan and schedule to achieve the repayment of the outstanding amount of any borrowing under paragraph (5); and

(II) demonstrates that income to the Corporation from the liquidated assets of the covered financial company and assessments under subsection (o) will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance within the time provided in subsection (o)(1)(B).

(ii) CONSULTATION WITH AND REPORT TO CONGRESS.—The Secretary and the Corporation shall—

(I) consult with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the terms of any repayment schedule agreement; and

(II) submit a copy of the repayment schedule agreement to the Committees described in subclause (I) before the end of the 30-day period beginning on the date on which any amount is provided by the Secretary to the Corporation under paragraph (5).

(10) IMPLEMENTATION EXPENSES.—

(A) IN GENERAL.—Reasonable implementation expenses of the Corporation incurred after the date of enactment of this Act shall be treated as expenses of the Council.

(B) REQUESTS FOR REIMBURSEMENT.—The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

(C) DEFINITION.—As used in this paragraph, the term “implementation expenses”—

(i) means costs incurred by the Corporation beginning on the date of enactment of this Act, as part of its efforts to implement this title that do not relate to a particular covered financial company; and

(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the Corporation consistent with carrying out this title.

(o) ASSESSMENTS.—

(1) RISK-BASED ASSESSMENTS.—

(A) ELIGIBLE FINANCIAL COMPANIES DEFINED.—For purposes of this subsection, the term “eligible financial company” means any bank holding company with total consolidated assets equal to or greater than **[\$50,000,000,000]** *\$105,000,000,000* and any nonbank financial company supervised by the Board of Governors.

(B) ASSESSMENTS.—The Corporation shall charge one or more risk-based assessments in accordance with the provisions of subparagraph (D), if such assessments are necessary to pay in full the obligations issued by the Corporation to the Secretary under this title within 60 months of the date of issuance of such obligations.

(C) EXTENSIONS AUTHORIZED.—The Corporation may, with the approval of the Secretary, extend the time period under subparagraph (B), if the Corporation determines that an extension is necessary to avoid a serious adverse effect on the financial system of the United States.

(D) APPLICATION OF ASSESSMENTS.—To meet the requirements of subparagraph (B), the Corporation shall—

(i) impose assessments, as soon as practicable, on any claimant that received additional payments or

amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this title; and

(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (B), after taking into account the considerations set forth in paragraph (4), impose assessments on—

(I) eligible financial companies; and

(II) financial companies with total consolidated assets equal to or greater than **[\$50,000,000,000]** **\$105,000,000,000** that are not eligible financial companies.

(E) PROVISION OF FINANCING.—Payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company described in subparagraph (D)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

(2) GRADUATED ASSESSMENT RATE.—The Corporation shall impose assessments on a graduated basis, with financial companies having greater assets and risk being assessed at a higher rate.

(3) NOTIFICATION AND PAYMENT.—The Corporation shall notify each financial company of that company's assessment under this subsection. Any financial company subject to assessment under this subsection shall pay such assessment in accordance with the regulations prescribed pursuant to paragraph (6).

(4) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under paragraph (1)(D)(ii), the Corporation shall use a risk matrix. The Council shall make a recommendation to the Corporation on the risk matrix to be used in imposing such assessments, and the Corporation shall take into account any such recommendation in the establishment of the risk matrix to be used to impose such assessments. In recommending or establishing such risk matrix, the Council and the Corporation, respectively, shall take into account—

(A) economic conditions generally affecting financial companies so as to allow assessments to increase during more favorable economic conditions and to decrease during less favorable economic conditions;

(B) any assessments imposed on a financial company or an affiliate of a financial company that—

(i) is an insured depository institution, assessed pursuant to section 7 or 13(c)(4)(G) of the Federal Deposit Insurance Act;

(ii) is a member of the Securities Investor Protection Corporation, assessed pursuant to section 4 of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ddd);

(iii) is an insured credit union, assessed pursuant to section 202(c)(1)(A)(i) of the Federal Credit Union Act (12 U.S.C. 1782(c)(1)(A)(i)); or

(iv) is an insurance company, assessed pursuant to applicable State law to cover (or reimburse payments made to cover) the costs of the rehabilitation, liquidation, or other State insolvency proceeding with respect to 1 or more insurance companies;

(C) the risks presented by the financial company to the financial system and the extent to which the financial company has benefitted, or likely would benefit, from the orderly liquidation of a financial company under this title, including—

(i) the amount, different categories, and concentrations of assets of the financial company and its affiliates, including both on-balance sheet and off-balance sheet assets;

(ii) the activities of the financial company and its affiliates;

(iii) the relevant market share of the financial company and its affiliates;

(iv) the extent to which the financial company is leveraged;

(v) the potential exposure to sudden calls on liquidity precipitated by economic distress;

(vi) the amount, maturity, volatility, and stability of the company's financial obligations to, and relationship with, other financial companies;

(vii) the amount, maturity, volatility, and stability of the liabilities of the company, including the degree of reliance on short-term funding, taking into consideration existing systems for measuring a company's risk-based capital;

(viii) the stability and variety of the company's sources of funding;

(ix) the company's importance as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the financial system;

(x) the extent to which assets are simply managed and not owned by the financial company and the extent to which ownership of assets under management is diffuse; and

(xi) the amount, different categories, and concentrations of liabilities, both insured and uninsured, contingent and noncontingent, including both on-balance

sheet and off-balance sheet liabilities, of the financial company and its affiliates;

(D) any risks presented by the financial company during the 10-year period immediately prior to the appointment of the Corporation as receiver for the covered financial company that contributed to the failure of the covered financial company; and

(E) such other risk-related factors as the Corporation, or the Council, as applicable, may determine to be appropriate.

(5) COLLECTION OF INFORMATION.—The Corporation may impose on covered financial companies such collection of information requirements as the Corporation deems necessary to carry out this subsection after the appointment of the Corporation as receiver under this title.

(6) RULEMAKING.—

(A) IN GENERAL.—The Corporation shall prescribe regulations to carry out this subsection. The Corporation shall consult with the Secretary in the development and finalization of such regulations.

(B) EQUITABLE TREATMENT.—The regulations prescribed under subparagraph (A) shall take into account the differences in risks posed to the financial stability of the United States by financial companies, the differences in the liability structures of financial companies, and the different bases for other assessments that such financial companies may be required to pay, to ensure that assessed financial companies are treated equitably and that assessments under this subsection reflect such differences.

(p) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

(1) IN GENERAL.—No provision described in paragraph (2) shall be enforceable against or impose any liability on any person, as such enforcement or liability shall be contrary to public policy.

(2) PROHIBITED PROVISIONS.—A provision described in this paragraph is any term 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 covered financial company, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under this title.

(q) OTHER EXEMPTIONS.—

(1) IN GENERAL.—When acting as a receiver under this title—

(A) the Corporation, including its franchise, its capital, reserves and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or

local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed;

(B) no property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation; and

(C) the Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due; and

(D) the Corporation shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by the covered financial company, or persons acting on behalf of the covered financial company, prior to the appointment of the Corporation as receiver.

(2) LIMITATION.—Paragraph (1) shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

(r) CERTAIN SALES OF ASSETS PROHIBITED.—

(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, COVERED FINANCIAL COMPANIES.—The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a covered financial company by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations, the aggregate amount of which exceeds ~~[\$1,000,000]~~ \$5,000,000, to such covered financial company;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any covered financial company;

(B) any person who participated, as an officer or director of such covered financial company or of any affiliate of such company, in a material way in any transaction that resulted in a substantial loss to such covered financial company; or

(C) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such covered financial company.

(2) CONVICTED DEBTORS.—Except as provided in paragraph (3), a person may not purchase any asset of such institution from the receiver, if that person—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to commit such an offense, affecting any covered financial company; and

(B) is in default on any loan or other extension of credit from such covered financial company which, if not paid, will cause substantial loss to the Fund or the Corporation.

(3) SETTLEMENT OF CLAIMS.—Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any covered financial company to any person, if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of 1 or more claims that have been, or could have been, asserted by the Corporation against the person.

(4) DEFINITION OF DEFAULT.—For purposes of this subsection, the term “default” means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(s) RECOUPMENT OF COMPENSATION FROM SENIOR EXECUTIVES AND DIRECTORS.—

(1) IN GENERAL.—The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

(2) COST CONSIDERATIONS.—In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

(3) RULEMAKING.—The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term “compensation” to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

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TITLE IX—INVESTOR PROTECTIONS AND IMPROVEMENTS TO THE REGU- LATION OF SECURITIES

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Subtitle E—Accountability and Executive Compensation

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SEC. 956. ENHANCED COMPENSATION STRUCTURE REPORTING.

(a) ENHANCED DISCLOSURE AND REPORTING OF COMPENSATION ARRANGEMENTS.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators jointly shall prescribe regulations or guidelines to require each covered financial institution to disclose to the appropriate Federal regulator the structures of all incentive-based compensation arrangements offered by such covered financial institutions sufficient to determine whether the compensation structure—

(A) provides an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(B) could lead to material financial loss to the covered financial institution.

(2) RULES OF CONSTRUCTION.—Nothing in this section shall be construed as requiring the reporting of the actual compensation of particular individuals. Nothing in this section shall be construed to require a covered financial institution that does not have an incentive-based payment arrangement to make the disclosures required under this subsection.

(b) PROHIBITION ON CERTAIN COMPENSATION ARRANGEMENTS.—Not later than 9 months after the date of enactment of this title, the appropriate Federal regulators shall jointly prescribe regulations or guidelines that prohibit any types of incentive-based payment arrangement, or any feature of any such arrangement, that the regulators determine encourages inappropriate risks by covered financial institutions—

(1) by providing an executive officer, employee, director, or principal shareholder of the covered financial institution with excessive compensation, fees, or benefits; or

(2) that could lead to material financial loss to the covered financial institution.

(c) STANDARDS.—The appropriate Federal regulators shall—

(1) ensure that any standards for compensation established under subsections (a) or (b) are comparable to the standards established under section of the Federal Deposit Insurance Act (12 U.S.C. 2 1831p-1) for insured depository institutions; and

(2) in establishing such standards under such subsections, take into consideration the compensation standards described in section 39(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831p- 9 1(c)).

(d) ENFORCEMENT.—The provisions of this section and the regulations issued under this section shall be enforced under section 505 of the Gramm-Leach-Bliley Act and, for purposes of such section, a violation of this section or such regulations shall be treated as a violation of subtitle A of title V of such Act.

(e) DEFINITIONS.—As used in this section—

(1) the term “appropriate Federal regulator” means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Securities and Exchange Commission, the Federal Housing Finance Agency; and

(2) the term “covered financial institution” means—

(A) a depository institution or depository institution holding company, as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(B) a broker-dealer registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o);

(C) a credit union, as described in section 19(b)(1)(A)(iv) of the Federal Reserve Act;

(D) an investment advisor, as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11));

(E) the Federal National Mortgage Association;

(F) the Federal Home Loan Mortgage Corporation; and

(G) any other financial institution that the appropriate Federal regulators, jointly, by rule, determine should be treated as a covered financial institution for purposes of this section.

(f) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—The requirements of this section shall not apply to covered financial institutions with assets of less than ~~【\$1,000,000,000】~~ \$3,000,000,000.

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FEDERAL CREDIT UNION ACT

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TITLE II—SHARE INSURANCE

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REPORTS OF CONDITION; CERTIFIED STATEMENTS; PREMIUMS FOR INSURANCE

SEC. 202. (a)(1) Each insured credit union shall make reports of condition to the Board upon dates which shall be selected by them. Such reports of condition shall be in such form and shall contain such information as the Board may require. The reporting dates selected for reports of condition shall be the same for all insured credit unions except that when any of said reporting dates is a non-business day for any credit union the preceding business day shall be its reporting date. The total amount of the member accounts of each insured credit union as of each reporting date shall be reported in such reports of condition in accordance with regulations prescribed by the Board. Each report of condition shall contain a declaration by the president, by a vice president, by the treasurer, or by any other officer designated by the board of directors of the reporting credit union to make such declaration, that the report is true and correct to the best of such officer’s knowledge and belief.

Unless such requirement is waived by the Board, the correctness of each report of condition shall be attested by the signatures of three of the officers of the reporting credit union with the declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct.

(2) The Board may call for such other reports as it may from time to time require.

(3) The Board may require reports of condition to be published in such manner, not inconsistent with any applicable law, as it may direct. Any insured credit union which maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit or publish any report required under this subsection or section 106, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, or inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. The insured credit union shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any insured credit union which fails to submit or publish any report required under this subsection or section 106, within the period of time specified by the Board, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any insured credit union knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Board may assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such credit union, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Board in the manner provided in section 206(k)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any insured credit union against which any penalty is assessed under this subsection shall be afforded an agency hearing if such insured credit union submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 206(j) shall apply to any proceeding under this subsection.

(4) The Board may accept any report of condition made to any commission, board, or authority having supervision of a State-chartered credit union and may furnish to any such commission, board, or authority reports of condition made to the Board.

(5) Reports required under title I of this Act shall be so prepared that they can be used for share insurance purposes. To the maximum extent feasible, the Board shall use for insurance purposes reports submitted to State regulatory agencies by State-chartered credit unions.

(6) AUDIT REQUIREMENT.—

(A) IN GENERAL.—Before the end of the 120-day period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and notwithstanding any other provision of Federal or State law, the Board shall prescribe, by regulation, audit standards which require an outside, independent audit of any insured credit union by a certified public accountant for any fiscal year (of such credit union)—

(i) for which such credit union has not conducted an annual supervisory committee audit;

(ii) for which such credit union has not received a complete and satisfactory supervisory committee audit; or

(iii) during which such credit union has experienced persistent and serious recordkeeping deficiencies, as determined by the Board.

(B) UNSAFE OR UNSOUND PRACTICE.—The Board may treat the failure of any insured credit union to obtain an outside, independent audit for any fiscal year for which such audit is required under subparagraph (A) or (D) as an unsafe or unsound practice within the meaning of section 206(b).

(C) ACCOUNTING PRINCIPLES.—

(i) IN GENERAL.—Accounting principles applicable to reports or statements required to be filed with the Board by each insured credit union shall be uniform and consistent with generally accepted accounting principles.

(ii) BOARD DETERMINATION.—If the Board determines that the application of any generally accepted accounting principle to any insured credit union is not appropriate, the Board may prescribe an accounting principle for application to the credit union that is no less stringent than generally accepted accounting principles.

(iii) **[DE MINIMUS]** *DE MINIMIS* EXCEPTION.—This subparagraph shall not apply to any insured credit union, the total assets of which are less than **[\$10,000,000]** *\$34,000,000*, unless prescribed by the Board or an appropriate State credit union supervisor.

(D) LARGE CREDIT UNION AUDIT REQUIREMENT.—

(i) IN GENERAL.—Each insured credit union having total assets of **[\$500,000,000]** *\$2,000,000,000* or more shall have an annual independent audit of the financial statements of the credit union, performed in accordance with generally accepted auditing standards by an independent certified public accountant or public accountant licensed by the appropriate State or jurisdiction to perform those services.

(ii) VOLUNTARY AUDITS.—If a Federal credit union that is not required to conduct an audit under clause (i), and that has total assets of more than **[\$10,000,000]** *\$34,000,000* conducts such an audit for any purpose, using an independent auditor who is compensated for his or her audit services with respect

to that audit, the audit shall be performed consistent with the accountancy laws of the appropriate State or jurisdiction, including licensing requirements.

(7) REPORT TO INDEPENDENT AUDITOR.—

(A) IN GENERAL.—Each insured credit union which has engaged the services of an independent auditor to audit such depository institution within the past 2 years shall transmit to such auditor a copy of the most recent report of condition made by such credit union (pursuant to this Act or any other provision of law) and a copy of the most recent report of examination received by such credit union.

(B) ADDITIONAL INFORMATION.—In addition to the copies of the reports required to be provided to an auditor under subparagraph (A), each insured credit union shall provide such auditor with—

(i) a copy of any supervisory memorandum of understanding with such credit union and any written agreement between the Board or a State regulatory agency and the credit union which is in effect during the period covered by the audit; and

(ii) a report of any action initiated or taken by the Board during such period under subsection (e), (f), (g), (i), (l), or (q) of section 206, or any similar action taken by a State regulatory agency under State law, or any other civil money penalty assessed by the Board under this Act, with respect to—

(I) the credit union; or

(II) any institution-affiliated party.

(8) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Board (with respect to all insured credit unions, including a credit union for which the Corporation has been appointed conservator or liquidating agent) or an appropriate State commission, board, or authority having supervision of a State-chartered credit union, the Board may, in the discretion of the Board, furnish any report of examination or other confidential supervisory information concerning any credit union or other entity examined by the Board under authority of any Federal law, to—

(A) any other Federal or State agency or authority with supervisory or regulatory authority over the credit union or other entity;

(B) any officer, director, or receiver of such credit union or entity; and

(C) any other person that the Board determines to be appropriate.

(b) CERTIFIED STATEMENT.—

(1) STATEMENT REQUIRED.—

(A) IN GENERAL.—For each calendar year, in the case of an insured credit union with total assets of not more than **[\$50,000,000]** *\$170,000,000*, and for each semi-annual period in the case of an insured credit union with total assets of **[\$50,000,000]** *\$170,000,000* or more, an insured credit union shall file with the Board, at such time as the Board

prescribes, a certified statement showing the total amount of insured shares in the credit union at the close of the relevant period and both the amount of its deposit or adjustment of deposit and the amount of the insurance charge due to the Fund for that period, both as computed under subsection (c).

(B) EXCEPTION FOR NEWLY INSURED CREDIT UNION.—Subparagraph (A) shall not apply with respect to a credit union that became insured during the reporting period.

(2) FORM.—The certified statements required to be filed with the Board pursuant to this subsection shall be in such form and shall set forth such supporting information as the Board shall require.

(3) CERTIFICATION.—The president of the credit union or any officer designated by the board of directors shall certify, with respect to each statement required to be filed with the Board pursuant to this subsection, that to the best of his or her knowledge and belief the statement is true, correct, complete, and in accordance with this title and the regulations issued under this title.

(c)(1)(A)(i) Each insured credit union shall pay to and maintain with the National Credit Union Share Insurance Fund a deposit in an amount equaling 1 per centum of the credit union's insured shares.

(ii) The Board may, in its discretion, authorize insured credit unions to initially fund such deposit over a period of time in excess of one year if necessary to avoid adverse effects on the condition of insured credit unions.

(iii) PERIODIC ADJUSTMENT.—The amount of each insured credit union's deposit shall be adjusted as follows, in accordance with procedures determined by the Board, to reflect changes in the credit union's insured shares:

(I) annually, in the case of an insured credit union with total assets of not more than **[\$50,000,000]** *\$170,000,000*; and

(II) semi-annually, in the case of an insured credit union with total assets of **[\$50,000,000]** *\$170,000,000* or more.

(B)(i) The deposit shall be returned to an insured credit union in the event that its insurance coverage is terminated, it converts to insurance coverage from another source, or in the event the operations of the fund are transferred from the National Credit Union Administration Board.

(ii) The deposit shall be returned in accordance with procedures and valuation methods determined by the Board, but in no event shall the deposit be returned any later than one year after the final date on which no shares of the credit union are insured by the Board.

(iii) The deposit shall not be returned in the event of liquidation on account of bankruptcy or insolvency.

(iv) The deposit funds may be used by the fund if necessary to meet its expenses, in which case the amount so used shall be expensed and shall be replenished by insured credit unions in accordance with procedures established by the Board.

(2) INSURANCE PREMIUM CHARGES.—

(A) IN GENERAL.—Each insured credit union shall, at such times as the Board prescribes (but not more than twice in any calendar year), pay to the Fund a premium charge for insurance in an amount stated as a percentage of insured shares (which shall be the same for all insured credit unions).

(B) RELATION OF PREMIUM CHARGE TO EQUITY RATIO OF FUND.—The Board may assess a premium charge only if—

- (i) the Fund's equity ratio is less than 1.3 percent; and
- (ii) the premium charge does not exceed the amount necessary to restore the equity ratio to 1.3 percent.

(C) PREMIUM CHARGE REQUIRED IF EQUITY RATIO FALLS BELOW 1.2 PERCENT.—If the Fund's equity ratio is less than 1.2 percent, the Board shall, subject to subparagraph (B), assess a premium charge in such an amount as the Board determines to be necessary to restore the equity ratio to, and maintain that ratio at, 1.2 percent.

(D) FUND RESTORATION PLANS.—

(i) IN GENERAL.—Whenever—

(I) the Board projects that the equity ratio of the Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (C); or

(II) the equity ratio of the Fund actually falls below the minimum amount specified in subparagraph (C) without any determination under subclause (I) having been made,

the Board shall establish and implement a restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Board determines to be appropriate.

(ii) REQUIREMENTS OF RESTORATION PLAN.—A restoration plan meets the requirements of this clause if the plan provides that the equity ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (C) before the end of the 8-year period beginning upon the implementation of the plan (or such longer period as the Board may determine to be necessary due to extraordinary circumstances).

(iii) TRANSPARENCY.—Not more than 30 days after the Board establishes and implements a restoration plan under clause (i), the Board shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

(3) DISTRIBUTIONS FROM FUND REQUIRED.—

(A) IN GENERAL.—The Board shall, subject to the requirements of section 217(e), effect a pro rata distribution to insured credit unions after each calendar year if, as of the end of that calendar year—

- (i) any loans to the Fund from the Federal Government, and any interest on those loans, have been repaid;

- (ii) the Fund's equity ratio exceeds the normal operating level; and
- (iii) the Fund's available assets ratio exceeds 1.0 percent.

(B) AMOUNT OF DISTRIBUTION.—The Board shall distribute under subparagraph (A) the maximum possible amount that—

- (i) does not reduce the Fund's equity ratio below the normal operating level; and
- (ii) does not reduce the Fund's available assets ratio below 1.0 percent.

(C) CALCULATION BASED ON CERTIFIED STATEMENTS.—In calculating the Fund's equity ratio and available assets ratio for purposes of this paragraph, the Board shall determine the aggregate amount of the insured shares in all insured credit unions from insured credit unions certified statements under subsection (b) for the final reporting period of the calendar year referred to in subparagraph (A).

(4) TIMELINESS AND ACCURACY OF DATA.—In calculating the available assets ratio and equity ratio of the Fund, the Board shall use the most current and accurate data reasonably available.

(d)

(1) If, in the judgment of the Board, a loan to the insurance fund, or to the stabilization fund described in section 217 of this title, is required at any time for purposes of this subchapter, the Secretary of the Treasury shall make the loan, but loans under this paragraph shall not exceed in the aggregate \$6,000,000,000 outstanding at any one time. Except as otherwise provided in this subsection, section 217, and in subsection (e) of this section, each loan under this paragraph shall be made on such terms as may be fixed by agreement between the Board and the Secretary of the Treasury.

(2) PENALTY FOR FAILURE TO MAKE ACCURATE CERTIFIED STATEMENT OR TO PAY DEPOSIT OR PREMIUM.—

(A) FIRST TIER.—Any insured credit union which—

- (i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit any certified statement under subsection (b)(1) within the period of time required or submits a false or misleading certified statement under such subsection; or
- (ii) submits the statement at a time which is minimally after the time required,

shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false and misleading information is not corrected. The insured credit union shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

(B) SECOND TIER.—Any insured credit union which—

- (i) fails to submit any certified statement under subsection (b)(1) within the period of time required or submits a false or misleading certified statement in a manner not described in subparagraph (A); or

(ii) fails or refuses to pay any deposit or premium for insurance required under this title, shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues, such false and misleading information is not corrected, or such deposit or premium is not paid.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), if any insured credit union knowingly or with reckless disregard for the accuracy of any certified statement under subsection (b)(1) submits a false or misleading certified statement under such subsection, the Board may assess a penalty of not more than \$1,000,000 or not more than 1 percent of the total assets of the credit union, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

(D) ASSESSMENT PROCEDURE.—Any penalty imposed under this paragraph shall be assessed and collected by the Board in the manner provided in section 206(k)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(E) HEARING.—Any insured credit union against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the credit union submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 206(j) shall apply to any proceeding under this subparagraph.

(F) SPECIAL RULE FOR DISPUTED PAYMENTS.—No penalty may be assessed for the failure of any insured credit union to pay any deposit or premium for insurance if—

- (i) the failure is due to a dispute between the credit union and the Board over the amount of the deposit or premium which is due from the credit union; and
- (ii) the credit union deposits security satisfactory to the Board for payment of the deposit or insurance premium upon final determination of the dispute.

(3) No insured credit union shall pay any dividends on its insured shares or distribute any of its assets while it remains in default in the payment of its deposit or any premium charge for insurance due to the fund. Any director or officer of any insured credit union who knowingly participates in the declaration or payment of any such dividend or in any such distribution shall, upon conviction, be fined not more than \$1,000 or imprisoned not more than one year, or both. The provisions of this paragraph shall not be applicable in any case in which the default is due to a dispute between the credit union and the Board over the amount of its deposit or the premium charge due to the fund if the credit union deposits security satisfactory to the Board for payment of its deposit or the premium charge upon final determination of the issue.

(4) TEMPORARY INCREASES AUTHORIZED.—

(A) RECOMMENDATIONS FOR INCREASE.—During the period beginning on the date of enactment of this paragraph and ending on December 31, 2010, if, upon the written rec-

ommendation of the Board (upon a vote of not less than two-thirds of the members of the Board) 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 additional amounts above the \$6,000,000,000 amount specified in paragraph (1) are necessary, such amount shall be increased to the amount so determined to be necessary, not to exceed \$30,000,000,000.

(B) REPORT REQUIRED.—If the borrowing authority of the Board is increased above \$6,000,000,000 pursuant to subparagraph (A), the Board shall promptly submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the reasons and need for the additional borrowing authority and its intended uses.

(e) The Board, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any insured credit union the amount of any unpaid deposit or premium charge for insurance lawfully payable by the credit union to the fund, whether or not such credit union shall have made any report of condition under subsection (a) of this section or filed any certified statement required under subsection (b) of this section and whether or not suit shall have been brought to compel the credit union to make any such report or to file any such statement. No action or proceeding shall be brought for the recovery of any deposit or premium charge due to the fund, or for the recovery of any amount paid to the fund in excess of the amount due it, unless such action or proceeding shall have been brought within five years after the right accrued for which the claim is made. Where the insured credit union has made or filed with the Board a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of its deposit or any premium charge, the claim shall not be deemed to have accrued until the discovery by the Board of the fact that the certified statement is false or fraudulent.

(f) Should any Federal credit union fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed under subsection (b) of this section or to pay its deposit or any premium charge for insurance required to be paid under any provision of this title, and should the credit union fail to correct such failure within thirty days after written notice has been given by the Board to an officer of the credit union, citing this subsection and stating that the credit union has failed to make any such report or file any such statement or pay any such deposit or premium charge as required by law, all the rights, privileges, and franchises of the credit union granted to it under title I of this Act shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged by any court of the United States of competent jurisdiction in a suit brought for that purpose in the district or territory in which the principal office of such credit union is located, under direction of and by the Board in its own name, before the credit union shall be declared dissolved. The remedies provided in this

subsection and in subsections (d) and (e) of this section shall not be construed as limiting any other remedies against any insured credit union but shall be in addition thereto.

(g) Each insured credit union shall maintain such records as will readily permit verification of the correctness of its reports of condition, certified statements, and deposit and premium charges for insurance. However, no insured credit union shall be required to retain such records for such purpose for a period in excess of five years from the date of the making of any such report, the filing of any such statement, or the payment of any deposit or adjustment thereof or any premium charge, except that when there is a dispute between the insured credit union and the Board over the amount of any deposit or adjustment thereof or any premium charge for insurance the credit union shall retain such records until final determination of the issue.

(h) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) AVAILABLE ASSETS RATIO.—The term “available assets ratio”, when applied to the Fund, means the ratio of—

(A) the amount determined by subtracting—

(i) direct liabilities of the Fund and contingent liabilities for which no provision for losses has been made, from

(ii) the sum of cash and the market value of unencumbered investments authorized under section 203(c), to

(B) the aggregate amount of the insured shares in all insured credit unions.

(2) EQUITY RATIO.—The term “equity ratio”, which shall be calculated using the financial statements of the Fund alone, without any consolidation or combination with the financial statements of any other fund or entity, means the ratio of—

(A) the amount of Fund capitalization, including insured credit unions’ 1 percent capitalization deposits and the retained earnings balance of the Fund (net of direct liabilities of the Fund and contingent liabilities for which no provision for losses has been made); to

(B) the aggregate amount of the insured shares in all insured credit unions.

(3) INSURED SHARES.—The term “insured shares”, when applied to this section, includes share, share draft, share certificate, and other similar accounts as determined by the Board, but does not include amounts exceeding the insured account limit set forth in section 207(k)(1).

(4) NORMAL OPERATING LEVEL.—The term “normal operating level”, when applied to the Fund, means an equity ratio specified by the Board, which shall be not less than 1.2 percent and not more than 1.5 percent.

* * * * *

SEC. 216. PROMPT CORRECTIVE ACTION.

(a) RESOLVING PROBLEMS TO PROTECT FUND.—

(1) PURPOSE.—The purpose of this section is to resolve the problems of insured credit unions at the least possible long-term loss to the Fund.

- (2) PROMPT CORRECTIVE ACTION REQUIRED.—The Board shall carry out the purpose of this section by taking prompt corrective action to resolve the problems of insured credit unions.
- (b) REGULATIONS REQUIRED.—
- (1) INSURED CREDIT UNIONS.—
- (A) IN GENERAL.—The Board shall, by regulation, prescribe a system of prompt corrective action for insured credit unions that is—
- (i) consistent with this section; and
 - (ii) comparable to section 38 of the Federal Deposit Insurance Act.
- (B) COOPERATIVE CHARACTER OF CREDIT UNIONS.—The Board shall design the system required under subparagraph (A) to take into account that credit unions are not-for-profit cooperatives that—
- (i) do not issue capital stock;
 - (ii) must rely on retained earnings to build net worth; and
 - (iii) have boards of directors that consist primarily of volunteers.
- (2) NEW CREDIT UNIONS.—
- (A) IN GENERAL.—In addition to regulations under paragraph (1), the Board shall, by regulation, prescribe a system of prompt corrective action that shall apply to new credit unions in lieu of this section and the regulations prescribed under paragraph (1).
- (B) CRITERIA FOR ALTERNATIVE SYSTEM.—The Board shall design the system prescribed under subparagraph (A)—
- (i) to carry out the purpose of this section;
 - (ii) to recognize that credit unions (as cooperatives that do not issue capital stock) initially have no net worth, and give new credit unions reasonable time to accumulate net worth;
 - (iii) to create adequate incentives for new credit unions to become adequately capitalized by the time that they either—
 - (I) have been in operation for more than 10 years; or
 - (II) have more than \$10,000,000 in total assets;
 - (iv) to impose appropriate restrictions and requirements on new credit unions that do not make sufficient progress toward becoming adequately capitalized; and
 - (v) to prevent evasion of the purpose of this section.
- (c) NET WORTH CATEGORIES.—
- (1) IN GENERAL.—For purposes of this section the following definitions shall apply:
- (A) WELL CAPITALIZED.—An insured credit union is “well capitalized” if—
- (i) it has a net worth ratio of not less than 7 percent; and
 - (ii) it meets any applicable risk-based net worth requirement under subsection (d).

(B) ADEQUATELY CAPITALIZED.—An insured credit union is “adequately capitalized” if—

- (i) it has a net worth ratio of not less than 6 percent; and
- (ii) it meets any applicable risk-based net worth requirement under subsection (d).

(C) UNDERCAPITALIZED.—An insured credit union is “undercapitalized” if—

- (i) it has a net worth ratio of less than 6 percent; or
- (ii) it fails to meet any applicable risk-based net worth requirement under subsection (d).

(D) SIGNIFICANTLY UNDERCAPITALIZED.—An insured credit union is “significantly undercapitalized”—

- (i) if it has a net worth ratio of less than 4 percent; or
- (ii) if—
 - (I) it has a net worth ratio of less than 5 percent; and
 - (II) it—
 - (aa) fails to submit an acceptable net worth restoration plan within the time allowed under subsection (f); or
 - (bb) materially fails to implement a net worth restoration plan accepted by the Board.

(E) CRITICALLY UNDERCAPITALIZED.—An insured credit union is “critically undercapitalized” if it has a net worth ratio of less than 2 percent (or such higher net worth ratio, not to exceed 3 percent, as the Board may specify by regulation).

(2) ADJUSTING NET WORTH LEVELS.—

(A) IN GENERAL.—If, for purposes of section 38(c) of the Federal Deposit Insurance Act, the Federal banking agencies increase or decrease the required minimum level for the leverage limit (as those terms are used in section 38), the Board may, by regulation, and subject to subparagraph (B) of this paragraph, correspondingly increase or decrease 1 or more of the net worth ratios specified in subparagraphs (A) through (D) of paragraph (1) of this subsection in an amount that is equal to not more than the difference between the required minimum level most recently established by the Federal banking agencies and 4 percent of total assets (with respect to institutions regulated by those agencies).

(B) DETERMINATIONS REQUIRED.—The Board may increase or decrease net worth ratios under subparagraph (A) only if the Board—

- (i) determines, in consultation with the Federal banking agencies, that the reason for the increase or decrease in the required minimum level for the leverage limit also justifies the adjustment in net worth ratios; and
- (ii) determines that the resulting net worth ratios are sufficient to carry out the purpose of this section.

(C) TRANSITION PERIOD REQUIRED.—If the Board increases any net worth ratio under this paragraph, the

Board shall give insured credit unions a reasonable period of time to meet the increased ratio.

(d) RISK-BASED NET WORTH REQUIREMENT FOR COMPLEX CREDIT UNIONS.—

(1) IN GENERAL.—The regulations required under subsection (b)(1) shall include a risk-based net worth requirement for insured credit unions that are complex, as defined by the Board based on the portfolios of assets and liabilities of credit unions.

(2) STANDARD.—The Board shall design the risk-based net worth requirement to take account of any material risks against which the net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection.

(e) EARNINGS-RETENTION REQUIREMENT APPLICABLE TO CREDIT UNIONS THAT ARE NOT WELL CAPITALIZED.—

(1) IN GENERAL.—An insured credit union that is not well capitalized shall annually set aside as net worth an amount equal to not less than 0.4 percent of its total assets.

(2) BOARD'S AUTHORITY TO DECREASE EARNINGS-RETENTION REQUIREMENT.—

(A) IN GENERAL.—The Board may, by order, decrease the 0.4 percent requirement in paragraph (1) with respect to a credit union to the extent that the Board determines that the decrease—

(i) is necessary to avoid a significant redemption of shares; and

(ii) would further the purpose of this section.

(B) PERIODIC REVIEW REQUIRED.—The Board shall periodically review any order issued under subparagraph (A).

(f) NET WORTH RESTORATION PLAN REQUIRED.—

(1) IN GENERAL.—Each insured credit union that is undercapitalized shall submit an acceptable net worth restoration plan to the Board within the time allowed under this subsection.

(2) ASSISTANCE TO SMALL CREDIT UNIONS.—The Board (or the staff of the Board) shall, upon timely request by an insured credit union with total assets of less than **[\$10,000,000]** **\$34,000,000**, and subject to such regulations or guidelines as the Board may prescribe, assist that credit union in preparing a net worth restoration plan.

(3) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The Board shall, by regulation, establish deadlines for submission of net worth restoration plans under this subsection that—

(A) provide insured credit unions with reasonable time to submit net worth restoration plans; and

(B) require the Board to act on net worth restoration plans expeditiously.

(4) FAILURE TO SUBMIT ACCEPTABLE PLAN WITHIN TIME ALLOWED.—

(A) FAILURE TO SUBMIT ANY PLAN.—If an insured credit union fails to submit a net worth restoration plan within the time allowed under paragraph (3), the Board shall—

(i) promptly notify the credit union of that failure; and

(ii) give the credit union a reasonable opportunity to submit a net worth restoration plan.

(B) SUBMISSION OF UNACCEPTABLE PLAN.—If an insured credit union submits a net worth restoration plan within the time allowed under paragraph (3), and the Board determines that the plan is not acceptable, the Board shall—

(i) promptly notify the credit union of why the plan is not acceptable; and

(ii) give the credit union a reasonable opportunity to submit a revised plan.

(5) ACCEPTING PLAN.—The Board may accept a net worth restoration plan only if the Board determines that the plan is based on realistic assumptions and is likely to succeed in restoring the net worth of the credit union.

(g) RESTRICTIONS ON UNDERCAPITALIZED CREDIT UNIONS.—

(1) RESTRICTION ON ASSET GROWTH.—An insured credit union that is undercapitalized shall not generally permit its average total assets to increase, unless—is—

(A) the Board has accepted the net worth restoration plan of the credit union for that action;

(B) any increase in total assets is consistent with the net worth restoration plan; and

(C) the net worth ratio of the credit union increases at a rate that is consistent with the net worth restoration plan.

(2) RESTRICTION ON MEMBER BUSINESS LOANS.—Notwithstanding section 107A(a), an insured credit union that is undercapitalized may not make any increase in the total amount of member business loans (as defined in section 107A(c)) outstanding at that credit union at any one time, until such time as the credit union becomes adequately capitalized.

(h) MORE STRINGENT TREATMENT BASED ON OTHER SUPERVISORY CRITERIA.—With respect to the exercise of authority by the Board under regulations comparable to section 38(g) of the Federal Deposit Insurance Act—

(1) the Board may not reclassify an insured credit union into a lower net worth category, or treat an insured credit union as if it were in a lower net worth category, for reasons not pertaining to the safety and soundness of that credit union; and

(2) the Board may not delegate its authority to reclassify an insured credit union into a lower net worth category or to treat an insured credit union as if it were in a lower net worth category.

(i) ACTION REQUIRED REGARDING CRITICALLY UNDERCAPITALIZED CREDIT UNIONS.—

(1) IN GENERAL.—The Board shall, not later than 90 days after the date on which an insured credit union becomes critically undercapitalized—

(A) appoint a conservator or liquidating agent for the credit union; or

(B) take such other action as the Board determines would better achieve the purpose of this section, after documenting why the action would better achieve that purpose.

(2) PERIODIC REDETERMINATIONS REQUIRED.—Any determination by the Board under paragraph (1)(B) to take any action with respect to an insured credit union in lieu of appointing a conservator or liquidating agent shall cease to be effective not later than the end of the 180-day period beginning on the date on which the determination is made, and a conservator or liquidating agent shall be appointed for that credit union under paragraph (1)(A), unless the Board makes a new determination under paragraph (1)(B) before the end of the effective period of the prior determination.

(3) APPOINTMENT OF LIQUIDATING AGENT REQUIRED IF OTHER ACTION FAILS TO RESTORE NET WORTH.—

(A) IN GENERAL.—Notwithstanding paragraphs (1) and (2), the Board shall appoint a liquidating agent for an insured credit union if the credit union is critically undercapitalized on average during the calendar quarter beginning 18 months after the date on which the credit union became critically undercapitalized.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the Board may continue to take such other action as the Board determines to be appropriate in lieu of appointment of a liquidating agent if—

(i) the Board determines that—

(I) the insured credit union has been in substantial compliance with an approved net worth restoration plan that requires consistent improvement in the net worth of the credit union since the date of the approval of the plan; and

(II) the insured credit union has positive net income or has an upward trend in earnings that the Board projects as sustainable; and

(ii) the Board certifies that the credit union is viable and not expected to fail.

(4) NONDELEGATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Board may not delegate the authority of the Board under this subsection.

(B) EXCEPTION.—The Board may delegate the authority of the Board under this subsection with respect to an insured credit union that has less than **[\$5,000,000]** **\$17,000,000** in total assets, if the Board permits the credit union to appeal any adverse action to the Board.

(j) REVIEWS REQUIRED WHEN SHARE INSURANCE FUND EXPERIENCES LOSSES.—

(1) IN GENERAL.—If the Fund incurs a material loss with respect to an insured credit union, the Inspector General of the Board shall—

(A) submit to the Board a written report reviewing the supervision of the credit union by the Administration (including the implementation of this section by the Administration), which shall include—

(i) a description of the reasons why the problems of the credit union resulted in a material loss to the Fund; and

- (ii) recommendations for preventing any such loss in the future; and
- (B) submit a copy of the report under subparagraph (A) to—
 - (i) the Comptroller General of the United States;
 - (ii) the Corporation;
 - (iii) in the case of a report relating to a State credit union, the appropriate State supervisor; and
 - (iv) to any Member of Congress, upon request.
- (2) MATERIAL LOSS DEFINED.—For purposes of determining whether the Fund has incurred a material loss with respect to an insured credit union, a loss is material if it exceeds the sum of—
 - (A) ~~[\$25,000,000]~~ \$51,000,000; and
 - (B) an amount equal to 10 percent of the total assets of the credit union on the date on which the Board initiated assistance under section 208 or was appointed liquidating agent.
- (3) PUBLIC DISCLOSURE REQUIRED.—
 - (A) IN GENERAL.—The Board shall disclose a report under this subsection, upon request under section 552 of title 5, United States Code, without excising—
 - (i) any portion under section 552(b)(5) of title 5, United States Code; or
 - (ii) any information about the insured credit union (other than trade secrets) under section 552(b)(8) of title 5, United States Code.
 - (B) RULE OF CONSTRUCTION.—Subparagraph (A) may not be construed as requiring the agency to disclose the name of any customer of the insured credit union (other than an institution-affiliated party), or information from which the identity of such customer could reasonably be ascertained.
- (4) LOSSES THAT ARE NOT MATERIAL.—
 - (A) SEMIANNUAL REPORT.—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of the Board shall—
 - (i) identify any losses that the Inspector General estimates were incurred by the Fund during such 6-month period, with respect to insured credit unions;
 - (ii) for each loss to the Fund that is not a material loss, determine—
 - (I) the grounds identified by the Board or the State official having jurisdiction over a State credit union for appointing the Board as the liquidating agent for any Federal or State credit union; and
 - (II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and
 - (iii) prepare and submit a written report to the Board and to Congress on the results of the determinations of the Inspector General that includes—
 - (I) an identification of any loss that warrants an in-depth review, and the reasons such review is warranted, or if the Inspector General determines

that no review is warranted, an explanation of such determination; and

(II) for each loss identified in subclause (I) that warrants an in-depth review, the date by which such review, and a report on the review prepared in a manner consistent with reports under paragraph (1)(A), will be completed.

(B) DEADLINE FOR SEMIANNUAL REPORT.—The Inspector General of the Board shall—

(i) submit each report required under subparagraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

(ii) provide a copy of the report required under subparagraph (A) to any Member of Congress, upon request.

(5) GAO REVIEW.—The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate—

(A) review each report made under paragraph (1), including the extent to which the Inspector General of the Board complied with the requirements under section 419 of title 5, United States Code, with respect to each such report; and

(B) recommend improvements to the supervision of insured credit unions (including improvements relating to the implementation of this section).

(k) APPEALS PROCESS.—Material supervisory determinations, including decisions to require prompt corrective action, made pursuant to this section by Administration officials other than the Board may be appealed to the Board pursuant to the independent appellate process required by section 309 of the Riegle Community Development and Regulatory Improvement Act of 1994 (or, if the Board so specifies, pursuant to separate procedures prescribed by regulation).

(l) CONSULTATION AND COOPERATION WITH STATE CREDIT UNION SUPERVISORS.—

(1) IN GENERAL.—In implementing this section, the Board shall consult and seek to work cooperatively with State officials having jurisdiction over State-chartered insured credit unions.

(2) EVALUATING NET WORTH RESTORATION PLAN.—In evaluating any net worth restoration plan submitted by a State-chartered insured credit union, the Board shall seek the views of the State official having jurisdiction over the credit union.

(3) DECIDING WHETHER TO APPOINT CONSERVATOR OR LIQUIDATING AGENT.—With respect to any decision by the Board on whether to appoint a conservator or liquidating agent for a State-chartered insured credit union—

(A) the Board shall—

(i) seek the views of the State official having jurisdiction over the credit union; and

(ii) give that official an opportunity to take the proposed action;

(B) the Board shall, upon timely request of an official referred to in subparagraph (A), promptly provide the official with—

- (i) a written statement of the reasons for the proposed action; and
 - (ii) reasonable time to respond to that statement;
- (C) if the official referred to in subparagraph (A) makes a timely written response that disagrees with the proposed action and gives reasons for that disagreement, the Board shall not appoint a conservator or liquidating agent for the credit union, unless the Board, after considering the views of the official, has determined that—
 - (i) the Fund faces a significant risk of loss with respect to the credit union if a conservator or liquidating agent is not appointed; and
 - (ii) the appointment is necessary to reduce—
 - (I) the risk that the Fund would incur a loss with respect to the credit union; or
 - (II) any loss that the Fund is expected to incur with respect to the credit union; and
- (D) the Board may not delegate any determination under subparagraph (C).
- (m) CORPORATE CREDIT UNIONS EXEMPTED.—This section does not apply to any insured credit union that—
 - (1) operates primarily for the purpose of serving credit unions; and
 - (2) permits individuals to be members of the credit union only to the extent that applicable law requires that such persons own shares.
- (n) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of the Board or a State to take action in addition to (but not in derogation of) any action that is required under this section.
- (o) DEFINITIONS.—For purposes of this section the following definitions shall apply:
 - (1) FEDERAL BANKING AGENCY.—The term “Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act.
 - (2) NET WORTH.—The term “net worth”—
 - (A) with respect to any insured credit union, means the retained earnings balance of the credit union, as determined under generally accepted accounting principles, together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined;
 - (B) with respect to any insured credit union, includes, at the Board’s discretion and subject to rules and regulations established by the Board, assistance provided under section 208 to facilitate a least-cost resolution consistent with the best interests of the credit union system; and
 - (C) with respect to a low-income credit union, includes secondary capital accounts that are—
 - (i) uninsured; and
 - (ii) subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the Fund.

(3) NET WORTH RATIO.—The term “net worth ratio” means, with respect to a credit union, the ratio of the net worth of the credit union to the total assets of the credit union.

(4) NEW CREDIT UNION.—The term “new credit union” means an insured credit union that—

(A) has been in operation for less than 10 years; and

(B) has not more than ~~【\$10,000,000】~~ \$34,000,000 in total assets.

* * * * *

FEDERAL DEPOSIT INSURANCE ACT

* * * * *

SEC. 7. (a)(1) Each insured State nonmember bank and each foreign bank having an insured branch which is not a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require. Such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. Any such bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any such bank which fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any such bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than \$1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions

of such section. Any such bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.

(2)(A) The Corporation and, with respect to any State depository institution, any appropriate State bank supervisor for such institution, shall have access to reports of examination made by, and reports of condition made to, the Comptroller of the Currency, the Federal Housing Finance Agency, any Federal home loan bank, or any Federal Reserve bank and to all revisions of reports of condition made to any of them, and they shall promptly advise the Corporation of any revisions or changes in respect to deposit liabilities made or required to be made in any report of condition. The Corporation may accept any report made by or to any commission, board, or authority having supervision of a depository institution, and may furnish to the Comptroller of the Currency, to the Federal Housing Finance Agency, to any Federal home loan bank, to any Federal Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to, the Corporation.

(B) ADDITIONAL REPORTS.—The Board of Directors may from time to time require any insured depository institution to file such additional reports as the Corporation, after consultation with the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, as appropriate, may deem advisable for insurance purposes.

(C) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Corporation (with respect to all insured depository institutions, including a depository institution for which the Corporation has been appointed conservator or receiver) or an appropriate State bank supervisor (with respect to a State depository institution) under subparagraph (A) or (B), a Federal banking agency may, in the discretion of the agency, furnish any report of examination or other confidential supervisory information concerning any depository institution or other entity examined by such agency under authority of any Federal law, to—

- (i) any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity;
- (ii) any officer, director, or receiver of such depository institution or entity; and
- (iii) any other person that the Federal banking agency determines to be appropriate.

(3) Each insured depository institution shall make to the appropriate Federal banking agency 4 reports of condition annually upon dates which shall be selected by the Chairman of the Board of Directors, the Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System. The dates selected shall be the same for all insured depository institutions, except that when any of said reporting dates is a nonbusiness day for any depository institution, the preceding business day shall be its reporting date. Such reports of condition shall be the basis for the

certified statements to be filed pursuant to subsection (c). The deposit liabilities shall be reported in said reports of condition in accordance with and pursuant to paragraphs (4) and (5) of this subsection, and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting depository institution to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of conditions shall be attested by the signatures of at least two directors or trustees of the reporting depository institution other than the officer making such declaration, with a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. At the time of making said reports of condition each insured depository institution shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks or savings associations under its jurisdiction to make additional reports of condition at any time.

(4) In the reports of condition required to be made by paragraph (3) of this subsection, each insured depository institution shall report the total amount of the liability of the depository institution for deposits in the main office and in any branch located in any State of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, according to the definition of the term "deposit" in and pursuant to subsection (1) of section 3 of this Act, without any deduction for indebtedness of depositors or creditors or any deduction for cash items in the process of collection drawn on others than the reporting depository institution: *Provided*, That the depository institution in reporting such deposits may (i) subtract from the deposit balance due to any depository institution the deposit balance due from the same depository institution (other than trust funds deposited by either depository institution) and any cash items in the process of collection due from or due to such depository institutions shall be included in determining such net balance, except that balances of time deposits of any depository institution and any balances standing to the credit of private depository institutions, of depository institutions in foreign countries, of foreign branches of other American depository institutions, and of American branches of foreign banks shall be reported gross without any such subtraction, and (ii) exclude any deposits received in any office of the depository institution for deposit in any other office of the depository institution: *And provided further*, That outstanding drafts (including advices and authorizations to charge depository institution's balance in another depository institution) drawn in the regular course of business by the reporting depository institution on depository institutions need not be reported as deposit liabilities. The amount of trust funds held in the depository institution's own trust department, which the reporting depository institution keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included in the total deposits in such reports, but

shall be separately stated in such reports. Deposits which are accumulated for the payment of personal loans and are assigned or pledged to assure payment of loans at maturity shall not be included in the total deposits in such reports, but shall be deducted from the loans for which such deposits are assigned or pledged to assure repayment.

(5) The deposits to be reported on such reports of condition shall be segregated between (i) time and savings deposits and (ii) demand deposits. For this purpose, the time and savings deposits shall consist of time certificates of deposit, time deposits-open account and savings deposits; and demand deposits shall consist of all deposits other than time and savings deposits.

(6) LIFELINE ACCOUNT DEPOSITS.—In the reports of condition required to be reported under this subsection, the deposits in lifeline accounts (as defined in section 232(a)(3)(D) of the Bank Enterprise Act of 1991) shall be reported separately.

(7) The Board of Directors, after consultation with the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, may by regulation define the terms “cash items” and “process of collection”, and shall classify deposits as “time,” “savings,” and “demand” deposits, for the purposes of this section.

(8) In respect of any report required or authorized to be supplied or published pursuant to this subsection or any other provision of law, the Board of Directors or the Comptroller of the Currency, as the case may be, may differentiate between domestic banks and foreign banks to such extent as, in their judgment, may be reasonably required to avoid hardship and can be done without substantial compromise of insurance risk or supervisory and regulatory effectiveness.

(9) DATA COLLECTIONS.—In addition to or in connection with any other report required under this subsection, the Corporation shall take such action as may be necessary to ensure that—

(A) each insured depository institution maintains; and

(B) the Corporation receives on a regular basis from such institution,

information on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the institution. In prescribing reporting and other requirements for the collection of actual and accurate information pursuant to this paragraph, the Corporation shall minimize the regulatory burden imposed upon insured depository institutions that are well capitalized (as defined in section 38) while taking into account the benefit of the information to the Corporation, including the use of the information to enable the Corporation to more accurately determine the total amount of insured deposits in each insured depository institution for purposes of compliance with this Act.

(10) A Federal banking agency may not, by regulation or otherwise, designate, or require an insured institution or an affiliate to designate, a corporation as highly leveraged or a transaction with a corporation as a highly leveraged transaction solely because such corporation is or has been a debtor or bankrupt under title 11, United States Code, if, after confirma-

tion of a plan of reorganization, such corporation would not otherwise be highly leveraged.

(11) STREAMLINING REPORTS OF CONDITION.—

(A) REVIEW OF INFORMATION AND SCHEDULES.—Before the end of the 1-year period beginning on the date of enactment of the Financial Services Regulatory Relief Act of 2006 and before the end of each 5-year period thereafter, each Federal banking agency shall, in conjunction with the other relevant Federal banking agencies, review the information and schedules that are required to be filed by an insured depository institution in a report of condition required under paragraph (3).

(B) REDUCTION OR ELIMINATION OF INFORMATION FOUND TO BE UNNECESSARY.—After completing the review required by subparagraph (A), a Federal banking agency, in conjunction with the other relevant Federal banking agencies, shall reduce or eliminate any requirement to file information or schedules under paragraph (3) (other than information or schedules that are otherwise required by law) if the agency determines that the continued collection of such information or schedules is no longer necessary or appropriate.

(12) SHORT FORM REPORTING.—

(A) IN GENERAL.—The appropriate Federal banking agencies shall issue regulations that allow for a reduced reporting requirement for a covered depository institution when the institution makes the first and third report of condition for a year, as required under paragraph (3).

(B) DEFINITION.—In this paragraph, the term “covered depository institution” means an insured depository institution that—

- (i) has less than **[\$5,000,000,000]** \$8,000,000,000 in total consolidated assets; and
- (ii) satisfies such other criteria as the appropriate Federal banking agencies determine appropriate.

(b) ASSESSMENTS.—

(1) RISK-BASED ASSESSMENT SYSTEM.—

(A) RISK-BASED ASSESSMENT SYSTEM REQUIRED.—The Board of Directors shall, by regulation, establish a risk-based assessment system for insured depository institutions.

(B) PRIVATE REINSURANCE AUTHORIZED.—In carrying out this paragraph, the Corporation may—

- (i) obtain private reinsurance covering not more than 10 percent of any loss the Corporation incurs with respect to an insured depository institution; and
- (ii) base that institution’s assessment (in whole or in part) on the cost of the reinsurance.

(C) RISK-BASED ASSESSMENT SYSTEM DEFINED.—For purposes of this paragraph, the term “risk-based assessment system” means a system for calculating a depository institution’s assessment based on—

- (i) the probability that the Deposit Insurance Fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) different categories and concentrations of assets;

(II) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

(III) any other factors the Corporation determines are relevant to assessing such probability;

(ii) the likely amount of any such loss; and

(iii) the revenue needs of the Deposit Insurance Fund.

(D) SEPARATE ASSESSMENT SYSTEMS.—The Board of Directors may establish separate risk-based assessment systems for large and small members of the Deposit Insurance Fund.

(E) INFORMATION CONCERNING RISK OF LOSS AND ECONOMIC CONDITIONS.—

(i) SOURCES OF INFORMATION.—For purposes of determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information, as appropriate, from all sources the Board of Directors considers appropriate, including reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 35), the Secretary of the Treasury, the Commodity Futures Trading Commission, the Farm Credit Administration, the Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other regulators of financial institutions, and any information available from private economic, credit, or business analysts.

(ii) CONSULTATION WITH FEDERAL BANKING AGENCIES.—

(I) IN GENERAL.—Except as provided in subclause (II), in assessing the risk of loss to the Deposit Insurance Fund with respect to any insured depository institution, the Corporation shall consult with the appropriate Federal banking agency of such institution.

(II) TREATMENT ON AGGREGATE BASIS.—In the case of insured depository institutions that are well capitalized (as defined in section 38) and, in the most recent examination, were found to be well managed, the consultation under subclause (I) concerning the assessment of the risk of loss posed by such institutions may be made on an aggregate basis.

(iii) RULE OF CONSTRUCTION.—No provision of this paragraph shall be construed as providing any new authority for the Corporation to require submission of information by insured depository institutions to the Corporation.

(F) MODIFICATIONS TO THE RISK-BASED ASSESSMENT SYSTEM ALLOWED ONLY AFTER NOTICE AND COMMENT.—In revising or modifying the risk-based assessment system at any time after the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment.

(2) SETTING ASSESSMENTS.—

(A) IN GENERAL.—The Board of Directors shall set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary or appropriate, subject to subparagraph (D).

(B) FACTORS TO BE CONSIDERED.—In setting assessments under subparagraph (A), the Board of Directors shall consider the following factors:

(i) The estimated operating expenses of the Deposit Insurance Fund.

(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

(iv) The risk factors and other factors taken into account pursuant to paragraph (1) under the risk-based assessment system, including the requirement under such paragraph to maintain a risk-based system.

(v) Any other factors the Board of Directors may determine to be appropriate.

(D) NOTICE OF ASSESSMENTS.—The Corporation shall notify each insured depository institution of that institution's assessment.

(E) BANK ENTERPRISE ACT REQUIREMENT.—The Corporation shall design the risk-based assessment system so that, insofar as the system bases assessments, directly or indirectly, on deposits, the portion of the deposits of any insured depository institution which are attributable to life-line accounts established in accordance with the Bank Enterprise Act of 1991 shall be subject to assessment at a rate determined in accordance with such Act.

(3) DESIGNATED RESERVE RATIO.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—Before the beginning of each calendar year, the Board of Directors shall designate the reserve ratio applicable with respect to the Deposit Insurance Fund and publish the reserve ratio so designated.

(ii) RULEMAKING REQUIREMENT.—Any change to the designated reserve ratio shall be made by the Board of Directors by regulation after notice and opportunity for comment.

(B) MINIMUM RESERVE RATIO.—The reserve ratio designated by the Board of Directors for any year may not be less than 1.35 percent of estimated insured deposits, or the comparable percentage of the assessment base set forth in paragraph (2)(C).

(C) FACTORS.—In designating a reserve ratio for any year, the Board of Directors shall—

(i) take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions;

(ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors;

(iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and

(iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

(D) PUBLICATION OF PROPOSED CHANGE IN RATIO.—In soliciting comment on any proposed change in the designated reserve ratio in accordance with subparagraph (A), the Board of Directors shall include in the published proposal a thorough analysis of the data and projections on which the proposal is based.

(E) DIF RESTORATION PLANS.—

(i) IN GENERAL.—Whenever—

(I) the Corporation projects that the reserve ratio of the Deposit Insurance Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio; or

(II) the reserve ratio of the Deposit Insurance Fund actually falls below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio without any determination under subclause (I) having been made,

the Corporation shall establish and implement a Deposit Insurance Fund restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Corporation determines to be appropriate.

(ii) REQUIREMENTS OF RESTORATION PLAN.—A Deposit Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the reserve ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio before the end of the 8-year period beginning upon the implementation of the plan (or such longer period as the Corporation may determine to be necessary due to extraordinary circumstances).

(iii) RESTRICTION ON ASSESSMENT CREDITS.—As part of any restoration plan under this subparagraph, the

Corporation may elect to restrict the application of assessment credits provided under subsection (e)(3) for any period that the plan is in effect.

(iv) LIMITATION ON RESTRICTION.—Notwithstanding clause (iii), while any restoration plan under this subparagraph is in effect, the Corporation shall apply credits provided to an insured depository institution under subsection (e)(3) against any assessment imposed on the institution for any assessment period in an amount equal to the lesser of—

(I) the amount of the assessment; or

(II) the amount equal to 3 basis points of the institution's assessment base.

(v) TRANSPARENCY.—Not more than 30 days after the Corporation establishes and implements a restoration plan under clause (i), the Corporation shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

(4) DEPOSITORY INSTITUTION REQUIRED TO MAINTAIN ASSESSMENT-RELATED RECORDS.—Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of any assessment on the insured depository institution under this subsection until the later of—

(A) the end of the 3-year period beginning on the due date of the assessment; or

(B) in the case of a dispute between the insured depository institution and the Corporation with respect to such assessment, the date of a final determination of any such dispute.

(5) EMERGENCY SPECIAL ASSESSMENTS.—In addition to the other assessments imposed on insured depository institutions under this subsection, the Corporation may impose 1 or more special assessments on insured depository institutions in an amount determined by the Corporation if the amount of any such assessment is necessary—

(A) to provide sufficient assessment income to repay amounts borrowed from the Secretary of the Treasury under section 14(a) in accordance with the repayment schedule in effect under section 14(c) during the period with respect to which such assessment is imposed;

(B) to provide sufficient assessment income to repay obligations issued to and other amounts borrowed from insured depository institutions under section 14(d); or

(C) for any other purpose that the Corporation may deem necessary.

(6) COMMUNITY ENTERPRISE CREDITS.—The Corporation shall allow a credit against any semiannual assessment to any insured depository institution which satisfies the requirements of the Community Enterprise Assessment Credit Board under section 233(a)(1) of the Bank Enterprise Act of 1991 in the amount determined by such Board by regulation.

(c) CERTIFIED STATEMENTS; PAYMENTS.—

(1) CERTIFIED STATEMENTS REQUIRED.—

(A) IN GENERAL.—Each insured depository institution shall file with the Corporation a certified statement containing such information as the Corporation may require for determining the institution's assessment.

(B) FORM OF CERTIFICATION.—The certified statement required under subparagraph (A) shall—

(i) be in such form and set forth such supporting information as the Board of Directors shall prescribe; and

(ii) be certified by the president of the depository institution or any other officer designated by its board of directors or trustees that to the best of his or her knowledge and belief, the statement is true, correct and complete, and in accordance with this Act and regulations issued hereunder.

(2) PAYMENTS REQUIRED.—

(A) IN GENERAL.—Each insured depository institution shall pay to the Corporation the assessment imposed under subsection (b).

(B) FORM OF PAYMENT.—The payments required under subparagraph (A) shall be made in such manner and at such time or times as the Board of Directors shall prescribe by regulation.

(3) NEWLY INSURED INSTITUTIONS.—To facilitate the administration of this section, the Board of Directors may waive the requirements of paragraphs (1) and (2) for the initial assessment period in which a depository institution becomes insured.

(4) PENALTY FOR FAILURE TO MAKE ACCURATE CERTIFIED STATEMENT.—

(A) FIRST TIER.—Any insured depository institution which—

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement; or

(ii) submits the statement at a time which is minimally after the time required in such paragraph, shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false and misleading information is not corrected. The institution shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

(B) SECOND TIER.—Any insured depository institution which fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement in a manner not described in subparagraph (A) shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false and misleading information is not corrected.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), if any insured depository institution knowingly or

with reckless disregard for the accuracy of any certified statement described in paragraph (1) submits a false or misleading certified statement under paragraph (1), the Corporation may assess a penalty of not more than \$1,000,000 or not more than 1 percent of the total assets of the institution, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

(D) ASSESSMENT PROCEDURE.—Any penalty imposed under this paragraph shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(E) HEARING.—Any insured depository institution against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the institution submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 8(h) shall apply to any proceeding under this subparagraph.

(d) CORPORATION EXEMPT FROM APPORTIONMENT.—Notwithstanding any other provision of law, amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or under any other authority.

(e) REFUNDS, DIVIDENDS, AND CREDITS.—

(1) REFUNDS OF OVERPAYMENTS.—In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may—

(A) refund the amount of the excess payment to the insured depository institution; or

(B) credit such excess amount toward the payment of subsequent assessments until such credit is exhausted.

(2) DIVIDENDS FROM EXCESS AMOUNTS IN DEPOSIT INSURANCE FUND.—

(A) RESERVE RATIO IN EXCESS OF 1.5 PERCENT OF ESTIMATED INSURED DEPOSITS.—If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund exceeds 1.5 percent of estimated insured deposits, the Corporation shall declare the amount in the Fund in excess of the amount required to maintain the reserve ratio at 1.5 percent of estimated insured deposits, as dividends to be paid to insured depository institutions.

(B) LIMITATION.—The Board of Directors may, in its sole discretion, suspend or limit the declaration of payment of dividends under subparagraph (A).

(C) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe, by regulation, after notice and opportunity for comment, the method for the declaration, calculation, distribution, and payment of dividends under this paragraph

(3) ONE-TIME CREDIT BASED ON TOTAL ASSESSMENT BASE AT YEAR-END 1996.—

(A) IN GENERAL.—Before the end of the 270-day period beginning on the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors shall, by regulation after notice and opportunity for comment, provide for a credit to each eligible insured depository institution (or a successor insured depository institution), based on the assessment base of the institution on December 31, 1996, as compared to the combined aggregate assessment base of all eligible insured depository institutions, taking into account such factors as the Board of Directors may determine to be appropriate.

(B) CREDIT LIMIT.—The aggregate amount of credits available under subparagraph (A) to all eligible insured depository institutions shall equal the amount that the Corporation could collect if the Corporation imposed an assessment of 10.5 basis points on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001.

(C) ELIGIBLE INSURED DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term “eligible insured depository institution” means any insured depository institution that—

- (i) was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date; or
- (ii) is a successor to any insured depository institution described in clause (i).

(D) APPLICATION OF CREDITS.—

(i) IN GENERAL.—Subject to clause (ii), the amount of a credit to any eligible insured depository institution under this paragraph shall be applied by the Corporation, subject to subsection (b)(3)(E), to the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning after the effective date of regulations prescribed under subparagraph (A).

(ii) TEMPORARY RESTRICTION ON USE OF CREDITS.—The amount of a credit to any eligible insured depository institution under this paragraph may not be applied to more than 90 percent of the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010.

(iii) REGULATIONS.—The regulations prescribed under subparagraph (A) shall establish the qualifications and procedures governing the application of assessment credits pursuant to clause (i).

(E) LIMITATION ON AMOUNT OF CREDIT FOR CERTAIN DEPOSITORY INSTITUTIONS.—In the case of an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized (as defined in section 38) at the beginning of an assessment period, the amount of any credit allowed under this paragraph against

the assessment on that depository institution for such period may not exceed the amount calculated by applying to that depository institution the average assessment rate on all insured depository institutions for such assessment period.

(F) SUCCESSOR DEFINED.—The Corporation shall define the term “successor” for purposes of this paragraph, by regulation, and may consider any factors as the Board may deem appropriate.

(4) ADMINISTRATIVE REVIEW.—

(A) IN GENERAL.—The regulations prescribed under paragraphs (2) and (3) shall include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of the credit or dividend determined under paragraph (2) or (3) for such institution.

(B) ADMINISTRATIVE REVIEW.—Any review under subparagraph (A) of any determination of the Corporation under paragraph (2) or (3) shall be final and not subject to judicial review.

(f) Any insured depository institution which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of any assessment payable by the depository institution to the Corporation may be compelled to make such report or file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Corporation against the depository institution and any officer or officers thereof in any court of the United States of competent jurisdiction in the District or Territory in which such depository institution is located.

(g) ASSESSMENT ACTIONS.—

(1) IN GENERAL.—The Corporation, in any court of competent jurisdiction, shall be entitled to recover from any insured depository institution the amount of any unpaid assessment lawfully payable by such insured depository institution.

(2) STATUTE OF LIMITATIONS.—The following provisions shall apply to actions relating to assessments, notwithstanding any other provision in Federal law, or the law of any State:

(A) Any action by an insured depository institution to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exception in subparagraph (E).

(B) Any action by the Corporation to recover from an insured depository institution the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exceptions in subparagraphs (C) and (E).

(C) If an insured depository institution has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

(D) Except as provided in subparagraph (C), assessment deposit information contained in records no longer required to be maintained pursuant to subsection (b)(4) shall be considered conclusive and not subject to change.

(E) Any action for the underpaid or overpaid amount of any assessment that became due before the amendment to this subsection under the Federal Deposit Insurance Reform Act of 2005 took effect shall be subject to the statute of limitations for assessments in effect at the time the assessment became due.

(h) Should any national member bank or any insured national nonmember bank fail to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by such bank under any provision of this section, or fail to pay any assessment required to be paid by such bank under any provision of this Act, and should the bank not correct such failure within thirty days after written notice has been given by the Corporation to an officer of the bank, citing this subsection, and stating that the bank has failed to make any report of condition under subsection (a) of this section or to file or pay as required by law, all the rights, privileges, and franchises of the bank granted to it under the National Bank Act, as amended, the Federal Reserve Act, as amended, or this Act, shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged in the manner provided in the sixth paragraph of section 2 of the Federal Reserve Act, as amended. The remedies provided in this subsection and in the two preceding subsections shall not be construed as limiting any other remedies against any insured depository institution, but shall be in addition thereto.

(i) INSURANCE OF TRUST FUNDS.—

(1) IN GENERAL.—Trust funds held on deposit by an insured depository institution in a fiduciary capacity as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement shall be insured in an amount not to exceed the standard maximum deposit insurance amount (as determined under section 11(a)(1)) for each trust estate.

(2) INTERBANK DEPOSITS.—Trust funds described in paragraph (1) which are deposited by the fiduciary depository institution in another insured depository institution shall be similarly insured to the fiduciary depository institution according to the trust estates represented.

(3) BANK DEPOSIT FINANCIAL ASSISTANCE PROGRAM.—Notwithstanding paragraph (1), funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy shall be separately insured in an amount not to exceed the standard maximum deposit insurance amount (as determined under section 11(a)(1)) for each insured depository institution depositing such funds.

(4) REGULATIONS.—The Board of Directors may prescribe such regulations as may be necessary to clarify the insurance coverage under this subsection and to prescribe the manner of reporting and depositing such trust funds.

(j)(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured depository institution through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured depository institution unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or, in the discretion of the agency, extending for an additional 30 days the period during which such a disapproval may issue. The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

(B) in the agency's judgment, any material information submitted is substantially inaccurate;

(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

(D) the agency determines that additional time is needed—

(i) to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code; or

(ii) to analyze the safety and soundness of any plans or proposals described in paragraph (6)(E) or the future prospects of the institution.

An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action.

(2)(A) NOTICE TO STATE AGENCY.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate State depository institution supervisory agency if the depository institution the voting shares of which are sought to be acquired is a State depository institution, and shall allow thirty days within which the views and recommendations of such State depository institution supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph, if the appropriate Federal banking agency determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable default of the depository institution involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of this paragraph or, if a copy of the notice is forwarded to the State depository institution supervisory agency, such Federal banking agency may request that the views and recommendations of such State depository institution supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

(C) REPORT.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.

(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, unless such agency determines that an emergency exists, within a reasonable period of time—

(i) publish the name of the insured depository institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency,

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.

(3) Within three days after its decision to disapprove any proposed acquisition, the appropriate Federal banking agency shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. The length of the hearing shall be determined by the appropriate Federal banking agency. At the conclusion thereof, the appropriate Federal banking agency shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearings under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the bank to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the appropriate Federal banking agency shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

(6) Except as otherwise provided by regulation of the appropriate Federal banking agency, a notice filed pursuant to this subsection shall contain the following information:

(A) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company or to make any other major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(H) Any additional relevant information in such form as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular notice.

(7) The appropriate Federal banking agency may disapprove any proposed acquisition if—

(A) the proposed acquisition of control would result in a monopoly or 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) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not 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;

(C) either the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank;

(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency; or

(F) the appropriate Federal banking agency determines that the proposed transaction would result in an adverse effect on the Deposit Insurance Fund.

(8) For the purposes of this subsection, the term—

(A) “person” means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

(B) “control” means the power, directly or indirectly, to direct the management or policies of an insured depository institution or to vote 25 per centum or more of any class of voting securities of an insured depository institution.

(9) REPORTING OF STOCK LOANS.—

(A) REPORT REQUIRED.—Any foreign bank, or any affiliate thereof, that has credit outstanding to any person or group of persons which is secured, directly or indirectly, by shares of an insured depository institution shall file a consolidated report with the appropriate Federal banking agency for such insured depository institution if the extensions of credit by the foreign bank or any affiliate thereof, in the aggregate, are secured, directly or indirectly, by 25 percent or more of any class of shares of the same insured depository institution.

(B) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) FOREIGN BANK.—The terms “foreign bank” and “affiliate” have the same meanings as in section 1 of the International Banking Act of 1978.

(ii) CREDIT OUTSTANDING.—The term “credit outstanding” includes—

(I) any loan or extension of credit,

(II) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, and

(III) any other type of transaction that extends credit or financing to the person or group of persons.

(iii) GROUP OF PERSONS.—The term “group of persons” includes any number of persons that the foreign bank or any affiliate thereof reasonably believes—

(I) are acting together, in concert, or with one another to acquire or control shares of the same insured depository institution, including an acquisition of shares of the same insured depository institution at approximately the same time under substantially the same terms; or

(II) have made, or propose to make, a joint filing under section 13 of the Securities Exchange Act of 1934 regarding ownership of the shares of the same insured depository institution.

(C) INCLUSION OF SHARES HELD BY THE FINANCIAL INSTITUTION.—Any shares of the insured depository institution held by the foreign bank or any affiliate thereof as principal shall be included in the calculation of the number of shares in which the foreign bank or any affiliate thereof has a security interest for purposes of subparagraph (A).

(D) REPORT REQUIREMENTS.—

(i) TIMING OF REPORT.—The report required under this paragraph shall be a consolidated report on behalf of the foreign bank and all affiliates thereof, and shall be filed in writing within 30 days of the date on which the foreign bank or affiliate thereof first believes that the security for any outstanding credit consists of 25 percent or more of any class of shares of an insured depository institution.

(ii) CONTENT OF REPORT.—The report under this paragraph shall indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(iii) COPY TO OTHER AGENCIES.—A copy of any report under this paragraph shall be filed with the appropriate Federal banking agency for the foreign bank or any affiliate thereof (if other than the agency receiving the report under this paragraph).

(iv) OTHER INFORMATION.—Each appropriate Federal banking agency may require any additional information necessary to carry out the agency’s supervisory responsibilities.

(E) EXCEPTIONS.—

(i) EXCEPTION WHERE INFORMATION PROVIDED BY BORROWER.—Notwithstanding subparagraph (A), a foreign bank or any affiliate thereof shall not be required to report a transaction under this paragraph if the person or group of persons referred to in such subparagraph has disclosed the amount borrowed from such foreign bank or any affiliate thereof and the security interest of the foreign bank or any affiliate thereof

to the appropriate Federal banking agency for the insured depository institution in connection with a notice filed under this subsection, an application filed under the Bank Holding Company Act of 1956, section 10 of the Home Owners' Loan Act, or any other application filed with the appropriate Federal banking agency for the insured depository institution as a substitute for a notice under this subsection, such as an application for deposit insurance, membership in the Federal Reserve System, or a national bank charter.

(ii) EXCEPTION FOR SHARES OWNED FOR MORE THAN 1 YEAR.—Notwithstanding subparagraph (A), a foreign bank and any affiliate thereof shall not be required to report a transaction involving—

(I) a person or group of persons that has been the owner or owners of record of the stock for a period of 1 year or more; or

(II) stock issued by a newly chartered bank before the bank's opening.

(10) The reports required by paragraph (9) of this subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular report.

(11) The Federal banking agency receiving a notice or report filed pursuant to paragraph (1) or (9) shall immediately furnish to the other Federal banking agencies a copy of such notice or report.

(12) Whenever such a change in control occurs, each insured depository institution shall report promptly to the appropriate Federal banking agency any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(13) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection.

(14) Within two years after the effective date of the Change in Bank Control Act of 1978, and each year thereafter in each appropriate Federal banking agency's annual report to the Congress, the appropriate Federal banking agency shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the appropriate Federal banking agency would be desirable.

(15) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

(A) INVESTIGATIONS.—The appropriate Federal banking agency may exercise any authority vested in such agency under section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

(B) ENFORCEMENT.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has vio-

lated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

(C) JURISDICTION.—

(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 8(n).

(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond. The resignation, termination of employment or participation, divestiture of control, or separation of or by an institution-affiliated party (including a separation caused by the closing of a depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this subsection against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after the date of the enactment of this sentence).

(16) CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any person who violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency under this subsection, shall forfeit and pay a civil penalty of not more than \$5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any person who—

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such institution; or

(III) results in pecuniary gain or other benefit to such person,

shall forfeit and pay a civil penalty of not more than \$25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any person who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than a depository institution, an amount to not exceed \$1,000,000; and

(ii) in the case of a depository institution, an amount not to exceed the lesser of—

(I) \$1,000,000; or

(II) 1 percent of the total assets of such institution.

(E) ASSESSMENT; ETC.—Any penalty imposed under subparagraph (A), (B), or (C) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(F) HEARING.—The depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or other person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.

(G) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(17) EXCEPTIONS.—This subsection shall not apply with respect to a transaction which is subject to—

(A) section 3 of the Bank Holding Company Act of 1956;

(B) section 18(c) of this Act; or

(C) section 10 of the Home Owners' Loan Act.

(18) APPLICABILITY OF CHANGE IN CONTROL PROVISIONS TO OTHER INSTITUTIONS.—For purposes of this subsection, the term “insured depository institution” includes—

(A) any depository institution holding company; and

(B) any other company which controls an insured depository institution and is not a depository institution holding company.

(k) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or any executive officer or principal shareholder thereof concerning extensions of credit by the bank to any of its executive officers or principal shareholders, or the related interests of such persons.

(l) DESIGNATION OF FUND MEMBERSHIP FOR NEWLY INSURED DEPOSITORY INSTITUTIONS; DEFINITIONS.—For purposes of this section:

(1) BANK INSURANCE FUND.—Any institution which—

(A) becomes an insured depository institution; and

(B) does not become a Savings Association Insurance Fund member pursuant to paragraph (2), shall be a Bank Insurance Fund member.

(2) SAVINGS ASSOCIATION INSURANCE FUND.—Any savings association, other than any Federal savings bank chartered pursuant to section 5(o) of the Home Owners’ Loan Act, which becomes an insured depository institution shall be a Savings Association Insurance Fund member.

(3) TRANSITION PROVISION.—

(A) BANK INSURANCE FUND.—Any depository institution the deposits of which were insured by the Federal Deposit Insurance Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, including—

(i) any Federal savings bank chartered pursuant to section 5(o) of the Home Owners’ Loan Act; and

(ii) any cooperative bank, shall be a Bank Insurance Fund member as of such date of enactment.

(B) SAVINGS ASSOCIATION INSURANCE FUND.—Any savings association which is an insured depository institution by operation of section 4(a)(2) shall be a Savings Association Insurance Fund member as of the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(4) BANK INSURANCE FUND MEMBER.—The term “Bank Insurance Fund member” means any depository institution the deposits of which are insured by the Bank Insurance Fund.

(5) SAVINGS ASSOCIATION INSURANCE FUND MEMBER.—The term “Savings Association Insurance Fund member” means any depository institution the deposits of which are insured by the Savings Association Insurance Fund.

(6) BANK INSURANCE FUND RESERVE RATIO.—The term “Bank Insurance Fund reserve ratio” means the ratio of the net worth of the Bank Insurance Fund to the value of the aggregate estimated insured deposits held in all Bank Insurance Fund members.

(7) SAVINGS ASSOCIATION INSURANCE FUND RESERVE RATIO.—The term “Savings Association Insurance Fund reserve ratio” means the ratio of the net worth of the Savings Association Insurance Fund to the value of the aggregate estimated insured deposits held in all Savings Association Insurance Fund members.

(m) SECONDARY RESERVE OFFSETS AGAINST PREMIUMS.—

(1) OFFSETS IN CALENDAR YEARS BEGINNING BEFORE 1993.—Subject to the maximum amount limitation contained in paragraph (2) and notwithstanding any other provision of law, any insured savings association may offset such association’s pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) of this section for any calendar year beginning before 1993.

(2) ANNUAL MAXIMUM AMOUNT LIMITATION.—The amount of any offset allowed for any savings association under paragraph (1) for any calendar year beginning before 1993 shall not exceed an amount which is equal to 20 percent of such association’s pro rata share of the statutorily prescribed amount (as computed for such calendar year).

(3) OFFSETS IN CALENDAR YEARS BEGINNING AFTER 1992.—Notwithstanding any other provision of law, a savings association may offset such association’s pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) for any calendar year beginning after 1992.

(4) TRANSFERABILITY.—No right, title, or interest of any insured depository institution in or with respect to its pro rata share of the secondary reserve shall be assignable or transferable whether by operation of law or otherwise, except to the extent that the Corporation may provide for transfer of such pro rata share in cases of merger or consolidation, transfer of bulk assets or assumption of liabilities, and similar transactions, as defined by the Corporation for purposes of this paragraph.

(5) PRO RATA DISTRIBUTION ON TERMINATION OF INSURED STATUS.—If—

(A) the status of any savings association as an insured depository institution is terminated pursuant to any provision of section 8 or the insurance of accounts of any such institution is otherwise terminated;

(B) a receiver or other legal custodian is appointed for the purpose of liquidation or winding up the affairs of any savings association; or

(C) the Corporation makes a determination that for the purposes of this subsection any savings association has otherwise gone into liquidation,

the Corporation shall pay in cash to such institution its pro rata share of the secondary reserve, in accordance with such terms and conditions as the Corporation may prescribe, or, at the option of the Corporation, the Corporation may apply the whole or any part of the amount which would otherwise be paid in cash toward the payment of any indebtedness or obligation, whether matured or not, of such institution to the Corporation, existing or arising before such payment in cash. Such payment or such application need not be made to the extent

that the provisions of the exception in paragraph (4) are applicable.

(6) STATUTORILY PRESCRIBED AMOUNT DEFINED.—For purposes of this subsection, the term “statutorily prescribed amount” means, with respect to any calendar year which ends after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

(A) \$823,705,000, minus

(B) the sum of—

(i) the aggregate amount of offsets made before such date of enactment by all insured institutions under section 404(e)(2) of the National Housing Act (as in effect before such date of enactment); and

(ii) the aggregate amount of offsets made by all savings associations under this subsection before the beginning of such calendar year.

(7) SAVINGS ASSOCIATION’S PRO RATA AMOUNT.—For purposes of this subsection, any savings association’s pro rata share of the statutorily prescribed amount is the percentage which is equal to such association’s share of the secondary reserve as determined under section 404(e) of the National Housing Act on the day before the date on which the Federal Savings and Loan Insurance Corporation ceased to recognize the secondary reserve (as such Act was in effect on the day before such date).

(8) YEAR OF ENACTMENT RULE.—With respect to the calendar year in which the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is enacted, the Corporation shall make such adjustments as may be necessary—

(A) in the computation of the statutorily prescribed amount which shall be applicable for the remainder of such calendar year after taking into account the aggregate amount of offsets by all insured institutions under section 404(e)(2) of the National Housing Act (as in effect before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) after the beginning of such calendar year and before such date of enactment; and

(B) in the computation of the maximum amount of any savings association’s offset for such calendar year under paragraph (1) after taking into account—

(i) the amount of any offset by such savings association under section 404(e)(2) of the National Housing Act (as in effect before such date of enactment) after the beginning of such calendar year and before such date of enactment; and

(ii) the change of such association’s premium year from the 1-year period applicable under section 404(b) of the National Housing Act (as in effect before such date of enactment) to a calendar year basis.

(n) COLLECTIONS ON BEHALF OF THE COMPTROLLER OF THE CURRENCY.—When requested by the Comptroller of the Currency, the Corporation shall collect on behalf of the Comptroller assessments on Federal savings associations levied by the Comptroller under section 9 of the Home Owners’ Loan Act. The Corporation shall be reimbursed for its actual costs for the collection of such assess-

ments. Any such assessments by the Comptroller shall be in addition to any amounts assessed by the Corporation.

* * * * *

SEC. 11. (a) DEPOSIT INSURANCE.—

(1) INSURED AMOUNTS PAYABLE.—

(A) IN GENERAL.—The Corporation shall insure the deposits of all insured depository institutions as provided in this Act.

(B) NET AMOUNT OF INSURED DEPOSIT.—The net amount to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3).

(C) AGGREGATION OF DEPOSITS.—For the purpose of determining the net amount due to any depositor under subparagraph (B), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other person, other than any amount in a trust fund described in paragraph (1) or (2) of section 7(i) or any funds described in section 7(i)(3).

(D) COVERAGE FOR CERTAIN EMPLOYEE BENEFIT PLAN DEPOSITS.—

(i) PASS-THROUGH INSURANCE.—The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.

(ii) PROHIBITION ON ACCEPTANCE OF BENEFIT PLAN DEPOSITS.—An insured depository institution that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

(iii) DEFINITIONS.—For purposes of this subparagraph, the following definitions shall apply:

(I) CAPITAL STANDARDS.—The terms “well capitalized” and “adequately capitalized” have the same meanings as in section 38.

(II) EMPLOYEE BENEFIT PLAN.—The term “employee benefit plan” has the same meaning as in paragraph (5)(B)(ii), and includes any eligible deferred compensation plan described in section 457 of the Internal Revenue Code of 1986.

(III) PASS-THROUGH DEPOSIT INSURANCE.—The term “pass-through deposit insurance” means, with respect to an employee benefit plan, deposit insurance coverage based on the interest of each participant, in accordance with regulations issued by the Corporation.

(E) STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT DEFINED.—For purposes of this Act, the term “standard maximum deposit insurance amount” means \$250,000, adjusted as provided under subparagraph (F) after March 31, 2010. Notwithstanding any other provision of law, the increase in the standard maximum deposit insurance amount to \$250,000 shall apply to depositors in any insti-

tution for which the Corporation was appointed as receiver or conservator on or after January 1, 2008, and before October 3, 2008. The Corporation shall take such actions as are necessary to carry out the requirements of this section with respect to such depositors, without regard to any time limitations under this Act. In implementing this and the preceding 2 sentences, any payment on a deposit claim made by the Corporation as receiver or conservator to a depositor above the standard maximum deposit insurance amount in effect at the time of the appointment of the Corporation as receiver or conservator shall be deemed to be part of the net amount due to the depositor under subparagraph (B).

(F) INFLATION ADJUSTMENT.—

(i) IN GENERAL.—By April 1 of 2010, and the 1st day of each subsequent 5-year period, the Board of Directors and the National Credit Union Administration Board shall jointly consider the factors set forth under clause (v), and, upon determining that an inflation adjustment is appropriate, shall jointly prescribe the amount by which the standard maximum deposit insurance amount and the standard maximum share insurance amount (as defined in section 207(k) of the Federal Credit Union Act) applicable to any depositor at an insured depository institution shall be increased by calculating the product of—

(I) \$100,000; and

(II) the ratio of the published annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which the adjustment is calculated under this clause, to the published annual value of such index for the calendar year preceding the date this subparagraph takes effect under the Federal Deposit Insurance Reform Act of 2005.

The values used in the calculation under subclause (II) shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

(ii) ROUNDING.—If the amount determined under clause (i) for any period is not a multiple of \$10,000, the amount so determined shall be rounded down to the nearest \$10,000.

(iii) PUBLICATION AND REPORT TO THE CONGRESS.—Not later than April 5 of any calendar year in which an adjustment is required to be calculated under clause (i) to the standard maximum deposit insurance amount and the standard maximum share insurance amount under such clause, the Board of Directors and the National Credit Union Administration Board shall—

(I) publish in the Federal Register the standard maximum deposit insurance amount, the standard

maximum share insurance amount, and the amount of coverage under paragraph (3)(A) and section 207(k)(3) of the Federal Credit Union Act, as so calculated; and

(II) jointly submit a report to the Congress containing the amounts described in subclause (I).

(iv) 6-MONTH IMPLEMENTATION PERIOD.—Unless an Act of Congress enacted before July 1 of the calendar year in which an adjustment is required to be calculated under clause (i) provides otherwise, the increase in the standard maximum deposit insurance amount and the standard maximum share insurance amount shall take effect on January 1 of the year immediately succeeding such calendar year.

(v) INFLATION ADJUSTMENT CONSIDERATION.—In making any determination under clause (i) to increase the standard maximum deposit insurance amount and the standard maximum share insurance amount, the Board of Directors and the National Credit Union Administration Board shall jointly consider—

(I) the overall state of the Deposit Insurance Fund and the economic conditions affecting insured depository institutions;

(II) potential problems affecting insured depository institutions; or

(III) whether the increase will cause the reserve ratio of the fund to fall below 1.15 percent of estimated insured deposits.

(2) GOVERNMENT DEPOSITORS.—

(A) IN GENERAL.—Notwithstanding any limitation in this Act or in any other provision of law relating to the amount of deposit insurance available to any 1 depositor—

(i) a government depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed to be a depositor separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in subparagraph (B); and

(ii) except as provided in subparagraph (C), the deposits of a government depositor shall be insured in an amount equal to the standard maximum deposit insurance amount (as determined under paragraph (1)).

(B) GOVERNMENT DEPOSITOR.—In this paragraph, the term “government depositor” means a depositor that is—

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Virgin Islands, of American Samoa, of the Trust Territory of the Pacific Islands, or of Guam, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 3(c) of the Indian Financing Act of 1974) or agency thereof having official custody of tribal funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution.

(C) AUTHORITY TO LIMIT DEPOSITS.—The Corporation may limit the aggregate amount of funds that may be invested or deposited in deposits in any insured depository institution by any government depositor on the basis of the size of any such bank in terms of its assets: *Provided, however*, such limitation may be exceeded by the pledging of acceptable securities to the government depositor when and where required.

(3) CERTAIN RETIREMENT ACCOUNTS.—

(A) IN GENERAL.—Notwithstanding any limitation in this Act relating to the amount of deposit insurance available for the account of any 1 depositor, deposits in an insured depository institution made in connection with—

(i) any individual retirement account described in section 408(a) of the Internal Revenue Code of 1986;

(ii) subject to the exception contained in paragraph (1)(D)(ii), any eligible deferred compensation plan described in section 457 of such Code; and

(iii) any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act, and any plan described in section 401(d) of the Internal Revenue Code of 1986, to the extent that participants and beneficiaries under such plan have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plan,

shall be aggregated and insured in an amount not to exceed \$250,000 (which amount shall be subject to inflation adjustments as provided in paragraph (1)(F), except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such paragraph) per participant per insured depository institution.

(B) AMOUNTS TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), the amount aggregated for insurance coverage under this paragraph shall consist of the present vested and ascertainable interest of each participant under the plan, excluding any remainder interest created by, or as a result of, the plan.

(4) DEPOSIT INSURANCE FUND.—

(A) ESTABLISHMENT.—There is established the Deposit Insurance Fund, which the Corporation shall—

- (i) maintain and administer;
- (ii) use to carry out its insurance purposes, in the manner provided by this subsection; and
- (iii) invest in accordance with section 13(a).

(B) USES.—The Deposit Insurance Fund shall be available to the Corporation for use with respect to insured depository institutions the deposits of which are insured by the Deposit Insurance Fund.

(C) LIMITATION ON USE.—Notwithstanding any provision of law other than section 13(c)(4)(G), the Deposit Insurance Fund shall not be used in any manner to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this Act) of—

- (i) any insured depository institution for which the Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation;
- (ii) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation; or
- (iii) any insured depository institution, in connection with the provision of assistance under this section or section 13 with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 13(f)(8)(B)) another insured depository institution.

(D) DEPOSITS.—All amounts assessed against insured depository institutions by the Corporation shall be deposited into the Deposit Insurance Fund.

(5) CERTAIN INVESTMENT CONTRACTS NOT TREATED AS INSURED DEPOSITS.—

(A) IN GENERAL.—A liability of an insured depository institution shall not be treated as an insured deposit if the liability arises under any insured depository institution investment contract between any insured depository institution and any employee benefit plan which expressly permits benefit-responsive withdrawals or transfers.

(B) DEFINITIONS.—For purposes of subparagraph (A)—

- (i) BENEFIT-RESPONSIVE WITHDRAWALS OR TRANSFERS.—The term “benefit-responsive withdrawals or transfers” means any withdrawal or transfer of funds (consisting of any portion of the principal and any interest credited at a rate guaranteed by the insured de-

pository institution investment contract) during the period in which any guaranteed rate is in effect, without substantial penalty or adjustment, to pay benefits provided by the employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance.

(ii) EMPLOYEE BENEFIT PLAN.—The term “employee benefit plan”—

(I) has the meaning given to such term in section 3(3) of the Employee Retirement Income Security Act of 1974; and

(II) includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(b) For the purposes of this Act an insured depository institution shall be deemed to have been closed on account of inability to meet the demands of its depositors in any case in which it has been closed for the purpose of liquidation without adequate provision being made for payment of its depositors.

(c) APPOINTMENT OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may accept appointment and act as conservator or receiver for any insured depository institution upon appointment in the manner provided in paragraph (2) or (3).

(2) FEDERAL DEPOSITORY INSTITUTIONS.—

(A) APPOINTMENT.—

(i) CONSERVATOR.—The Corporation may, at the discretion of the supervisory authority, be appointed conservator of any insured Federal depository institution and the Corporation may accept such appointment.

(ii) RECEIVER.—The Corporation shall be appointed receiver, and shall accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution by the appropriate Federal banking agency, notwithstanding any other provision of Federal law.

(B) ADDITIONAL POWERS.—In addition to and not in derogation of the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver, the Corporation, to the extent not inconsistent with such powers and duties, shall have any other power conferred on or any duty (which is related to the exercise of such power) imposed on a conservator or receiver for any Federal depository institution under any other provision of law.

(C) CORPORATION NOT SUBJECT TO ANY OTHER AGENCY.—When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of the Corporation’s rights, powers, and privileges.

(D) DEPOSITORY INSTITUTION IN CONSERVATORSHIP SUBJECT TO BANKING AGENCY SUPERVISION.—Notwithstanding subparagraph (C), any Federal depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate Federal banking agency.

(3) INSURED STATE DEPOSITORY INSTITUTIONS.—

(A) APPOINTMENT BY APPROPRIATE STATE SUPERVISOR.—Whenever the authority having supervision of any insured State depository institution appoints a conservator or receiver for such institution and tenders appointment to the Corporation, the Corporation may accept such appointment.

(B) ADDITIONAL POWERS.—In addition to the powers conferred and the duties related to the exercise of such powers imposed by State law on any conservator or receiver appointed under the law of such State for an insured State depository institution, the Corporation, as conservator or receiver pursuant to an appointment described in subparagraph (A), shall have the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver.

(C) CORPORATION NOT SUBJECT TO ANY OTHER AGENCY.—When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of its rights, powers, and privileges.

(D) DEPOSITORY INSTITUTION IN CONSERVATORSHIP SUBJECT TO BANKING AGENCY SUPERVISION.—Notwithstanding subparagraph (C), any insured State depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate State bank or savings association supervisor.

(4) APPOINTMENT OF CORPORATION BY THE CORPORATION.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may appoint itself as sole conservator or receiver of any insured State depository institution if—

(A) the Corporation determines—

(i) that—

(I) a conservator, receiver, or other legal custodian has been appointed for such institution;

(II) such institution has been subject to the appointment of any such conservator, receiver, or custodian for a period of at least 15 consecutive days; and

(III) 1 or more of the depositors in such institution is unable to withdraw any amount of any insured deposit; or

(ii) that such institution has been closed by or under the laws of any State; and

(B) the Corporation determines that 1 or more of the grounds specified in paragraph (5)—

(i) existed with respect to such institution at the time—

(I) the conservator, receiver, or other legal custodian was appointed; or

(II) such institution was closed; or

(ii) exist at any time—

(I) during the appointment of the conservator, receiver, or other legal custodian; or

(II) while such institution is closed.

(5) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER.—The grounds for appointing a conservator or receiver (which may be the Corporation) for any insured depository institution are as follows:

(A) ASSETS INSUFFICIENT FOR OBLIGATIONS.—The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution.

(B) SUBSTANTIAL DISSIPATION.—Substantial dissipation of assets or earnings due to—

(i) any violation of any statute or regulation; or

(ii) any unsafe or unsound practice.

(C) UNSAFE OR UNSOUND CONDITION.—An unsafe or unsound condition to transact business.

(D) CEASE AND DESIST ORDERS.—Any willful violation of a cease-and-desist order which has become final.

(E) CONCEALMENT.—Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

(F) INABILITY TO MEET OBLIGATIONS.—The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

(G) LOSSES.—The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in section 38(b)) without Federal assistance.

(H) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) cause insolvency or substantial dissipation of assets or earnings;

(ii) weaken the institution's condition; or

(iii) otherwise seriously prejudice the interests of the institution's depositors or the Deposit Insurance Fund.

(I) CONSENT.—The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) CESSATION OF INSURED STATUS.—The institution ceases to be an insured institution.

(K) UNDERCAPITALIZATION.—The institution is undercapitalized (as defined in section 38(b)), and—

(i) has no reasonable prospect of becoming adequately capitalized (as defined in that section);

(ii) fails to become adequately capitalized when required to do so under section 38(f)(2)(A);

(iii) fails to submit a capital restoration plan acceptable to that agency within the time prescribed under section 38(e)(2)(D); or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 38(e)(2).

(L) The institution—

(i) is critically undercapitalized, as defined in section 38(b); or

(ii) otherwise has substantially insufficient capital.

(M) MONEY LAUNDERING OFFENSE.—The Attorney General notifies the appropriate Federal banking agency or the Corporation in writing that the insured depository institution has been found guilty of a criminal offense under section 1956 or 1957 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code.

(6) APPOINTMENT BY COMPTROLLER OF THE CURRENCY.—

(A) CONSERVATOR.—The Corporation may, at the discretion of the Comptroller of the Currency, be appointed conservator and the Corporation may accept any such appointment.

(B) RECEIVER.—The Corporation may, at the discretion of the Comptroller of the Currency, be appointed receiver and the Corporation may accept any such appointment.

(7) JUDICIAL REVIEW.—If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10), the depository institution may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.

(8) REPLACEMENT OF CONSERVATOR OF STATE DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—In the case of any insured State depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4), the Corporation may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

(B) REPLACEMENT TREATED AS REMOVAL OF INCUMBENT.—The replacement of a conservator with a receiver under subparagraph (A) shall be treated as the removal of the Corporation as conservator.

(C) RIGHT OF REVIEW OF ORIGINAL APPOINTMENT NOT AFFECTED.—The replacement of a conservator with a receiver

under subparagraph (A) shall not affect any right of the insured State depository institution to obtain review, pursuant to paragraph (7), of the original appointment of the conservator.

(9) APPROPRIATE FEDERAL BANKING AGENCY MAY APPOINT CORPORATION AS CONSERVATOR OR RECEIVER FOR INSURED STATE DEPOSITORY INSTITUTION TO CARRY OUT SECTION 38.—

(A) IN GENERAL.—The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

(i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and

(ii) the appointment is necessary to carry out the purpose of section 38.

(B) NONDELEGATION.—The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

(10) CORPORATION MAY APPOINT ITSELF AS CONSERVATOR OR RECEIVER FOR INSURED DEPOSITORY INSTITUTION TO PREVENT LOSS TO DEPOSIT INSURANCE FUND.—The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that—

(A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and

(B) the appointment is necessary to reduce—

(i) the risk that the Deposit Insurance Fund would incur a loss with respect to the insured depository institution, or

(ii) any loss that the Deposit Insurance Fund is expected to incur with respect to that institution.

(11) APPROPRIATE FEDERAL BANKING AGENCY SHALL NOT APPOINT CONSERVATOR UNDER CERTAIN PROVISIONS WITHOUT GIVING CORPORATION OPPORTUNITY TO APPOINT RECEIVER.—The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation's consent unless the agency has given the Corporation 48 hours notice of the agency's intention to appoint the conservator and the grounds for the appointment.

(12) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to—

(A) the appointment of the Corporation as conservator or receiver for that institution; or

(B) an acquisition or combination under section 38(f)(2)(A)(iii).

(13) ADDITIONAL POWERS.—In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution—

(A) this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

(B) the Corporation as receiver of the institution may—
(i) liquidate the institution in an orderly manner; and

(ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.

(d) POWERS AND DUTIES OF CORPORATION AS CONSERVATOR OR RECEIVER.—

(1) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) GENERAL POWERS.—

(A) SUCCESSOR TO INSTITUTION.—The Corporation shall, as conservator or receiver, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, accountholder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(B) OPERATE THE INSTITUTION.—The Corporation may (subject to the provisions of section 40), as conservator or receiver—

(i) take over the assets of and operate the insured depository institution with all the powers of the members or shareholders, the directors, and the officers of the institution and conduct all business of the institution;

(ii) collect all obligations and money due the institution;

(iii) perform all functions of the institution in the name of the institution which are consistent with the appointment as conservator or receiver; and

(iv) preserve and conserve the assets and property of such institution.

(C) FUNCTIONS OF INSTITUTION'S OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The Corporation may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any insured depository institution for which the Corporation has been appointed conservator or receiver.

(D) POWERS AS CONSERVATOR.—The Corporation may, as conservator, take such action as may be—

- (i) necessary to put the insured depository institution in a sound and solvent condition; and
- (ii) appropriate to carry on the business of the institution and preserve and conserve the assets and property of the institution.

(E) ADDITIONAL POWERS AS RECEIVER.—The Corporation may (subject to the provisions of section 40), as receiver, place the insured depository institution in liquidation and proceed to realize upon the assets of the institution, having due regard to the conditions of credit in the locality.

(F) ORGANIZATION OF NEW INSTITUTIONS.—The Corporation may, as receiver, with respect to any insured depository institution, organize a new depository institution under subsection (m) or a bridge depository institution under subsection (n).

(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—

(i) IN GENERAL.—The Corporation may, as conservator or receiver—

(I) merge the insured depository institution with another insured depository institution; or

(II) subject to clause (ii), transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust business) without any approval, assignment, or consent with respect to such transfer.

(ii) APPROVAL BY APPROPRIATE FEDERAL BANKING AGENCY.—No transfer described in clause (i)(II) may be made to another depository institution (other than a new depository institution or a bridge depository institution established pursuant to subsection (m) or (n)) without the approval of the appropriate Federal banking agency for such institution.

(H) PAYMENT OF VALID OBLIGATIONS.—The Corporation, as conservator or receiver, shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this Act.

(I) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Corporation may, as conservator, receiver, or exclusive manager and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution (including determining any claim against the institution and determining and realizing upon any asset of any person in the course of collecting money due the institution), exercise any power established under section 8(n), and the provisions of such section shall apply with respect to the exercise of any such power under this subparagraph in the same manner as such provisions apply under such section.

(ii) AUTHORITY OF BOARD OF DIRECTORS.—A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board of Directors or their designees (or, in the case

of a subpoena or subpoena duces tecum issued by the Resolution Trust Corporation under this subparagraph and section 21A(b)(4), only by, or with the written approval of, the Board of Directors of such Corporation or their designees).

(iii) RULE OF CONSTRUCTION.—This subsection shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have under section 10(c) of this Act.

(J) INCIDENTAL POWERS.—The Corporation may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this Act and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this Act, which the Corporation determines is in the best interests of the depository institution, its depositors, or the Corporation.

(K) UTILIZATION OF PRIVATE SECTOR.—In carrying out its responsibilities in the management and disposition of assets from insured depository institutions, as conservator, receiver, or in its corporate capacity, the Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, only if such services are available in the private sector and the Corporation determines utilization of such services is the most practicable, efficient, and cost effective.

(3) AUTHORITY OF RECEIVER TO DETERMINE CLAIMS.—

(A) IN GENERAL.—The Corporation may, as receiver, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).

(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a closed depository institution, shall—

(i) promptly publish a notice to the depository institution's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the institution's books—

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the institution's books within 30 days after the discovery of such name and address.

(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(B) FINAL SETTLEMENT PAYMENT PROCEDURE.—

(i) IN GENERAL.—In the handling of receiverships of insured depository institutions, to maintain essential liquidity and to prevent financial disruption, the Corporation may, after the declaration of an institution's insolvency, settle all uninsured and unsecured claims on the receivership with a final settlement payment which shall constitute full payment and disposition of the Corporation's obligations to such claimants.

(ii) FINAL SETTLEMENT PAYMENT.—For purposes of clause (i), a final settlement payment shall be payment of an amount equal to the product of the final settlement payment rate and the amount of the uninsured and unsecured claim on the receivership; and

(iii) FINAL SETTLEMENT PAYMENT RATE.—For purposes of clause (ii), the final settlement payment rate shall be a percentage rate reflecting an average of the Corporation's receivership recovery experience, determined by the Corporation in such a way that over such time period as the Corporation may deem appropriate, the Corporation in total will receive no more or less than it would have received in total as a general creditor standing in the place of insured depositors in each specific receivership.

(iv) CORPORATION AUTHORITY.—The Corporation may undertake such supervisory actions and promulgate such regulations as may be necessary to assure that the requirements of this section can be implemented with respect to each insured depository institution in the event of its insolvency.

(5) PROCEDURES FOR DETERMINATION OF CLAIMS.—

(A) DETERMINATION PERIOD.—

(i) IN GENERAL.—Before the end of the 180-day period beginning on the date any claim against a depository institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.

(iii) MAILING OF NOTICE SUFFICIENT.—The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

- (I) on the depository institution's books;
- (II) in the claim filed by the claimant; or

(III) in documents submitted in proof of the claim.

(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

(I) a statement of each reason for the disallowance; and

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) ALLOWANCE OF PROVEN CLAIMS.—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the receiver from any claimant which is proved to the satisfaction of the receiver.

(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—

(i) IN GENERAL.—Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the receiver if—

(I) the claimant did not receive notice of the appointment of the receiver in time to file such claim before such date; and

(II) such claim is filed in time to permit payment of such claim.

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against an insured depository institution which is secured by any property or other asset of such institution, any receiver appointed for any insured depository institution—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the institution; and

(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the institution.

(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(II) any security interest in the assets of the institution securing any such extension of credit.

(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the Corporation's determination pursuant to subparagraph (D) to disallow a claim.

(F) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(6) PROVISION FOR AGENCY REVIEW OR JUDICIAL DETERMINATION OF CLAIMS.—

(A) IN GENERAL.—Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a depository institution for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) STATUTE OF LIMITATIONS.—If any claimant fails to—

(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

(ii) file suit on such claim (or continue an action commenced before the appointment of the receiver), before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) REVIEW OF CLAIMS.—

(A) ADMINISTRATIVE HEARING.—If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record. The final determination of the Corporation with respect to such claim shall be subject to judicial review under chapter 7 of title 5, United States Code.

(B) OTHER REVIEW PROCEDURES.—

(i) IN GENERAL.—The Corporation shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Corporation shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Corporation may establish both binding and non-binding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Corporation, must agree to the use of the process in a particular case.

(iv) CONSIDERATION OF INCENTIVES.—The Corporation shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) EXPEDITED DETERMINATION OF CLAIMS.—

(A) ESTABLISHMENT REQUIRED.—The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any depository institution for which the Corporation has been appointed receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) DETERMINATION PERIOD.—Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Corporation denies the claim.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B),

the claim shall be deemed to be disallowed as of the end of such period (other than any portion of such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the receiver.

(9) AGREEMENT AS BASIS OF CLAIM.—

(A) REQUIREMENTS.—Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 13(e) shall not form the basis of, or substantially comprise, a claim against the receiver or the Corporation.

(B) EXCEPTION TO CONTEMPORANEOUS EXECUTION REQUIREMENT.—Notwithstanding section 13(e)(2), any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

(10) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—The receiver may, in the receiver's discretion and to the extent funds are available, pay creditor claims which are allowed by the receiver, approved by the Corporation pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this Act.

(B) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the receiver's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Corporation (in such Corporation's corporate capacity or as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) RULEMAKING AUTHORITY OF CORPORATION.—The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the receiver of the principal amount of all creditor claims.

(11) DEPOSITOR PREFERENCE.—

(A) IN GENERAL.—Subject to section 5(e)(2)(C), amounts realized from the liquidation or other resolution of any in-

secured depository institution by any receiver appointed for such institution shall be distributed to pay claims (other than secured claims to the extent of any such security) in the following order of priority:

- (i) Administrative expenses of the receiver.
- (ii) Any deposit liability of the institution.
- (iii) Any other general or senior liability of the institution (which is not a liability described in clause (iv) or (v)).
- (iv) Any obligation subordinated to depositors or general creditors (which is not an obligation described in clause (v)).
- (v) Any obligation to shareholders or members arising as a result of their status as shareholders or members (including any depository institution holding company or any shareholder or creditor of such company).

(B) EFFECT ON STATE LAW.—

(i) IN GENERAL.—The provisions of subparagraph (A) shall not supersede the law of any State except to the extent such law is inconsistent with the provisions of such subparagraph, and then only to the extent of the inconsistency.

(ii) PROCEDURE FOR DETERMINATION OF INCONSISTENCY.—Upon the Corporation's own motion or upon the request of any person with a claim described in subparagraph (A) or any State which is submitted to the Corporation in accordance with procedures which the Corporation shall prescribe, the Corporation shall determine whether any provision of the law of any State is inconsistent with any provision of subparagraph (A) and the extent of any such inconsistency.

(iii) JUDICIAL REVIEW.—The final determination of the Corporation under clause (ii) shall be subject to judicial review under chapter 7 of title 5, United States Code.

(C) ACCOUNTING REPORT.—Any distribution by the Corporation in connection with any claim described in subparagraph (A)(v) shall be accompanied by the accounting report required under paragraph (15)(B).

(12) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of a conservator or receiver for an insured depository institution, the conservator or receiver may request a stay for a period not to exceed—

- (i) 45 days, in the case of any conservator; and
 - (ii) 90 days, in the case of any receiver,
- in any judicial action or proceeding to which such institution is or becomes a party.

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by any conservator or receiver pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as conservator or receiver.

(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Corporation as conservator or receiver shall—

(i) have all the rights and remedies available to the insured depository institution (before the appointment of such conservator or receiver) and the Corporation in its corporate capacity, including removal to Federal court and all appellate rights; and

(ii) not be required to post any bond in order to pursue such remedies.

(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such institution or the Corporation as receiver.

(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of any insured depository institution for which the Corporation has been appointed conservator or receiver, including any sale or disposition of assets acquired by the Corporation under section 13(d)(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.

(14) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY CONSERVATOR OR RECEIVER.—

(A) IN GENERAL.—Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and
(ii) in the case of any tort claim (other than a claim which is subject to section 21A(b)(14) of the Federal Home Loan Bank Act), the longer of—

(I) the 3-year period beginning on the date the claim accrues; or

(II) the period applicable under State law.

(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Corporation as conservator or receiver; or

(ii) the date on which the cause of action accrues.

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(i) IN GENERAL.—In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as conservator or receiver, the Corporation may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.

(15) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Corporation as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each conservatorship and receivership or other disposition of institutions in default.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary of the Treasury, the Comptroller General of the United States, and the authority which appointed the Corporation as conservator or receiver.

(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any shareholder of the depository institution for which the Corporation was appointed conservator or receiver or any other member of the public.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of an insured depository institution, the Corporation may destroy any records of such institution which the Corporation, in the Corporation's discretion, determines to

be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) OLD RECORDS.—Notwithstanding clause (i), the Corporation may destroy records of an insured depository institution which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such depository institution in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(16) CONTRACTS WITH STATE HOUSING FINANCE AUTHORITIES.—

(A) IN GENERAL.—The Corporation may enter into contracts with any State housing finance authority for the sale of mortgage-related assets (as such terms are defined in section 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) of any depository institution in default (including assets and liabilities associated with any trust business), such contracts to be effective in accordance with their terms without any further approval, assignment, or consent with respect thereto.

(B) FACTORS TO CONSIDER.—In evaluating the disposition of mortgage related assets to any State housing finance authority the Corporation shall consider—

(i) the State housing finance authority's ability to acquire and service current, delinquent, and defaulted mortgage related assets;

(ii) the State housing finance authority's ability to further national housing policies;

(iii) the State housing finance authority's sensitivity to the impact of the sale of mortgage related assets upon the State and local communities;

(iv) the costs to the Federal Government associated with alternative ownership or disposition of the mortgage related assets;

(v) the minimization of future guaranties which may be required of the Federal Government;

(vi) the maximization of mortgage related asset values; and

(vii) the utilization of institutions currently established in mortgage related asset market activities.

(17) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Corporation, as conservator or receiver for any insured depository institution, and any conservator appointed by the Comptroller of the Currency may avoid a transfer of any interest of an institution-affiliated party, or any person who the Corporation or conservator determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation or conservator was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured depository in-

stitution, the Corporation or other conservator, or any other appropriate Federal banking agency.

(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Corporation or any conservator described in such subparagraph may recover, for the benefit of the insured depository institution, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the institution-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Corporation or any conservator described in subparagraph (A) may not recover under subparagraph (B) from—

(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

(ii) any immediate or mediate good faith transferee of such transferee.

(D) RIGHTS UNDER THIS PARAGRAPH.—The rights under this paragraph of the Corporation and any conservator described in subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

(18) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (19), any court of competent jurisdiction may, at the request of—

(A) the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under section 11, 12, or 13); or

(B) any conservator appointed by the Comptroller of the Currency,

issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets.

(19) STANDARDS.—

(A) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (18) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the

Corporation or a conservator pursuant to paragraph (18) may be requested under the laws of such State.

(20) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE RECEIVER OR CONSERVATOR.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for an insured depository institution for the breach of an agreement executed or approved by such receiver or conservator after the date of its appointment shall be paid as an administrative expense of the receiver or conservator. Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(e) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any insured depository institution may disaffirm or repudiate any contract or lease—

(A) to which such institution is a party;

(B) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs.

(2) TIMING OF REPUDIATION.—The conservator or receiver appointed for any insured depository institution in accordance with subsection (c) shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

(A) IN GENERAL.—Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or receiver; or

(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term “actual direct compensatory damages” does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

(ii) paid in accordance with this subsection and subsection (i) except as otherwise specifically provided in this section.

(4) LEASES UNDER WHICH THE INSTITUTION IS THE LESSEE.—

(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a lease under which the insured depository institution was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

(i) be entitled to the contractual rent accruing before the later of the date—

(I) the notice of disaffirmance or repudiation is mailed; or

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and

(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment which shall be paid in accordance with this subsection and subsection (i).

(5) LEASES UNDER WHICH THE INSTITUTION IS THE LESSOR.—

(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired written lease of real property of the insured depository institution under which the institution is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

(i) treat the lease as terminated by such repudiation; or

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease;

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, any damages which accrue after such date due to the nonperformance of any obligation of the insured depository institution under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

(A) IN GENERAL.—If the conservator or receiver repudiates any contract (which meets the requirements of each paragraph of section 13(e)) for the sale of real property and the purchaser of such real property under such contract is in possession and is not, as of the date of such repudiation, in default, such purchaser may either—

(i) treat the contract as terminated by such repudiation; or

(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described in subparagraph (A) remains in possession of such property pursuant to clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the depository institution under the contract; and

(ii) the conservator or receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described in clause (i) is con-

summated, the conservator or receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any insured depository institution for which the Corporation has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

- (i) a claim to be paid in accordance with subsections (d) and (i); and
- (ii) deemed to have arisen as of the date the conservator or receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described in subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

- (i) the other party shall be paid under the terms of the contract for the services performed; and
- (ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any conservator or receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this Act (other than subsection (d)(9) of this section and section 13(e)), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

- (i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with an insured depository institution which arises upon the appointment of the Corporation as receiver for such institution at any time after such appointment;
- (ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);
- (iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), includ-

ing any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Subsection (d)(12) shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the insured depository institution for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such institution.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured depository institution.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured depository institution if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such institution, the creditors of such institution, or any conservator or receiver appointed for such institution.

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection, the following definitions shall apply:

(i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified financial contract” means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term “securities contract”—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

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

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II)));

(V) means any margin loan;

(VI) means any extension of credit for the clearance or settlement of securities transactions;

(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;

(VIII) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(IX) means any combination of the agreements or transactions referred to in this clause;

(X) means any option to enter into any agreement or transaction referred to in this clause;

(XI) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement

obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term “commodity contract” means—

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

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

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

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

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

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

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or

product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

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

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such

transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

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

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term “qualified foreign government security” means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

(vi) SWAP AGREEMENT.—The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange, precious metals, or other commodity agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or for-

ward agreement; weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option, or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

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

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act.

(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this

subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) TRANSFER.—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution’s equity of redemption.

(ix) PERSON.—The term “person” includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1, United States Code.

(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (other than subsections (d)(9) and (e)(10) of this section, and section 13(e) of this Act), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a depository institution in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term “walkaway clause” means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party’s status as a nondefaulting party in connection with the insolvency of an insured depository institution that is a party to the contract or the appointment of or the exercise of rights or powers by a conservator or receiver of such depository institution, and not as a result of a party’s exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph, the term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term “clearing organization” has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—If—

(i) the conservator or receiver for an insured depository institution in default makes any transfer of the assets and liabilities of such institution; and

(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of

the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) TREATMENT OF BRIDGE DEPOSITORY INSTITUTIONS.—

The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

(i) A bridge depository institution.

(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

(I) immediately upon the organization of the institution; or

(II) at the time of a purchase and assumption transaction between the depository institution and

the Corporation as receiver for a depository institution in default.

(D) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

- (i) any person or any affiliate of such person; and
- (ii) the depository institution in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution’s insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The conservator or receiver may enforce any contract, other than a director’s or officer’s liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a conservator or receiver.

(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director’s or officer’s liability insurance contract or depository institution bond under other applicable law.

(C) CONSENT REQUIREMENT.—

(i) IN GENERAL.—Except as otherwise provided by this section or section 15, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the depository institution is a party, or to obtain possession of or exercise control over any property of the institution or affect any contractual rights of the institution, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a depository institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contract.

(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11, United States Code.

(14) EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) any security interest in the assets of the institution securing any such extension of credit.

(15) SELLING CREDIT CARD ACCOUNTS RECEIVABLE.—

(A) NOTIFICATION REQUIRED.—An undercapitalized insured depository institution (as defined in section 38) shall notify the Corporation in writing before entering into an agreement to sell credit card accounts receivable.

(B) WAIVER BY CORPORATION.—The Corporation may at any time, in its sole discretion and upon such terms as it may prescribe, waive its right to repudiate an agreement to sell credit card accounts receivable if the Corporation—

(i) determines that the waiver is in the best interests of the Deposit Insurance Fund; and

(ii) provides a written waiver to the selling institution.

(C) EFFECT OF WAIVER ON SUCCESSORS.—

(i) IN GENERAL.—If, under subparagraph (B), the Corporation has waived its right to repudiate an agreement to sell credit card accounts receivable—

(I) any provision of the agreement that restricts solicitation of a credit card customer of the selling institution, or the use of a credit card customer list of the institution, shall bind any receiver or conservator of the institution; and

(II) the Corporation shall require any acquirer of the selling institution, or of substantially all of the selling institution's assets or liabilities, to agree to be bound by a provision described in subclause (I) as if the acquirer were the selling institution.

(ii) EXCEPTION.—Clause (i)(II) does not—

(I) restrict the acquirer's authority to offer any product or service to any person identified without using a list of the selling institution's customers in violation of the agreement;

(II) require the acquirer to restrict any pre-existing relationship between the acquirer and a customer; or

(III) apply to any transaction in which the acquirer acquires only insured deposits.

(D) WAIVER NOT ACTIONABLE.—The Corporation shall not, in any capacity, be liable to any person for damages resulting from the waiver of or failure to waive the Corporation's right under this section to repudiate any contract or lease, including an agreement to sell credit card accounts receivable. No court shall issue any order affecting any such waiver or failure to waive.

(E) OTHER AUTHORITY NOT AFFECTED.—This paragraph does not limit any other authority of the Corporation to waive the Corporation's right to repudiate an agreement or lease under this section.

(16) CERTAIN CREDIT CARD CUSTOMER LISTS PROTECTED.—

(A) IN GENERAL.—If any insured depository institution sells credit card accounts receivable under an agreement negotiated at arm's length that provides for the sale of the institution's credit card customer list, the Corporation shall prohibit any party to a transaction with respect to the institution under this section or section 13 from using the list, except as permitted under the agreement.

(B) FRAUDULENT TRANSACTIONS EXCLUDED.—Subparagraph (A) does not limit the Corporation's authority to repudiate any agreement entered into with the intent to hinder, delay, or defraud the institution, the institution's creditors, or the Corporation.

(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(f) PAYMENT OF INSURED DEPOSITS.—

(1) IN GENERAL.—In case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the insured deposits in such institution shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g), either by cash or by making available to each depositor a transferred deposit in a new insured depository institution in the same community or in another insured depository institution in an amount equal to the insured deposit of such depositor.

(2) PROOF OF CLAIMS.—The Corporation, in its discretion, may require proof of claims to be filed and may approve or reject such claims for insured deposits.

(3) RESOLUTION OF DISPUTES.—A determination by the Corporation regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Corporation may promulgate regulations pre-

scribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit.

(4) REVIEW OF CORPORATION DETERMINATION.—A final determination made by the Corporation regarding any claim for insurance coverage shall be a final agency action reviewable in accordance with chapter 7 of title 5, United States Code, by the United States district court for the Federal judicial district where the principal place of business of the depository institution is located.

(5) STATUTE OF LIMITATIONS.—Any request for review of a final determination by the Corporation regarding any claim for insurance coverage shall be filed with the appropriate United States district court not later than 60 days after the date on which such determination is issued.

(g) SUBROGATION OF CORPORATION.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation, upon the payment to any depositor as provided in subsection (f) in connection with any insured depository institution or insured branch described in such subsection or the assumption of any deposit in such institution or branch by another insured depository institution pursuant to this section or section 13, shall be subrogated to all rights of the depositor against such institution or branch to the extent of such payment or assumption.

(2) DIVIDENDS ON SUBROGATED AMOUNTS.—The subrogation of the Corporation under paragraph (1) with respect to any insured depository institution shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such institution and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain such claim for any uninsured or unassumed portion of the deposit.

(3) WAIVER OF CERTAIN CLAIMS.—With respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon such stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries or dividends on account of claims to which the Corporation is not subrogated.

(4) APPLICABILITY OF STATE LAW.—Subject to subsection (d)(11), if the Corporation is appointed pursuant to subsection (c)(3), or determines not to invoke the authority conferred in subsection (c)(4), the rights of depositors and other creditors of any State depository institution shall be determined in accordance with the applicable provisions of State law.

(h) CONDITIONS APPLICABLE TO RESOLUTION PROCEEDINGS.—

(1) CONSIDERATION OF LOCAL ECONOMIC IMPACT REQUIRED.—The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of

actions to be taken by it during the administration and liquidation of loans of a depository institution in default.

(2) ACTIONS TO ALLEVIATE ADVERSE ECONOMIC IMPACT TO BE CONSIDERED.—The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decisionmaking process for the acceptance of offers of settlement contingent upon third party financing.

(3) GUIDELINES REQUIRED.—The Corporation shall adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community.

(4) FINANCIAL SERVICES INDUSTRY IMPACT ANALYSIS.—After the appointment of the Corporation as conservator or receiver for any insured depository institution and before taking any action under this section or section 13 in connection with the resolution of such institution, the Corporation shall—

(A) evaluate the likely impact of the means of resolution, and any action which the Corporation may take in connection with such resolution, on the viability of other insured depository institutions in the same community; and

(B) take such evaluation into account in determining the means for resolving the institution and establishing the terms and conditions for any such action.

(i) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State and regardless of the method which the Corporation determines to utilize with respect to an insured depository institution in default or in danger of default, including transactions authorized under subsection (n) and section 13(c), this subsection shall govern the rights of the creditors (other than insured depositors) of such institution.

(2) MAXIMUM LIABILITY.—The maximum liability of the Corporation, acting as receiver or in any other capacity, to any person having a claim against the receiver or the insured depository institution for which such receiver is appointed shall equal the amount such claimant would have received if the Corporation had liquidated the assets and liabilities of such institution without exercising the Corporation's authority under subsection (n) of this section or section 13.

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—The Corporation may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. Notwithstanding any other provision of Federal or State law, or the constitution of any State, the Corporation shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(B) MANNER OF PAYMENT.—The Corporation may make the payments or credit the amounts specified in subparagraph (A) directly to the claimants or may make such payments or credit such amounts to an open insured depository institution to induce such institution to accept liability for such claims.

(j) LIMITATION ON COURT ACTION.—Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

(k) LIABILITY OF DIRECTORS AND OFFICERS.—A director or officer of an insured depository institution may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Corporation, which action is prosecuted wholly or partially for the benefit of the Corporation—

- (1) acting as conservator or receiver of such institution,
- (2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, or
- (3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured depository institution or its affiliate in connection with assistance provided under section 13,

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right of the Corporation under other applicable law.

(l) DAMAGES.—In any proceeding related to any claim against an insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured depository institution, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured depository institution's assets shall include principal losses and appropriate interest.

(m) NEW DEPOSITORY INSTITUTIONS.—

(1) ORGANIZATION AUTHORIZED.—As soon as possible after the default of an insured depository institution, the Corporation, if it finds that it is advisable and in the interest of the depositors of the insured depository institution in default or the public shall organize a new national bank or Federal savings association in the same community as the insured depository institution in default to assume the insured deposits of such depository institution in default and otherwise to perform temporarily the functions hereinafter provided for.

(2) ARTICLES OF ASSOCIATION.—The articles of association and the organization certificate of the new depository institution shall be executed by representatives designated by the Corporation.

(3) CAPITAL STOCK.—No capital stock need be paid in by the Corporation.

(4) EXECUTIVE OFFICER.—The new depository institution shall not have a board of directors, but shall be managed by

an executive officer appointed by the Board of Directors of the Corporation who shall be subject to its directions.

(5) SUBJECT TO LAWS RELATING TO NATIONAL BANKS.—In all other respects the new depository institution shall be organized in accordance with the then existing provisions of law relating to the organization of national banking associations.

(6) NEW DEPOSITS.—The new depository institution may, with the approval of the Corporation, accept new deposits which shall be subject to withdrawal on demand and which, except where the new depository institution is the only depository institution in the community, shall not exceed an amount equal to the standard maximum deposit insurance amount from any depositor.

(7) INSURED STATUS.—The new depository institution, without application to or approval by the Corporation, shall be an insured depository institution and shall maintain on deposit with the Federal Reserve bank of its district reserves in the amount required by law for member banks, but it shall not be required to subscribe for stock of the Federal Reserve bank.

(8) INVESTMENTS.—Funds of the new depository institution shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Corporation, any Federal Reserve bank, or, to the extent of the insurance coverage on any such deposit, an insured depository institution.

(9) CONDUCT OF BUSINESS.—The new depository institution, unless otherwise authorized by the Comptroller of the Currency, shall transact business only as authorized by this Act and as may be incidental to its organization.

(10) EXEMPT STATUS.—Notwithstanding any other provision of Federal or State law, the new depository institution, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) TRANSFER OF DEPOSITS.—(A) Upon the organization of a new depository institution, the Corporation shall promptly make available to it an amount equal to the estimated insured deposits of such depository institution in default plus the estimated amount of the expenses of operating the new depository institution, and shall determine as soon as possible the amount due each depositor for the depositor's insured deposit in the insured depository institution in default, and the total expenses of operation of the new depository institution.

(12) EARNINGS.—Earnings of the new depository institution shall be paid over or credited to the Corporation in such adjustment.

(13) LOSSES.—If any new depository institution, during the period it continues its status as such, sustains any losses with respect to which it is not effectively protected except by reason of being an insured depository institution, the Corporation shall furnish to it additional funds in the amount of such losses.

(14) PAYMENT OF INSURED DEPOSITS.—(A) The new depository institution shall assume as transferred deposits the payment of the insured deposits of such depository institution in default to each of its depositors.

(B) Of the amounts so made available, the Corporation shall transfer to the new depository institution, in cash, such sums as may be necessary to enable it to meet its expenses of operation and immediate cash demands on such transferred deposits, and the remainder of such amounts shall be subject to withdrawal by the new depository institution on demand.

(15) ISSUANCE OF STOCK.—(A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Corporation shall cause capital stock of the new depository institution to be offered for sale on such terms and conditions as the Board of Directors shall deem advisable in an amount sufficient, in the opinion of the Board of Directors, to make possible the conduct of the business of the new depository institution on a sound basis.

(B) The stockholders of the insured depository institution in default shall be given the first opportunity to purchase any shares of common stock so offered.

(16) ISSUANCE OF CERTIFICATE.—Upon proof that an adequate amount of capital stock in the new depository institution has been subscribed and paid for in cash, the Comptroller of the Currency, shall require the articles of association and the organization certificate to be amended to conform to the requirements for the organization of a national bank or Federal savings association, and thereafter, when the requirements of law with respect to the organization of a national bank or Federal savings association have been complied with, the Comptroller of the Currency, shall issue to the depository institution a certificate of authority to commence business, and thereupon the depository institution shall cease to have the status of a new depository institution, shall be managed by directors elected by its own shareholders, may exercise all the powers granted by law, and shall be subject to all provisions of law relating to national banks or Federal savings associations. Such depository institution shall thereafter be an insured national bank or Federal savings association, without certification to or approval by the Corporation.

(17) TRANSFER TO OTHER INSTITUTION.—If the capital stock of the new depository institution is not offered for sale, or if an adequate amount of capital for such new depository institution is not subscribed and paid for, the Board of Directors may offer to transfer its business to any insured depository institution in the same community which will take over its assets, assume its liabilities, and pay to the Corporation for such business such amount as the Board of Directors may deem adequate; or the Board of Directors in its discretion may change the location of the new depository institution to the office of the Corporation or to some other place or may at any time wind up its affairs as herein provided.

(18) WINDING UP.—Unless the capital stock of the new depository institution is sold or its assets are taken over and its liabilities are assumed by an insured depository institution as

above provided within 2 years after the date of its organization, the Corporation shall wind up the affairs of such depository institution, after giving such notice, if any, as the Comptroller of the Currency, may require, and shall certify to the Comptroller of the Currency, the termination of the new depository institution. Thereafter the Corporation shall be liable for the obligations of such depository institution and shall be the owner of its assets.

(19) APPLICABILITY OF CERTAIN LAWS.—The provisions of sections 5220 and 5221 of the Revised Statutes shall not apply to a new depository institution under this subsection.

(n) BRIDGE DEPOSITORY INSTITUTIONS.—

(1) ORGANIZATION.—

(A) PURPOSE.—When 1 or more insured depository institutions are in default, or when the Corporation anticipates that 1 or more insured depository institutions may become in default, the Corporation may, in its discretion, organize, and the Office of the Comptroller of the Currency, with respect to 1 or more insured depository institutions or 1 or more insured savings associations, shall charter, 1 or more national banks or Federal savings associations, as appropriate, with respect thereto with the powers and attributes of national banking associations or Federal savings associations, as applicable, subject to the provisions of this subsection, to be referred to as “bridge depository institutions”.

(B) AUTHORITIES.—Upon the granting of a charter to a bridge depository institution, the bridge depository institution may—

(i) assume such deposits of such insured depository institution or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(ii) assume such other liabilities (including liabilities associated with any trust business) of such insured depository institution or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(iii) purchase such assets (including assets associated with any trust business) of such insured depository institution or banks that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and

(iv) perform any other temporary function which the Corporation may, in its discretion, prescribe in accordance with this Act.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge depository institution as approved by the Corporation shall be executed by 3 representatives designated by the Corporation.

(D) INTERIM DIRECTORS.—A bridge depository institution shall have an interim board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION.—A bridge depository institution shall be organized as a national bank, in the case of 1 or more insured depository institutions, and as a Federal savings association, in the case of 1 or more insured savings associations.

(2) CHARTERING.—

(A) CONDITIONS.—A national bank or Federal savings association may be chartered by the Comptroller of the Currency as a bridge depository institution only if the Board of Directors determines that—

(i) the amount which is reasonably necessary to operate such bridge depository institution will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, 1 or more insured depository institutions in default or in danger of default with respect to which the bridge depository institution is chartered;

(ii) the continued operation of such insured depository institution or banks in default or in danger of default with respect to which the bridge depository institution is chartered is essential to provide adequate banking services in the community where each such depository institution in default or in danger of default is located; or

(iii) the continued operation of such insured depository institution or banks in default or in danger of default with respect to which the bridge depository institution is chartered is in the best interest of the depositors of such depository institution or banks in default or in danger of default or the public.

(B) INSURED NATIONAL BANK OR FEDERAL SAVINGS ASSOCIATION.—A bridge depository institution shall be an insured depository institution from the time it is chartered as a national bank or Federal savings association.

(C) BRIDGE BANK TREATED AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A bridge depository institution shall be treated as an insured depository institution in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(D) MANAGEMENT.—A bridge depository institution, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) BYLAWS.—The board of directors of a bridge depository institution shall adopt such bylaws as may be approved by the Corporation.

(3) TRANSFER OF ASSETS AND LIABILITIES.—

(A) IN GENERAL.—

(i) TRANSFER UPON GRANT OF CHARTER.—Upon the granting of a charter to a bridge depository institution pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed with respect to any insured depository institution in default with respect to which the bridge depository institution is chartered may transfer any assets and liabilities of

such depository institution in default to the bridge depository institution in accordance with paragraph (1).

(ii) SUBSEQUENT TRANSFERS.—At any time after a charter is granted to a bridge depository institution, the Corporation, as receiver, or any other receiver appointed with respect to an insured depository institution in default may transfer any assets and liabilities of such insured depository institution in default as the Corporation may, in its discretion, determine to be appropriate in accordance with paragraph (1).

(iii) TREATMENT OF TRUST BUSINESS.—For purposes of this paragraph, the trust business, including fiduciary appointments, of any insured depository institution in default is included among its assets and liabilities.

(iv) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities, including those associated with any trust business, of an insured depository institution in default transferred to a bridge depository institution shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(B) INTENT OF CONGRESS REGARDING CONTINUING OPERATIONS.—It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of any insured depository institution in default with respect to which a bridge depository institution is chartered, especially creditworthy farmers, small businesses, and households, the Corporation should—

(i) continue to honor commitments made by the depository institution in default to creditworthy customers, and

(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

(4) POWERS OF BRIDGE BANKS.—Each bridge depository institution chartered under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank or Federal savings association, as appropriate, except that—

(A) the Corporation may—

(i) remove the interim directors and directors of a bridge depository institution;

(ii) fix the compensation of members of the interim board of directors and the board of directors and senior management, as determined by the Corporation in its discretion, of a bridge depository institution; and

(iii) waive any requirement established under section 5145, 5146, 5147, 5148, or 5149 of the Revised Statutes (relating to directors of national banks) or section 31 of the Banking Act of 1933 which would otherwise be applicable with respect to directors of a bridge depository institution by operation of paragraph (2)(B);

(B) the Corporation may indemnify the representatives for purposes of paragraph (1)(B) and the interim directors, directors, officers, employees, and agents of a bridge depository institution on such terms as the Corporation determines to be appropriate;

(C) no requirement under any provision of law relating to the capital of a national bank shall apply with respect to a bridge depository institution;

(D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to a bridge depository institution without regard to the amount of the bridge depository institution's capital or surplus;

(E)(i) the board of directors of a bridge depository institution shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Corporation; and
(ii) the board of directors of a bridge depository institution may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Corporation;

(F) a bridge depository institution shall not be required to purchase stock of any Federal Reserve bank;

(G) the Comptroller of the Currency shall waive any requirement for a fidelity bond with respect to a bridge depository institution at the request of the Corporation;

(H) any judicial action to which a bridge depository institution becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a depository institution in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge depository institution;

(I) no agreement which tends to diminish or defeat the right, title or interest of a bridge depository institution in any asset of an insured depository institution in default acquired by it shall be valid against the bridge depository institution unless such agreement—

(i) is in writing,

(ii) was executed by such insured depository institution in default and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such insured depository institution in default,

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

(iv) has been, continuously from the time of its execution, an official record of such insured depository institution in default;

(J) notwithstanding section 13(e)(2), any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension

of credit by such bank to such depository institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (I); and

(K) except with the prior approval of the Corporation, a bridge depository institution may not, in any transaction or series of transactions, issue capital stock or be a party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction, or change its charter.

(5) CAPITAL.—

(A) NO CAPITAL REQUIRED.—The Corporation shall not be required to—

(i) issue any capital stock on behalf of a bridge depository institution chartered under this subsection; or

(ii) purchase any capital stock of a bridge depository institution, except that notwithstanding any other provision of Federal or State law, the Corporation may purchase and retain capital stock of a bridge depository institution in such amounts and on such terms as the Corporation, in its discretion, determines to be appropriate.

(B) OPERATING FUNDS IN LIEU OF CAPITAL.—Upon the organization of a bridge depository institution, and thereafter, as the Board of Directors may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge depository institution, upon such terms and conditions and in such form and amounts as the Corporation may in its discretion determine, funds for the operation of the bridge depository institution in lieu of capital.

(C) AUTHORITY TO ISSUE CAPITAL STOCK.—Whenever the Board of Directors determines it is advisable to do so, the Corporation shall cause capital stock of a bridge depository institution to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(D) CAPITAL LEVELS.—A bridge depository institution shall not be considered an undercapitalized depository institution or a critically undercapitalized depository institution for purposes of section 10B(b) of the Federal Reserve Act.

(6) NO FEDERAL STATUS.—

(A) AGENCY STATUS.—A bridge depository institution is not an agency, establishment, or instrumentality of the United States.

(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a bridge depository institution are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Corporation or of any Federal instrumentality who serves at the request of the Corporation as a representative for purposes of paragraph (1)(B), interim director, di-

rector, officer, employee, or agent of a bridge depository institution shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law, or

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge depository institution in addition to such salary or benefits as are obtained through employment with the Corporation or such Federal instrumentality.

(7) ASSISTANCE AUTHORIZED.—The Corporation may, in its discretion, provide assistance under section 13(c) to facilitate any transaction described in clause (i), (ii), or (iii) of paragraph (10)(A) with respect to any bridge depository institution in the same manner and to the same extent as such assistance may be provided under such section with respect to an insured depository institution in default, or to facilitate a bridge depository institution's acquisition of any assets or the assumption of any liabilities of an insured depository institution in default.

(8) ACQUISITION.—

(A) IN GENERAL.—The responsible agency shall notify the Attorney General of any transaction involving the merger or sale of a bridge depository institution requiring approval under section 18(c) and if a report on competitive factors is requested within 10 days, such transaction may not be consummated before the 5th calendar day after the date of approval by the responsible agency with respect thereto. If the responsible agency has found that it must act immediately to prevent the probable failure of 1 of the depository institutions involved, the preceding sentence does not apply and the transaction may be consummated immediately upon approval by the agency.

(B) BY OUT-OF-STATE HOLDING COMPANY.—Any depository institution, including an out-of-State depository institution, or any out-of-State depository institution holding company may acquire and retain the capital stock or assets of, or otherwise acquire and retain a bridge depository institution if the bridge depository institution at any time had assets aggregating \$500,000,000 or more, as determined by the Corporation on the basis of the bridge depository institution's reports of condition or on the basis of the last available reports of condition of any insured depository institution in default, which institution has been acquired, or whose assets have been acquired, by the bridge depository institution. The acquiring entity may acquire the bridge depository institution only in the same manner and to the same extent as such entity may acquire an insured depository institution in default under section 13(f)(2).

(9) DURATION OF BRIDGE DEPOSITORY INSTITUTION.—Subject to paragraphs (11) and (12), the status of a bridge depository institution as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Board of

Directors may, in its discretion, extend the status of the bridge depository institution as such for 3 additional 1-year periods.

(10) TERMINATION OF BRIDGE DEPOSITORY INSTITUTION STATUS.—The status of any bridge depository institution as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge depository institution with a depository institution that is not a bridge depository institution;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(C) the sale of 80 percent, or more, of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(D) at the election of the Corporation, either the assumption of all or substantially all of the deposits and other liabilities of the bridge depository institution by a depository institution holding company or a depository institution that is not a bridge depository institution, or the acquisition of all or substantially all of the assets of the bridge depository institution by a depository institution holding company, a depository institution that is not a bridge depository institution, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (9), or the earlier dissolution of the bridge depository institution as provided in paragraph (12).

(11) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A bridge depository institution that participates in a merger or consolidation as provided in paragraph (10)(A) shall be for all purposes a national bank or a Federal savings association, as the case may be, with all the rights, powers, and privileges thereof, and such merger or consolidation shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the capital stock of the bridge depository institution as provided in paragraph (10)(B), the Corporation may amend the charter of the bridge depository institution to reflect the termination of the status of the bridge depository institution as such, whereupon the depository institution shall remain a national bank or a Federal savings association, as the case may be, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the capital stock of a bridge depository institution as provided in paragraph (10)(C), the depository institution shall remain a national bank or a Federal savings association, as the case may be, with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the assumption of all or substantially all of the liabilities of the bridge depository institution, or the sale of all or substantially all of the assets of the bridge depository institution, as provided in paragraph (10)(D), at the election of the Corporation the bridge depository institution may retain its status as such for the period provided in paragraph (9).

(E) EFFECT ON HOLDING COMPANIES.—A depository institution holding company acquiring a bridge depository institution under section 13(f), paragraph (8)(B) (or any predecessor provision), or both provisions, shall not be impaired or adversely affected by the termination of the status of a bridge depository institution as a result of subparagraph (A), (B), (C), or (D) of paragraph (10), and shall be entitled to the rights and privileges provided in section 13(f).

(F) AMENDMENTS TO CHARTER.—Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (10), the charter of the resulting institution shall be amended to reflect the termination of bridge depository institution status, if appropriate.

(12) DISSOLUTION OF BRIDGE DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—Notwithstanding any other provision of State or Federal law, if the bridge depository institution's status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (10)—

(i) the Board of Directors may, in its discretion, dissolve a bridge depository institution in accordance with this paragraph at any time; and

(ii) the Board of Directors shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge depository institution was chartered, or any extension thereof, as provided in paragraph (9).

(B) PROCEDURES.—The Comptroller of the Currency shall appoint the Corporation as receiver for a bridge depository institution upon certification by the Board of Directors to the Comptroller of the Currency of its determination to dissolve the bridge depository institution. The Corporation as such receiver shall wind up the affairs of the bridge depository institution in conformity with the provisions of law relating to the liquidation of closed national banks or Federal savings associations, as appropriate. With respect to any such bridge depository institution, the Corporation as such receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of any insured depository institution and notwithstanding any other provision of law in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(13) MULTIPLE BRIDGE DEPOSITORY INSTITUTIONS.—Subject to paragraph (1)(B)(i), the Corporation may, in the Corporation's discretion, organize 2 or more bridge depository institutions under this subsection to assume any deposits of, assume any other liabilities of, and purchase any assets of a single depository institution in default.

(o) SUPERVISORY RECORDS.—In addition to the requirements of section 7(a)(2) to provide to the Corporation copies of reports of examination and reports of condition, whenever the Corporation has been appointed as receiver for an insured depository institution, the appropriate Federal banking agency shall make available all supervisory records to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(p) CERTAIN SALES OF ASSETS PROHIBITED.—

(1) PERSONS WHO ENGAGED IN IMPROPER CONDUCT WITH, OR CAUSED LOSSES TO, DEPOSITORY INSTITUTIONS.—The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a failed institution by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations the aggregate amount of which exceed ~~[\$1,000,000]~~ \$5,000,000, to such failed institution;

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution for which the Corporation has been appointed as conservator or receiver;

(B) any person who participated, as an officer or director of such failed institution or of any affiliate of such institution, in a material way in transactions that resulted in a substantial loss to such failed institution;

(C) any person who has been removed from, or prohibited from participating in the affairs of, such failed institution pursuant to any final enforcement action by an appropriate Federal banking agency; or

(D) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such failed institution.

(2) CONVICTED DEBTORS.—Except as provided in paragraph

(3), any person who—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, or of conspiring to commit such an offense, affecting any insured depository institution for which any conservator or receiver has been appointed; and

(B) is in default on any loan or other extension of credit from such insured depository institution which, if not paid,

will cause substantial loss to the institution, the Deposit Insurance Fund, or the Corporation, may not purchase any asset of such institution from the conservator or receiver.

(3) SETTLEMENT OF CLAIMS.—Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any insured depository institution to any person if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

(A) 1 or more claims that have been, or could have been, asserted by the Corporation against the person; or

(B) obligations owed by the person to any insured depository institution or the Corporation.

(4) DEFINITION OF DEFAULT.—For purposes of this subsection, the term “default” means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(q) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against an insured depository institution’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—Consistent with section 1657 of title 18, United States Code, a court of the United States shall expedite the consideration of any case brought by the Corporation against an insured depository institution’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution. As far as practicable the court shall give such case priority on its docket.

(3) JUDICIAL DISCRETION.—The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(r) FOREIGN INVESTIGATIONS.—The Corporation, as conservator or receiver of any insured depository institution and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution—

(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 8(v); and

(2) may each maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.

(s) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Corporation may not enter into any agree-

ment or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as conservator or receiver for an insured depository institution.

(t) AGENCIES MAY SHARE INFORMATION WITHOUT WAIVING PRIVILEGE.—

(1) IN GENERAL.—A covered agency, in any capacity, shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

(A) any other covered agency, in any capacity; or

(B) any other agency of the Federal Government (as defined in section 6 of title 18, United States Code).

(2) DEFINITIONS.—For purposes of this subsection:

(A) COVERED AGENCY.—The term “covered agency” means any of the following:

(i) Any Federal banking agency.

(ii) The Farm Credit Administration.

(iii) The Farm Credit System Insurance Corporation.

(iv) The National Credit Union Administration.

(v) The General Accounting Office.

(vi) The Bureau of Consumer Financial Protection.

(vii) Federal Housing Finance Agency.

(B) PRIVILEGE.—The term “privilege” includes any work-product, attorney-client, or other privilege recognized under Federal or State law.

(3) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (1) does not apply to the transfer or use of that information.

(u) PURCHASE RIGHTS OF TENANTS.—

(1) NOTICE.—Except as provided in paragraph (3), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under paragraph (2).

(2) PREFERENCE.—In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

(A) such offer is substantially similar in amount to other offers made within such period (or expected by the Corporation to be made within such period);

(B) such offer is made during the period beginning upon the Corporation making such property available and of a reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and

(C) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

(3) EXCEPTIONS.—Paragraphs (1) and (2) shall not apply to—

(A) any residence transferred in connection with the transfer of substantially all of the assets of an insured de-

pository institution for which the Corporation has been appointed conservator or receiver;

(B) any eligible single family property (as such term is defined in section 40(p)); or

(C) any residence for which the household occupying the residence was the mortgagor under a mortgage on such residence and to which the Corporation acquired title pursuant to default on such mortgage.

(v) PREFERENCE FOR SALES FOR HOMELESS FAMILIES.—Subject to subsection (u), in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in section 40(p)) to which the Corporation acquires title, the Corporation shall give preference among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.

(w) PREFERENCES FOR SALES OF CERTAIN COMMERCIAL REAL PROPERTIES.—

(1) AUTHORITY.—In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer—

(A) that is made by a public agency or nonprofit organization; and

(B) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (i) homeownership and rental housing opportunities for very-low-, low-, and moderate-income families, or (ii) housing or shelter for homeless persons (as such term is defined in section 103 of the Stewart B. McKinney Homeless Assistance Act) or homeless families.

(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) ELIGIBLE COMMERCIAL REAL PROPERTY.—The term “eligible commercial real property” means any property (i) to which the Corporation acquires title, and (ii) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in paragraph (1)(B).

(B) NONPROFIT ORGANIZATION AND PUBLIC AGENCY.—The terms “nonprofit organization” and “public agency” have the same meanings as in section 40(p).

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SEC. 36. EARLY IDENTIFICATION OF NEEDED IMPROVEMENTS IN FINANCIAL MANAGEMENT.

(a) ANNUAL REPORT ON FINANCIAL CONDITION AND MANAGEMENT.—

(1) REPORT REQUIRED.—Each insured depository institution shall submit an annual report to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor (including any State bank supervisor of a host State).

(2) CONTENTS OF REPORT.—Any annual report required under paragraph (1) shall contain—

(A) the information required to be provided by—

(i) the institution's management under subsection (b); and

(ii) an independent public accountant under subsections (c) and (d); and

(B) such other information as the Corporation and the appropriate Federal banking agency may determine to be necessary to assess the financial condition and management of the institution.

(3) PUBLIC AVAILABILITY.—Any annual report required under paragraph (1) shall be available for public inspection. Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.

(b) MANAGEMENT RESPONSIBILITY FOR FINANCIAL STATEMENTS AND INTERNAL CONTROLS.—Each insured depository institution shall prepare—

(1) annual financial statements in accordance with generally accepted accounting principles and such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe; and

(2) a report signed by the chief executive officer and the chief accounting or financial officer of the institution which contains—

(A) a statement of the management's responsibilities for—

(i) preparing financial statements;

(ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(iii) complying with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency; and

(B) an assessment, as of the end of the institution's most recent fiscal year, of—

(i) the effectiveness of such internal control structure and procedures; and

(ii) the institution's compliance with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency.

(c) INTERNAL CONTROL EVALUATION AND REPORTING REQUIREMENTS FOR INDEPENDENT PUBLIC ACCOUNTANTS.—

(1) IN GENERAL.—With respect to any internal control report required by subsection (b)(2) of any institution, the institution's independent public accountant shall attest to, and report sepa-

ately on, the assertions of the institution's management contained in such report.

(2) ATTESTATION REQUIREMENTS.—Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

(d) ANNUAL INDEPENDENT AUDITS OF FINANCIAL STATEMENTS.—

(1) AUDITS REQUIRED.—The Corporation, in consultation with the appropriate Federal banking agencies, shall prescribe regulations requiring that each insured depository institution shall have an annual independent audit made of the institution's financial statements by an independent public accountant in accordance with generally accepted auditing standards and section 37.

(2) SCOPE OF AUDIT.—In connection with any audit under this subsection, the independent public accountant shall determine and report whether the financial statements of the institution—

(A) are presented fairly in accordance with generally accepted accounting principles; and

(B) comply with such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe.

(3) REQUIREMENTS FOR INSURED SUBSIDIARIES OF HOLDING COMPANIES.—The requirements for an independent audit under this subsection may be satisfied for insured depository institutions that are subsidiaries of a holding company by an independent audit of the holding company.

(f) FORM AND CONTENT OF REPORTS AND AUDITING STANDARDS.—

(1) IN GENERAL.—The scope of each report by an independent public accountant pursuant to this section, and the procedures followed in preparing such report, shall meet or exceed the scope and procedures required by generally accepted auditing standards and other applicable standards recognized by the Corporation.

(2) CONSULTATION.—The Corporation shall consult with the other appropriate Federal banking agencies in implementing this subsection.

(g) IMPROVED ACCOUNTABILITY.—

(1) INDEPENDENT AUDIT COMMITTEE.—

(A) ESTABLISHMENT.—Each insured depository institution (to which this section applies) shall have an independent audit committee entirely made up of outside directors who are independent of management of the institution, except as provided in subparagraph (D), and who satisfy any specific requirements the Corporation may establish.

(B) DUTIES.—An independent audit committee's duties shall include reviewing with management and the independent public accountant the basis for the reports issued under subsections (b)(2), (c), and (d).

(C) CRITERIA APPLICABLE TO COMMITTEES OF LARGE INSURED DEPOSITORY INSTITUTIONS.—In the case of each insured depository institution which the Corporation determines to be a large institution, the audit committee required by subparagraph (A) shall—

- (i) include members with banking or related financial management expertise;
- (ii) have access to the committee's own outside counsel; and
- (iii) not include any large customers of the institution.

(D) EXEMPTION AUTHORITY.—

(i) IN GENERAL.—An appropriate Federal banking agency may, by order or regulation, permit the independent audit committee of an insured depository institution to be made up of less than all, but no fewer than a majority of, outside directors, if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the internal audit committee of the institution.

(ii) FACTORS TO BE CONSIDERED.—In determining whether an insured depository institution has encountered hardships referred to in clause (i), the appropriate Federal banking agency shall consider factors such as the size of the institution, and whether the institution has made a good faith effort to elect or name additional competent outside directors to the board of directors of the institution who may serve on the internal audit committee.

(2) REVIEW OF QUARTERLY REPORTS OF LARGE INSURED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—In the case of any insured depository institution which the Corporation has determined to be a large institution, the Corporation may require the independent public accountant retained by such institution to perform reviews of the institution's quarterly financial reports in accordance with procedures agreed upon by the Corporation.

(B) REPORT TO AUDIT COMMITTEE.—The independent public accountant referred to in subparagraph (A) shall provide the audit committee of the insured depository institution with reports on the reviews under such subparagraph and the audit committee shall provide such reports to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor.

(C) LIMITATION ON NOTICE.—Reports provided under subparagraph (B) shall be only for the information and use of the insured depository institution, the Corporation, any appropriate Federal banking agency, and any State bank supervisor that received the report.

(D) NOTICE TO INSTITUTION.—The Corporation shall promptly notify an insured depository institution, in writing, of a determination pursuant to subparagraph (A) to require a review of such institution's quarterly financial reports.

(3) QUALIFICATIONS OF INDEPENDENT PUBLIC ACCOUNTANTS.—

(A) IN GENERAL.—All audit services required by this section shall be performed only by an independent public accountant who—

(i) has agreed to provide related working papers, policies, and procedures to the Corporation, any appropriate Federal banking agency, and any State bank supervisor, if requested; and

(ii) has received a peer review that meets guidelines acceptable to the Corporation.

(B) REPORTS ON PEER REVIEWS.—Reports on peer reviews shall be filed with the Corporation and made available for public inspection.

(4) ENFORCEMENT ACTIONS.—

(A) IN GENERAL.—In addition to any authority contained in section 8, the Corporation or an appropriate Federal banking agency may remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services required by this section.

(B) JOINT RULEMAKING.—The appropriate Federal banking agencies shall jointly issue rules of practice to implement this paragraph.

(5) NOTICE BY ACCOUNTANT OF TERMINATION OF SERVICES.—Any independent public accountant performing an audit under this section who subsequently ceases to be the accountant for the institution shall promptly notify the Corporation and each appropriate Federal banking agency pursuant to such rules as the Corporation and each appropriate Federal banking agency shall prescribe.

(h) EXCHANGE OF REPORTS AND INFORMATION.—

(1) REPORT TO THE INDEPENDENT AUDITOR.—

(A) IN GENERAL.—Each insured depository institution which has engaged the services of an independent auditor to audit such institution shall transmit to the auditor a copy of the most recent report of condition made by the institution (pursuant to this Act or any other provision of law) and a copy of the most recent report of examination received by the institution.

(B) ADDITIONAL INFORMATION.—In addition to the copies of the reports required to be provided under subparagraph (A), each insured depository institution shall provide the auditor with—

(i) a copy of any supervisory memorandum of understanding with such institution and any written agreement between such institution and any appropriate Federal banking agency or any appropriate State bank supervisor which is in effect during the period covered by the audit; and

(ii) a report of—

(I) any action initiated or taken by the appropriate Federal banking agency or the Corporation during such period under subsection (a), (b), (c), (e), (g), (i), (s), or (t) of section 8;

(II) any action taken by any appropriate State bank supervisor under State law which is similar to any action referred to in subclause (I); or

(III) any assessment of any civil money penalty under any other provision of law with respect to the institution or any institution-affiliated party.

(2) REPORTS TO BANKING AGENCIES.—

(A) INDEPENDENT AUDITOR REPORTS.—Each insured depository institution shall provide to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor, a copy of each audit report and any qualification to such report, any management letter, and any other report within 15 days of receipt of any such report, qualification, or letter from the institution's independent auditors.

(B) NOTICE OF CHANGE OF AUDITOR.—Each insured depository institution shall provide written notification to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor of the resignation or dismissal of the institution's independent auditor or the engagement of a new independent auditor by the institution, including a statement of the reasons for such change within 15 calendar days of the occurrence of the event.

(i) REQUIREMENTS FOR INSURED SUBSIDIARIES OF HOLDING COMPANIES.—

(1) IN GENERAL.—Except with respect to any audit requirements established under or pursuant to subsection (d), the requirements of this section may be satisfied for insured depository institutions that are subsidiaries of a holding company, if—

(A) services and functions comparable to those required under this section are provided at the holding company level; and

(B) the institution—

(i) has total assets, as of the beginning of such fiscal year, of less than ~~【\$5,000,000,000】~~ \$21,000,000,000; or

(ii) has—

(I) total assets, as of the beginning of such fiscal year, of ~~【\$5,000,000,000】~~ \$21,000,000,000, or more; and

(II) a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency.

(2) LARGE INSTITUTIONS.—For purposes of this subsection, in the case of an insured depository institution described in paragraph (1)(B)(ii) that the Corporation determines to be a large institution, the audit committee of the holding company of such an institution shall not include any large customers of the institution.

(3) APPLICABILITY BASED ON RISK TO FUND.—The appropriate Federal banking agency may require an institution with total assets in excess of \$9,000,000,000 to comply with this section, notwithstanding the exemption provided by this subsection, if it determines that such exemption would create a significant

risk to the Deposit Insurance Fund if applied to that institution.

(j) EXEMPTION FOR SMALL DEPOSITORY INSTITUTIONS.—This section shall not apply with respect to any fiscal year of any insured depository institution the total assets of which, as of the beginning of such fiscal year, are less than the greater of—

- (1) ~~["\$150,000,000"]~~ \$800,000,000; or
- (2) such amount (in excess of ~~["\$150,000,000"]~~ \$800,000,000) as the Corporation may prescribe by regulation.

* * * * *

SEC. 38. PROMPT CORRECTIVE ACTION.

(a) RESOLVING PROBLEMS TO PROTECT DEPOSIT INSURANCE FUND.—

(1) PURPOSE.—The purpose of this section is to resolve the problems of insured depository institutions at the least possible long-term loss to the Deposit Insurance Fund.

(2) PROMPT CORRECTIVE ACTION REQUIRED.—Each appropriate Federal banking agency and the Corporation (acting in the Corporation's capacity as the insurer of depository institutions under this Act) shall carry out the purpose of this section by taking prompt corrective action to resolve the problems of insured depository institutions.

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

(1) CAPITAL CATEGORIES.—

(A) WELL CAPITALIZED.—An insured depository institution is "well capitalized" if it significantly exceeds the required minimum level for each relevant capital measure.

(B) ADEQUATELY CAPITALIZED.—An insured depository institution is "adequately capitalized" if it meets the required minimum level for each relevant capital measure.

(C) UNDERCAPITALIZED.—An insured depository institution is "undercapitalized" if it fails to meet the required minimum level for any relevant capital measure.

(D) SIGNIFICANTLY UNDERCAPITALIZED.—An insured depository institution is "significantly undercapitalized" if it is significantly below the required minimum level for any relevant capital measure.

(E) CRITICALLY UNDERCAPITALIZED.—An insured depository institution is "critically undercapitalized" if it fails to meet any level specified under subsection (c)(3)(A).

(2) OTHER DEFINITIONS.—

(A) AVERAGE.—

(i) IN GENERAL.—The "average" of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period divided by the total number of business days in that period.

(ii) AGENCY MAY PERMIT WEEKLY AVERAGING FOR CERTAIN INSTITUTIONS.—In the case of insured depository institutions that have total assets of less than ~~["\$300,000,000"]~~ \$2,000,000,000 and normally file reports of condition reflecting weekly (rather than daily) averages of accounting items, the appropriate Federal

banking agency may provide that the “average” of an accounting item during a given period means the sum of that item at the close of business on the relevant business day each week during that period divided by the total number of weeks in that period.

(B) CAPITAL DISTRIBUTION.—The term “capital distribution” means—

(i) a distribution of cash or other property by any insured depository institution or company to its owners made on account of that ownership, but not including—

(I) any dividend consisting only of shares of the institution or company or rights to purchase such shares; or

(II) any amount paid on the deposits of a mutual or cooperative institution that the appropriate Federal banking agency determines is not a distribution for purposes of this section;

(ii) a payment by an insured depository institution or company to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance an affiliated company’s acquisition of those shares or interests; or

(iii) a transaction that the appropriate Federal banking agency or the Corporation determines, by order or regulation, to be in substance a distribution of capital to the owners of the insured depository institution or company.

(C) CAPITAL RESTORATION PLAN.—The term “capital restoration plan” means a plan submitted under subsection (e)(2).

(D) COMPANY.—The term “company” has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

(E) COMPENSATION.—The term “compensation” includes any payment of money or provision of any other thing of value in consideration of employment.

(F) RELEVANT CAPITAL MEASURE.—The term “relevant capital measure” means the measures described in subsection (c).

(G) REQUIRED MINIMUM LEVEL.—The term “required minimum level” means, with respect to each relevant capital measure, the minimum acceptable capital level specified by the appropriate Federal banking agency by regulation.

(H) SENIOR EXECUTIVE OFFICER.—The term “senior executive officer” has the same meaning as the term “executive officer” in section 22(h) of the Federal Reserve Act.

(I) SUBORDINATED DEBT.—The term “subordinated debt” means debt subordinated to the claims of general creditors.

(c) CAPITAL STANDARDS.—

(1) RELEVANT CAPITAL MEASURES.—

- (A) IN GENERAL.—Except as provided in subparagraph (B)(ii), the capital standards prescribed by each appropriate Federal banking agency shall include—
 - (i) a leverage limit; and
 - (ii) a risk-based capital requirement.
- (B) OTHER CAPITAL MEASURES.—An appropriate Federal banking agency may, by regulation—
 - (i) establish any additional relevant capital measures to carry out the purpose of this section; or
 - (ii) rescind any relevant capital measure required under subparagraph (A) upon determining (with the concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of this section.
- (2) CAPITAL CATEGORIES GENERALLY.—Each appropriate Federal banking agency shall, by regulation, specify for each relevant capital measure the levels at which an insured depository institution is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.
- (3) CRITICAL CAPITAL.—
 - (A) AGENCY TO SPECIFY LEVEL.—
 - (i) LEVERAGE LIMIT.—Each appropriate Federal banking agency shall, by regulation, in consultation with the Corporation, specify the ratio of tangible equity to total assets at which an insured depository institution is critically undercapitalized.
 - (ii) OTHER RELEVANT CAPITAL MEASURES.—The agency may, by regulation, specify for 1 or more other relevant capital measures, the level at which an insured depository institution is critically undercapitalized.
 - (B) LEVERAGE LIMIT RANGE.—The level specified under subparagraph (A)(i) shall require tangible equity in an amount—
 - (i) not less than 2 percent of total assets; and
 - (ii) except as provided in clause (i), not more than 65 percent of the required minimum level of capital under the leverage limit.
 - (C) FDIC'S CONCURRENCE REQUIRED.—The appropriate Federal banking agency shall not, without the concurrence of the Corporation, specify a level under subparagraph (A)(i) lower than that specified by the Corporation for State nonmember insured banks.
- (d) PROVISIONS APPLICABLE TO ALL INSTITUTIONS.—
 - (1) CAPITAL DISTRIBUTIONS RESTRICTED.—
 - (A) IN GENERAL.—An insured depository institution shall make no capital distribution if, after making the distribution, the institution would be undercapitalized.
 - (B) EXCEPTION.—Notwithstanding subparagraph (A), the appropriate Federal banking agency may permit, after consultation with the Corporation, an insured depository institution to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(i) is made in connection with the issuance of additional shares or obligations of the institution in at least an equivalent amount; and

(ii) will reduce the institution's financial obligations or otherwise improve the institution's financial condition.

(2) MANAGEMENT FEES RESTRICTED.—An insured depository institution shall pay no management fee to any person having control of that institution if, after making the payment, the institution would be undercapitalized.

(e) PROVISIONS APPLICABLE TO UNDERCAPITALIZED INSTITUTIONS.—

(1) MONITORING REQUIRED.—Each appropriate Federal banking agency shall—

(A) closely monitor the condition of any undercapitalized insured depository institution;

(B) closely monitor compliance with capital restoration plans, restrictions, and requirements imposed under this section; and

(C) periodically review the plan, restrictions, and requirements applicable to any undercapitalized insured depository institution to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

(2) CAPITAL RESTORATION PLAN REQUIRED.—

(A) IN GENERAL.—Any undercapitalized insured depository institution shall submit an acceptable capital restoration plan to the appropriate Federal banking agency within the time allowed by the agency under subparagraph (D).

(B) CONTENTS OF PLAN.—The capital restoration plan shall—

(i) specify—

(I) the steps the insured depository institution will take to become adequately capitalized;

(II) the levels of capital to be attained during each year in which the plan will be in effect;

(III) how the institution will comply with the restrictions or requirements then in effect under this section; and

(IV) the types and levels of activities in which the institution will engage; and

(ii) contain such other information as the appropriate Federal banking agency may require.

(C) CRITERIA FOR ACCEPTING PLAN.—The appropriate Federal banking agency shall not accept a capital restoration plan unless the agency determines that—

(i) the plan—

(I) complies with subparagraph (B);

(II) is based on realistic assumptions, and is likely to succeed in restoring the institution's capital; and

(III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed; and

(ii) if the insured depository institution is undercapitalized, each company having control of the institution has—

(I) guaranteed that the institution will comply with the plan until the institution has been adequately capitalized on average during each of 4 consecutive calendar quarters; and

(II) provided appropriate assurances of performance.

(D) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The appropriate Federal banking agency shall by regulation establish deadlines that—

(i) provide insured depository institutions with reasonable time to submit capital restoration plans, and generally require an institution to submit a plan not later than 45 days after the institution becomes undercapitalized;

(ii) require the agency to act on capital restoration plans expeditiously, and generally not later than 60 days after the plan is submitted; and

(iii) require the agency to submit a copy of any plan approved by the agency to the Corporation before the end of the 45-day period beginning on the date such approval is granted.

(E) GUARANTEE LIABILITY LIMITED.—

(i) IN GENERAL.—The aggregate liability under subparagraph (C)(ii) of all companies having control of an insured depository institution shall be the lesser of—

(I) an amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized; or

(II) the amount which is necessary (or would have been necessary) to bring the institution into compliance with all capital standards applicable with respect to such institution as of the time the institution fails to comply with a plan under this subsection.

(ii) CERTAIN AFFILIATES NOT AFFECTED.—This paragraph may not be construed as—

(I) requiring any company not having control of an undercapitalized insured depository institution to guarantee, or otherwise be liable on, a capital restoration plan;

(II) requiring any person other than an insured depository institution to submit a capital restoration plan; or

(III) affecting compliance by brokers, dealers, government securities brokers, and government securities dealers with the financial responsibility requirements of the Securities Exchange Act of 1934 and regulations and orders thereunder.

(3) ASSET GROWTH RESTRICTED.—An undercapitalized insured depository institution shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

(A) the appropriate Federal banking agency has accepted the institution's capital restoration plan;

(B) any increase in total assets is consistent with the plan; and

(C) the institution's ratio of tangible equity to assets increases during the calendar quarter at a rate sufficient to enable the institution to become adequately capitalized within a reasonable time.

(4) PRIOR APPROVAL REQUIRED FOR ACQUISITIONS, BRANCHING, AND NEW LINES OF BUSINESS.—An undercapitalized insured depository institution shall not, directly or indirectly, acquire any interest in any company or insured depository institution, establish or acquire any additional branch office, or engage in any new line of business unless—

(A) the appropriate Federal banking agency has accepted the insured depository institution's capital restoration plan, the institution is implementing the plan, and the agency determines that the proposed action is consistent with and will further the achievement of the plan; or

(B) the Board of Directors determines that the proposed action will further the purpose of this section.

(5) DISCRETIONARY SAFEGUARDS.—The appropriate Federal banking agency may, with respect to any undercapitalized insured depository institution, take actions described in any subparagraph of subsection (f)(2) if the agency determines that those actions are necessary to carry out the purpose of this section.

(f) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED INSTITUTIONS AND UNDERCAPITALIZED INSTITUTIONS THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

(1) IN GENERAL.—This subsection shall apply with respect to any insured depository institution that—

(A) is significantly undercapitalized; or

(B) is undercapitalized and—

(i) fails to submit an acceptable capital restoration plan within the time allowed by the appropriate Federal banking agency under subsection (e)(2)(D); or

(ii) fails in any material respect to implement a plan accepted by the agency.

(2) SPECIFIC ACTIONS AUTHORIZED.—The appropriate Federal banking agency shall carry out this section by taking 1 or more of the following actions:

(A) REQUIRING RECAPITALIZATION.—Doing 1 or more of the following:

(i) Requiring the institution to sell enough shares or obligations of the institution so that the institution will be adequately capitalized after the sale.

(ii) Further requiring that instruments sold under clause (i) be voting shares.

(iii) Requiring the institution to be acquired by a depository institution holding company, or to combine with another insured depository institution, if 1 or more grounds exist for appointing a conservator or receiver for the institution.

(B) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

(i) Requiring the institution to comply with section 23A of the Federal Reserve Act as if subsection (d)(1) of that section (exempting transactions with certain affiliated institutions) did not apply.

(ii) Further restricting the institution's transactions with affiliates.

(C) RESTRICTING INTEREST RATES PAID.—

(i) IN GENERAL.—Restricting the interest rates that the institution pays on deposits to the prevailing rates of interest on deposits of comparable amounts and maturities in the region where the institution is located, as determined by the agency.

(ii) RETROACTIVE RESTRICTIONS PROHIBITED.—This subparagraph does not authorize the agency to restrict interest rates paid on time deposits made before (and not renewed or renegotiated after) the agency acted under this subparagraph.

(D) RESTRICTING ASSET GROWTH.—Restricting the institution's asset growth more stringently than subsection (e)(3), or requiring the institution to reduce its total assets.

(E) RESTRICTING ACTIVITIES.—Requiring the institution or any of its subsidiaries to alter, reduce, or terminate any activity that the agency determines poses excessive risk to the institution.

(F) IMPROVING MANAGEMENT.—Doing 1 or more of the following:

(i) NEW ELECTION OF DIRECTORS.—Ordering a new election for the institution's board of directors.

(ii) DISMISSING DIRECTORS OR SENIOR EXECUTIVE OFFICERS.—Requiring the institution to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the institution became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 8.

(iii) EMPLOYING QUALIFIED SENIOR EXECUTIVE OFFICERS.—Requiring the institution to employ qualified senior executive officers (who, if the agency so specifies, shall be subject to approval by the agency).

(G) PROHIBITING DEPOSITS FROM CORRESPONDENT BANKS.—Prohibiting the acceptance by the institution of deposits from correspondent depository institutions, including renewals and rollovers of prior deposits.

(H) REQUIRING PRIOR APPROVAL FOR CAPITAL DISTRIBUTIONS BY BANK HOLDING COMPANY.—Prohibiting any bank holding company having control of the insured depository institution from making any capital distribution without the prior approval of the Board of Governors of the Federal Reserve System.

(I) REQUIRING DIVESTITURE.—Doing one or more of the following:

(i) DIVESTITURE BY THE INSTITUTION.—Requiring the institution to divest itself of or liquidate any subsidiary if the agency determines that the subsidiary is in danger of becoming insolvent and poses a signifi-

cant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

(ii) **DIVESTITURE BY PARENT COMPANY OF NONDEPOSITORY AFFILIATE.**—Requiring any company having control of the institution to divest itself of or liquidate any affiliate other than an insured depository institution if the appropriate Federal banking agency for that company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

(iii) **DIVESTITURE OF INSTITUTION.**—Requiring any company having control of the institution to divest itself of the institution if the appropriate Federal banking agency for that company determines that divestiture would improve the institution's financial condition and future prospects.

(J) **REQUIRING OTHER ACTION.**—Requiring the institution to take any other action that the agency determines will better carry out the purpose of this section than any of the actions described in this paragraph.

(3) **PRESUMPTION IN FAVOR OF CERTAIN ACTIONS.**—In complying with paragraph (2), the agency shall take the following actions, unless the agency determines that the actions would not further the purpose of this section:

(A) The action described in clause (i) or (iii) of paragraph (2)(A) (relating to requiring the sale of shares or obligations, or requiring the institution to be acquired by or combine with another institution).

(B) The action described in paragraph (2)(B)(i) (relating to restricting transactions with affiliates).

(C) The action described in paragraph (2)(C) (relating to restricting interest rates).

(4) **SENIOR EXECUTIVE OFFICERS' COMPENSATION RESTRICTED.**—

(A) **IN GENERAL.**—The insured depository institution shall not do any of the following without the prior written approval of the appropriate Federal banking agency:

(i) Pay any bonus to any senior executive officer.

(ii) Provide compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the institution became undercapitalized.

(B) **FAILING TO SUBMIT PLAN.**—The appropriate Federal banking agency shall not grant any approval under subparagraph (A) with respect to an institution that has failed to submit an acceptable capital restoration plan.

(5) **DISCRETION TO IMPOSE CERTAIN ADDITIONAL RESTRICTIONS.**—The agency may impose 1 or more of the restrictions prescribed by regulation under subsection (i) if the agency determines that those restrictions are necessary to carry out the purpose of this section.

(6) CONSULTATION WITH OTHER REGULATORS.—Before the agency or Corporation makes a determination under paragraph (2)(I) with respect to an affiliate that is a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the agency or Corporation shall consult with the Securities and Exchange Commission and, in the case of any other affiliate which is subject to any financial responsibility or capital requirement, any other appropriate regulator of such affiliate with respect to the proposed determination of the agency or the Corporation and actions pursuant to such determination.

(g) MORE STRINGENT TREATMENT BASED ON OTHER SUPERVISORY CRITERIA.—

(1) IN GENERAL.—If the appropriate Federal banking agency determines (after notice and an opportunity for hearing) that an insured depository institution is in an unsafe or unsound condition or, pursuant to section 8(b)(8), deems the institution to be engaging in an unsafe or unsound practice, the agency may—

(A) if the institution is well capitalized, reclassify the institution as adequately capitalized;

(B) if the institution is adequately capitalized (but not well capitalized), require the institution to comply with 1 or more provisions of subsections (d) and (e), as if the institution were undercapitalized; or

(C) if the institution is undercapitalized, take any 1 or more actions authorized under subsection (f)(2) as if the institution were significantly undercapitalized.

(2) CONTENTS OF PLAN.—Any plan required under paragraph (1) shall specify the steps that the insured depository institution will take to correct the unsafe or unsound condition or practice. Capital restoration plans shall not be required under paragraph (1)(B).

(h) PROVISIONS APPLICABLE TO CRITICALLY UNDERCAPITALIZED INSTITUTIONS.—

(1) ACTIVITIES RESTRICTED.—Any critically undercapitalized insured depository institution shall comply with restrictions prescribed by the Corporation under subsection (i).

(2) PAYMENTS ON SUBORDINATED DEBT PROHIBITED.—

(A) IN GENERAL.—A critically undercapitalized insured depository institution shall not, beginning 60 days after becoming critically undercapitalized, make any payment of principal or interest on the institution's subordinated debt.

(B) EXCEPTIONS.—The Corporation may make exceptions to subparagraph (A) if—

(i) the appropriate Federal banking agency has taken action with respect to the insured depository institution under paragraph (3)(A)(ii); and

(ii) the Corporation determines that the exception would further the purpose of this section.

(C) LIMITED EXEMPTION FOR CERTAIN SUBORDINATED DEBT.—Until July 15, 1996, subparagraph (A) shall not apply with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

(D) ACCRUAL OF INTEREST.—Subparagraph (A) does not prevent unpaid interest from accruing on subordinated debt under the terms of that debt, to the extent otherwise permitted by law.

(3) CONSERVATORSHIP, RECEIVERSHIP, OR OTHER ACTION REQUIRED.—

(A) IN GENERAL.—The appropriate Federal banking agency shall, not later than 90 days after an insured depository institution becomes critically undercapitalized—

(i) appoint a receiver (or, with the concurrence of the Corporation, a conservator) for the institution; or

(ii) take such other action as the agency determines, with the concurrence of the Corporation, would better achieve the purpose of this section, after documenting why the action would better achieve that purpose.

(B) PERIODIC REDETERMINATIONS REQUIRED.—Any determination by an appropriate Federal banking agency under subparagraph (A)(ii) to take any action with respect to an insured depository institution in lieu of appointing a conservator or receiver shall cease to be effective not later than the end of the 90-day period beginning on the date that the determination is made and a conservator or receiver shall be appointed for that institution under subparagraph (A)(i) unless the agency makes a new determination under subparagraph (A)(ii) at the end of the effective period of the prior determination.

(C) APPOINTMENT OF RECEIVER REQUIRED IF OTHER ACTION FAILS TO RESTORE CAPITAL.—

(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the appropriate Federal banking agency shall appoint a receiver for the insured depository institution if the institution is critically undercapitalized on average during the calendar quarter beginning 270 days after the date on which the institution became critically undercapitalized.

(ii) EXCEPTION.—Notwithstanding clause (i), the appropriate Federal banking agency may continue to take such other action as the agency determines to be appropriate in lieu of such appointment if—

(I) the agency determines, with the concurrence of the Corporation, that (aa) the insured depository institution has positive net worth, (bb) the insured depository institution has been in substantial compliance with an approved capital restoration plan which requires consistent improvement in the institution's capital since the date of the approval of the plan, (cc) the insured depository institution is profitable or has an upward trend in earnings the agency projects as sustainable, and (dd) the insured depository institution is reducing the ratio of nonperforming loans to total loans; and

(II) the head of the appropriate Federal banking agency and the Chairperson of the Board of Direc-

tors both certify that the institution is viable and not expected to fail.

(i) **RESTRICTING ACTIVITIES OF CRITICALLY UNDERCAPITALIZED INSTITUTIONS.**—To carry out the purpose of this section, the Corporation shall, by regulation or order—

(1) restrict the activities of any critically undercapitalized insured depository institution; and

(2) at a minimum, prohibit any such institution from doing any of the following without the Corporation's prior written approval:

(A) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency.

(B) Extending credit for any highly leveraged transaction.

(C) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order.

(D) Making any material change in accounting methods.

(E) Engaging in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act).

(F) Paying excessive compensation or bonuses.

(G) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas.

(j) **CERTAIN GOVERNMENT-CONTROLLED INSTITUTIONS EXEMPTED.**—Subsections (e) through (i) (other than paragraph (3) of subsection (e)) shall not apply—

(1) to an insured depository institution for which the Corporation or the Resolution Trust Corporation is conservator; or

(2) to a bridge depository institution, none of the voting securities of which are owned by a person or agency other than the Corporation or the Resolution Trust Corporation.

(k) **REVIEWS REQUIRED WHEN DEPOSIT INSURANCE FUND INCURS LOSSES.**—

(1) **IN GENERAL.**—If the Deposit Insurance Fund incurs a material loss with respect to an insured depository institution on or after July 1, 1993, the inspector general of the appropriate Federal banking agency shall—

(A) make a written report to that agency reviewing the agency's supervision of the institution (including the agency's implementation of this section), which shall—

(i) ascertain why the institution's problems resulted in a material loss to the Deposit Insurance Fund; and

(ii) make recommendations for preventing any such loss in the future; and

(B) provide a copy of the report to—

(i) the Comptroller General of the United States;

(ii) the Corporation (if the agency is not the Corporation);

- (iii) in the case of a State depository institution, the appropriate State banking supervisor; and
- (iv) upon request by any Member of Congress, to that Member.

(2) MATERIAL LOSS INCURRED.—For purposes of this subsection:

(A) LOSS INCURRED.—The Deposit Insurance Fund incurs a loss with respect to an insured depository institution—

(i) if the Corporation provides any assistance under section 13(c) with respect to that institution; and—

(I) it is not substantially certain that the assistance will be fully repaid not later than 24 months after the date on which the Corporation initiated the assistance; or

(II) the institution ceases to repay the assistance in accordance with its terms; or

(ii) if the Corporation is appointed receiver of the institution, and it is or becomes apparent that the present value of the outlays of the Deposit Insurance Fund with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

(B) MATERIAL LOSS DEFINED.—The term “material loss” means any estimated loss in excess of—

(i) \$200,000,000, if the loss occurs during the period beginning on January 1, 2010, and ending on December 31, 2011;

(ii) \$150,000,000, if the loss occurs during the period beginning on January 1, 2012, and ending on December 31, 2013; and

(iii) **[\$50,000,000]** *\$110,000,000*, if the loss occurs on or after January 1, 2014, provided that if the inspector general of a Federal banking agency certifies to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that the number of projected failures of depository institutions that would require material loss reviews for the following 12 months will be greater than 30 and would hinder the effectiveness of its oversight functions, then the definition of “material loss” shall be **[\$75,000,000]** *\$150,000,000* for a duration of 1 year from the date of the certification.

(3) DEADLINE FOR REPORT.—The inspector general of the appropriate Federal banking agency shall comply with paragraph (1) expeditiously, and in any event (except with respect to paragraph (1)(B)(iv)) as follows:

(A) If the institution is described in paragraph (2)(A)(i), during the 6-month period beginning on the earlier of—

(i) the date on which the institution ceases to repay assistance under section 13(c) in accordance with its terms, or

(ii) the date on which it becomes apparent that the assistance will not be fully repaid during the 24-month period described in paragraph (2)(A)(i).

(B) If the institution is described in paragraph (2)(A)(ii), during the 6-month period beginning on the date on which it becomes apparent that the present value of the outlays of the Deposit Insurance Fund with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

(4) PUBLIC DISCLOSURE REQUIRED.—

(A) IN GENERAL.—The appropriate Federal banking agency shall disclose any report on losses required under this subsection, upon request under section 552 of title 5, United States Code, without excising—

(i) any portion under section 552(b)(5) of that title; or

(ii) any information about the insured depository institution under paragraph (4) (other than trade secrets) or paragraph (8) of section 552(b) of that title.

(B) EXCEPTION.—Subparagraph (A) does not require the agency to disclose the name of any customer of the insured depository institution (other than an institution-affiliated party), or information from which such a person's identity could reasonably be ascertained.

(5) LOSSES THAT ARE NOT MATERIAL.—

(A) SEMIANNUAL REPORT.—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of each Federal banking agency shall—

(i) identify losses that the Inspector General estimates have been incurred by the Deposit Insurance Fund during that 6-month period, with respect to the insured depository institutions supervised by the Federal banking agency;

(ii) for each loss incurred by the Deposit Insurance Fund that is not a material loss, determine—

(I) the grounds identified by the Federal banking agency or State bank supervisor for appointing the Corporation as receiver under section 11(c)(5); and

(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

(iii) prepare and submit a written report to the appropriate Federal banking agency and to Congress on the results of any determination by the Inspector General, including—

(I) an identification of any loss that warrants an in-depth review, together with the reasons why such review is warranted, or, if the Inspector General determines that no review is warranted, an explanation of such determination; and

(II) for each loss identified under subclause (I) that warrants an in-depth review, the date by which such review, and a report on such review prepared in a manner consistent with reports under paragraph (1)(A), will be completed and

submitted to the Federal banking agency and Congress.

(B) DEADLINE FOR SEMIANNUAL REPORT.—The Inspector General of each Federal banking agency shall—

- (i) submit each report required under paragraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and
- (ii) provide a copy of the report required under paragraph (A) to any Member of Congress, upon request.

(6) GAO REVIEW.—The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate, review reports made under paragraph (1) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section).

(l) IMPLEMENTATION.—

(1) REGULATIONS AND OTHER ACTIONS.—Each appropriate Federal banking agency shall prescribe such regulations (in consultation with the other Federal banking agencies), issue such orders, and take such other actions as are necessary to carry out this section.

(2) WRITTEN DETERMINATION AND CONCURRENCE REQUIRED.—Any determination or concurrence by an appropriate Federal banking agency or the Corporation required under this section shall be written.

(m) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of an appropriate Federal banking agency, the Corporation, or a State to take action in addition to (but not in derogation of) that required under this section.

(n) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

(1) TIMELY PETITION REQUIRED.—A director or senior executive officer dismissed pursuant to an order under subsection (f)(2)(F)(ii) may obtain review of that order by filing a written petition for reinstatement with the appropriate Federal banking agency not later than 10 days after receiving notice of the dismissal.

(2) PROCEDURE.—

(A) HEARING REQUIRED.—The agency shall give the petitioner an opportunity to—

- (i) submit written materials in support of the petition; and
- (ii) appear, personally or through counsel, before 1 or more members of the agency or designated employees of the agency.

(B) DEADLINE FOR HEARING.—The agency shall—

- (i) schedule the hearing referred to in subparagraph (A)(ii) promptly after the petition is filed; and
- (ii) hold the hearing not later than 30 days after the petition is filed, unless the petitioner requests that the hearing be held at a later time.

(C) DEADLINE FOR DECISION.—Not later than 60 days after the date of the hearing, the agency shall—

- (i) by order, grant or deny the petition;
- (ii) if the order is adverse to the petitioner, set forth the basis for the order; and

(iii) notify the petitioner of the order.

(3) STANDARD FOR REVIEW OF DISMISSAL ORDERS.—The petitioner shall bear the burden of proving that the petitioner's continued employment would materially strengthen the insured depository institution's ability—

(A) to become adequately capitalized, to the extent that the order is based on the institution's capital level or failure to submit or implement a capital restoration plan; and

(B) to correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the order is based on subsection (g)(1).

(o) TRANSITION RULES FOR SAVINGS ASSOCIATIONS.—Subsections (e)(2), (f), and (h) shall not apply before July 1, 1994, to any insured savings association if—

(1) before the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991—

(A) the savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act; and

(B) the Director of the Office of Thrift Supervision had accepted the plan;

(2) the plan remains in effect; and

(3) the savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.

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FEDERAL HOME LOAN BANK ACT

* * * * *

DEFINITIONS

SEC. 2. As used in this Act—

(1)(A) BANK.—The term “Federal Home Loan Bank” or “Bank” means a bank established under the authority of the Federal Home Loan Bank Act.

(B) BANK SYSTEM.—The term “Federal Home Loan Bank System” means the Federal Home Loan Banks under the supervision of the Director.

(2) STATE.—The term “State”, in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(3) The term “member” means any institution which has subscribed for the stock of a Federal Home Loan Bank.

(4) The term “home mortgage loan” means a loan made by a member upon the security of a home mortgage.

(5) The term “home mortgage” means a mortgage upon real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed, upon which is located, or which comprises or includes, one or more homes or other dwelling units, all of which may be defined by the Director, and shall include, in addition to

first mortgages, such classes of first liens as are commonly given to secure advances on real estate by institutions authorized under this Act to become members, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

(6) The term “unpaid principal,” when used in respect of a loan secured by a home mortgage means the principal thereof less the sum of (1) payments made on such principal, and (2) in cases where shares or stock are pledged as security for the loan, the payments made on such shares or stock plus earnings or dividends apportioned or credited thereon.

(7) An “amortized” or “installment” home mortgage loan shall, for the purposes of this Act, be a home mortgage loan to be repaid or liquidated in not less than eight years by means of regular weekly, monthly, or quarterly payments made directly in reduction of the debt or upon stock or shares pledged as collateral for the repayment of such loan.

(8) SAVINGS ASSOCIATION.—The term “savings association” has the meaning given to such term in section 3 of the Federal Deposit Insurance Act.

(9) INSURED DEPOSITORY INSTITUTION.—The term “insured depository institution” means—

(A) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), and

(B) except as used in sections 21A and 21B, an insured credit union (as defined in section 101 of the Federal Credit Union Act).

(10) COMMUNITY FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term “community financial institution” means a member—

(i) the deposits of which are insured under the Federal Deposit Insurance Act; and

(ii) that has, as of the date of the transaction at issue, less than ~~[\$1,000,000,000]~~ \$3,000,000,000 in average total assets, based on an average of total assets over the 3 years preceding that date.

(B) ADJUSTMENTS.—The ~~[\$1,000,000,000]~~ \$3,000,000,000 limit referred to in subparagraph (A)(ii) shall be adjusted annually by the Director, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.

(11) DIRECTOR.—The term “Director” means the Director of the Federal Housing Finance Agency.

(12) AGENCY.—The term “Agency” means the Federal Housing Finance Agency, established under section 1311 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

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FEDERAL RESERVE ACT

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DIVISION OF EARNINGS.

SEC. 7. (a) DIVIDENDS AND SURPLUS FUNDS OF RESERVE BANKS.—

(1) STOCKHOLDER DIVIDENDS.—

(A) DIVIDEND AMOUNT.—After all necessary expenses of a Federal reserve bank have been paid or provided for, the stockholders of the bank shall be entitled to receive an annual dividend on paid-in capital stock of—

(i) in the case of a stockholder with total consolidated assets of more than **[\$10,000,000,000]** *\$17,000,000,000*, the smaller of—

(I) the rate equal to the high yield of the 10-year Treasury note auctioned at the last auction held prior to the payment of such dividend; and

(II) 6 percent; and

(ii) in the case of a stockholder with total consolidated assets of **[\$10,000,000,000]** *\$17,000,000,000* or less, 6 percent.

(B) DIVIDEND CUMULATIVE.—The entitlement to dividends under subparagraph (A) shall be cumulative.

(C) INFLATION ADJUSTMENT.—The Board of Governors of the Federal Reserve System shall annually adjust the dollar amounts of total consolidated assets specified under subparagraph (A) to reflect the change in the Gross Domestic Product Price Index, published by the Bureau of Economic Analysis.

(2) DEPOSIT OF NET EARNINGS IN SURPLUS FUND.—That portion of net earnings of each Federal reserve bank which remains after dividend claims under paragraph (1)(A) have been fully met shall be deposited in the surplus fund of the bank.

(3) LIMITATION ON SURPLUS FUNDS.—

(A) IN GENERAL.—The aggregate amount of the surplus funds of the Federal reserve banks may not exceed \$6,825,000,000.

(B) TRANSFER TO THE GENERAL FUND.—Any amounts of the surplus funds of the Federal reserve banks that exceed, or would exceed, the limitation under subparagraph (A) shall be transferred to the Board of Governors of the Federal Reserve System for transfer to the Secretary of the Treasury for deposit in the general fund of the Treasury.

(b) TRANSFER FOR FISCAL YEAR 2000.—

(1) IN GENERAL.—The Federal reserve banks shall transfer from the surplus funds of such banks to the Board of Governors of the Federal Reserve System for transfer to the Secretary of the Treasury for deposit in the general fund of the Treasury, a total amount of \$3,752,000,000 in fiscal year 2000.

(2) ALLOCATED BY FED.—Of the total amount required to be paid by the Federal reserve banks under paragraph (1) for fiscal year 2000, the Board shall determine the amount each such bank shall pay in such fiscal year.

(3) REPLENISHMENT OF SURPLUS FUND PROHIBITED.—During fiscal year 2000, no Federal reserve bank may replenish such bank's surplus fund by the amount of any transfer by such bank under paragraph (1).

(b) **USE OF EARNINGS TRANSFERRED TO THE TREASURY.**—The net earnings derived by the United States from Federal reserve banks shall, in the discretion of the Secretary, be used to supplement the gold reserve held against outstanding United States notes, or shall be applied to the reduction of the outstanding bonded indebtedness of the United States under regulations to be prescribed by the Secretary of the Treasury. Should a Federal reserve bank be dissolved or go into liquidation, any surplus remaining, after the payment of all debts, dividend requirements as hereinbefore provided, and the par value of the stock, shall be paid to and become the property of the United States and shall be similarly applied.

(c) **EXEMPTION FROM TAXATION.**—Federal reserve banks, including the capital stock and surplus therein, and the income derived therefrom shall be exempt from Federal, State, and local taxation, except taxes upon real estate.

* * * * *

SEC. 22.

(d) [Reserved]

(e) No member bank shall pay to any director, officer, attorney, or employee a greater rate of interest on the deposits of such director, officer, attorney, or employee than that paid to other depositors on similar deposits with such member bank.

(f) If the directors or officers of any member bank shall knowingly violate or permit any of the agents, officers, or directors of any member bank to violate any of the provisions of this section or regulations of the board made under authority thereof, or any of the provisions of sections 217, 218, 219, 220, 655, 1005, 1014, 1906, or 1909 of Title 18, United States Code, every director and officer participating in or assenting to such violation shall be held liable in his personal and individual capacity for all damages which the member bank, its shareholders, or any other persons shall have sustained in consequence of such violation.

(g)(1) Except as authorized under this subsection, no member bank may extend credit in any manner to any of its own executive officers. No executive officer of any member bank may become indebted to that member bank except by means of an extension of credit which the bank is authorized to make under this subsection. Any extension of credit under this subsection shall be promptly reported to the board of directors of the bank, and may be made only if—

(A) the bank would be authorized to make it to borrowers other than its officers;

(B) it is on terms not more favorable than those afforded other borrowers;

(C) the officer has submitted a detailed current financial statement; and

(D) it is on condition that it shall become due and payable on demand of the bank at any time when the officer is indebted to any other bank or banks on account of extensions of credit of any one of the three categories respectively referred to in paragraphs (2), (3), and (4) in an aggregate amount greater than the amount of credit of the same category that could be extended to him by the bank of which he is an officer.

(2) A member bank may make a loan to any executive officer of the bank if, at the time the loan is made—

(A) it is secured by a first lien on a dwelling which is expected, after the making of the loan, to be owned by the officer and used by him as his residence, and

(B) no other loan by the bank to the officer under authority of this paragraph is outstanding.

(3) A member bank may make extensions of credit to any executive officer of the bank to finance the education of the children of the officer.

(4) A member bank may make extensions of credit not otherwise specifically authorized under this subsection to any executive officer of the bank in an amount prescribed in a regulation of the member bank's appropriate Federal banking agency.

(5) Except to the extent permitted under paragraph (4), a member bank may not extend credit to a partnership in which one or more of its executive officers are partners having either individually or together a majority interest. For the purposes of paragraph (4), the full amount of any credit so extended shall be considered to have been extended to each officer of the bank who is a member of the partnership.

(6) This subsection does not prohibit any executive officer of a member bank from endorsing or guaranteeing for the protection of the bank any loan or other asset previously acquired by the bank in good faith or from incurring any indebtedness to the bank for the purpose of protecting the bank against loss or giving financial assistance to it.

(7) Each day that any extension of credit in violation of this subsection exists is a continuation of the violation for the purposes of section 8 of the Federal Deposit Insurance Act.

(8) The Board of Governors of the Federal Reserve System may prescribe such rules and regulations, including definitions of terms, as it deems necessary to effectuate the purposes and to prevent evasions of this subsection.

(h) EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS.—

(1) IN GENERAL.—No member bank may extend credit to any of its executive officers, directors, or principal shareholders, or to any related interest of such a person, except to the extent permitted under paragraphs (2), (3), (4), (5), and (6).

(2) PREFERENTIAL TERMS PROHIBITED.—

(A) IN GENERAL.—A member bank may extend credit to its executive officers, directors, or principal shareholders, or to any related interest of such a person, only if the extension of credit—

(i) is made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank;

(ii) does not involve more than the normal risk of repayment or present other unfavorable features; and

(iii) the bank follows credit underwriting procedures that are not less stringent than those applicable to comparable transactions by the bank with persons who are not executive officers, directors, principal shareholders, or employees of the bank.

(B) EXCEPTION.—Nothing in this paragraph shall prohibit any extension of credit made pursuant to a benefit or compensation program—

(i) that is widely available to employees of the member bank; and

(ii) that does not give preference to any officer, director, or principal shareholder of the member bank, or to any related interest of such person, over other employees of the member bank.

(3) PRIOR APPROVAL REQUIRED.—A member bank may extend credit to a person described in paragraph (1) in an amount that, when aggregated with the amount of all other outstanding extensions of credit by that bank to each such person and that person's related interests, would exceed an amount prescribed by regulation of the appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act) only if—

(A) the extension of credit has been approved in advance by a majority vote of that bank's entire board of directors; and

(B) the interested party has abstained from participating, directly or indirectly, in the deliberations or voting on the extension of credit.

(4) AGGREGATE LIMIT ON EXTENSIONS OF CREDIT TO ANY EXECUTIVE OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER.—A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, only if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to that person and that person's related interests, would not exceed the limits on loans to a single borrower established by section 5200 of the Revised Statutes. For purposes of this paragraph, section 5200 of the Revised Statutes shall be deemed to apply to a State member bank as if the State member bank were a national banking association.

(5) AGGREGATE LIMIT ON EXTENSIONS OF CREDIT TO ALL EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—

(A) IN GENERAL.—A member bank may extend credit to any executive officer, director, or principal shareholder, or to any related interest of such a person, if the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to its executive officers, directors, principal shareholders, and those persons' related interests would not exceed the bank's unimpaired capital and unimpaired surplus.

(B) MORE STRINGENT LIMIT AUTHORIZED.—The Board may, by regulation, prescribe a limit that is more stringent than that contained in subparagraph (A).

(C) BOARD MAY MAKE EXCEPTIONS FOR CERTAIN BANKS.—The Board may, by regulation, make exceptions to subparagraph (A) for member banks with less than **[\$100,000,000]** \$500,000,000 in deposits if the Board determines that the exceptions are important to avoid con-

stricting the availability of credit in small communities or to attract directors to such banks. In no case may the aggregate amount of all outstanding extensions of credit to a bank's executive officers, directors, principal shareholders, and those persons' related interests be more than 2 times the bank's unimpaired capital and unimpaired surplus.

(6) OVERDRAFTS BY EXECUTIVE OFFICERS AND DIRECTORS PROHIBITED.—

(A) IN GENERAL.—If any executive officer or director has an account at the member bank, the bank may not pay on behalf of that person an amount exceeding the funds on deposit in the account.

(B) EXCEPTIONS.—Subparagraph (A) does not prohibit a member bank from paying funds in accordance with—

- (i) a written preauthorized, interest-bearing extension of credit specifying a method of repayment; or
- (ii) a written preauthorized transfer of funds from another account of the executive officer or director at that bank.

(7) PROHIBITION ON KNOWINGLY RECEIVING UNAUTHORIZED EXTENSION OF CREDIT.—No executive officer, director, or principal shareholder shall knowingly receive (or knowingly permit any of that person's related interests to receive) from a member bank, directly or indirectly, any extension of credit not authorized under this subsection.

(8) EXECUTIVE OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER OF CERTAIN AFFILIATES TREATED AS EXECUTIVE OFFICER, DIRECTOR, OR PRINCIPAL SHAREHOLDER OF MEMBER BANK.—

(A) IN GENERAL.—For purposes of this subsection, any executive officer, director, or principal shareholder (as the case may be) of any company of which the member bank is a subsidiary, or of any other subsidiary of that company, shall be deemed to be an executive officer, director, or principal shareholder (as the case may be) of the member bank.

(B) EXCEPTION.—The Board may, by regulation, make exceptions to subparagraph (A) for any executive officer or director of a subsidiary of a company that controls the member bank if—

- (i) the executive officer or director does not have authority to participate, and does not participate, in major policymaking functions of the member bank; and
- (ii) the assets of such subsidiary do not exceed 10 percent of the consolidated assets of a company that controls the member bank and such subsidiary (and is not controlled by any other company).

(9) DEFINITIONS.—For purposes of this subsection:

(A) COMPANY.—

(i) IN GENERAL.—Except as provided in clause (ii), the term “company” means any corporation, partnership, business or other trust, association, joint ven-

ture, pool syndicate, sole proprietorship, unincorporated organization, or other business entity.

(ii) EXCEPTIONS.—The term “company” does not include—

(I) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act); or

(II) a corporation the majority of the shares of which are owned by the United States or by any State.

(B) CONTROL.—A person controls a company or bank if that person, directly or indirectly, or acting through or in concert with 1 or more persons—

(i) owns, controls, or has the power to vote 25 percent or more of any class of the company’s voting securities;

(ii) controls in any manner the election of a majority of the company’s directors; or

(iii) has the power to exercise a controlling influence over the company’s management or policies.

(C) EXECUTIVE OFFICER.—A person is an “executive officer” of a company or bank if that person participates or has authority to participate (other than as a director) in major policymaking functions of the company or bank.

(D) EXTENSION OF CREDIT.—

(i) IN GENERAL.—A member bank extends credit to a person by—

(I) making or renewing any loan, granting a line of credit, or entering into any similar transaction as a result of which the person becomes obligated (directly or indirectly, or by any means whatsoever) to pay money or its equivalent to the bank; or

(II) having credit exposure to the person arising from a derivative transaction (as defined in section 5200(b) of the Revised Statutes of the United States (12 U.S.C. 84(b))), repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the member bank and the person.

(ii) EXCEPTIONS.—The Board may, by regulation, make exceptions to clause (i) for transactions that the Board determines pose minimal risk.

(E) MEMBER BANK.—The term “member bank” includes any subsidiary of a member bank.

(F) PRINCIPAL SHAREHOLDER.—The term “principal shareholder”—

(i) means any person that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a member bank or company; and

(ii) does not include a company of which a member bank is a subsidiary.

(G) RELATED INTEREST.—A “related interest” of a person is—

- (i) any company controlled by that person; and
- (ii) any political or campaign committee that is controlled by that person or the funds or services of which will benefit that person.

(H) SUBSIDIARY.—The term “subsidiary” has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

(10) BOARD’S RULEMAKING AUTHORITY.—The Board of Governors of the Federal Reserve System may prescribe such regulations, including definitions of terms, as it determines to be necessary to effectuate the purposes and prevent evasions of this subsection.

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HOME MORTGAGE DISCLOSURE ACT OF 1975

TITLE III—HOME MORTGAGE DISCLOSURE

* * * * *

MAINTENANCE OF RECORDS AND PUBLIC DISCLOSURE

SEC. 304. (a)(1) Each depository institution which has a home office or branch office located within a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, as defined by the Department of Commerce shall compile and make available, in accordance with regulations of the Board, to the public for inspection and copying at the home office, and at least one branch office within each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas in which the depository institution has an office the number and total dollar amount of mortgage loans which were (A) originated (or for which the institution received completed applications), or (B) purchased by that institution during each fiscal year (beginning with the last full fiscal year of that institution which immediately preceded the effective date of this title).

(2) The information required to be maintained and made available under paragraph (1) shall also be itemized in order to clearly and conspicuously disclose the following:

(A) The number and dollar amount for each item referred to in paragraph (1), by census tracts for mortgage loans secured by property located within any county with a population of more than 30,000, within that primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas, otherwise, by county, for mortgage loans secured by property located within any other county within that standard metropolitan statistical area.

(B) The number and dollar amount for each item referred to in paragraph (1) for all such mortgage loans which are secured

by property located outside that primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas.

For the purpose of this paragraph, a depository institution which maintains offices in more than one primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas shall be required to make the information required by this paragraph available at any such office only to the extent that such information relates to mortgage loans which were originated or purchased (or for which completed applications were received) by an office of that depository institution located in the primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas in which the office making such information available is located. For purposes of this paragraph, other lending institutions shall be deemed to have a home office or branch office within a primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas if such institutions have originated or purchased or received completed applications for at least 5 mortgage loans in such area in the preceding calendar year.

(b) Any item of information relating to mortgage loans required to be maintained under subsection (a) shall be further itemized in order to disclose for each such item—

(1) the number and dollar amount of mortgage loans which are insured under title II of the National Housing Act or under title V of the Housing Act of 1949 or which are guaranteed under chapter 37 of title 38, United States Code;

(2) the number and dollar amount of mortgage loans made to mortgagors who did not, at the time of execution of the mortgage, intend to reside in the property securing the mortgage loan;

(3) the number and dollar amount of home improvement loans;

(4) the number and dollar amount of mortgage loans and completed applications involving mortgagors or mortgage applicants grouped according to census tract, income level, racial characteristics, age, and gender;

(5) the number and dollar amount of mortgage loans grouped according to measurements of—

(A) the total points and fees payable at origination in connection with the mortgage as determined by the Bureau, taking into account 15 U.S.C. 1602(aa)(4);

(B) the difference between the annual percentage rate associated with the loan and a benchmark rate or rates for all loans;

(C) the term in months of any prepayment penalty or other fee or charge payable on repayment of some portion of principal or the entire principal in advance of scheduled payments; and

(D) such other information as the Bureau may require; and

(6) the number and dollar amount of mortgage loans and completed applications grouped according to measurements of—

(A) the value of the real property pledged or proposed to be pledged as collateral;

(B) the actual or proposed term in months of any introductory period after which the rate of interest may change;

(C) the presence of contractual terms or proposed contractual terms that would allow the mortgagor or applicant to make payments other than fully amortizing payments during any portion of the loan term;

(D) the actual or proposed term in months of the mortgage loan;

(E) the channel through which application was made, including retail, broker, and other relevant categories;

(F) as the Bureau may determine to be appropriate, a unique identifier that identifies the loan originator as set forth in section 1503 of the S.A.F.E. Mortgage Licensing Act of 2008;

(G) as the Bureau may determine to be appropriate, a universal loan identifier;

(H) as the Bureau may determine to be appropriate, the parcel number that corresponds to the real property pledged or proposed to be pledged as collateral;

(I) the credit score of mortgage applicants and mortgagors, in such form as the Bureau may prescribe; and

(J) such other information as the Bureau may require.

(c) Any information required to be compiled and made available under this section, other than loan application register information under subsection (j), shall be maintained and made available for a period of five years after the close of the first year during which such information is required to be maintained and made available.

(d) Notwithstanding the provisions of subsection (a)(1), data required to be disclosed under this section for 1980 and thereafter shall be disclosed for each calendar year. Any depository institution which is required to make disclosures under this section but which has been making disclosures on some basis other than a calendar year basis shall make available a separate disclosure statement containing data for any period prior to calendar year 1980 which is not covered by the last full year report prior to the 1980 calendar year report.

(e) Subject to subsection (h), the Bureau shall prescribe a standard format for the disclosures required under this section.

(f) The Federal Financial Institutions Examination Council, in consultation with the Secretary, shall implement a system to facilitate access to data required to be disclosed under this section. Such system shall include arrangements for a central depository of data in each primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas. Disclosure statements shall be made available to the public for inspection and copying at such central depository of data for all depository institutions which are required to disclose information under this section (or which are exempted pursuant to section 306(b)) and which have a home office or branch office within such

primary metropolitan statistical area, metropolitan statistical area, or consolidated metropolitan statistical area that is not comprised of designated primary metropolitan statistical areas.

(g) The requirements of subsections (a) and (b) shall not apply with respect to mortgage loans that are—

(1) made (or for which completed applications are received) by any mortgage banking subsidiary of a bank holding company or savings and loan holding company or by any savings and loan service corporation that originates or purchases mortgage loans; and

(2) approved (or for which completed applications are received) by the Secretary for insurance under title I or II of the National Housing Act.

(h) SUBMISSION TO AGENCIES.—

(1) IN GENERAL.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for the institution reporting under this title, in accordance with rules prescribed by the Bureau. Notwithstanding the requirement of subsection (a)(2)(A) for disclosure by census tract, the Bureau, in consultation with other appropriate agencies described in paragraph (2) and, after notice and comment, shall develop regulations that—

(A) prescribe the format for such disclosures, the method for submission of the data to the appropriate agency, and the procedures for disclosing the information to the public;

(B) require the collection of data required to be disclosed under subsection (b) with respect to loans sold by each institution reporting under this title;

(C) require disclosure of the class of the purchaser of such loans;

(D) permit any reporting institution to submit in writing to the Bureau or to the appropriate agency such additional data or explanations as it deems relevant to the decision to originate or purchase mortgage loans; and

(E) modify or require modification of itemized information, for the purpose of protecting the privacy interests of the mortgage applicants or mortgagors, that is or will be available to the public.

(2) OTHER APPROPRIATE AGENCIES.—The appropriate agencies described in this paragraph are—

(A) the appropriate Federal banking agencies, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to the entities that are subject to the jurisdiction of each such agency, respectively;

(B) the Federal Deposit Insurance Corporation for banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), mutual savings banks, insured State branches of foreign banks, and any other depository institution described in section 303(2)(A) which is not otherwise referred to in this paragraph;

(C) the National Credit Union Administration Board with respect to credit unions; and

(D) the Secretary of Housing and Urban Development with respect to other lending institutions not regulated by the agencies referred to in subparagraph (A) or (B).

(3) RULES FOR MODIFICATIONS UNDER PARAGRAPH (1).—

(A) APPLICATION.—A modification under paragraph (1)(E) shall apply to information concerning—

(i) credit score data described in subsection (b)(6)(I), in a manner that is consistent with the purpose described in paragraph (1)(E); and

(ii) age or any other category of data described in paragraph (5) or (6) of subsection (b), as the Bureau determines to be necessary to satisfy the purpose described in paragraph (1)(E), and in a manner consistent with that purpose.

(B) STANDARDS.—The Bureau shall prescribe standards for any modification under paragraph (1)(E) to effectuate the purposes of this title, in light of the privacy interests of mortgage applicants or mortgagors. Where necessary to protect the privacy interests of mortgage applicants or mortgagors, the Bureau shall provide for the disclosure of information described in subparagraph (A) in aggregate or other reasonably modified form, in order to effectuate the purposes of this title.

(i) EXEMPTIONS.—

(1) CLOSED-END MORTGAGE LOANS.—With respect to an insured depository institution or insured credit union, the requirements of paragraphs (5) and (6) of subsection (b) shall not apply with respect to closed-end mortgage loans if the insured depository institution or insured credit union originated fewer than 500 closed-end mortgage loans in each of the 2 preceding calendar years.

(2) OPEN-END LINES OF CREDIT.—With respect to an insured depository institution or insured credit union, the requirements of paragraphs (5) and (6) of subsection (b) shall not apply with respect to open-end lines of credit if the insured depository institution or insured credit union originated fewer than 500 open-end lines of credit in each of the 2 preceding calendar years.

(3) REQUIRED COMPLIANCE.—Notwithstanding paragraphs (1) and (2), an insured depository institution shall comply with paragraphs (5) and (6) of subsection (b) if the insured depository institution has received a rating of “needs to improve record of meeting community credit needs” during each of its 2 most recent examinations or a rating of “substantial non-compliance in meeting community credit needs” on its most recent examination under section 807(b)(2) of the Community Reinvestment Act of 1977 (12 U.S.C. 2906(b)(2)).

(3) EXEMPTION FROM CERTAIN DISCLOSURE REQUIREMENTS.—The requirements of subsections (b)(4), (b)(5), and (b)(6) shall not apply with respect to any depository institution described in section 303(3)(A) which has total assets, as of the most recent full fiscal year of such institution, of **[\$30,000,000]** **\$160,000,000** or less.

(j) LOAN APPLICATION REGISTER INFORMATION.—

(1) IN GENERAL.—In addition to the information required to be disclosed under subsections (a) and (b), any depository institution which is required to make disclosures under this section shall make available to the public, upon request, loan application register information (as defined by the Bureau by regulation) in the form required under regulations prescribed by the Board.

(2) FORMAT OF DISCLOSURE.—

(A) UNEDITED FORMAT.—Subject to subparagraph (B), the loan application register information described in paragraph (1) may be disclosed by a depository institution without editing or compilation and in such formats as the Bureau may require.

(B) PROTECTION OF APPLICANT'S PRIVACY INTEREST.—The Bureau shall require, by regulation, such deletions as the Bureau may determine to be appropriate to protect—

(i) any privacy interest of any applicant, including the deletion of the applicant's name and identification number, the date of the application, and the date of any determination by the institution with respect to such application; and

(ii) a depository institution from liability under any Federal or State privacy law.

(C) CENSUS TRACT FORMAT ENCOURAGED.—It is the sense of the Congress that a depository institution should provide loan register information under this section in a format based on the census tract in which the property is located.

(3) CHANGE OF FORM NOT REQUIRED.—A depository institution meets the disclosure requirement of paragraph (1) if the institution provides the information required under such paragraph in such formats as the Bureau may require

(4) REASONABLE CHARGE FOR INFORMATION.—Any depository institution which provides information under this subsection may impose a reasonable fee for any cost incurred in reproducing such information.

(5) TIME OF DISCLOSURE.—The disclosure of the loan application register information described in paragraph (1) for any year pursuant to a request under paragraph (1) shall be made—

(A) in the case of a request made on or before March 1 of the succeeding year, before April 1 of the succeeding year; and

(B) in the case of a request made after March 1 of the succeeding year, before the end of the 30-day period beginning on the date the request is made.

(6) RETENTION OF INFORMATION.—Notwithstanding subsection (c), the loan application register information described in paragraph (1) for any year shall be maintained and made available, upon request, for 3 years after the close of the 1st year during which such information is required to be maintained and made available.

(7) MINIMIZING COMPLIANCE COSTS.—In prescribing regulations under this subsection, the Bureau shall make every effort

to minimize the costs incurred by a depository institution in complying with this subsection and such regulations.

(k) DISCLOSURE OF STATEMENTS BY DEPOSITORY INSTITUTIONS.—

(1) IN GENERAL.—In accordance with procedures established by the Bureau pursuant to this section, any depository institution required to make disclosures under this section—

(A) shall make a disclosure statement available, upon request, to the public no later than 3 business days after the institution receives the statement from the Federal Financial Institutions Examination Council; and

(B) may make such statement available on a floppy disc which may be used with a personal computer or in any other media which is not prohibited under regulations prescribed by the Board.

(2) NOTICE THAT DATA IS SUBJECT TO CORRECTION AFTER FINAL REVIEW.—Any disclosure statement provided pursuant to paragraph (1) shall be accompanied by a clear and conspicuous notice that the statement is subject to final review and revision, if necessary.

(3) REASONABLE CHARGE FOR INFORMATION.—Any depository institution which provides a disclosure statement pursuant to paragraph (1) may impose a reasonable fee for any cost incurred in providing or reproducing such statement.

(l) PROMPT DISCLOSURES.—

(1) IN GENERAL.—Any disclosure of information pursuant to this section or section 310 shall be made as promptly as possible.

(2) MAXIMUM DISCLOSURE PERIOD.—

(A) 6- AND 9-MONTH MAXIMUM PERIODS.—Except as provided in subsections (j)(5) and (k)(1) and regulations prescribed by the Bureau and subject to subparagraph (B), any information required to be disclosed for any year beginning after December 31, 1992, under—

(i) this section shall be made available to the public before September 1 of the succeeding year; and

(ii) section 310 shall be made available to the public before December 1 of the succeeding year.

(B) SHORTER PERIODS ENCOURAGED AFTER 1994.—With respect to disclosures of information under this section or section 310 for any year beginning after December 31, 1993, every effort shall be made—

(i) to make information disclosed under this section available to the public before July 1 of the succeeding year; and

(ii) to make information required to be disclosed under section 310 available to the public before September 1 of the succeeding year.

(3) IMPROVED PROCEDURE.—The Federal Financial Institutions Examination Council shall make such changes in the system established pursuant to subsection (f) as may be necessary to carry out the requirements of this subsection.

(m) OPPORTUNITY TO REDUCE COMPLIANCE BURDEN.—

(1) IN GENERAL.—

(A) SATISFACTION OF PUBLIC AVAILABILITY REQUIREMENTS.—A depository institution shall be deemed to have

satisfied the public availability requirements of subsection (a) if the institution compiles the information required under that subsection at the home office of the institution and provides notice at the branch locations specified in subsection (a) that such information is available from the home office of the institution upon written request.

(B) PROVISION OF INFORMATION UPON REQUEST.—Not later than 15 days after the receipt of a written request for any information required to be compiled under subsection (a), the home office of the depository institution receiving the request shall provide the information pertinent to the location of the branch in question to the person requesting the information.

(2) FORM OF INFORMATION.—In complying with paragraph (1), a depository institution shall provide the person requesting the information with a copy of the information requested in such formats as the Bureau may require.

(n) TIMING OF CERTAIN DISCLOSURES.—The data required to be disclosed under subsection (b) shall be submitted to the Bureau or to the appropriate agency for any institution reporting under this title, in accordance with regulations prescribed by the Bureau. Institutions shall not be required to report new data under paragraph (5) or (6) of subsection (b) before the first January 1 that occurs after the end of the 9-month period beginning on the date on which regulations are issued by the Bureau in final form with respect to such disclosures.

(o) DEFINITIONS.—In this section—

(1) the term “insured credit union” has the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752); and

(2) the term “insured depository institution” has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

* * * * *

EFFECTIVE DATE

SEC. 309. (a) IN GENERAL.—This title shall take effect on the one hundred and eightieth day beginning after the date of its enactment. Any institution specified in section 303(2)(A) which has total assets as of its last full fiscal year of ~~【\$10,000,000】~~ \$180,000,000 or less is exempt from the provisions of this title. The Board, in consultation with the Secretary, may exempt institutions described in section 303(2)(B) that are comparable within their respective industries to institutions that are exempt under the preceding sentence (as determined without regard to the adjustment made by subsection (b)).

(b) CPI ADJUSTMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), the dollar amount applicable with respect to institutions described in section 303(2)(A) under the 2d sentence of subsection (a) shall be adjusted annually after December 31, 1996, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics.

(2) 1-TIME ADJUSTMENT FOR PRIOR INFLATION.—The first adjustment made under paragraph (1) after the date of the enactment of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 shall be the percentage by which—

(A) the Consumer Price Index described in such paragraph for the calendar year 1996, exceeds

(B) such Consumer Price Index for the calendar year 1975.

(3) ROUNDING.—The dollar amount applicable under paragraph (1) for any calendar year shall be the amount determined in accordance with subparagraphs (A) and (B) of paragraph (2) and rounded to the nearest multiple of \$1,000,000.

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HOME OWNERS' LOAN ACT

* * * * *

SEC. 5. FEDERAL SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—In order to provide thrift institutions for the deposit of funds and for the extension of credit for homes and other goods and services, the Comptroller of the Currency is authorized, under such regulations as the Comptroller of the Currency may prescribe—

(1) to provide for the organization, incorporation, examination, operation, and regulation of associations to be known as Federal savings associations (including Federal savings banks), and

(2) to issue charters therefor, giving primary consideration of the best practices of thrift institutions in the United States. The lending and investment powers conferred by this section are intended to encourage such institutions to provide credit for housing safely and soundly.

(b) DEPOSITS AND RELATED POWERS.—

(1) DEPOSIT ACCOUNTS.—

(A) Subject to the terms of its charter and regulations of the Comptroller of the Currency, a Federal savings association may—

(i) raise funds through such deposit, share, or other accounts, including demand deposit accounts (hereafter in this section referred to as “accounts”); and

(ii) issue passbooks, certificates, or other evidence of accounts.

(B) A Federal savings association may not permit any overdraft (including an intraday overdraft) on behalf of an affiliate, or incur any such overdraft in such savings association's account at a Federal reserve bank or Federal home loan bank on behalf of an affiliate.

All savings accounts and demand accounts shall have the same priority upon liquidation. Holders of accounts and obligors of a Federal savings association shall, to such extent as may be provided by its charter or by regulations of the Comptroller of the Currency, be members of the savings association, and shall have such voting rights and such other rights as are thereby provided.

(C) A Federal savings association may require not less than 14 days notice prior to payment of savings accounts if the charter of the savings association or the regulations of the Comptroller of the Currency so provide.

(D) If a Federal savings association does not pay all withdrawals in full (subject to the right of the association, where applicable, to require notice), the payment of withdrawals from accounts shall be subject to such rules and procedures as may be prescribed by the savings association's charter or by regulation of the Comptroller of the Currency. Except as authorized in writing by the Comptroller of the Currency, any Federal savings association that fails to make full payment of any withdrawal when due shall be deemed to be in an unsafe or unsound condition.

(E) Accounts may be subject to check or to withdrawal or transfer on negotiable or transferable or other order or authorization to the Federal savings association, as the Comptroller of the Currency may by regulation provide.

(F) A Federal savings association may establish remote service units for the purpose of crediting savings or demand accounts, debiting such accounts, crediting payments on loans, and the disposition of related financial transactions, as provided in regulations prescribed by the Comptroller of the Currency.

(2) OTHER LIABILITIES.—To such extent as the Comptroller of the Currency may authorize in writing, a Federal savings association may borrow, may give security, may be surety as defined by the Comptroller of the Currency and may issue such notes, bonds, debentures, or other obligations, or other securities, including capital stock.

(3) LOANS FROM STATE HOUSING FINANCE AGENCIES.—

(A) IN GENERAL.—Subject to regulation by the Comptroller of the Currency but without regard to any other provision of this subsection, any Federal savings association that is in compliance with the capital standards in effect under subsection (t) may borrow funds from a State mortgage finance agency of the State in which the head office of such savings association is situated to the same extent as State law authorizes a savings association organized under the laws of such State to borrow from the State mortgage finance agency.

(B) INTEREST RATE.—A Federal savings association may not make any loan of funds borrowed under subparagraph (A) at an interest rate which exceeds by more than $1\frac{3}{4}$ percent per annum the interest rate paid to the State mortgage finance agency on the obligations issued to obtain the funds so borrowed.

(4) MUTUAL CAPITAL CERTIFICATES.—In accordance with regulations issued by the Comptroller of the Currency, mutual capital certificates may be issued and sold directly to subscribers or through underwriters. Such certificates may be included in calculating capital for the purpose of subsection (t) to the extent permitted by the Comptroller of the Currency. The issuance of certificates under this paragraph does not con-

stitute a change of control or ownership under this Act or any other law unless there is in fact a change in control or reorganization. Regulations relating to the issuance and sale of mutual capital certificates shall provide that such certificates—

(A) are subordinate to all savings accounts, savings certificates, and debt obligations;

(B) constitute a claim in liquidation on the general reserves, surplus, and undivided profits of the Federal savings association remaining after the payment in full of all savings accounts, savings certificates, and debt obligations;

(C) are entitled to the payment of dividends; and

(D) may have a fixed or variable dividend rate.

(c) LOANS AND INVESTMENTS.—To the extent specified in regulations of the Comptroller, a Federal savings association may invest in, sell, or otherwise deal in the following loans and other investments:

(1) LOANS OR INVESTMENTS WITHOUT PERCENTAGE OF ASSETS LIMITATION.—Without limitation as a percentage of assets, the following are permitted:

(A) ACCOUNT LOANS.—Loans on the security of its savings accounts and loans specifically related to transaction accounts.

(B) RESIDENTIAL REAL PROPERTY LOANS.—Loans on the security of liens upon residential real property.

(C) UNITED STATES GOVERNMENT SECURITIES.—Investments in obligations of, or fully guaranteed as to principal and interest by, the United States.

(D) FEDERAL HOME LOAN BANK AND FEDERAL NATIONAL MORTGAGE ASSOCIATION SECURITIES.—Investments in the stock or bonds of a Federal home loan bank or in the stock of the Federal National Mortgage Association.

(E) FEDERAL HOME LOAN MORTGAGE CORPORATION INSTRUMENTS.—Investments in mortgages, obligations, or other securities which are or have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or 306 of the Federal Home Loan Mortgage Corporation Act.

(F) OTHER GOVERNMENT SECURITIES.—Investments in obligations, participations, securities, or other instruments issued by, or fully guaranteed as to principal and interest by, the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association, or any agency of the United States. A savings association may issue and sell securities which are guaranteed pursuant to section 306(g) of the National Housing Act.

(G) DEPOSITS.—Investments in accounts of any insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act.

(H) STATE SECURITIES.—Investments in obligations issued by any State or political subdivision thereof (including any agency, corporation, or instrumentality of a State or political subdivision). A Federal savings association may not invest more than 10 percent of its capital in obliga-

tions of any one issuer, exclusive of investments in general obligations of any issuer.

(I) PURCHASE OF INSURED LOANS.—Purchase of loans secured by liens on improved real estate which are insured or guaranteed under the National Housing Act, the Servicemen's Readjustment Act of 1944, or chapter 37 of title 38, United States Code.

(J) HOME IMPROVEMENT AND MANUFACTURED HOME LOANS.—Loans made to repair, equip, alter, or improve any residential real property, and loans made for manufactured home financing.

(K) INSURED LOANS TO FINANCE THE PURCHASE OF FEE SIMPLE.—Loans insured under section 240 of the National Housing Act.

(L) LOANS TO FINANCIAL INSTITUTIONS, BROKERS, AND DEALERS.—Loans to—

- (i) financial institutions with respect to which the United States or an agency or instrumentality thereof has any function of examination or supervision, or
- (ii) any broker or dealer registered with the Securities and Exchange Commission,

which are secured by loans, obligations, or investments in which the Federal savings association has the statutory authority to invest directly.

(M) LIQUIDITY INVESTMENTS.—Investments (other than equity investments), identified by the Comptroller, for liquidity purposes, including cash, funds on deposit at a Federal reserve bank or a Federal home loan bank, or bankers' acceptances.

(N) INVESTMENT IN THE NATIONAL HOUSING PARTNERSHIP CORPORATION, PARTNERSHIPS, AND JOINT VENTURES.—Investments in shares of stock issued by a corporation authorized to be created pursuant to title IX of the Housing and Urban Development Act of 1968, and investments in any partnership, limited partnership, or joint venture formed pursuant to section 907(a) or 907(c) of such Act.

(O) CERTAIN HUD INSURED OR GUARANTEED INVESTMENTS.—Loans that are secured by mortgages—

- (i) insured under title X of the National Housing Act, or
- (ii) guaranteed under title IV of the Housing and Urban Development Act of 1968, under part B of the National Urban Policy and New Community Development Act of 1970, or under section 802 of the Housing and Community Development Act of 1974.

(P) STATE HOUSING CORPORATION INVESTMENTS.—Obligations of and loans to any State housing corporation, if—

- (i) such obligations or loans are secured directly, or indirectly through an agent or fiduciary, by a first lien on improved real estate which is insured under the provisions of the National Housing Act, and
- (ii) in the event of default, the holder of the obligations or loans has the right directly, or indirectly through an agent or fiduciary, to cause to be subject to the satisfaction of such obligations or loans the real

estate described in the first lien or the insurance proceeds under the National Housing Act.

(Q) INVESTMENT COMPANIES.—A Federal savings association may invest in, redeem, or hold shares or certificates issued by any open-end management investment company which—

(i) is registered with the Securities and Exchange Commission under the Investment Company Act of 1940, and

(ii) the portfolio of which is restricted by such management company's investment policy (changeable only if authorized by shareholder vote) solely to investments that a Federal savings association by law or regulation may, without limitation as to percentage of assets, invest in, sell, redeem, hold, or otherwise deal in.

(R) MORTGAGE-BACKED SECURITIES.—Investments in securities that—

(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933; or

(ii) are mortgage related securities (as defined in section 3(a)(41) of the Securities Exchange Act of 1934),

subject to such regulations as the Comptroller may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales price, or both.

(S) SMALL BUSINESS RELATED SECURITIES.—Investments in small business related securities (as defined in section 3(a)(53) of the Securities Exchange Act of 1934), subject to such regulations as the Comptroller may prescribe, including regulations concerning the minimum size of the issue (at the time of the initial distribution), the minimum aggregate sales price, or both.

(T) CREDIT CARD LOANS.—Loans made through credit cards or credit card accounts.

(U) EDUCATIONAL LOANS.—Loans made for the payment of educational expenses.

(2) LOANS OR INVESTMENTS LIMITED TO A PERCENTAGE OF ASSETS OR CAPITAL.—The following loans or investments are permitted, but only to the extent specified:

(A) COMMERCIAL AND OTHER LOANS.—Secured or unsecured loans for commercial, corporate, business, or agricultural purposes. The aggregate amount of loans made under this subparagraph may not exceed 20 percent of the total assets of the Federal savings association, and amounts in excess of 10 percent of such total assets may be used under this subparagraph only for small business loans, as that term is defined by the Comptroller.

(B) NONRESIDENTIAL REAL PROPERTY LOANS.—

(i) IN GENERAL.—Loans on the security of liens upon nonresidential real property. Except as provided in clause (ii), the aggregate amount of such loans shall not exceed 400 percent of the Federal savings association's capital, as determined under subsection (t).

(ii) EXCEPTION.—The Comptroller may permit a savings association to exceed the limitation set forth in clause (i) if the Comptroller determines that the increased authority—

(I) poses no significant risk to the safe and sound operation of the association, and

(II) is consistent with prudent operating practices.

(iii) MONITORING.—If the Comptroller permits any increased authority pursuant to clause (ii), the Comptroller shall closely monitor the Federal savings association's condition and lending activities to ensure that the savings association carries out all authority under this paragraph in a safe and sound manner and complies with this subparagraph and all relevant laws and regulations.

(C) INVESTMENTS IN PERSONAL PROPERTY.—Investments in tangible personal property, including vehicles, manufactured homes, machinery, equipment, or furniture, for rental or sale. Investments under this subparagraph may not exceed 10 percent of the assets of the Federal savings association.

(D) CONSUMER LOANS AND CERTAIN SECURITIES.—A Federal savings association may make loans for personal, family, or household purposes, including loans reasonably incident to providing such credit, and may invest in, sell, or hold commercial paper and corporate debt securities, as defined and approved by the Comptroller. Loans and other investments under this subparagraph may not exceed 35 percent of the assets of the Federal savings association, except that amounts in excess of 30 percent of the assets may be invested only in loans which are made by the association directly to the original obligor and with respect to which the association does not pay any finder, referral, or other fee, directly or indirectly, to any third party.

(3) LOANS OR INVESTMENTS LIMITED TO 5 PERCENT OF ASSETS.—The following loans or investments are permitted, but not to exceed 5 percent of assets of a Federal savings association for each subparagraph:

(A) COMMUNITY DEVELOPMENT INVESTMENTS.—Investments in real property and obligations secured by liens on real property located within a geographic area or neighborhood receiving concentrated development assistance by a local government under title I of the Housing and Community Development Act of 1974. No investment under this subparagraph in such real property may exceed an aggregate of 2 percent of the assets of the Federal savings association.

(B) NONCONFORMING LOANS.—Loans upon the security of or respecting real property or interests therein used for primarily residential or farm purposes that do not comply with the limitations of this subsection.

(C) CONSTRUCTION LOANS WITHOUT SECURITY.—Loans—

(i) the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate; and

(ii) with respect to which the association—

(I) relies substantially on the borrower's general credit standing and projected future income for repayment, without other security; or

(II) relies on other assurances for repayment, including a guarantee or similar obligation of a third party.

The aggregate amount of such investments shall not exceed the greater of the Federal savings association's capital or 5 percent of its assets.

(4) OTHER LOANS AND INVESTMENTS.—The following additional loans and other investments to the extent authorized below:

(A) BUSINESS DEVELOPMENT CREDIT CORPORATIONS.—A Federal savings association that is in compliance with the capital standards prescribed under subsection (t) may invest in, lend to, or to commit itself to lend to, any business development credit corporation incorporated in the State in which the home office of the association is located in the same manner and to the same extent as savings associations chartered by such State are authorized. The aggregate amount of such investments, loans, and commitments of any such Federal savings association shall not exceed one-half of 1 percent of the association's total outstanding loans or \$250,000, whichever is less.

(B) SERVICE CORPORATIONS.—Investments in the capital stock, obligations, or other securities of any corporation organized under the laws of the State in which the Federal savings association's home office is located, if such corporation's entire capital stock is available for purchase only by savings associations of such State and by Federal associations having their home offices in such State. No Federal savings association may make any investment under this subparagraph if the association's aggregate outstanding investment under this subparagraph would exceed 3 percent of the association's assets. Not less than one-half of the investment permitted under this subparagraph which exceeds 1 percent of the association's assets shall be used primarily for community, inner-city, and community development purposes.

(C) FOREIGN ASSISTANCE INVESTMENTS.—Investments in housing project loans having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961 or loans having the benefit of any guarantee under section 224 of such Act, or any commitment or agreement with respect to such loans made pursuant to either of such sections and in the share capital and capital reserve of the Inter-American Savings and Loan Bank. This authority extends to the acquisition, holding, and disposition of loans guaranteed under section 221 or 222 of such Act. Investments under this subparagraph shall not exceed 1 percent of the Federal savings association's assets.

(D) SMALL BUSINESS INVESTMENT COMPANIES.—A Federal savings association may invest in stock, obligations, or other securities of any small business investment company formed pursuant to section 301(d) of the Small Business Investment Act of 1958 for the purpose of aiding members of a Federal home loan bank. A Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 1 percent of the assets of such savings association.

(E) BANKERS' BANKS.—A Federal savings association may purchase for its own account shares of stock of a bankers' bank, described in Paragraph Seventh of section 5136 of the Revised Statutes or in section 5169(b) of the Revised Statutes, on the same terms and conditions as a national bank may purchase such shares.

(F) NEW MARKETS VENTURE CAPITAL COMPANIES.—A Federal savings association may invest in stock, obligations, or other securities of any New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, except that a Federal savings association may not make any investment under this subparagraph if its aggregate outstanding investment under this subparagraph would exceed 5 percent of the capital and surplus of such savings association.

(5) TRANSITION RULE FOR SAVINGS ASSOCIATIONS ACQUIRING BANKS.—

(A) IN GENERAL.—If, under section 5(d)(3) of the Federal Deposit Insurance Act, a savings association acquires all or substantially all of the assets of a bank, the appropriate Federal banking agency may permit the savings association to retain any such asset during the 2-year period beginning on the date of the acquisition.

(B) EXTENSION.—The appropriate Federal banking agency may extend the 2-year period described in subparagraph (A) for not more than 1 year at a time and not more than 2 years in the aggregate, if the appropriate Federal banking agency determines that the extension is consistent with the purposes of this Act.

(6) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) RESIDENTIAL PROPERTY.—The terms “residential real property” or “residential real estate” mean leaseholds, homes (including condominiums and cooperatives, except that in connection with loans on individual cooperative units, such loans shall be adequately secured as defined by the Comptroller) and, combinations of homes or dwelling units and business property, involving only minor or incidental business use, or property to be improved by construction of such structures.

(B) LOANS.—The term “loans” includes obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment.

(d) REGULATORY AUTHORITY.—

(1) IN GENERAL.—

(A) ENFORCEMENT.—The appropriate Federal banking agency shall have power to enforce this section, section 8 of the Federal Deposit Insurance Act, and regulations prescribed hereunder. In enforcing any provision of this section, regulations prescribed under this section, or any other law or regulation, or in any other action, suit, or proceeding to which the appropriate Federal banking agency is a party or in which the appropriate Federal banking agency is interested, and in the administration of conservatorships and receiverships, the appropriate Federal banking agency may act in the name of the appropriate Federal banking agency and through the attorneys of the appropriate Federal banking agency. Except as otherwise provided, the Comptroller shall be subject to suit (other than suits on claims for money damages) by any Federal savings association or director or officer thereof with respect to any matter under this section or any other applicable law, or regulation thereunder, in the United States district court for the judicial district in which the savings association's home office is located, or in the United States District Court for the District of Columbia, and the Comptroller may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

(B) ANCILLARY PROVISIONS.—(i) In making examinations of savings associations, examiners appointed by the appropriate Federal banking agency shall have power to make such examinations of the affairs of all affiliates of such savings associations as shall be necessary to disclose fully the relations between such savings associations and their affiliates and the effect of such relations upon such savings associations. For purposes of this subsection, the term “affiliate” has the same meaning as in section 2(b) of the Banking Act of 1933, except that the term “member bank” in section 2(b) shall be deemed to refer to a savings association.

(ii) In the course of any examination of any savings association, upon request by the appropriate Federal banking agency, prompt and complete access shall be given to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

(iii) Upon request made in the course of supervision or oversight of any savings association, for the purpose of acting on any application or determining the condition of any savings association, including whether operations are being conducted safely, soundly, or in compliance with charters, laws, regulations, directives, written agreements, or conditions imposed in writing in connection with the granting of an application or other request, the appropriate Federal banking agency shall be given prompt and complete access to all savings association officers, directors, employees, and agents, and to all relevant books, records, or documents of any type.

(iv) If prompt and complete access upon request is not given as required in this subsection, the appropriate Federal banking agency may apply to the United States district court for the judicial district (or the United States court in any territory) in which the principal office of the institution is located, or in which the person denying such access resides or carries on business, for an order requiring that such information be promptly provided.

(v) In connection with examinations of savings associations and affiliates thereof, the appropriate Federal banking agency may—

(I) administer oaths and affirmations and examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such savings association or affiliate, and

(II) issue subpoenas and, for the enforcement thereof, apply to the United States district court for the judicial district (or the United States court in any territory) in which the principal office of the savings association or affiliate is located, or in which the witness resides or carries on business.

Such courts shall have jurisdiction and power to order and require compliance with any such subpoena.

(vi) In any proceeding under this section, the appropriate Federal banking agency may administer oaths and affirmations, take depositions, and issue subpoenas. The Comptroller may prescribe regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted.

(vii) Any party to a proceeding under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district (or the United States court in any territory) in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena issued pursuant to this subsection or section 10(c) of the Federal Deposit Insurance Act, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the appropriate Federal banking agency in connection with this section shall be considered as non-administrative expenses. Any court having jurisdiction of any proceeding instituted under this section by a savings association, or a director or officer thereof, may allow to any such party reasonable expenses and attorneys' fees. Such expenses and fees shall be paid by the savings association.

(2) CONSERVATORSHIPS AND RECEIVERSHIPS.—

(A) GROUNDS FOR APPOINTING CONSERVATOR OR RECEIVER FOR INSURED SAVINGS ASSOCIATION.—The appro-

appropriate Federal banking agency may appoint a conservator or receiver for an insured savings association if the appropriate Federal banking agency determines, in the discretion of the appropriate Federal banking agency, that 1 or more of the grounds specified in section 11(c)(5) of the Federal Deposit Insurance Act exists.

(B) POWER OF APPOINTMENT; JUDICIAL REVIEW.—The appropriate Federal banking agency shall have exclusive power and jurisdiction to appoint a conservator or receiver for a Federal savings association. If, in the opinion of the appropriate Federal banking agency, a ground for the appointment of a conservator or receiver for a savings association exists, the appropriate Federal banking agency is authorized to appoint ex parte and without notice a conservator or receiver for the savings association. In the event of such appointment, the association may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is located, or in the United States District Court for the District of Columbia, for an order requiring the appropriate Federal banking agency to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the appropriate Federal banking agency to remove such conservator or receiver. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

(C) REPLACEMENT.—The appropriate Federal banking agency may, without any prior notice, hearing, or other action, replace a conservator with another conservator or with a receiver, but such replacement shall not affect any right which the association may have to obtain judicial review of the original appointment, except that any removal under this subparagraph shall be removal of the conservator or receiver in office at the time of such removal.

(D) COURT ACTION.—Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver or, except at the request of the appropriate Federal banking agency, to restrain or affect the exercise of powers or functions of a conservator or receiver.

(E) POWERS.—

(i) IN GENERAL.—A conservator shall have all the powers of the members, the stockholders, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the appropriate Federal banking agency.

(ii) FDIC AS CONSERVATOR OR RECEIVER.—Except as provided in section 21A of the Federal Home Loan Bank Act, the appropriate Federal banking agency, at

the Director's discretion, may appoint the Federal Deposit Insurance Corporation as conservator for a savings association. The appropriate Federal banking agency shall appoint only the Federal Deposit Insurance Corporation as receiver for a savings association for the purpose of liquidation or winding up the affairs of such savings association. The conservator or receiver so appointed shall, as such, have power to buy at its own sale. The Federal Deposit Insurance Corporation, as such conservator or receiver, shall have all the powers of a conservator or receiver, as appropriate, granted under the Federal Deposit Insurance Act, and (when not inconsistent therewith) any other rights, powers, and privileges possessed by conservators or receivers, as appropriate, of savings associations under this Act and any other provisions of law.

(F) DISCLOSURE REQUIREMENT FOR THOSE ACTING ON BEHALF OF CONSERVATOR.—A conservator shall require that any independent contractor, consultant, or counsel employed by the conservator in connection with the conservatorship of a savings association pursuant to this section shall fully disclose to all parties with which such contractor, consultant, or counsel is negotiating, any limitation on the authority of such contractor, consultant, or counsel to make legally binding representations on behalf of the conservator.

(3) REGULATIONS.—

(A) IN GENERAL.—The Comptroller may prescribe regulations for the reorganization, consolidation, liquidation, and dissolution of savings associations, for the merger of insured savings associations with insured savings associations, for savings associations in conservatorship and receivership, and for the conduct of conservatorships and receiverships. The Comptroller may, by regulation or otherwise, provide for the exercise of functions by members, stockholders, directors, or officers of a savings association during conservatorship and receivership.

(B) FDIC AS CONSERVATOR OR RECEIVER.—In any case where the Federal Deposit Insurance Corporation is the conservator or receiver, any regulations prescribed by the Comptroller shall be consistent with any regulations prescribed by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act.

(4) REFUSAL TO COMPLY WITH DEMAND.—Whenever a conservator or receiver appointed by the appropriate Federal banking agency demands possession of the property, business, and assets of any savings association, or of any part thereof, the refusal by any director, officer, employee, or agent of such association to comply with the demand shall be punishable by a fine of not more than \$5,000 or imprisonment for not more than one year, or both.

(5) DEFINITIONS.—As used in this subsection, the term "savings association" includes any savings association or former savings association that retains deposits insured by the Cor-

poration, notwithstanding termination of its status as an institution insured by the Corporation.

(6) COMPLIANCE WITH MONETARY TRANSACTION RECORD-KEEPING AND REPORT REQUIREMENTS.—

(A) COMPLIANCE PROCEDURES REQUIRED.—The Comptroller shall prescribe regulations requiring savings associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

(B) EXAMINATIONS OF SAVINGS ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

(i) IN GENERAL.—Each examination of a savings association by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under subparagraph (A).

(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the appropriate Federal banking agency determines that a savings association—

(i) has failed to establish and maintain the procedures described in subparagraph (A); or

(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the appropriate Federal banking agency,

the appropriate Federal banking agency shall issue an order under section 8 of the Federal Deposit Insurance Act requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.

(7) REGULATION AND EXAMINATION OF SAVINGS ASSOCIATION SERVICE COMPANIES, SUBSIDIARIES, AND SERVICE PROVIDERS.—

(A) GENERAL EXAMINATION AND REGULATORY AUTHORITY.—A service company or subsidiary that is owned in whole or in part by a savings association shall be subject to examination and regulation by the appropriate Federal banking agency to the same extent as that savings association.

(B) EXAMINATION BY OTHER BANKING AGENCIES.—The appropriate Federal banking agency may authorize any other Federal banking agency that supervises any other owner of part of the service company or subsidiary to perform an examination described in subparagraph (A).

(C) APPLICABILITY OF SECTION 8 OF THE FEDERAL DEPOSIT INSURANCE ACT.—A service company or subsidiary that is owned in whole or in part by a saving association shall be subject to the provisions of section 8 of the Federal Deposit Insurance Act as if the service company or subsidiary were an insured depository institution. In any such case, the Federal Deposit Insurance Corporation or the Comptroller, as appropriate, shall be deemed to be the appropriate Fed-

eral banking agency, pursuant to section 3(q) of the Federal Deposit Insurance Act.

(D) SERVICE PERFORMED BY CONTRACT OR OTHERWISE.—Notwithstanding subparagraph (A), if a savings association, a subsidiary thereof, or any savings and loan affiliate or entity, as identified by section 8(b)(9) of the Federal Deposit Insurance Act, that is regularly examined or subject to examination by the appropriate Federal banking agency, causes to be performed for itself, by contract or otherwise, any service authorized under this Act or, in the case of a State savings association, any applicable State law, whether on or off its premises—

(i) such performance shall be subject to regulation and examination by the appropriate Federal banking agency to the same extent as if such services were being performed by the savings association on its own premises; and

(ii) the savings association shall notify the appropriate Federal banking agency of the existence of the service relationship not later than 30 days after the earlier of—

(I) the date on which the contract is entered into; or

(II) the date on which the performance of the service is initiated.

(E) ADMINISTRATION BY THE COMPTROLLER AND THE CORPORATION.—The Comptroller may issue such regulations, and the appropriate Federal banking agency may issue such orders, including those issued pursuant to section 8 of the Federal Deposit Insurance Act, as may be necessary to administer and carry out this paragraph and to prevent evasion of this paragraph.

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

(A) the term “service company” means—

(i) any corporation—

(I) that is organized to perform services authorized by this Act or, in the case of a corporation owned in part by a State savings association, authorized by applicable State law; and

(II) all of the capital stock of which is owned by 1 or more insured savings associations; and

(ii) any limited liability company—

(I) that is organized to perform services authorized by this Act or, in the case of a company, 1 of the members of which is a State savings association, authorized by applicable State law; and

(II) all of the members of which are 1 or more insured savings associations;

(B) the term “limited liability company” means any company, partnership, trust, or similar business entity organized under the law of a State (as defined in section 3 of the Federal Deposit Insurance Act) that provides that a member or manager of such company is not personally liable for a debt, obligation, or liability of the company solely

by reason of being, or acting as, a member or manager of such company; and

(C) the terms “State savings association” and “subsidiary” have the same meanings as in section 3 of the Federal Deposit Insurance Act.

(e) CHARACTER AND RESPONSIBILITY.—A charter may be granted only—

- (1) to persons of good character and responsibility,
- (2) if in the judgment of the Comptroller a necessity exists for such an institution in the community to be served,
- (3) if there is a reasonable probability of its usefulness and success, and
- (4) if the association can be established without undue injury to properly conducted existing local thrift and home financing institutions.

(f) FEDERAL HOME LOAN BANK MEMBERSHIP.—After the end of the 6-month period beginning on the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, a Federal savings association may become a member of the Federal Home Loan Bank System, and shall qualify for such membership in the manner provided by the Federal Home Loan Bank Act.

(h) DISCRIMINATORY STATE AND LOCAL TAXATION PROHIBITED.—No State, county, municipal, or local taxing authority may impose any tax on Federal savings associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions.

(i) CONVERSIONS.—

(1) IN GENERAL.—Any savings association which is, or is eligible to become, a member of a Federal home loan bank may convert into a Federal savings association (and in so doing may change directly from the mutual form to the stock form, or from the stock form to the mutual form). Such conversion shall be subject to such regulations as the Comptroller shall prescribe. Thereafter such Federal savings association shall be entitled to all the benefits of this section and shall be subject to examination and regulation to the same extent as other associations incorporated pursuant to this Act.

(2) AUTHORITY OF COMPTROLLER.—(A) No savings association may convert from the mutual to the stock form, or from the stock form to the mutual form, except in accordance with the regulations of the Comptroller.

(B) Any aggrieved person may obtain review of a final action of the Comptroller which approves or disapproves a plan of conversion pursuant to this subsection only by complying with the provisions of section 10(j) of this Act within the time limit and in the manner therein prescribed, which provisions shall apply in all respects as if such final action were an order the review of which is therein provided for, except that such time limit shall commence upon publication of notice of such final action in the Federal Register or upon the giving of such general notice of such final action as is required by or approved under regulations of the Comptroller, whichever is later.

(C) Any Federal savings association may change its designation from a Federal savings association to a Federal savings bank, or the reverse.

(3) CONVERSION TO STATE ASSOCIATION.—(A) Any Federal savings association may convert itself into a savings association or savings bank organized pursuant to the laws of the State in which the principal office of such Federal savings association is located if—

(i) the State permits the conversion of any savings association or savings bank of such State into a Federal savings association;

(ii) such conversion of a Federal savings association into such a State savings association is determined—

(I) upon the vote in favor of such conversion cast in person or by proxy at a special meeting of members or stockholders called to consider such action, specified by the law of the State in which the home office of the Federal savings association is located, as required by such law for a State-chartered institution to convert itself into a Federal savings association, but in no event upon a vote of less than 51 percent of all the votes cast at such meeting, and

(II) upon compliance with other requirements reciprocally equivalent to the requirements of such State law for the conversion of a State-chartered institution into a Federal savings association;

(iii) notice of the meeting to vote on conversion shall be given as herein provided and no other notice thereof shall be necessary; the notice shall expressly state that such meeting is called to vote thereon, as well as the time and place thereof; and such notice shall be mailed, postage prepaid, at least 30 and not more than 60 days prior to the date of the meeting, to the Comptroller and to each member or stockholder of record of the Federal savings association at the member's or stockholder's last address as shown on the books of the Federal savings association;

(iv) when a mutual savings association is dissolved after conversion, the members or shareholders of the savings association will share on a mutual basis in the assets of the association in exact proportion to their relative share or account credits;

(v) when a stock savings association is dissolved after conversion, the stockholders will share on an equitable basis in the assets of the association; and

(vi) such conversion shall be effective upon the date that all the provisions of this Act shall have been fully complied with and upon the issuance of a new charter by the State wherein the savings association is located.

(B)(i) The act of conversion constitutes consent by the institution to be bound by all the requirements that the Comptroller may impose under this Act.

(ii) The savings association shall upon conversion and thereafter be authorized to issue securities in any form currently approved at the time of issue by the Comptroller for issuance by similar savings associations in such State.

(iii) If the insurance of accounts is terminated in connection with such conversion, the notice and other action shall be taken as provided by law and regulations for the termination of insurance of accounts.

(4) SAVINGS BANK ACTIVITIES.—(A) To the extent authorized by the Comptroller, but subject to section 18(m)(3) of the Federal Deposit Insurance Act—

(i) any Federal savings bank chartered as such prior to October 15, 1982, may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was permitted to do so as a Federal savings bank prior to October 15, 1982; and

(ii) any Federal savings bank in existence on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and formerly organized as a mutual savings bank under State law may continue to make any investment or engage in any activity not otherwise authorized under this section, to the degree it was authorized to do so as a mutual savings bank under State law.

(B) The authority conferred by this paragraph may be utilized by any Federal savings association that acquires, by merger or consolidation, a Federal savings bank enjoying grandfather rights hereunder.

(5) CONVERSION TO NATIONAL OR STATE BANK.—

(A) IN GENERAL.—Any Federal savings association chartered and in operation before the date of enactment of the Gramm-Leach-Bliley Act, with branches in operation before such date of enactment in 1 or more States, may convert, at its option, with the approval of the Comptroller for each national bank, and with the approval of the appropriate State bank supervisor and the appropriate Federal banking agency for each State bank, into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States subject to subparagraph (B).

(B) CONDITIONS OF CONVERSION.—The authority in subparagraph (A) shall apply only if each resulting national or State bank—

(i) will meet all financial, management, and capital requirements applicable to the resulting national or State bank; and

(ii) if more than 1 national or State bank results from a conversion under this subparagraph, has received approval from the Federal Deposit Insurance Corporation under section 5(a) of the Federal Deposit Insurance Act.

(C) NO MERGER APPLICATION UNDER FDIA REQUIRED.—No application under section 18(c) of the Federal Deposit Insurance Act shall be required for a conversion under this paragraph.

(D) DEFINITIONS.—For purposes of this paragraph, the terms “State bank” and “State bank supervisor” have the

same meanings as in section 3 of the Federal Deposit Insurance Act.

(6) LIMITATION ON CERTAIN CONVERSIONS BY FEDERAL SAVINGS ASSOCIATIONS.—A Federal savings association may not convert to a State bank or State savings association during any period in which the Federal savings association is subject to a cease and desist order (or other formal enforcement order) issued by, or a memorandum of understanding entered into with, the Office of Thrift Supervision or the Comptroller of the Currency with respect to a significant supervisory matter.

(k) DEPOSITORY OF PUBLIC MONEY.—When designated for that purpose by the Secretary of the Treasury, a savings association the deposits of which are insured by the Corporation shall be a depository of public money and may be employed as fiscal agent of the Government under such regulations as may be prescribed by the Secretary and shall perform all such reasonable duties as fiscal agent of the Government as may be required of it. A savings association the deposits of which are insured by the Corporation may act as agent for any other instrumentality of the United States when designated for that purpose by such instrumentality, including services in connection with the collection of taxes and other obligations owed the United States, and the Secretary of the Treasury may deposit public money in any such savings association, and shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(l) RETIREMENT ACCOUNTS.—A Federal savings association is authorized to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) of the Internal Revenue Code of 1986 and to act as trustee or custodian of an individual retirement account within the meaning of section 408 of such Code if the funds of such trust or account are invested only in savings accounts or deposits in such Federal savings association or in obligations or securities issued by such Federal savings association. All funds held in such fiduciary capacity by any Federal savings association may be commingled for appropriate purposes of investment, but individual records shall be kept by the fiduciary for each participant and shall show in proper detail all transactions engaged in under this paragraph.

(m) BRANCHING.—

(1) IN GENERAL.—

(A) No savings association incorporated under the laws of the District of Columbia or organized in the District or doing business in the District shall establish any branch or move its principal office or any branch without the Director's prior written approval.

(B) No savings association shall establish any branch in the District of Columbia or move its principal office or any branch in the District without the Director's prior written approval.

(2) DEFINITION.—For purposes of this subsection the term "branch" means any office, place of business, or facility, other than the principal office as defined by the Comptroller, of a savings association at which accounts are opened or payments

are received or withdrawals are made, or any other office, place of business, or facility of a savings association defined by the Comptroller as a branch within the meaning of such sentence.

(n) TRUSTS.—

(1) PERMITS.—The Comptroller may grant by special permit to a Federal savings association applying therefor the right to act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which compete with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located. Subject to the regulations of the Comptroller, service corporations may invest in State or federally chartered corporations which are located in the State in which the home office of the Federal savings association is located and which are engaged in trust activities.

(2) SEGREGATION OF ASSETS.—A Federal savings association exercising any or all of the powers enumerated in this section shall segregate all assets held in any fiduciary capacity from the general assets of the association and shall keep a separate set of books and records showing in proper detail all transactions engaged in under this subsection. The State banking authority involved may have access to reports of examination made by the Comptroller insofar as such reports relate to the trust department of such association but nothing in this subsection shall be construed as authorizing such State banking authority to examine the books, records, and assets of such associations.

(3) PROHIBITIONS.—No Federal savings association shall receive in its trust department deposits of current funds subject to check or the deposit of checks, drafts, bills of exchange, or other items for collection or exchange purposes. Funds deposited or held in trust by the association awaiting investment shall be carried in a separate account and shall not be used by the association in the conduct of its business unless it shall first set aside in the trust department United States bonds or other securities approved by the Comptroller.

(4) SEPARATE LIEN.—In the event of the failure of a Federal savings association, the owners of the funds held in trust for investment shall have a lien on the bonds or other securities so set apart in addition to their claim against the estate of the association.

(5) DEPOSITS.—Whenever the laws of a State require corporations acting in a fiduciary capacity to deposit securities with the State authorities for the protection of private or court trusts, Federal savings associations so acting shall be required to make similar deposits. Securities so deposited shall be held for the protection of private or court trusts, as provided by the State law. Federal savings associations in such cases shall not be required to execute the bond usually required of individuals if State corporations under similar circumstances are exempt from this requirement. Federal savings associations shall have power to execute such bond when so required by the laws of the State involved.

(6) OATHS AND AFFIDAVITS.—In any case in which the laws of a State require that a corporation acting as trustee, executor, administrator, or in any capacity specified in this section, shall take an oath or make an affidavit, the president, vice president, cashier, or trust officer of such association may take the necessary oath or execute the necessary affidavit.

(7) CERTAIN LOANS PROHIBITED.—It shall be unlawful for any Federal savings association to lend any officer, director, or employee any funds held in trust under the powers conferred by this section. Any officer, director, or employee making such loan, or to whom such loan is made, may be fined not more than \$50,000 or twice the amount of that person's gain from the loan, whichever is greater, or may be imprisoned not more than 5 years, or may be both fined and imprisoned, in the discretion of the court.

(8) FACTORS TO BE CONSIDERED.—In reviewing applications for permission to exercise the powers enumerated in this section, the Comptroller may consider—

(A) the amount of capital of the applying Federal savings association,

(B) whether or not such capital is sufficient under the circumstances of the case,

(C) the needs of the community to be served, and

(D) any other facts and circumstances that seem to it proper.

The Comptroller may grant or refuse the application accordingly, except that no permit shall be issued to any association having capital less than the capital required by State law of State banks, trust companies, and corporations exercising such powers.

(9) SURRENDER OF CHARTER.—(A) Any Federal savings association may surrender its right to exercise the powers granted under this subsection, and have returned to it any securities which it may have deposited with the State authorities, by filing with the Comptroller a certified copy of a resolution of its board of directors indicating its intention to surrender its right.

(B) Upon receipt of such resolution, the Comptroller, if satisfied that such Federal savings association has been relieved in accordance with State law of all duties as trustee, executor, administrator, guardian or other fiduciary, may in the Director's discretion, issue to such association a certificate that such association is no longer authorized to exercise the powers granted by this subsection.

(C) Upon the issuance of such a certificate by the Comptroller, such Federal savings association (i) shall no longer be subject to the provisions of this section or the regulations of the Comptroller made pursuant thereto, (ii) shall be entitled to have returned to it any securities which it may have deposited with State authorities, and (iii) shall not exercise thereafter any of the powers granted by this section without first applying for and obtaining a new permit to exercise such powers pursuant to the provisions of this section.

(D) The Comptroller may prescribe regulations necessary to enforce compliance with the provisions of this subsection.

(10) REVOCATION.—(A) In addition to the authority conferred by other law, if, in the opinion of the Comptroller, a Federal savings association is unlawfully or unsoundly exercising, or has unlawfully or unsoundly exercised, or has failed for a period of 5 consecutive years to exercise, the powers granted by this subsection or otherwise fails or has failed to comply with the requirements of this subsection, the Comptroller may issue and serve upon the association a notice of intent to revoke the authority of the association to exercise the powers granted by this subsection. The notice shall contain a statement of the facts constituting the alleged unlawful or unsound exercise of powers, or failure to exercise powers, or failure to comply, and shall fix a time and place at which a hearing will be held to determine whether an order revoking authority to exercise such powers should issue against the association.

(B) Such hearing shall be conducted in accordance with the provisions of subsection (d)(1)(B), and subject to judicial review as therein provided, and shall be fixed for a date not earlier than 30 days and not later than 60 days after service of such notice unless the Comptroller sets an earlier or later date at the request of any Federal savings association so served.

(C) Unless the Federal savings association so served shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the revocation order. In the event of such consent, or if upon the record made at any such hearing, the Comptroller shall find that any allegation specified in the notice of charges has been established, the Comptroller may issue and serve upon the association an order prohibiting it from accepting any new or additional trust accounts and revoking authority to exercise any and all powers granted by this subsection, except that such order shall permit the association to continue to service all previously accepted trust accounts pending their expeditious divestiture or termination.

(D) A revocation order shall become effective not earlier than the expiration of 30 days after service of such order upon the association so served (except in the case of a revocation order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

(o) CONVERSION OF STATE SAVINGS BANKS.—(1) Subject to the provisions of this subsection and under regulations of the Comptroller, the Comptroller may authorize the conversion of a State-chartered savings bank into a Federal savings bank, if such conversion is not in contravention of State law, and provide for the organization, incorporation, operation, examination, and regulation of such institution.

(2)(A) Any Federal savings bank chartered pursuant to this subsection shall continue to be insured by the Deposit Insurance Fund.

(B) The Comptroller shall notify the Corporation of any application under this Act for conversion to a Federal charter by an institution insured by the Corporation, shall consult with the Corporation before disposing of the application, and shall notify the Cor-

poration of the determination of the Comptroller with respect to such application.

(C) Notwithstanding any other provision of law, if the Corporation determines that conversion into a Federal stock savings bank or the chartering of a Federal stock savings bank is necessary to prevent the default of a savings bank it insures or to reopen a savings bank in default that it insured, or if the Corporation determines, with the concurrence of the Comptroller, that severe financial conditions exist that threaten the stability of a savings bank insured by the Corporation and that such a conversion or charter is likely to improve the financial condition of such savings bank, the Corporation shall provide the Comptroller with a certificate of such determination, the reasons therefor in conformance with the requirements of this Act, and the bank shall be converted or chartered by the Comptroller, pursuant to the regulations thereof, from the time the Corporation issues the certificate.

(D) A bank may be converted under subparagraph (C) only if the board of trustees of the bank—

(i) has specified in writing that the bank is in danger of closing or is closed, or that severe financial conditions exist that threaten the stability of the bank and a conversion is likely to improve the financial condition of the bank; and

(ii) has requested in writing that the Corporation use the authority of subparagraph (C).

(E)(i) Before making a determination under subparagraph (D), the Corporation shall consult the State bank supervisor of the State in which the bank in danger of closing is chartered. The State bank supervisor shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of subparagraph (D).

(ii) If the State supervisor objects during such period, the Corporation may use the authority of subparagraph (D) only by an affirmative vote of three-fourths of the Board of Directors. The Board of Directors shall provide the State supervisor, as soon as practicable, with a written certification of its determination.

(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations, and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this Act.

(p) CONVERSIONS.—(1) Notwithstanding any other provision of law, and consistent with the purposes of this Act, the Comptroller may authorize (or in the case of a Federal savings association, require) the conversion of any mutual savings association or Federal mutual savings bank that is insured by the Corporation into a Federal stock savings association or Federal stock savings bank, or charter a Federal stock savings association or Federal stock savings bank to acquire the assets of, or merge with such a mutual institution under the regulations of the Comptroller.

(2) Authorizations under this subsection may be made only—

(A) if the Comptroller has determined that severe financial conditions exist which threaten the stability of an association and that such authorization is likely to improve the financial condition of the association,

(B) when the Corporation has contracted to provide assistance to such association under section 13 of the Federal Deposit Insurance Act, or

(C) to assist an institution in receivership.

(3) A Federal savings bank chartered under this subsection shall have the same authority with respect to investments, operations and activities, and shall be subject to the same restrictions, including those applicable to branching and discrimination, as would apply to it if it were chartered as a Federal savings bank under any other provision of this Act, and may engage in any investment, activity, or operation that the institution it acquired was engaged in if that institution was a Federal savings bank, or would have been authorized to engage in had that institution converted to a Federal charter.

(q) TYING ARRANGEMENTS.—(1) A savings association may not in any manner extend credit, lease, or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition or requirement—

(A) that the customer shall obtain additional credit, property, or service from such savings association, or from any service corporation or affiliate of such association, other than a loan, discount, deposit, or trust service;

(B) that the customer provide additional credit, property, or service to such association, or to any service corporation or affiliate of such association, other than those related to and usually provided in connection with a similar loan, discount, deposit, or trust service; and

(C) that the customer shall not obtain some other credit, property, or service from a competitor of such association, or from a competitor of any service corporation or affiliate of such association, other than a condition or requirement that such association shall reasonably impose in connection with credit transactions to assure the soundness of credit.

(2)(A) Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of a violation of paragraph (1), under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity and under the rules governing such proceedings.

(B) Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue.

(3) Any person injured by a violation of paragraph (1) may bring an action in any district court of the United States in which the defendant resides or is found or has an agent, without regard to the amount in controversy, or in any other court of competent jurisdiction, and shall be entitled to recover three times the amount of the damages sustained, and the cost of suit, including a reasonable attorney's fee. Any such action shall be brought within 4 years from the date of the occurrence of the violation.

(4) Nothing contained in this subsection affects in any manner the right of the United States or any other party to bring an action under any other law of the United States or of any State, including

any right which may exist in addition to specific statutory authority, challenging the legality of any act or practice which may be proscribed by this subsection. No regulation or order issued by the Board under this subsection shall in any manner constitute a defense to such action.

(5) For purposes of this subsection, the term “loan” includes obligations and extensions or advances of credit.

(6) EXCEPTIONS.—The Board may, by regulation or order, permit such exceptions to the prohibitions of this subsection as the Board in consultation with the Comptroller and the Corporation, considers will not be contrary to the purposes of this subsection and which conform to exceptions granted by the Board pursuant to section 106(b) of the Bank Holding Company Act Amendments of 1970.

(r) OUT-OF-STATE BRANCHES.—(1) No Federal savings association may establish, retain, or operate a branch outside the State in which the Federal savings association has its home office, unless the association qualifies as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 or meets the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify, or qualifies as a qualified thrift lender, as determined under section 10(m) of this Act. No out-of-State branch so established shall be retained or operated unless the total assets of the Federal savings association attributable to all branches of the Federal savings association in that State would qualify the branches as a whole, were they otherwise eligible, for treatment as a domestic building and loan association under section 7701(a)(19) or as a qualified thrift lender, as determined under section 10(m) of this Act, as applicable.

(2) The limitations of paragraph (1) shall not apply if—

(A) the branch results from a transaction authorized under section 13(k) of the Federal Deposit Insurance Act;

(B) the branch was authorized for the Federal savings association prior to October 15, 1982;

(C) the law of the State where the branch is located, or is to be located, would permit establishment of the branch if the association was a savings association or savings bank chartered by the State in which its home office is located; or

(D) the branch was operated lawfully as a branch under State law prior to the association’s conversion to a Federal charter.

(3) The Comptroller of the Currency, for good cause shown, may allow Federal savings associations up to 2 years to comply with the requirements of this subsection.

(s) MINIMUM CAPITAL REQUIREMENTS.—

(1) IN GENERAL.—Consistent with the purposes of section 908 of the International Lending Supervision Act of 1983 and the capital requirements established pursuant to such section by the appropriate Federal banking agencies (as defined in section 903(1) of such Act), the Comptroller of the Currency shall require all savings associations to achieve and maintain adequate capital by—

(A) establishing minimum levels of capital for savings associations; and

(B) using such other methods as the Comptroller of the Currency determines to be appropriate.

(2) MINIMUM CAPITAL LEVELS MAY BE DETERMINED BY DIRECTOR CASE-BY-CASE.—The Comptroller of the Currency may, consistent with subsection (t), establish the minimum level of capital for a savings association at such amount or at such ratio of capital-to-assets as the Comptroller of the Currency determines to be necessary or appropriate for such association in light of the particular circumstances of the association.

(3) UNSAFE OR UNSOUND PRACTICE.—In the discretion of the appropriate Federal banking agency, the appropriate Federal banking agency, may treat the failure of any savings association to maintain capital at or above the minimum level required by the Comptroller under this subsection or subsection (t) as an unsafe or unsound practice.

(4) DIRECTIVE TO INCREASE CAPITAL.—

(A) PLAN MAY BE REQUIRED.—In addition to any other action authorized by law, including paragraph (3), the appropriate Federal banking agency may issue a directive requiring any savings association which fails to maintain capital at or above the minimum level required by the appropriate Federal banking agency to submit and adhere to a plan for increasing capital which is acceptable to the appropriate Federal banking agency.

(B) ENFORCEMENT OF PLAN.—Any directive issued and plan approved under subparagraph (A) shall be enforceable under section 8 of the Federal Deposit Insurance Act to the same extent and in the same manner as an outstanding order which was issued under section 8 of the Federal Deposit Insurance Act and has become final.

(5) PLAN TAKEN INTO ACCOUNT IN OTHER PROCEEDINGS.—The appropriate Federal banking agency may—

(A) consider a savings association's progress in adhering to any plan required under paragraph (4) whenever such association or any affiliate of such association (including any company which controls such association) seeks the approval of the appropriate Federal banking agency for any proposal which would have the effect of diverting earnings, diminishing capital, or otherwise impeding such association's progress in meeting the minimum level of capital required by the appropriate Federal banking agency; and

(B) disapprove any proposal referred to in subparagraph (A) if the appropriate Federal banking agency determines that the proposal would adversely affect the ability of the association to comply with such plan.

(t) CAPITAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIREMENT FOR STANDARDS TO BE PRESCRIBED.—The appropriate Federal banking agency shall, by regulation, prescribe and maintain uniformly applicable capital standards for savings associations. Those standards shall include—

- (i) a leverage limit;
- (ii) a tangible capital requirement; and

(iii) a risk-based capital requirement.

(B) COMPLIANCE.—A savings association is not in compliance with capital standards for purposes of this subsection unless it complies with all capital standards prescribed under this paragraph.

(C) STRINGENCY.—The standards prescribed under this paragraph shall be no less stringent than the capital standards applicable to national banks.

(2) CONTENT OF STANDARDS.—

(A) LEVERAGE LIMIT.—The leverage limit prescribed under paragraph (1) shall require a savings association to maintain core capital in an amount not less than 3 percent of the savings association's total assets.

(B) TANGIBLE CAPITAL REQUIREMENT.—The tangible capital requirement prescribed under paragraph (1) shall require a savings association to maintain tangible capital in an amount not less than 1.5 percent of the savings association's total assets.

(C) RISK-BASED CAPITAL REQUIREMENT.—Notwithstanding paragraph (1)(C), the risk-based capital requirement prescribed under paragraph (1) may deviate from the risk-based capital standards applicable to national banks to reflect interest-rate risk or other risks, but such deviations shall not, in the aggregate, result in materially lower levels of capital being required of savings associations under the risk-based capital requirement than would be required under the risk-based capital standards applicable to national banks.

(5) SEPARATE CAPITALIZATION REQUIRED FOR CERTAIN SUBSIDIARIES.—

(A) IN GENERAL.—In determining compliance with capital standards prescribed under paragraph (1), all of a savings association's investments in and extensions of credit to any subsidiary engaged in activities not permissible for a national bank shall be deducted from the savings association's capital.

(B) EXCEPTION FOR AGENCY ACTIVITIES.—Subparagraph (A) shall not apply with respect to a subsidiary engaged, solely as agent for its customers, in activities not permissible for a national bank unless the appropriate Federal banking agency, in the sole discretion of the appropriate Federal banking agency, determines that, in the interests of safety and soundness, this subparagraph should cease to apply to that subsidiary.

(C) OTHER EXCEPTIONS.—Subparagraph (A) shall not apply with respect to any of the following:

(i) MORTGAGE BANKING SUBSIDIARIES.—A savings association's investments in and extensions of credit to a subsidiary engaged solely in mortgage-banking activities.

(ii) SUBSIDIARY INSURED DEPOSITORY INSTITUTIONS.—A savings association's investments in and extensions of credit to a subsidiary—

(I) that is itself an insured depository institution or a company the sole investment of which is an insured depository institution, and

(II) that was acquired by the parent insured depository institution prior to May 1, 1989.

(iii) CERTAIN FEDERAL SAVINGS BANKS.—Any Federal savings association existing as a Federal savings association on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

(I) that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law; or

(II) that acquired its principal assets from an association that was chartered prior to October 15, 1982, as a savings bank or a cooperative bank under State law.

(E) CONSOLIDATION OF SUBSIDIARIES NOT SEPARATELY CAPITALIZED.—In determining compliance with capital standards prescribed under paragraph (1), the assets and liabilities of each of a savings association's subsidiaries (other than any subsidiary described in subparagraph (C)(ii)) shall be consolidated with the savings association's assets and liabilities, unless all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital pursuant to subparagraph (A).

(6) CONSEQUENCES OF FAILING TO COMPLY WITH CAPITAL STANDARDS.—

(B) ON OR AFTER JANUARY 1, 1991.—On or after January 1, 1991, the appropriate Federal banking agency—

(i) shall prohibit any asset growth by any savings association not in compliance with capital standards, except as provided in subparagraph (C); and

(ii) shall require any savings association not in compliance with capital standards to comply with a capital directive issued by the appropriate Federal banking agency (which may include such restrictions, including restrictions on the payment of dividends and on compensation, as the appropriate Federal banking agency determines to be appropriate).

(C) LIMITED GROWTH EXCEPTION.—The appropriate Federal banking agency may permit any savings association that is subject to subparagraph (B) to increase its assets in an amount not exceeding the amount of net interest credited to the savings association's deposit liabilities if—

(i) the savings association obtains the prior approval of the appropriate Federal banking agency;

(ii) any increase in assets is accompanied by an increase in tangible capital in an amount not less than 6 percent of the increase in assets (or, in the discretion of the appropriate Federal banking agency if the leverage limit then applicable is less than 6 percent, in an amount equal to the increase in assets multiplied by the percentage amount of the leverage limit);

(iii) any increase in assets is accompanied by an increase in capital not less in percentage amount than required under the risk-based capital standard then applicable;

(iv) any increase in assets is invested in low-risk assets, such as first mortgage loans secured by 1- to 4-family residences and fully secured consumer loans; and

(v) the savings association's ratio of core capital to total assets is not less than the ratio existing on January 1, 1991.

(D) ADDITIONAL RESTRICTIONS IN CASE OF EXCESSIVE RISKS OR RATES.—The appropriate Federal banking agency may restrict the asset growth of any savings association that the appropriate Federal banking agency determines is taking excessive risks or paying excessive rates for deposits.

(E) FAILURE TO COMPLY WITH PLAN, REGULATION, OR ORDER.—The appropriate Federal banking agency may treat as an unsafe and unsound practice any material failure by a savings association to comply with any plan, regulation, or order under this paragraph.

(F) EFFECT ON OTHER REGULATORY AUTHORITY.—This paragraph does not limit any authority of the appropriate Federal banking agency under this Act or any other provision of law.

(7) EXEMPTION FROM CERTAIN SANCTIONS.—

(A) APPLICATION FOR EXEMPTION.—Any savings association not in compliance with the capital standards prescribed under paragraph (1) may apply to the appropriate Federal banking agency for an exemption from any applicable sanction or penalty for noncompliance which the appropriate Federal banking agency may impose under this Act.

(B) EFFECT OF GRANT OF EXEMPTION.—If the appropriate Federal banking agency approves any savings association's application under subparagraph (A), the only sanction or penalty to be imposed by the appropriate Federal banking agency under this Act for the savings association's failure to comply with the capital standards prescribed under paragraph (1) is the growth limitation contained in paragraph (6)(B) or paragraph (6)(C), whichever is applicable.

(C) STANDARDS FOR APPROVAL OR DISAPPROVAL.—

(i) APPROVAL.—The appropriate Federal banking agency may approve an application for an exemption if the appropriate Federal banking agency determines that—

(I) such exemption would pose no significant risk to the Deposit Insurance Fund;

(II) the savings association's management is competent;

(III) the savings association is in substantial compliance with all applicable statutes, regulations, orders, and supervisory agreements and directives; and

(IV) the savings association's management has not engaged in insider dealing, speculative practices, or any other activities that have jeopardized the association's safety and soundness or contributed to impairing the association's capital.

(ii) DENIAL OR REVOCATION OF APPROVAL.—The appropriate Federal banking agency shall deny any application submitted under clause (i) and revoke any prior approval granted with respect to any such application if the appropriate Federal banking agency determines that the association's failure to meet any capital standards prescribed under paragraph (1) is accompanied by—

- (I) a pattern of consistent losses;
- (II) substantial dissipation of assets;
- (III) evidence of imprudent management or business behavior;
- (IV) a material violation of any Federal law, any law of any State to which such association is subject, or any applicable regulation; or
- (V) any other unsafe or unsound condition or activity, other than the failure to meet such capital standards.

(D) SUBMISSION OF PLAN REQUIRED.—Any application submitted under subparagraph (A) shall be accompanied by a plan which—

- (i) meets the requirements of paragraph (6)(A)(ii); and
- (ii) is acceptable to the appropriate Federal banking agency.

(E) FAILURE TO COMPLY WITH PLAN.—The appropriate Federal banking agency shall treat as an unsafe and unsound practice any material failure by any savings association which has been granted an exemption under this paragraph to comply with the provisions of any plan submitted by such association under subparagraph (D).

(F) EXEMPTION NOT AVAILABLE WITH RESPECT TO UNSAFE OR UNSOUND PRACTICES.—This paragraph does not limit any authority of the appropriate Federal banking agency under any other provision of law, including section 8 of the Federal Deposit Insurance Act, to take any appropriate action with respect to any unsafe or unsound practice or condition of any savings association, other than the failure of such savings association to comply with the capital standards prescribed under paragraph (1).

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

(A) CORE CAPITAL.—Unless the Comptroller prescribes a more stringent definition, the term “core capital” means core capital as defined by the Comptroller of the Currency for national banks, less any unidentifiable intangible assets.

(B) TANGIBLE CAPITAL.—The term “tangible capital” means core capital minus any intangible assets (as intangible assets are defined by the Comptroller for national banks).

(C) TOTAL ASSETS.—The term “total assets” means total assets (as total assets are defined by the Comptroller of the Currency for national banks) adjusted in the same manner as total assets would be adjusted in determining compliance with the leverage limit applicable to national banks if the savings association were a national bank.

(10) USE OF COMPTROLLER’S DEFINITIONS.—

(A) IN GENERAL.—The standards prescribed under paragraph (1) shall include all relevant substantive definitions established by the Comptroller of the Currency for national banks.

(B) SPECIAL RULE.—If the Comptroller of the Currency has not made effective regulations defining core capital or establishing a risk-based capital standard, the appropriate Federal banking agency shall use the definition and standard contained in the Comptroller’s most recently published final regulations.

(u) LIMITS ON LOANS TO ONE BORROWER.—

(1) IN GENERAL.—Section 5200 of the Revised Statutes shall apply to savings associations in the same manner and to the same extent as it applies to national banks.

(2) SPECIAL RULES.—

(A) Notwithstanding paragraph (1), a savings association may make loans to one borrower under one of the following clauses:

(i) For any purpose, not to exceed **【\$500,000】** *\$3,000,000*.

(ii) To develop domestic residential housing units, not to exceed the lesser of **【\$30,000,000】** *\$160,000,000* or 30 percent of the savings association’s unimpaired capital and unimpaired surplus, if—

(I) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under subsection (t);

(II) the appropriate Federal banking agency, by order, permits the savings association to avail itself of the higher limit provided by this clause;

(III) loans made under this clause to all borrowers do not, in aggregate, exceed 150 percent of the savings association’s unimpaired capital and unimpaired surplus; and

(IV) such loans comply with all applicable loan-to-value requirements.

(B) A savings association’s loans to one borrower to finance the sale of real property acquired in satisfaction of debts previously contracted in good faith shall not exceed 50 percent of the savings association’s unimpaired capital and unimpaired surplus.

(3) AUTHORITY TO IMPOSE MORE STRINGENT RESTRICTIONS.—The appropriate Federal banking agency may impose more stringent restrictions on a savings association’s loans to one borrower if the appropriate Federal banking agency determines that such restrictions are necessary to protect the safety and soundness of the savings association.

(v) REPORTS OF CONDITION.—

(1) IN GENERAL.—Each association shall make reports of conditions to the appropriate Federal banking agency which shall be in a form prescribed by the appropriate Federal banking agency and shall contain—

(A) information sufficient to allow the identification of potential interest rate and credit risk;

(B) a description of any assistance being received by the association, including the type and monetary value of such assistance;

(C) the identity of all subsidiaries and affiliates of the association;

(D) the identity, value, type, and sector of investment of all equity investments of the associations and subsidiaries; and

(E) other information that the appropriate Federal banking agency may prescribe.

(2) PUBLIC DISCLOSURE.—

(A) Reports required under paragraph (1) and all information contained therein shall be available to the public upon request, unless the appropriate Federal banking agency determines—

(i) that a particular item or classification of information should not be made public in order to protect the safety or soundness of the institution concerned or institutions concerned, or the Deposit Insurance Fund; or

(ii) that public disclosure would not otherwise be in the public interest.

(B) Any determination made by the appropriate Federal banking agency under subparagraph (A) not to permit the public disclosure of information shall be made in writing, and if the appropriate Federal banking agency restricts any item of information for savings institutions generally, the appropriate Federal banking agency shall disclose the reason in detail in the Federal Register.

(C) The determinations of the appropriate Federal banking agency under subparagraph (A) shall not be subject to judicial review.

(3) ACCESS BY CERTAIN PARTIES.—

(A) Notwithstanding paragraph (2), the persons described in subparagraph (B) shall not be denied access to any information contained in a report of condition, subject to reasonable requirements of confidentiality. Those requirements shall not prevent such information from being transmitted to the Comptroller General of the United States for analysis.

(B) The following persons are described in this subparagraph for purposes of subparagraph (A):

(i) the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and their designees; and

(ii) the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and their designees.

(4) FIRST TIER PENALTIES.—Any savings association which—

(A) maintains procedures reasonably adapted to avoid any inadvertent and unintentional error and, as a result of such an error—

(i) fails to submit or publish any report or information required by the appropriate Federal banking agency under paragraph (1) or (2), within the period of time specified by the appropriate Federal banking agency; or

(ii) submits or publishes any false or misleading report or information; or

(B) inadvertently transmits or publishes any report which is minimally late,

shall be subject to a penalty of not more than \$2,000 for each day during which such failure continues or such false or misleading information is not corrected. The savings association shall have the burden of proving by a preponderance of the evidence that an error was inadvertent and unintentional and that a report was inadvertently transmitted or published late.

(5) SECOND TIER PENALTIES.—Any savings association which—

(A) fails to submit or publish any report or information required by the appropriate Federal banking agency under paragraph (1) or (2), within the period of time specified by the appropriate Federal banking agency; or

(B) submits or publishes any false or misleading report or information,

in a manner not described in paragraph (4) shall be subject to a penalty of not more than \$20,000 for each day during which such failure continues or such false or misleading information is not corrected.

(6) THIRD TIER PENALTIES.—If any savings association knowingly or with reckless disregard for the accuracy of any information or report described in paragraph (5) submits or publishes any false or misleading report or information, the appropriate Federal banking agency may assess a penalty of not more than \$1,000,000 or 1 percent of total assets, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected.

(7) ASSESSMENT.—Any penalty imposed under paragraph (4), (5), or (6) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) of the Federal Deposit Insurance Act (for penalties imposed under such section), and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such subsection.

(8) HEARING.—Any savings association against which any penalty is assessed under this subsection shall be afforded a hearing if such savings association submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) of the Federal Deposit Insurance Act shall apply to any proceeding under this subsection.

(w) FORFEITURE OF FRANCHISE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

(1) IN GENERAL.—

(A) CONVICTION OF TITLE 18 OFFENSE.—

(I) DUTY TO NOTIFY.—If a Federal savings association has been convicted of any criminal offense under section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Comptroller a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(II) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receiving written notification from the Attorney General of such a conviction, the Comptroller shall issue to the savings association a notice of the intention of the Comptroller to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

(B) CONVICTION OF TITLE 31 OFFENSES.—If a Federal savings association is convicted of any criminal offense under section 5322 or 5324 of title 31, United States Code, after receiving written notification from the Attorney General, the Comptroller may issue to the savings association a notice of the intention of the Comptroller to terminate all rights, privileges, and franchises of the savings association and schedule a pretermination hearing.

(C) JUDICIAL REVIEW.—Subsection (d)(1)(B)(vii) shall apply to any proceeding under this subsection.

(2) FACTORS TO BE CONSIDERED.—In determining whether a franchise shall be forfeited under paragraph (1), the Comptroller shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the savings association knew of, were involved in, the commission of the money laundering offense of which the association was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the savings association which were designed to prevent the occurrence of any such offense.

(C) The extent to which the savings association has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the association was found guilty.

(D) The extent to which the savings association has implemented additional internal controls (since the commission of the offense of which the savings association was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the forfeiture of the franchise.

(3) SUCCESSOR LIABILITY.—This subsection shall not apply to a successor to the interests of, or a person who acquires, a savings association that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith and not for

purposes of evading this subsection or regulations prescribed under this subsection.

(4) DEFINITION.—The term “senior executive officer” has the same meaning as in regulations prescribed under section 32(f) of the Federal Deposit Insurance Act.

(x) HOME STATE CITIZENSHIP.—In determining whether a Federal court has diversity jurisdiction over a case in which a Federal savings association is a party, the Federal savings association shall be considered to be a citizen only of the State in which such savings association has its home office.

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INTERNATIONAL LENDING SUPERVISION ACT OF 1983

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TITLE IX—INTERNATIONAL LENDING SUPERVISION

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FOREIGN LOAN EVALUATIONS

SEC. 909. (a)(1) In any case in which one or more banking institutions extend credit, whether by loan, lease, guarantee, or otherwise, which individually or in the aggregate exceeds **[\$20,000,000]** **\$160,000,000**, to finance any project which has as a major objective the construction or operation of any mining operation, any metal or mineral primary processing operation, any fabricating facility or operation, or any metal-making operations (semi and finished) located outside the United States or its territories and possessions, a written economic feasibility evaluation of such foreign project shall be prepared and approved in writing by a senior official of the banking institution, or, if more than one banking institution is involved, the lead banking institution, prior to the extension of such credit.

(2) Such evaluation shall—

(A) take into account the profit potential of the project, the impact of the project on world markets, the inherent competitive advantages and disadvantages of the project over the entire life of the project, and the likely effect of the project upon the overall long-term economic development of the country in which the project is located; and

(B) consider whether the extension of credit can reasonably be expected to be repaid from revenues generated by such foreign project without regard to any subsidy, as defined in international agreements, provided by the government involved or any instrumentality of any country.

(b) Such economic feasibility evaluations shall be reviewed by representatives of the appropriate Federal banking agencies whenever an examination by such appropriate Federal banking agency is conducted.

(c)(1) The authorities of the Federal banking agencies contained in section 8 of the Federal Deposit Insurance Act and in section 910 of this Act, except those contained in section 910(d), shall be applicable to this section.

(2) No private right of action or claim for relief may be predicated upon this section.

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REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

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DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term “federally related mortgage loan” includes any loan (other than temporary financing such as a construction loan) which—

(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and

(B)(i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government; or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any “creditor”, as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), who makes or invests in residential real estate loans aggregating more than **[\$1,000,000]** **\$19,000,000** per year, except that for the purpose of this Act, the term “creditor” does not include any agency or instrumentality of any state;

(2) the term “thing of value” includes any payment, advance, funds, loan, service, or other consideration;

(3) the term “settlement services” includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searchers, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, the origination of a federally related mortgage loan (in-

cluding, but not limited to, the taking of loan applications, loan processing, and the underwriting and funding of loans), and the handling of the processing, and closing or settlement;

(4) the term “title company” means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company;

(5) the term “person” includes individuals, corporations, associations, partnerships, and trusts;

(6) the term “Secretary” means the Secretary of Housing and Urban Development;

(7) the term “affiliated business arrangement” means an arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmately influences the selection of that provider;

(8) the term “associate” means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent, or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor, or franchisee of such person; or (D) anyone who has an agreement, arrangement, or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business; and

(9) the term “Bureau” means the Bureau of Consumer Financial Protection.

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REVISED STATUTES OF THE UNITED STATES

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TITLE LXII—NATIONAL BANKS.

CHAPTER ONE—ORGANIZATION AND POWERS.

* * * * *

SEC. 5136A. FINANCIAL SUBSIDIARIES OF NATIONAL BANKS.

(a) AUTHORIZATION TO CONDUCT IN SUBSIDIARIES CERTAIN ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

(1) IN GENERAL.—Subject to paragraph (2), a national bank may control a financial subsidiary, or hold an interest in a financial subsidiary.

(2) CONDITIONS AND REQUIREMENTS.—A national bank may control a financial subsidiary, or hold an interest in a financial subsidiary, only if—

(A) the financial subsidiary engages only in—

(i) activities that are financial in nature or incidental to a financial activity pursuant to subsection (b); and

(ii) activities that are permitted for national banks to engage in directly (subject to the same terms and conditions that govern the conduct of the activities by a national bank);

(B) the activities engaged in by the financial subsidiary as a principal do not include—

(i) insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death (except to the extent permitted under section 302 or 303(c) of the Gramm-Leach-Bliley Act) or providing or issuing annuities the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986;

(ii) real estate development or real estate investment activities, unless otherwise expressly authorized by law; or

(iii) any activity permitted in subparagraph (H) or (I) of section 4(k)(4) of the Bank Holding Company Act of 1956, except activities described in section 4(k)(4)(H) that may be permitted in accordance with section 122 of the Gramm-Leach-Bliley Act;

(C) the national bank and each depository institution affiliate of the national bank are well capitalized and well managed;

(D) the aggregate consolidated total assets of all financial subsidiaries of the national bank do not exceed the lesser of—

(i) 45 percent of the consolidated total assets of the parent bank; or

(ii) ~~["\$50,000,000,000"]~~ \$175,000,000,000;

(E) except as provided in paragraph (4), the national bank meets standards of credit-worthiness established by the Comptroller of the Currency or other requirement set forth in paragraph (3); and

(F) the national bank has received the approval of the Comptroller of the Currency for the financial subsidiary to engage in such activities, which approval shall be based solely upon the factors set forth in this section.

(3) REQUIREMENT.—

(A) IN GENERAL.—A national bank meets the requirements of this paragraph if the bank is one of the 100 largest insured banks and has not fewer than 1 issue of outstanding debt that meets standards of credit-worthiness or other criteria as the Secretary of the Treasury and the Board of Governors of the Federal Reserve System may jointly establish.

(B) CONSOLIDATED TOTAL ASSETS.—For purposes of this paragraph, the size of an insured bank shall be determined on the basis of the consolidated total assets of the bank as of the end of each calendar year.

(4) FINANCIAL AGENCY SUBSIDIARY.—The requirement in paragraph (2)(E) shall not apply with respect to the ownership

or control of a financial subsidiary that engages in activities described in subsection (b)(1) solely as agent and not directly or indirectly as principal.

(5) REGULATIONS REQUIRED.—Before the end of the 270-day period beginning on the date of the enactment of the Gramm-Leach-Bliley Act, the Comptroller of the Currency shall, by regulation, prescribe procedures to implement this section.

(6) INDEXED ASSET LIMIT.—The dollar amount contained in paragraph (2)(D) shall be adjusted according to an indexing mechanism jointly established by regulation by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System.

(7) COORDINATION WITH SECTION 4(l)(2) OF THE BANK HOLDING COMPANY ACT OF 1956.—Section 4(l)(2) of the Bank Holding Company Act of 1956 applies to a national bank that controls a financial subsidiary in the manner provided in that section.

(b) ACTIVITIES THAT ARE FINANCIAL IN NATURE.—

(1) FINANCIAL ACTIVITIES.—

(A) IN GENERAL.—An activity shall be financial in nature or incidental to such financial activity only if—

(i) such activity has been defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to section 4(k)(4) of the Bank Holding Company Act of 1956; or

(ii) the Secretary of the Treasury determines the activity is financial in nature or incidental to a financial activity in accordance with subparagraph (B).

(B) COORDINATION BETWEEN THE BOARD AND THE SECRETARY OF THE TREASURY.—

(i) PROPOSALS RAISED BEFORE THE SECRETARY OF THE TREASURY.—

(I) CONSULTATION.—The Secretary of the Treasury shall notify the Board of, and consult with the Board concerning, any request, proposal, or application under this section for a determination of whether an activity is financial in nature or incidental to a financial activity.

(II) BOARD VIEW.—The Secretary of the Treasury shall not determine that any activity is financial in nature or incidental to a financial activity under this section if the Board notifies the Secretary in writing, not later than 30 days after the date of receipt of the notice described in subclause (I) (or such longer period as the Secretary determines to be appropriate under the circumstances) that the Board believes that the activity is not financial in nature or incidental to a financial activity or is not otherwise permissible under this section.

(ii) PROPOSALS RAISED BY THE BOARD.—

(I) BOARD RECOMMENDATION.—The Board may, at any time, recommend in writing that the Secretary of the Treasury find an activity to be financial in nature or incidental to a financial activity for purposes of this section.

(II) TIME PERIOD FOR SECRETARIAL ACTION.—Not later than 30 days after the date of receipt of a written recommendation from the Board under subclause (I) (or such longer period as the Secretary of the Treasury and the Board determine to be appropriate under the circumstances), the Secretary shall determine whether to initiate a public rulemaking proposing that the subject recommended activity be found to be financial in nature or incidental to a financial activity under this section, and shall notify the Board in writing of the determination of the Secretary and, in the event that the Secretary determines not to seek public comment on the proposal, the reasons for that determination.

(2) FACTORS TO BE CONSIDERED.—In determining whether an activity is financial in nature or incidental to a financial activity, the Secretary shall take into account—

(A) the purposes of this Act and the Gramm-Leach-Bliley Act;

(B) changes or reasonably expected changes in the marketplace in which banks compete;

(C) changes or reasonably expected changes in the technology for delivering financial services; and

(D) whether such activity is necessary or appropriate to allow a bank and the subsidiaries of a bank to—

(i) compete effectively with any company seeking to provide financial services in the United States;

(ii) efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and

(iii) offer customers any available or emerging technological means for using financial services or for the document imaging of data.

(3) AUTHORIZATION OF NEW FINANCIAL ACTIVITIES.—The Secretary of the Treasury shall, by regulation or order and in accordance with paragraph (1)(B), define, consistent with the purposes of this Act and the Gramm-Leach-Bliley Act, the following activities as, and the extent to which such activities are, financial in nature or incidental to a financial activity:

(A) Lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or securities.

(B) Providing any device or other instrumentality for transferring money or other financial assets.

(C) Arranging, effecting, or facilitating financial transactions for the account of third parties.

(c) CAPITAL DEDUCTION.—

(1) CAPITAL DEDUCTION REQUIRED.—In determining compliance with applicable capital standards—

(A) the aggregate amount of the outstanding equity investment, including retained earnings, of a national bank

in all financial subsidiaries shall be deducted from the assets and tangible equity of the national bank; and

(B) the assets and liabilities of the financial subsidiaries shall not be consolidated with those of the national bank.

(2) FINANCIAL STATEMENT DISCLOSURE OF CAPITAL DEDUCTION.—Any published financial statement of a national bank that controls a financial subsidiary shall, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank in the manner provided in paragraph (1).

(d) SAFEGUARDS FOR THE BANK.—A national bank that establishes or maintains a financial subsidiary shall assure that—

(1) the procedures of the national bank for identifying and managing financial and operational risks within the national bank and the financial subsidiary adequately protect the national bank from such risks;

(2) the national bank has, for the protection of the bank, reasonable policies and procedures to preserve the separate corporate identity and limited liability of the national bank and the financial subsidiaries of the national bank; and

(3) the national bank is in compliance with this section.

(e) PROVISIONS APPLICABLE TO NATIONAL BANKS THAT FAIL TO CONTINUE TO MEET CERTAIN REQUIREMENTS.—

(1) IN GENERAL.—If a national bank or insured depository institution affiliate does not continue to meet the requirements of subsection (a)(2)(C) or subsection (d), the Comptroller of the Currency shall promptly give notice to the national bank to that effect describing the conditions giving rise to the notice.

(2) AGREEMENT TO CORRECT CONDITIONS.—Not later than 45 days after the date of receipt by a national bank of a notice given under paragraph (1) (or such additional period as the Comptroller of the Currency may permit), the national bank shall execute an agreement with the Comptroller of the Currency and any relevant insured depository institution affiliate shall execute an agreement with its appropriate Federal banking agency to comply with the requirements of subsection (a)(2)(C) and subsection (d).

(3) IMPOSITION OF CONDITIONS.—Until the conditions described in a notice under paragraph (1) are corrected—

(A) the Comptroller of the Currency may impose such limitations on the conduct or activities of the national bank or any subsidiary of the national bank as the Comptroller of the Currency determines to be appropriate under the circumstances and consistent with the purposes of this section; and

(B) the appropriate Federal banking agency may impose such limitations on the conduct or activities of any relevant insured depository institution affiliate or any subsidiary of the institution as such agency determines to be appropriate under the circumstances and consistent with the purposes of this section.

(4) FAILURE TO CORRECT.—If the conditions described in a notice to a national bank under paragraph (1) are not corrected within 180 days after the date of receipt by the national bank of the notice, the Comptroller of the Currency may require the

national bank, under such terms and conditions as may be imposed by the Comptroller and subject to such extension of time as may be granted in the discretion of the Comptroller, to divest control of any financial subsidiary.

(5) CONSULTATION.—In taking any action under this subsection, the Comptroller shall consult with all relevant Federal and State regulatory agencies and authorities.

(f) FAILURE TO MEET STANDARDS OF CREDIT-WORTHINESS MEET APPLICABLE CRITERIA.—

(1) IN GENERAL.—A national bank that does not continue to meet standards of credit-worthiness established by the Comptroller of the Currency or other requirement of subsection (a)(2)(E) after acquiring or establishing a financial subsidiary shall not, directly or through a subsidiary, purchase or acquire any additional equity capital of any financial subsidiary until the bank meets such requirements.

(2) EQUITY CAPITAL.—For purposes of this subsection, the term “equity capital” includes, in addition to any equity instrument, any debt instrument issued by a financial subsidiary, if the instrument qualifies as capital of the subsidiary under any Federal or State law, regulation, or interpretation applicable to the subsidiary.

(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) AFFILIATE, COMPANY, CONTROL, AND SUBSIDIARY.—The terms “affiliate”, “company”, “control”, and “subsidiary” have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956.

(2) APPROPRIATE FEDERAL BANKING AGENCY, DEPOSITORY INSTITUTION, INSURED BANK, AND INSURED DEPOSITORY INSTITUTION.—The terms “appropriate Federal banking agency”, “depository institution”, “insured bank”, and “insured depository institution” have the meanings given those terms in section 3 of the Federal Deposit Insurance Act.

(3) FINANCIAL SUBSIDIARY.—The term “financial subsidiary” means any company that is controlled by 1 or more insured depository institutions other than a subsidiary that—

(A) engages solely in activities that national banks are permitted to engage in directly and are conducted subject to the same terms and conditions that govern the conduct of such activities by national banks; or

(B) a national bank is specifically authorized by the express terms of a Federal statute (other than this section), and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act or the Bank Service Company Act.

(4) ELIGIBLE DEBT.—The term “eligible debt” means unsecured long-term debt that—

(A) is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

(B) is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

(5) WELL CAPITALIZED.—The term “well capitalized” has the meaning given the term in section 38 of the Federal Deposit Insurance Act.

(6) WELL MANAGED.—The term “well managed” means—

(A) in the case of a depository institution that has been examined, unless otherwise determined in writing by the appropriate Federal banking agency—

(i) the achievement of a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with the most recent examination or subsequent review of the depository institution; and

(ii) at least a rating of 2 for management, if such rating is given; or

(B) in the case of any depository institution that has not been examined, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

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TRUTH IN LENDING ACT

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TITLE I—CONSUMER CREDIT COST DISCLOSURE

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CHAPTER 2—CREDIT TRANSACTIONS

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§ 129C. Minimum standards for residential mortgage loans

(a) ABILITY TO REPAY.—

(1) IN GENERAL.—In accordance with regulations prescribed by the Board, no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.

(3) **BASIS FOR DETERMINATION.**—A determination under this subsection of a consumer's ability to repay a residential mortgage loan shall include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying non-mortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan. A creditor shall determine the ability of the consumer to repay using a payment schedule that fully amortizes the loan over the term of the loan.

(4) **INCOME VERIFICATION.**—A creditor making a residential mortgage loan shall verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer's Internal Revenue Service Form W-2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets. In order to safeguard against fraudulent reporting, any consideration of a consumer's income history in making a determination under this subsection shall include the verification of such income by the use of—

(A) Internal Revenue Service transcripts of tax returns;

or

(B) a method that quickly and effectively verifies income documentation by a third party subject to rules prescribed by the Board.

(5) **EXEMPTION.**—With respect to loans made, guaranteed, or insured by Federal departments or agencies identified in subsection (b)(3)(B)(ii), such departments or agencies may exempt refinancings under a streamlined refinancing from this income verification requirement as long as the following conditions are met:

(A) The consumer is not 30 days or more past due on the prior existing residential mortgage loan.

(B) The refinancing does not increase the principal balance outstanding on the prior existing residential mortgage loan, except to the extent of fees and charges allowed by the department or agency making, guaranteeing, or insuring the refinancing.

(C) Total points and fees (as defined in section 103(aa)(4), other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator) payable in connection with the refinancing do not exceed 3 percent of the total new loan amount.

(D) The interest rate on the refinanced loan is lower than the interest rate of the original loan, unless the borrower is refinancing from an adjustable rate to a fixed-rate loan, under guidelines that the department or agency shall establish for loans they make, guarantee, or issue.

(E) The refinancing is subject to a payment schedule that will fully amortize the refinancing in accordance with

the regulations prescribed by the department or agency making, guaranteeing, or insuring the refinancing.

(F) The terms of the refinancing do not result in a balloon payment, as defined in subsection (b)(2)(A)(ii).

(G) Both the residential mortgage loan being refinanced and the refinancing satisfy all requirements of the department or agency making, guaranteeing, or insuring the refinancing.

(6) NONSTANDARD LOANS.—

(A) VARIABLE RATE LOANS THAT DEFER REPAYMENT OF ANY PRINCIPAL OR INTEREST.—For purposes of determining, under this subsection, a consumer's ability to repay a variable rate residential mortgage loan that allows or requires the consumer to defer the repayment of any principal or interest, the creditor shall use a fully amortizing repayment schedule.

(B) INTEREST-ONLY LOANS.—For purposes of determining, under this subsection, a consumer's ability to repay a residential mortgage loan that permits or requires the payment of interest only, the creditor shall use the payment amount required to amortize the loan by its final maturity.

(C) CALCULATION FOR NEGATIVE AMORTIZATION.—In making any determination under this subsection, a creditor shall also take into consideration any balance increase that may accrue from any negative amortization provision.

(D) CALCULATION PROCESS.—For purposes of making any determination under this subsection, a creditor shall calculate the monthly payment amount for principal and interest on any residential mortgage loan by assuming—

(i) the loan proceeds are fully disbursed on the date of the consummation of the loan;

(ii) the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over the entire term of the loan with no balloon payment, unless the loan contract requires more rapid repayment (including balloon payment), in which case the calculation shall be made (I) in accordance with regulations prescribed by the Board, with respect to any loan which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set, by 1.5 or more percentage points for a first lien residential mortgage loan; and by 3.5 or more percentage points for a subordinate lien residential mortgage loan; or (II) using the contract's repayment schedule, with respect to a loan which has an annual percentage rate, as of the date the interest rate is set, that is at least 1.5 percentage points above the average prime offer rate for a first lien residential mortgage loan; and 3.5 percentage points above the average prime offer rate for a subordinate lien residential mortgage loan; and

(iii) the interest rate over the entire term of the loan is a fixed rate equal to the fully indexed rate at the

time of the loan closing, without considering the introductory rate.

(E) REFINANCE OF HYBRID LOANS WITH CURRENT LENDER.—In considering any application for refinancing an existing hybrid loan by the creditor into a standard loan to be made by the same creditor in any case in which there would be a reduction in monthly payment and the mortgagor has not been delinquent on any payment on the existing hybrid loan, the creditor may—

(i) consider the mortgagor's good standing on the existing mortgage;

(ii) consider if the extension of new credit would prevent a likely default should the original mortgage reset and give such concerns a higher priority as an acceptable underwriting practice; and

(iii) offer rate discounts and other favorable terms to such mortgagor that would be available to new customers with high credit ratings based on such underwriting practice.

(7) FULLY-INDEXED RATE DEFINED.—For purposes of this subsection, the term “fully indexed rate” means the index rate prevailing on a residential mortgage loan at the time the loan is made plus the margin that will apply after the expiration of any introductory interest rates.

(8) REVERSE MORTGAGES AND BRIDGE LOANS.—This subsection shall not apply with respect to any reverse mortgage or temporary or bridge loan with a term of 12 months or less, including to any loan to purchase a new dwelling where the consumer plans to sell a different dwelling within 12 months.

(9) SEASONAL INCOME.—If documented income, including income from a small business, is a repayment source for a residential mortgage loan, a creditor may consider the seasonality and irregularity of such income in the underwriting of and scheduling of payments for such credit.

(b) PRESUMPTION OF ABILITY TO REPAY.—

(1) IN GENERAL.—Any creditor with respect to any residential mortgage loan, and any assignee of such loan subject to liability under this title, may presume that the loan has met the requirements of subsection (a), if the loan is a qualified mortgage.

(2) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) QUALIFIED MORTGAGE.—The term “qualified mortgage” means any residential mortgage loan—

(i) for which the regular periodic payments for the loan may not—

(I) result in an increase of the principal balance;

or

(II) except as provided in subparagraph (E), allow the consumer to defer repayment of principal;

(ii) except as provided in subparagraph (E), the terms of which do not result in a balloon payment, where a “balloon payment” is a scheduled payment

that is more than twice as large as the average of earlier scheduled payments;

(iii) for which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented;

(iv) in the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(v) in the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first 5 years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(vi) that complies with any guidelines or regulations established by the Board relating to ratios of total monthly debt to monthly income or alternative measures of ability to pay regular expenses after payment of total monthly debt, taking into account the income levels of the borrower and such other factors as the Board may determine relevant and consistent with the purposes described in paragraph (3)(B)(i);

(vii) for which the total points and fees (as defined in subparagraph (C)) payable in connection with the loan do not exceed 3 percent of the total loan amount;

(viii) for which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (3), such as in high-cost areas; and

(ix) in the case of a reverse mortgage (except for the purposes of subsection (a) of section 129C, to the extent that such mortgages are exempt altogether from those requirements), a reverse mortgage which meets the standards for a qualified mortgage, as set by the Board in rules that are consistent with the purposes of this subsection.

(B) AVERAGE PRIME OFFER RATE.—The term “average prime offer rate” means the average prime offer rate for a comparable transaction as of the date on which the interest rate for the transaction is set, as published by the Board..

(C) POINTS AND FEES.—

(i) IN GENERAL.—For purposes of subparagraph (A), the term “points and fees” means points and fees as defined by section 103(aa)(4) (other than bona fide third party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or mortgage originator).

(ii) COMPUTATION.—For purposes of computing the total points and fees under this subparagraph, the total points and fees shall exclude either of the amounts described in the following subclauses, but not both:

(I) Up to and including 2 bona fide discount points payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 1 percentage point the average prime offer rate.

(II) Unless 2 bona fide discount points have been excluded under subclause (I), up to and including 1 bona fide discount point payable by the consumer in connection with the mortgage, but only if the interest rate from which the mortgage's interest rate will be discounted does not exceed by more than 2 percentage points the average prime offer rate.

(iii) BONA FIDE DISCOUNT POINTS DEFINED.—For purposes of clause (ii), the term “bona fide discount points” means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

(iv) INTEREST RATE REDUCTION.—Subclauses (I) and (II) of clause (ii) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(D) SMALLER LOANS.—The Board shall prescribe rules adjusting the criteria under subparagraph (A)(vii) in order to permit lenders that extend smaller loans to meet the requirements of the presumption of compliance under paragraph (1). In prescribing such rules, the Board shall consider the potential impact of such rules on rural areas and other areas where home values are lower.

(E) BALLOON LOANS.—The Board may, by regulation, provide that the term “qualified mortgage” includes a balloon loan—

(i) that meets all of the criteria for a qualified mortgage under subparagraph (A) (except clauses (i)(II), (ii), (iv), and (v) of such subparagraph);

(ii) for which the creditor makes a determination that the consumer is able to make all scheduled payments, except the balloon payment, out of income or assets other than the collateral;

(iii) for which the underwriting is based on a payment schedule that fully amortizes the loan over a period of not more than 30 years and takes into account all applicable taxes, insurance, and assessments; and

(iv) that is extended by a creditor that—

(I) operates in rural or underserved areas;

(II) together with all affiliates, has total annual residential mortgage loan originations that do not exceed a limit set by the Board;

(III) retains the balloon loans in portfolio; and

(IV) meets any asset size threshold and any other criteria as the Board may establish, consistent with the purposes of this subtitle.

(F) SAFE HARBOR.—

(i) DEFINITIONS.—In this subparagraph—

(I) the term “covered institution” means an insured depository institution or an insured credit union that, together with its affiliates, has less than ~~【\$10,000,000,000】~~ \$15,000,000,000 in total consolidated assets;

(II) the term “insured credit union” has the meaning given the term in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(III) the term “insured depository institution” has the meaning given the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(IV) the term “interest-only” means that, under the terms of the legal obligation, one or more of the periodic payments may be applied solely to accrued interest and not to loan principal; and

(V) the term “negative amortization” means payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation.

(ii) SAFE HARBOR.—In this section—

(I) the term “qualified mortgage” includes any residential mortgage loan—

(aa) that is originated and retained in portfolio by a covered institution;

(bb) that is in compliance with the limitations with respect to prepayment penalties described in subsections (c)(1) and (c)(3);

(cc) that is in compliance with the requirements of clause (vii) of subparagraph (A);

(dd) that does not have negative amortization or interest-only features; and

(ee) for which the covered institution considers and documents the debt, income, and financial resources of the consumer in accordance with clause (iv); and

(II) a residential mortgage loan described in subclause (I) shall be deemed to meet the requirements of subsection (a).

(iii) EXCEPTION FOR CERTAIN TRANSFERS.—A residential mortgage loan described in clause (ii)(I) shall not qualify for the safe harbor under clause (ii) if the legal title to the residential mortgage loan is sold, assigned, or otherwise transferred to another person unless the residential mortgage loan is sold, assigned, or otherwise transferred—

(I) to another person by reason of the bankruptcy or failure of a covered institution;

(II) to a covered institution so long as the loan is retained in portfolio by the covered institution

to which the loan is sold, assigned, or otherwise transferred;

(III) pursuant to a merger of a covered institution with another person or the acquisition of a covered institution by another person or of another person by a covered institution, so long as the loan is retained in portfolio by the person to whom the loan is sold, assigned, or otherwise transferred; or

(IV) to a wholly owned subsidiary of a covered institution, provided that, after the sale, assignment, or transfer, the residential mortgage loan is considered to be an asset of the covered institution for regulatory accounting purposes.

(iv) CONSIDERATION AND DOCUMENTATION REQUIREMENTS.—The consideration and documentation requirements described in clause (ii)(I)(ee) shall—

(I) not be construed to require compliance with, or documentation in accordance with, appendix Q to part 1026 of title 12, Code of Federal Regulations, or any successor regulation; and

(II) be construed to permit multiple methods of documentation.

(3) REGULATIONS.—

(A) IN GENERAL.—The Board shall prescribe regulations to carry out the purposes of this subsection.

(B) REVISION OF SAFE HARBOR CRITERIA.—

(i) IN GENERAL.—The Board may prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage upon a finding that such regulations are necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of this section, necessary and appropriate to effectuate the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections.

(ii) LOAN DEFINITION.—The following agencies shall, in consultation with the Board, prescribe rules defining the types of loans they insure, guarantee, or administer, as the case may be, that are qualified mortgages for purposes of paragraph (2)(A), and such rules may revise, add to, or subtract from the criteria used to define a qualified mortgage under paragraph (2)(A), upon a finding that such rules are consistent with the purposes of this section and section 129B, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections:

(I) The Department of Housing and Urban Development, with regard to mortgages insured under the National Housing Act (12 U.S.C. 1707 et seq.).

(II) The Department of Veterans Affairs, with regard to a loan made or guaranteed by the Secretary of Veterans Affairs.

(III) The Department of Agriculture, with regard loans guaranteed by the Secretary of Agriculture pursuant to 42 U.S.C. 1472(h).

(IV) The Rural Housing Service, with regard to loans insured by the Rural Housing Service.

(C) CONSIDERATION OF UNDERWRITING REQUIREMENTS FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING.—

(i) DEFINITION.—In this subparagraph, the term “Property Assessed Clean Energy financing” means financing to cover the costs of home improvements that results in a tax assessment on the real property of the consumer.

(ii) REGULATIONS.—The Bureau shall prescribe regulations that carry out the purposes of subsection (a) and apply section 130 with respect to violations under subsection (a) of this section with respect to Property Assessed Clean Energy financing, which shall account for the unique nature of Property Assessed Clean Energy financing.

(iii) COLLECTION OF INFORMATION AND CONSULTATION.—In prescribing the regulations under this subparagraph, the Bureau—

(I) may collect such information and data that the Bureau determines is necessary; and

(II) shall consult with State and local governments and bond-issuing authorities.

(c) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.—

(1) PROHIBITED ON CERTAIN LOANS.—

(A) IN GENERAL.—A residential mortgage loan that is not a “qualified mortgage”, as defined under subsection (b)(2), may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated.

(B) EXCLUSIONS.—For purposes of this subsection, a “qualified mortgage” may not include a residential mortgage loan that—

(i) has an adjustable rate; or

(ii) has an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

(I) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

(II) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having a original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in ef-

fect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the 6th sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

(III) by 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan.

(2) PUBLICATION OF AVERAGE PRIME OFFER RATE AND APR THRESHOLDS.—The Board—

(A) shall publish, and update at least weekly, average prime offer rates;

(B) may publish multiple rates based on varying types of mortgage transactions; and

(C) shall adjust the thresholds established under subclause (I), (II), and (III) of paragraph (1)(B)(ii) as necessary to reflect significant changes in market conditions and to effectuate the purposes of the Mortgage Reform and Anti-Predatory Lending Act.

(3) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—A qualified mortgage (as defined in subsection (b)(2)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.

(4) OPTION FOR NO PREPAYMENT PENALTY REQUIRED.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.

(d) SINGLE PREMIUM CREDIT INSURANCE PROHIBITED.—No creditor may finance, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that—

(1) insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor; and

(2) this subsection shall not apply to credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to another insurance contract and not paid to an affiliate of the creditor.

(e) ARBITRATION.—

(1) IN GENERAL.—No residential mortgage loan and no extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer may include terms which require arbitration or any other nonjudicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction.

(2) POST-CONTROVERSY AGREEMENTS.—Subject to paragraph (3), paragraph (1) shall not be construed as limiting the right of the consumer and the creditor or any assignee to agree to arbitration or any other nonjudicial procedure as the method for resolving any controversy at any time after a dispute or claim under the transaction arises.

(3) NO WAIVER OF STATUTORY CAUSE OF ACTION.—No provision of any residential mortgage loan or of any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer, and no other agreement between the consumer and the creditor relating to the residential mortgage loan or extension of credit referred to in paragraph (1), shall be applied or interpreted so as to bar a consumer from bringing an action in an appropriate district court of the United States, or any other court of competent jurisdiction, pursuant to section 130 or any other provision of law, for damages or other relief in connection with any alleged violation of this section, any other provision of this title, or any other Federal law.

(f) MORTGAGES WITH NEGATIVE AMORTIZATION.—No creditor may extend credit to a borrower in connection with a consumer credit transaction under an open or closed end consumer credit plan secured by a dwelling or residential real property that includes a dwelling, other than a reverse mortgage, that provides or permits a payment plan that may, at any time over the term of the extension of credit, result in negative amortization unless, before such transaction is consummated—

(1) the creditor provides the consumer with a statement that—

(A) the pending transaction will or may, as the case may be, result in negative amortization;

(B) describes negative amortization in such manner as the Board shall prescribe;

(C) negative amortization increases the outstanding principal balance of the account; and

(D) negative amortization reduces the consumer's equity in the dwelling or real property; and

(2) in the case of a first-time borrower with respect to a residential mortgage loan that is not a qualified mortgage, the first-time borrower provides the creditor with sufficient documentation to demonstrate that the consumer received homeownership counseling from organizations or counselors certified by the Secretary of Housing and Urban Development as competent to provide such counseling.

(g) PROTECTION AGAINST LOSS OF ANTI-DEFICIENCY PROTECTION.—

(1) DEFINITION.—For purposes of this subsection, the term “anti-deficiency law” means the law of any State which provides that, in the event of foreclosure on the residential property of a consumer securing a mortgage, the consumer is not liable, in accordance with the terms and limitations of such State law, for any deficiency between the sale price obtained on such property through foreclosure and the outstanding balance of the mortgage.

(2) NOTICE AT TIME OF CONSUMMATION.—In the case of any residential mortgage loan that is, or upon consummation will be, subject to protection under an anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before such loan is consummated.

(3) NOTICE BEFORE REFINANCING THAT WOULD CAUSE LOSS OF PROTECTION.—In the case of any residential mortgage loan that is subject to protection under an anti-deficiency law, if a creditor or mortgage originator provides an application to a consumer, or receives an application from a consumer, for any type of refinancing for such loan that would cause the loan to lose the protection of such anti-deficiency law, the creditor or mortgage originator shall provide a written notice to the consumer describing the protection provided by the anti-deficiency law and the significance for the consumer of the loss of such protection before any agreement for any such refinancing is consummated.

(h) POLICY REGARDING ACCEPTANCE OF PARTIAL PAYMENT.—In the case of any residential mortgage loan, a creditor shall disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor—

(1) the creditor’s policy regarding the acceptance of partial payments; and

(2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.

(i) TIMESHARE PLANS.—This section and any regulations promulgated under this section do not apply to an extension of credit relating to a plan described in section 101(53D) of title 11, United States Code.

* * * * *

DOCUMENTS INCLUDED BY UNANIMOUS CONSENT



Kirsten Sutton
Executive Vice President
Congressional Relations & Legislative Affairs
202-663-5356
ksutton@aba.com

January 21, 2026

The Honorable Andy Barr
Chairman
Financial Institutions Subcommittee
House Financial Services Committee
2430 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Barr:

The American Bankers Association (ABA)¹ writes today in support of H.R. 7056, the Community Bank Regulatory Tailoring Act, which is scheduled to be marked up by the House Financial Services Committee on January 22, 2026. We commend your leadership on this important issue.

For decades, many statutory thresholds have stayed fixed in nominal terms, even as the economy has grown. These thresholds were typically set during very different economic conditions and have not been updated to reflect significant changes in the banking sector over time. As a result, thresholds that once reflected meaningful distinctions in size, complexity, or risk now capture institutions that were never intended to be subject to more burdensome regulatory requirements. Ultimately this regulatory “drift” burdens institutions never meant to be captured, discourages organic growth, and dilutes regulatory resources.

This critical legislation would adjust and index several key community and mid-size bank thresholds to nominal GDP after a one-time increase to account for past inaction. Importantly, this bill includes thresholds related to activity limitations, reporting requirements, liquidity and resolution frameworks, and definitions that determine eligibility for community focused exemptions. Indexing is a low-cost, high-impact reform. That improves transparency, reduces arbitrary burdens, and allows regulators to focus on actual risk. Modernizing these thresholds would better align statutory requirements and the actual size, complexity, and risk profiles of the banking industry.

The ABA appreciates the Committee advancing this critically important legislation and urges all members to vote in support of H.R. 7056.

Sincerely,

Cc: Members of the House Financial Services Committee

¹ The American Bankers Association is the voice of the nation's \$25.1 trillion banking industry, which is composed of small, regional and large banks that together employ over 2 million people, safeguard \$19.7 trillion in deposits and extend \$13.2 trillion in loans.



Jack E. Hopkins, Chairman
 Alice P. Frazier, Chairman-Elect
 Michael J. Burke, Jr., Vice Chairman
 Quentin Leighty, Treasurer
 Douglas E. Parrott, Secretary
 Lucas White, Immediate Past Chairman
 Rebeca Romero Rainey, President and CEO

January 21, 2026

The Honorable Andy Barr
 Chairman
 Subcommittee on Financial Institutions
 Committee on Financial Services
 U.S. House of Representatives
 Washington, D.C. 20515

Re: Support for the Community Bank Regulatory Tailoring Act (H.R. 7056)

Dear Chairman Barr:

On behalf of ICBA and the nearly 45,000 community bank locations we represent, I write to thank you for introducing the Community Bank Regulatory Tailoring Act (H.R. 7056). ICBA will support your legislation when it is marked up on January 22 and ask all committee members to vote YES.

H.R. 7056 indexes various asset-based, bank-regulatory thresholds to nominal GDP for community banks. These include thresholds under the Bank Holding Company Act, the Community Reinvestment Act, the Volker Rule, the Home Mortgage Disclosure Act, the Truth in Lending Act, and other statutes. Further, the bill would provide for future threshold increases at five-year intervals.

As ICBA has repeatedly argued, “one-size-fits-all” regulations disproportionately burden community banks, and current thresholds are overdue for an update. H.R. 7056 would update numerous thresholds without sacrificing fundamental consumer protections or safety and soundness and thereby create regulatory relief for community banks that will allow them to focus more resources on the customers and communities they serve.

ICBA looks forward to working with you to advance H.R. 7056 into law.

Sincerely,

/s/

Rebeca Romero Rainey
 President & CEO

CC: Members of the House Financial Services Committee

866-843-4222
 icba.org

1100 New York Avenue NW
 Suite 500 East
 Washington, DC 20005

518 Lincoln Road
 P.O. Box 267
 Sauk Centre, MN 56378



Jack E. Hopkins, Chairman
 Alice P. Frazier, Chairman-Elect
 Michael J. Burke, Jr., Vice Chairman
 Quentin Leighty, Treasurer
 Douglas E. Parrott, Secretary
 Lucas White, Immediate Past Chairman
 Rebeca Romero Rainey, President and CEO

January 22, 2026

The Honorable French Hill
 Chairman
 Committee on Financial Services
 U.S. House of Representatives
 Washington, D.C. 20515

The Honorable Maxine Waters
 Ranking Member
 Committee on Financial Services
 U.S. House of Representatives
 Washington, D.C. 20515

Re: Support for Markup Legislation

Dear Chairman Hill and Ranking Member Waters:

On behalf of ICBA and the nearly 45,000 community bank locations we represent, I write to thank you for scheduling a markup on Thursday, January 22 and to share our views on several bills that will be considered. ICBA urges members of the Committee to vote YES on the following bills.

The Financial Reporting Threshold Modernization Act (H.R. 1799), sponsored by Rep. Barry Loudermilk (R-GA), would raise the currency transaction reporting (CTR) and Suspicious Activity Reporting (SAR) thresholds to \$30,000 and \$10,000 respectively and index the CTR threshold for inflation every five years prospectively. These updated thresholds would result in more targeted, useful information for law enforcement while allowing community banks to redirect resources toward serving their communities.

Current reporting thresholds under the Bank Secrecy Act are significantly outdated and capture far more transactions than originally intended. The CTR threshold of \$10,000 was set in 1972 and has not been adjusted since that time. Similarly, SAR thresholds have not been adjusted since becoming effective in 1992. CTR and SAR filings are a primary source of community bank compliance burden and expense, diverting resources that could be better directed toward community lending.

The Community Bank Regulatory Tailoring Act (H.R. 7056), sponsored by Chairman Andy Barr (R-KY), would index various asset-based, bank-regulatory thresholds to nominal GDP for community banks. These include thresholds under the Bank Holding Company Act, the Community Reinvestment Act, the Volker Rule, the Home Mortgage Disclosure Act, the Truth in Lending Act, and other statutes. Further, the bill would provide for future threshold increases at five-year intervals.

As ICBA has repeatedly argued, “one-size-fits-all” regulations disproportionately burden community banks, and current thresholds are overdue for an update. H.R. 7056 would update numerous thresholds without sacrificing fundamental consumer protections or safety and soundness and thereby create

regulatory relief for community banks that will allow them to focus more resources on the customers and communities they serve.

Enactment of these bills would promote reform of our financial regulatory system and strengthen community banks to better serve their local communities.

Thank you for your consideration.

Sincerely,

/s/

Rebeca Romero Rainey
President & CEO

CC: Member of the House Committee on Financial Services



January 21, 2026

The Honorable French Hill
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Re: Tomorrow's Committee Markup

Dear Chairman Hill and Ranking Member Waters:

On behalf of America's Credit Unions, I am writing ahead of tomorrow's Committee markup to provide our thoughts on bills before the Committee. America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their over 145 million members nationwide.

H.R. 1799, the Financial Reporting Threshold Modernization Act

America's Credit Unions strongly supports H.R. 1799, the Financial Reporting Threshold Modernization Act. As inflation and the cost of living have increased without any adjustment to the Currency Transaction Report (CTR) and Suspicious Activity Report (SAR) thresholds, the volume of CTR and SAR filings has risen exponentially, increasing the regulatory burden for credit unions. This bill updates the CTR threshold from \$10,000 to \$30,000, increases the SAR threshold from \$5,000 to \$10,000, and ensures the CTR threshold is periodically adjusted for inflation. Such increases would be conservative, appropriate, and more properly strike a balance between what is helpful to law enforcement and the compliance burden for credit unions.

H.R. 7056, the Community Bank Regulatory Tailoring Act

We strongly support this bill that will update asset thresholds in the Federal Credit Union Act and other areas of financial law, aligning the thresholds with their original intent. For example, raising the threshold for small credit unions from \$10 million to \$34 million will give smaller credit unions greater flexibility and more resources to serve their members. Additionally, this bill raises the asset threshold for the large credit union audit requirement from \$500 million to \$2 billion, a threshold that has not been updated since it was added in 1998. Raising these thresholds will reduce regulatory burdens and allow credit unions to spend more time serving their members.

The bill also makes important steps to modernize other thresholds in banking law, such as ones under the Dodd-Frank Act, the Home Mortgage Disclosure Act (HMDA) and the Federal Home Loan Bank (FHLB) Act. In particular, as the threshold for the definition of community financial institution is updated from \$1 billion to \$3 billion in the FHLB Act, we believe it should also be updated to include credit unions and not just community banks and urge you to support efforts to do so.

January 21, 2026
Page 2 of 2

Additionally, indexing the thresholds in this bill in the future is a commonsense solution to ensure they remain consistent with the original intent and we support this important step.

Finally, we urge the Committee to reject any extraneous amendments that may seek to establish a new national rate cap on credit cards or bring government interference to the credit card interchange system. These efforts to impose price controls would do nothing to help consumers or increase affordability. These amendments would ultimately harm access to credit for many consumers and weaken data security of card networks, while having negative impacts on community financial institutions, such as credit unions, and the consumers they serve.

On behalf of America's credit unions and their more than 145 million members, we thank you for the opportunity to share our views on these bills and issues before the Committee. We look forward to continuing to work with you on these important issues. Should you have any questions or require any additional information, please feel free to contact me at gmesack@americascritunions.org.

Sincerely,



Greg Mesack
Senior Vice President of Advocacy

cc: Members of the Committee on Financial Services



1627 Eye St, NW
Suite 935
Washington, DC 20006
202.734.5007
www.d cuc.org

Anthony R. Hernandez
President/CEO

September 4, 2025

The Honorable Mike Rogers
Chairman
House Armed Services Committee
2216 Rayburn House Office Building
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
House Armed Services Committee
2216 Rayburn House Office Building
Washington, DC 20515

The Honorable Roger Wicker
Chairman
Senate Armed Services Committee
555 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
Senate Armed Services Committee
555 Dirksen Senate Office Building
Washington, DC 20510

Subject: Support for Including the *Financial Reporting Threshold Modernization Act* in the FY2026 National Defense Authorization Act

Dear Chairmen Rogers and Wicker, and Ranking Members Smith and Reed:

On behalf of the Defense Credit Union Council (DCUC) – representing more than 200 defense-affiliated credit unions serving over 40 million members, including active-duty servicemembers, Guard and Reserve members, veterans, Department of Defense civilians, and military families – I write to **express our strong support for H.R. 1799, the Financial Reporting Threshold Modernization Act, and to urge its inclusion in the Fiscal Year 2026 National Defense Authorization Act (NDAA).** This important, bipartisan legislation to modernize financial reporting will **reduce outdated regulatory burdens, better protect consumers' financial privacy, and enhance the ability of defense credit unions to serve those who serve our nation.**

Modernizing Financial Reporting Requirements

H.R. 1799 would bring much-needed updates to the Bank Secrecy Act's financial reporting thresholds. Specifically, the bill (and its corresponding NDAA amendment) would:

- **Raise the Currency Transaction Report (CTR) threshold from \$10,000 to \$30,000,** with provisions to **adjust this threshold for inflation every five years.** The current \$10,000 CTR trigger – unchanged since 1972 – is severely outdated; if adjusted for decades of inflation, it would be over **\$75,000 today.** As a result, the old threshold now **"captures millions of commonplace transactions, like used car purchases and small business cash deposits,"** far beyond the "significant and unusual" transactions Congress intended to monitor. Updating the CTR threshold to \$30,000 will realign reporting requirements with their original intent.
- **Raise the Suspicious Activity Report (SAR) threshold from \$5,000 to \$10,000.** The SAR threshold has likewise not been adjusted since 1992, even as the value of money and the nature of financial transactions have changed. Modernizing this threshold in tandem with the CTR update ensures consistency in anti-money laundering efforts while preventing routine transactions from being flagged as "suspicious" without cause.

Serving Those Who Serve Our Country

These moderate adjustments – which reflect decades of economic change – have broad support in the financial community. The Government Accountability Office (GAO), as mandated by the Anti-Money Laundering Act of 2020, recently **recommended raising outdated Bank Secrecy Act (BSA) reporting thresholds to reduce the flood of low-value reports that provide little value to law enforcement. Community banks and credit unions have similarly endorsed these reforms**, noting that the “\$10,000 reporting threshold for CTR has never been adjusted... A modest increase to \$30,000 would reduce the number of annual CTR filings by nearly 80%,” dramatically easing unnecessary compliance workload. By indexing the CTR threshold to inflation going forward, H.R. 1799 will also prevent this problem from recurring, so that reporting requirements remain relevant and effective over time.

Reducing Burdens and Protecting Consumer Privacy

Modernizing these reporting thresholds will significantly reduce regulatory burdens on credit unions and banks, while strengthening consumer privacy protections. Under current law, financial institutions must generate **tens of millions of CTRs and SARs each year**, most of which involve ordinary transactions of law-abiding Americans that “*no longer serve the goals and original intent*” of anti-money laundering laws. This mountain of reports imposes **substantial compliance costs** and paperwork, diverting valuable resources away from member service. In fact, **CTR/SAR filings are cited as a primary source of compliance burden and expense, “diverting resources that could be better directed toward” community lending and member services.** By raising the thresholds, H.R. 1799 is estimated to reduce the volume of CTR filings by **60–80%**, freeing up compliance personnel and budget for more productive uses in our credit unions. As America’s Credit Unions President/CEO Jim Nussle noted in a recent letter, “*This change in the reporting threshold will significantly reduce the compliance burden on credit unions, allowing them to serve their members better*”.

Crucially, these updates will **not compromise law enforcement or national security.** Even with a higher \$30,000 CTR threshold, truly large or suspicious transactions will still be reported to authorities – **ensuring that law enforcement can “review significant transactions that could offer various security concerns,”** without being inundated by trivial data. In fact, refocusing reporting on larger, more unusual activities will help federal agencies “**focus on the data that really matters,**” instead of sifting through millions of low-value reports. This targeted approach **enhances** security efforts. Moreover, by eliminating needless reports on individuals’ routine financial activities, the bill will “**enhance customer privacy**” for consumers. **Fewer unwarranted data collections means stronger privacy** for our members – an especially important consideration for military families who entrust us with their financial information. In short, **updating these thresholds will protect consumer privacy while preserving effective tools to combat illicit finance.**

Supporting Military Members and Readiness through Credit Unions

Defense credit unions play a vital role in the financial well-being and readiness of our armed forces community, and the reforms in H.R. 1799 will amplify our ability to fulfill that mission. The nation’s defense credit unions have a “**storied relationship**” with servicemembers and their families, often acting as their first and most trusted financial institution. Collectively, DCUC member credit unions serve more than **40 million Americans** – over a quarter of all U.S. credit union members – including a vast segment of the military community. We provide specialized products and education tailored to the unique challenges of military life: from handling irregular pay and deployment gaps to offering early pay, credit-builder loans, and financial counseling programs that ensure troops are financially strong **during and after service.** We also routinely **shield servicemembers from predatory lenders outside the base gates,** delivering stable, **mission-aligned financial services that save military families and the government money.**

Every hour and dollar that a defense credit union must dedicate to **excessive paperwork and outdated compliance tasks is time and resources taken away from serving our military members.** By relieving unnecessary reporting burdens, the Financial Reporting Threshold Modernization Act will enable defense-sector credit unions to **reinvest more into financial education, affordable credit, and emergency assistance for those who protect our nation.** This directly contributes to military readiness: the Department of Defense has long

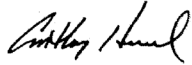
recognized that **financial readiness is a key pillar of overall military readiness**. When our servicemembers and their families are on sound financial footing, free from undue stress or privacy intrusions, they are better able to focus on the mission. **Modernizing financial reporting requirements is therefore not just a banking reform – it is a meaningful investment in the financial resilience of our troops and the strength of our national defense.**

Conclusion and Request for Inclusion in NDAA

In light of these important benefits, **the Defense Credit Union Council strongly urges that the Financial Reporting Threshold Modernization Act (H.R. 1799) be included in the final FY2026 NDAA**. This legislative effort has our full support as well as the backing of the broader credit union industry and many community financial institutions. Including H.R. 1799's provisions in the NDAA will ensure these long-overdue updates are enacted without delay, bringing immediate relief to financial institutions that serve our military and communities. We believe this reform is *germane to the NDAA's purpose*: it supports **troop readiness and financial security**, honors Congressional intent in regulatory oversight, and poses no controversy in terms of national security impact. In short, it is a commonsense modernization that belongs in our nation's defense authorization bill.

Thank you for your consideration and leadership on behalf of our servicemembers and their families. We appreciate your commitment to policies that safeguard both national security and the financial well-being of those who serve. The Defense Credit Union Council stands ready to work with you to advance this critical measure.

Sincerely,



ANTHONY R. HERNANDEZ, Colonel, USAF (Ret)
President & CEO
Defense Credit Union Council



U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

January 22, 2026

The Honorable French Hill
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hill and Ranking Member Waters:

The U.S. Chamber of Commerce appreciates the Committee holding the markup scheduled for January 22, 2026. We write to express our support for several bills the Committee will be considering.

The Chamber commends the Committee for its continued work to advance capital formation legislation and to improve the financial regulatory architecture in the United States. The Chamber looks forward to working with the Committee as these bills advance through the legislative process.

The Chamber supports the following bills:

H.R. 7085, to repeal certain disclosure requirements related to conflict minerals

The Chamber continues to support full repeal of Section 1502 of the Dodd-Frank Act, better known as the “conflict minerals” rule. The decades-old human rights crisis in the Democratic Republic of the Congo needs to be resolved. However, the conflict minerals rule fails to do so while imposing substantial reporting requirements upon companies—despite parts of the disclosure being struck down as violating the First Amendment. Some evidence even suggests that the conflict minerals rule has worsened the situation on the ground in the DRC.¹ The experience with this rule makes a compelling case that the federal securities laws should never be used to solve a complex geopolitical issue. Congress should fully repeal this ill-advised and harmful mandate from the Dodd-Frank Act.

H.R. 4171, the Small Entrepreneurs Empowerment and Development (SEED) Act of 2025

This bill provides an exemption from state and federal registration requirements for “micro-offerings” that do not exceed \$250,000 in the aggregate. This exemption

¹ <https://www.sec.gov/comments/statement-013117/cil2-1648731-148501.pdf>

would benefit entrepreneurs who are looking to raise relatively small amounts of capital and cannot afford costly legal and registration requirements. Importantly, this bill would also prevent bad actors from participating in such offerings.

H.R. 1799, the Financial Reporting Threshold Modernization Act

This legislation is a critical step toward modernizing outdated financial reporting thresholds, which have not been adjusted to reflect economic growth and inflation over the decades. By raising the automatic domestic currency transaction report (CTR) threshold from \$10,000 to \$30,000 and indexing it to inflation every five years, the bill ensures that financial institutions can focus their resources on truly suspicious and high-risk activities. These updates will reduce unnecessary regulatory burdens on businesses while maintaining robust safeguards against fraud and illicit financial activities.

H.R. 7056, the Community Bank Regulatory Tailoring Act

By indexing asset-based thresholds to nominal GDP, this legislation ensures that regulatory requirements evolve alongside economic growth, preventing outdated thresholds from constraining these vital financial institutions. Tailored regulation is essential to maintaining a competitive and resilient banking ecosystem, allowing community banks and credit unions to better serve small businesses, families, and local economies. This bill promotes fairness and flexibility, enabling these institutions to focus on their core mission of driving economic opportunity and supporting underserved communities.

H.R. 7127, the Restoring Secondary Market Trading Act

This bill would provide legal certainty for small public companies and prevent duplicative regulation for the secondary trading of certain stocks. Currently, a patchwork of state regulation negatively affects the trading liquidity and efficiency of small company stocks. The legislation would rightfully constitute a national market for these stocks which will facilitate capital formation and enhanced investor protection.

H.R. 7128, the Terrorism Risk Insurance Act of 2026

This legislation, which reauthorizes the Department of the Treasury's Terrorism Insurance Program through 2034, includes changes to the event certification process and other technical adjustments. While the Chamber would prefer a clean reauthorization, we believe that the reauthorization of the Terrorism Risk Insurance Act is vital to ensuring financial safety and stability, providing businesses with the necessary support to manage risks associated with terrorism-related events.

We thank the Committee for their work on these bills and look forward to serving as a resource for members and their staff.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mike Flood', with a stylized flourish at the end.

Mike Flood
Senior Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

cc: Members of the House Committee on Financial Services

MINORITY VIEWS

The bill increases 37 different regulatory thresholds for financial institutions regarding a wide range of topics, including capital, mortgage disclosures and ability-to-repay consumer protections, community reinvestment exams, Volcker Rule's prohibition on proprietary trading, executive compensation, GAAP accounting, annual independent audits, material loss reviews, Orderly Liquidation Authority, Federal Reserve dividends, and more.¹ Furthermore, these thresholds would rapidly increase based on nominal Gross Domestic Product (GDP), an indexing approach that the FDIC run by Trump appointees recently rejected when they adopted a less aggressive inflation-based index for some of these thresholds. Moreover, the bill does not include any flexibility for regulators to make adjustments in the opposite direction that might promote safety, soundness, and consumer protection.

While Committee Democrats are open to a more targeted approach focused on helping community banks and credit unions, several of the bill threshold increases would benefit large banks with up to \$175 billion in assets. H.R. 7056 also omits an overdue increase to the deposit insurance limit that would benefit bank customers, and instead weakens several key laws that help promote fair access to financial products and services. Furthermore, Committee Democrats are open to considering ways to make the use of regulatory thresholds more dynamic and refined based on the policy objective, and also considering ways to mitigate cliff effects associated with some of these thresholds, the Committee has failed to hold a hearing on this bill where experts could discuss the pros and cons with this approach, and there has not been any study or analysis to justify making all of these changes.

Proponents of indexing thresholds with nominal GDP argue that using nominal GDP will capture both inflation and economic growth, and ensure these thresholds evolve over time to make the application of various regulatory criteria more dynamic.² That said, nominal GDP does not capture industry growth (which may differ from economic growth), institution complexity, consumer impacts, or other factors that may be relevant in setting a threshold to include or exclude different entities from the application of certain obligations. Moreover, using nominal GDP will lead to more rapid increases to thresholds compared to inflation, exempting institutions that Congress may not have intended to exempt when it first enacted the law. Over the last ten years, nominal GDP grew by nearly 70% compared to a modest 37% increase based on Consumer Price Index for Urban Wage Earners and Clerical Workers ("CPI–

¹Specifically, H.R. 7056 would modify thresholds across many important financial laws, including the Bank Holding Company Act of 1956 ("BHCA"), Community Reinvestment Act of 1977 ("CRA"), Depository Institution Management Interlocks Act ("DIMIA"), Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), Federal Credit Union Act, Federal Deposit Insurance Act ("FDI Act"), Federal Home Loan Bank Act of 1932 ("FHLB Act"), Federal Reserve Act, Home Mortgage Disclosure Act of 1975 ("HMDA"), Home Owners' Loan Act ("HOLA"), International Lending Supervision Act of 1983, Real Estate Settlement Procedures Act of 1974 ("RESPA"), Revised Statutes of the United States (which includes the National Bank Act), and Truth in Lending Act ("TILA").

²See Bank Policy Institute (BPI), *Adjusting Regulatory Thresholds for Economic Growth* (Sep. 9, 2024); BPI, *The Economy Evolves Over Time—So Should Bank Regulations* (Sep. 26, 2025).

W”).³ Over the past three decades, nominal GDP increased by 299% compared to a 111% increase in CPI-W.⁴ While lobbyists for large banks have advocated for the use of a nominal GDP growth,⁵ other stakeholders have suggested Congress consider inflation-based metrics or even more nuanced thresholds that are not based solely on asset size.⁶

Additionally, the use of nominal GDP as an indexing metric appears to be novel and untested in banking law; to the extent thresholds utilize an index, they often utilize inflation-based metrics. For example, the dollar threshold for exempting certain large-dollar consumer credit transactions from TILA is adjusted annually based on CPI W. Regulation CC, implementing the Expedited Funds Availability Act (“EFAA”) modifies thresholds relating to check hold periods utilizing CPI W every 5 years. Indeed, the approach in H.R. 7056 is more aggressive than what Trump’s banking regulators have recently adopted. The FDIC recently adopted a final rule that changed numerous regulatory thresholds relating to bank filing procedures, audits, reporting requirements, Orderly Liquidation Authority, and more, however they based the changes on inflation instead of nominal GDP.⁷ In the final rule, the FDIC rejected industry arguments that nominal GDP should be used and explained:

“[T]here are several downsides to using GDP for threshold adjustments. GDP is subject to business cycle fluctuations that may not always correspond with price level changes, such as in a “stagflationary” environment where stagnant economic growth occurs simultaneously with inflation. Relatedly, GDP in certain cases may grow fast for a period of years, followed by a downturn marked by slow or negative growth. Additionally, GDP is a lagging indicator that is frequently revised, which may limit the accuracy and durability of threshold adjustments. Finally, the intent behind many rules that use asset-based thresholds is to target banks of a certain size, rather than a size relative to the broader economy; thus, if the banking industry is growing quickly in real terms alongside a rapidly growing economy, banks are still growing for purposes of the relevant regulations.”

Furthermore, not all of the threshold changes are focused on community financial institutions. Some of the increases are sizable and would benefit larger banks (e.g. one \$50 billion threshold is more than doubled to \$105 billion, and another is more than tripled to \$175 billion). For context, roughly 97% of all banks have

³FRED, *Nominal Gross Domestic Product for United States* (accessed Jan. 19, 2026); and FRED, *Consumer Price Index for All Urban Wage Earners and Clerical Workers: All Items in U.S. City Average* (accessed Jan. 19, 2026).

⁴Federal Register, *FDIC Final Rule: Adjusting and Indexing Certain Regulatory Thresholds* (Dec. 4, 2025).

⁵See Bank Policy Institute (BPI), *Adjusting Regulatory Thresholds for Economic Growth* (Sep. 9, 2024); BPI, *The Economy Evolves Over Time—So Should Bank Regulations* (Sep. 26, 2025).

⁶Better Markets, *Letter to the House Financial Services Committee re Making Community Banking Great Again Principles* (Feb. 20, 2025). For example, the FDIC developed a nuanced definition of community banking organizations that take into account a bank’s business lines, foreign assets, deposit base, and geographic footprint, among other criteria that could provide a more tailored regulatory application than a blunt asset-size threshold. See FDIC, *Community Banking Study* (Dec. 2012), page 1–2.

⁷Federal Register, *FDIC Final Rule: Adjusting and Indexing Certain Regulatory Thresholds* (Dec. 4, 2025).

less than \$10 billion in assets,⁸ and only 26 banks of the roughly 4,400 banks have more than \$100 billion in assets.⁹

To underscore the bill's sweeping scope, it is worth noting that H.R. 7056 rolls back several consumer protection obligations relating to mortgage rules and HMDA reporting at a time when the Trump Administration has largely shut down the Consumer Financial Protection Bureau (CFPB). Even a modest reduction in HMDA reporting would arguably curb efforts to promote a competitive housing market and lending opportunities in rural and other underserved communities.¹⁰ The bill also reduces Community Reinvestment Act exams while Trump's regulators are rolling back anti-discrimination and CRA rules while reducing bank exam staff.

Finally, the bill has the potential to undermine regulatory agency efforts to establish tailored risk-based thresholds that are phased in to mitigate cliff effects that can happen with asset-based thresholds. This potential impact is evident in the context of the post-financial crisis prohibition on banking entities engaging in proprietary trading and hedge fund ownership, commonly known as the Volcker Rule. In July 2019, regulators finalized a rule to exempt banks from the Volcker prohibition firms that have less than \$10 billion total assets and total trading assets and liabilities equal to five percent or less of total consolidated assets.¹¹ In November 2019, the agencies further tailored Volcker rule implementation to "make the scale of compliance activity required . . . commensurate with a banking entity's size and level of trading activity."¹² The November 2019 tailoring revisions established three categories based on a firms' level of trading activity and tailored compliance requirements that gradually phased in obligations based on new compliance tiers.¹³ The November 2019 tiering amendments set a floor of \$20 billion in gross trading assets and liabilities for the full suite of Volcker rule compliance requirements.¹⁴ In July 2020, Trump's banking regulators further rolled back Volcker rule implementation to simplify compliance and permit additional fund activities.¹⁵ These rollbacks arguably contributed to a stronger linkage between banks and private credit, which last year experienced turmoil that affected several large banks, including JPMorgan Chase.¹⁶ The bank's CEO, Jamie Dimon, warned, "When you see one cockroach, there are probably more."¹⁷ Given these growing concerns, it would be prudent to be cautious about exempting more banks from the Volcker Rule. Even setting aside those concerns, the bill's proposed statutory revisions to Volcker based on nominal GDP would arguably be disruptive to the more tailored, phased-in approach that the regulatory agencies have developed with input

⁸ See FDIC, *Quarterly Banking Profile* (3rd Quarter, 2025).

⁹ Federal Reserve, *Large Commercial Banks* (Sep. 30, 2025).

¹⁰ See Mayer Brown, *NCRC Files Suit Against CFPB over HMDA Reporting Thresholds* (Aug. 11, 2020); NCRC, *NCRC And Co-Plaintiffs' Legal Victory Means Mortgage Lenders Must Comply With More Robust Fair Lending Reporting Requirements* (Dec. 7, 2022).

¹¹ See OCC, Fed, FDIC, SEC, CFTC, *84 Fed. Reg.* 35008 (Jul. 22, 2019).

¹² See OCC, Fed, FDIC, SEC, CFTC, *84 Fed. Reg.* 61975 (Nov. 14, 2019).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See OCC, Fed, FDIC, SEC, CFTC, *85 Fed. Reg.* 46422 (Jul. 13, 2020).

¹⁶ WSJ, *Private-Credit Growth Fueled by Banks May Pose Risks* (May 21, 2025); Natasha Sarin, *How Bad Is Finance's Cockroach Problem? We Are About to Find Out.*, New York Times (Oct. 27, 2025); and Bloomberg, *Cracks in the Credit Market Could Be a Warning for Wall Street* (Oct. 31, 2025).

¹⁷ *Id.*

from the public through the notice and comment rulemaking process.

A number of consumer and advocacy groups are opposed to the bill, including Americans for Financial Reform (“AFR”), Center for Responsible Lending (“CRL”), Consumer Federation of America (“CFA”), National Community Reinvestment Coalition (“NCRC”), National Consumer Law Center (on behalf of its low-income clients) (“NCLC”), and Public Citizen.

For these reasons, we oppose H.R. 7056.

Sincerely,

MAXINE WATERS,
Ranking Member.
STEPHEN F. LYNCH,
AL GREEN,
JOYCE BEATTY,
RASHIDA TLAIB,
SYLVIA R. GARCIA,
NIKEMA WILLIAMS,
Members of Congress.

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