

fect as if no such amendment had taken effect before such date, see section 1(c) of Pub. L. 99-452, set out as a note under section 1464 of this title.

Section 141(a) of Pub. L. 97-320, set out as a note under section 1464 of this title, as in effect on the day after Aug. 27, 1986, applicable as if included in Pub. L. 97-320 on Oct. 15, 1982, with no amendment made by such section to any other provision of law to be deemed to have taken effect before Aug. 27, 1986, and any such provision of law to be in effect as if no such amendment had taken effect before Aug. 27, 1986, see section 1(c) of Pub. L. 99-400, set out as a note under section 1464 of this title.

§ 1786a. Omitted

CODIFICATION

Section, act June 26, 1934, ch. 750, title II, §206A, as added Pub. L. 105-164, §3(b), Mar. 20, 1998, 112 Stat. 35; amended Pub. L. 109-351, title VII, §726(20), Oct. 13, 2006, 120 Stat. 2003, which related to regulation and examination of credit union organizations and service providers by the National Credit Union Administration Board, ceased to be effective as of Dec. 31, 2001, pursuant to subsec. (f) of the section.

§ 1787. Payment of insurance

(a) Liquidation by Board; bond; appointment of agent; fees to be fixed by Board

(1)(A) Upon its finding that a Federal credit union insured under this subchapter is bankrupt or insolvent, the Board shall close such credit union for liquidation and appoint itself liquidating agent therefor.

(B) Not later than 10 days after the date on which the Board closes a credit union for liquidation pursuant to paragraph (1), or accepts appointment as liquidating agent pursuant to subsection (b) of this section, such insured credit union may apply to the United States district court for the judicial district in which the principal office of such insured credit union is located or the United States District Court for the District of Columbia, for an order requiring the Board to show cause why it should not be prohibited from continuing such liquidation. Except as otherwise provided in this subparagraph, no court may take any action for or toward the removal of any liquidating agent or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a liquidating agent.

(2) Notwithstanding any other provision of law, the Board as liquidating agent of a closed Federal credit union insured under this subchapter shall not be required to furnish bond and shall have the right to appoint an agent or agents to assist it in its duties as such liquidating agent. All fees, compensation, and expenses of liquidation and administration thereof shall be fixed by the Board and may be paid by them out of funds coming into its possession as such liquidating agent.

(3) LIQUIDATION TO FACILITATE PROMPT CORRECTIVE ACTION.—The Board may close any credit union for liquidation, and appoint itself or another (including, in the case of a State-chartered insured credit union, the State official having jurisdiction over the credit union) as liquidating agent of that credit union, if—

(A) the Board determines that—

(i) the credit union is significantly undercapitalized, as defined in section 1790d of

this title, and has no reasonable prospect of becoming adequately capitalized, as defined in section 1790d of this title; or

(ii) the credit union is critically undercapitalized, as defined in section 1790d of this title; and

(B) in the case of a State-chartered insured credit union, the Board has complied with section 1790d(l) of this title.

(b) Powers and duties of Board as conservator or liquidating agent

(1) Rulemaking authority of Board

The Board may prescribe such regulations as the Board determines to be appropriate regarding the conduct of the Board as conservator or liquidating agent.

(2) General powers

(A) Successor to credit union

The Board shall, as conservator or liquidating agent, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the credit union, and of any member, accountholder, officer, or director of such credit union with respect to the credit union and the assets of the credit union; and

(ii) title to the books, records, and assets of any previous conservator or other legal custodian of such credit union.

(B) Operate the credit union

The Board may, as conservator or liquidating agent—

(i) take over the assets of and operate the credit union with all the powers of the members or shareholders, the directors, and the officers of the credit union and shall be authorized to conduct all business of the credit union;

(ii) collect all obligations and money due the credit union;

(iii) perform all functions of the credit union in the name of the credit union which is consistent with the appointment as conservator or liquidating agent; and

(iv) preserve and conserve the assets and property of such credit union.

(C) Functions of credit union's officers, directors, and shareholders

The Board may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any credit union for which the Board has been appointed conservator or liquidating agent.

(D) Powers as conservator

The Board may, as conservator, take such action as may be—

(i) necessary to put the credit union in a sound and solvent condition; and

(ii) appropriate to carry on the business of the credit union and preserve and conserve the assets and property of the credit union.

(E) Additional powers as liquidating agent

The Board may, as liquidating agent, place the credit union in liquidation and proceed

to realize upon the assets of the credit union, having due regard to the conditions of credit in the locality.

(F) Payment of valid obligations

The Board, as conservator or liquidating agent, shall pay all valid obligations of the credit union in accordance with the prescriptions and limitations of this chapter.

(G) Attachment of assets and injunctive relief

Subject to subparagraph (H), any court of competent jurisdiction may, at the request of the Board (in the Board's capacity as conservator or liquidating agent for any insured credit union or in the Board's corporate capacity in the exercise of any authority under this section), 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 Board under the control of the court and appointing a trustee to hold such assets.

(H) Standards

(i) Showing

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subparagraph (G) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(ii) 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 clause (i)), the relief sought by the Board pursuant to subparagraph (G) may be requested under the laws of such State.

(I) Subpoena authority

(i) In general

The Board may, as conservator or liquidating agent and for purposes of carrying out any power, authority, or duty with respect to an insured credit union (including determining any claim against the credit union and determining and realizing upon any asset of any person in the course of collecting money due the credit union), exercise any power established under section 1786(p) of this title, 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

A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board or their designees.

(iii) Rule of construction

This subsection shall not be construed as limiting any rights that the Board, in any capacity, might otherwise have under section 1786(p) of this title.

(J) Incidental powers

The Board may, as conservator or liquidating agent—

(i) exercise all powers and authorities specifically granted to conservators or liquidating agents, respectively, under this chapter and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this chapter,

which the Board determines is in the best interests of the credit union, its account holders, or the Board.

(K) Exemption from criminal prosecution

The Administration 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 a credit union, or persons acting on behalf of a credit union, prior to the appointment of the Administration as liquidating agent.

(3) Authority of liquidating agent to determine claims

(A) In general

The Board may, as liquidating agent, determine claims in accordance with the requirements of this subsection and regulations prescribed under paragraph (4).

(B) Notice requirements

The liquidating agent, in any case involving the liquidation or winding up of the affairs of a closed credit union, shall—

(i) promptly publish a notice to the credit union's creditors to present their claims, together with proof, to the liquidating agent 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 liquidating agent 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 credit union'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 credit union's books within 30 days after the discovery of such name and address.

(4) Rulemaking authority relating to determination of claims

The Board may prescribe regulations regarding the allowance or disallowance of claims by the liquidating agent and providing for administrative determination of claims and review of such determination.

(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

credit union is filed with the Board as liquidating agent, the Board 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 Board.

(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 credit union'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 liquidating agent shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i) by the liquidating agent from any claimant which is proved to the satisfaction of the liquidating agent.

(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 liquidating agent if—

- (I) the claimant did not receive notice of the appointment of the liquidating agent 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

The liquidating agent 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 liquidating agent.

(E) No judicial review of determination pursuant to subparagraph (D)

No court may review the Board'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 liquidating agent shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the liquidating agent shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the liquidating agent.

(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 credit union for which the Board is liquidating agent; 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 liquidating agent) in the district or territorial court of the United States for the district within which the credit union'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 liquidating agent),

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 liquidating agent) 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 Board agrees to such request, the Board shall consider the claim after opportunity for a hearing on the record. The final deter-

mination of the Board with respect to such claim shall be subject to judicial review under chapter 7 of title 5.

(B) Other review procedures

(i) In general

The Board 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 Board shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) Voluntary binding or nonbinding procedures

The Board may establish both binding and nonbinding processes, which may be conducted by any government or private party, but all parties, including the claimant and the Board, must agree to the use of the process in a particular case.

(iv) Consideration of incentives

The Board shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) Expedited determination of claims

(A) Establishment required

The Board 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 credit union for which the Board has been appointed liquidating agent; 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 Board 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); or

(ii) notify the claimant of the determination, and if the claim is disallowed, 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 liquidating agent, 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 Board 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 liquidating agent), 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 liquidating agent shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the liquidating agent shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the liquidating agent.

(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 1788(a)(3) of this title shall not form the basis of, or substantially comprise, a claim against the liquidating agent or the Board.

(B) Exception to contemporaneous execution requirement

Notwithstanding section 1788(a)(3) of this title, any agreement between a Federal home loan bank or Federal Reserve bank and any insured credit union which was executed before the extension of credit by such bank to such credit union 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 liquidating agent may, in the liquidating agent's discretion and to the extent funds are available, pay creditor claims which are allowed by the liquidating agent, approved by the Board 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 chapter.

(B) Payment of dividends on claims

The liquidating agent may, in the liquidating agent's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Board (in such Board's corporate capacity or as liquidating agent), 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.

(11) Distribution of assets

(A) Subrogated claims; claims of uninsured accountholders and other creditors

The liquidating agent shall—

(i) retain for the account of the Board such portion of the amounts realized from any liquidation as the Board may be entitled to receive in connection with the subrogation of the claims of accountholders; and

(ii) pay to accountholders and other creditors the net amounts available for distribution to them.

(B) Distribution to shareholders of amounts remaining after payment of all other claims and expenses

In any case in which funds remain after all accountholders, creditors, other claimants, and administrative expenses are paid, the liquidating agent shall distribute such funds to the credit union's shareholders or members together with the accounting report required under paragraph (14)(C).

(12) Suspension of legal actions

(A) In general

After the appointment of a conservator or liquidating agent for an insured credit union, the conservator or liquidating agent 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 liquidating agent,

in any judicial action or proceeding to which such credit union is or becomes a party.

(B) Grant of stay by all courts required

Upon receipt of a request by any conservator or liquidating agent 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 Board shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Board as conservator or liquidating agent.

(B) Rights and remedies of conservator or liquidating agent

In the event of any appealable judgment, the Board as conservator or liquidating agent shall—

(i) have all the rights and remedies available to the credit union (before the appointment of such conservator or liquidating agent) and the Board 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 liquidating agent.

(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 credit union for which the Board has been appointed liquidating agent, including assets which the Board may acquire from itself as such liquidating agent; or

(ii) any claim relating to any act or omission of such credit union or the Board as liquidating agent.

(14) Statute of limitations for actions brought by conservator or liquidating agent

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Board as conservator or liquidating agent 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, 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 limitation begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Board as conservator or liquidating agent; or

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

(15) Accounting and recordkeeping requirements

(A) In general

The Board as conservator or liquidating agent shall, consistent with the accounting and reporting practices and procedures established by the Board, maintain a full accounting of each conservatorship and liquidation or other disposition of credit unions in default.

(B) Annual accounting or report

With respect to each conservatorship or liquidation to which the Board was appointed, the Board shall make an annual accounting or report, as appropriate, available to the Comptroller General of the United States or, in the case of a State-chartered

credit union, the authority which appointed the Board as conservator or liquidating agent.

(C) Availability of reports

Any report prepared pursuant to subparagraph (B) shall be made available by the Board upon request to any shareholder of the credit union for which the Board was appointed conservator or liquidating agent 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 Board is appointed as liquidating agent of an insured credit union, the Board may destroy any records of such credit union which the Board, in the Board'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 Board may destroy records of an insured credit union which are at least 10 years old as of the date on which the Board is appointed as liquidating agent of such credit union 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) Fraudulent transfers

(A) In general

The Board, as conservator or liquidating agent for any insured credit union, may avoid a transfer of any interest of an institution-affiliated party, or any person who the Board 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 Board becomes conservator or liquidating agent 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 credit union or the Board.

(B) Right of recovery

To the extent a transfer is avoided under subparagraph (A), the Board may recover, for the benefit of the insured credit union, 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 Board 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 of the Board under this paragraph 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.

(c) Provisions relating to contracts entered into before appointment of conservator or liquidating agent

(1) Authority to repudiate contracts

In addition to any other rights a conservator or liquidating agent may have, the conservator or liquidating agent for any insured credit union may disaffirm or repudiate any contract or lease—

(A) to which such credit union is a party;

(B) the performance of which the conservator or liquidating agent, in the conservator's or liquidating agent's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or liquidating agent determines, in the conservator's or liquidating agent's discretion, will promote the orderly administration of the credit union's affairs.

(2) Timing of repudiation

The conservator or liquidating agent appointed for any insured credit union 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 liquidating agent 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 liquidating agent; 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 (f) of this section except as otherwise specifically provided in this section.

(4) Leases under which the credit union is the lessee

(A) In general

If the conservator or liquidating agent disaffirms or repudiates a lease under which the credit union was the lessee, the conservator or liquidating agent 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 (b) of this section.

(5) Leases under which the credit union is the lessor

(A) In general

If the conservator or liquidating agent repudiates an unexpired written lease of real property of the credit union under which the credit union 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; 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 credit union under the lease after such date; and

(ii) the conservator or liquidating agent 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 liquidating agent repudiates any contract (which meets the requirements of each paragraph of section 1788(a)(3) of this title) 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 credit union under the contract; and

(ii) the conservator or liquidating agent 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 liquidating agent 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 conservator

or liquidating agent 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 credit union for which the Board has been appointed conservator or liquidating agent, any claim of such person for services performed before the appointment of the conservator or the liquidating agent shall be—

- (i) a claim to be paid in accordance with subsection (b) of this section; and
- (ii) deemed to have arisen as of the date the conservator or liquidating agent 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 liquidating agent accepts performance by the other person before the conservator or liquidating agent 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 liquidation.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by any conservator or liquidating agent 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 liquidating agent 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 chapter (other than subsection (b)(9) of this section and section 1788(a)(3) of this title), 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 credit union which arises upon the appointment of the Board as liquidating agent for such credit union at any time after such appointment;
- (ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);¹
- (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), including any master agreement for such contracts or agreements.

(B) Applicability of other provisions

Subsection (b)(12) of this section shall apply in the case of any judicial action or proceeding brought against any liquidating agent referred to in subparagraph (A), or the credit union for which such liquidating agent was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such credit union.

(C) Certain transfers not avoidable

(i) In general

Notwithstanding paragraph (11), section 91 of this title or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Board, whether acting as such or as conservator or liquidating agent of an insured credit union, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured credit union.

(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 credit union if the Board determines that the transferee had actual intent to hinder, delay, or defraud such credit union, the creditors of such credit union, or any conservator or liquidating agent appointed for such credit union.

(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, forward contract, repurchase agreement, and any similar agreement that the Board 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 re-

¹ So in original. Probably should be followed by “or”.

purchase 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 Board 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 agree-

ment 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 en-

tered into, including,² 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 [15 U.S.C. 78a et seq.]), 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 Board 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 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

² So in original. The comma probably should not appear.

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 [7 U.S.C. 27 to 27f], the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(47)]) and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(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.

(E) Certain protections in event of appointment of conservator

Notwithstanding any other provision of this chapter (other than subsections (b)(9) and (c)(10) of this section, and section 1788(a)(3) of this title), 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 credit union 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 1 or more qualified financial contracts described in clause (i);¹

(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 Board, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Board 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 (c)(1) of this section.

(G) Walkaway clauses not effective

(i) In general

Notwithstanding the provisions of subparagraphs (A) and (E), and sections 4403 and 4404 of this title, no walkaway clause shall be enforceable in a qualified financial contract of an insured credit union 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 liquidating agent 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 liquidating agent.

(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 credit union or the appointment of or the exercise of rights or powers by a conservator or liquidating agent of such credit union, 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 Board, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured credit union with respect to qualified financial contracts (including market valuations) only if such insured credit union is in a troubled condition (as such term is defined by the Board pursuant to section 1790a of this title).

(9) Transfer of qualified financial contracts

(A) In general

In making any transfer of assets or liabilities of a credit union in default which includes any qualified financial contract, the conservator or liquidating agent for such credit union shall either—

(i) transfer to 1 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 credit union in default;

(II) all claims of such person or any affiliate of such person against such credit union 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 credit union);

(III) all claims of such credit union 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 de-

scribed 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 liquidating agent for the credit union 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 1 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 liquidating agent 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—

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

(ii) the term “clearing organization” has the same meaning as in section 4402 of this title.

(10) Notification of transfer

(A) In general

If—

(i) the conservator or liquidating agent for an insured credit union in default makes any transfer of the assets and liabilities of such credit union; and

(ii) the transfer includes any qualified financial contract,

the conservator or liquidating agent 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 liquidating

agent in the case of a liquidation, or the business day following such transfer in the case of a conservatorship.

(B) Certain rights not enforceable

(i) Liquidation

A person who is a party to a qualified financial contract with an insured credit union 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 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a liquidating agent for the credit union institution (or the insolvency or financial condition of the credit union for which the liquidating agent has been appointed)—

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent; 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 credit union 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 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a conservator for the credit union or³ the insolvency or financial condition of the credit union for which the conservator has been appointed).

(iii) Notice

For purposes of this paragraph, the Board as conservator or liquidating agent of an insured credit union shall be deemed to have notified a person who is a party to a qualified financial contract with such credit union if the Board has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) Treatment of bridge banks⁴

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 credit union organized by the Board, for which a conservator is appointed either—

(I) immediately upon the organization of the credit union; or

(II) at the time of a purchase and assumption transaction between the credit union and the Board as receiver for a credit union 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 liquidating agent with respect to any qualified financial contract to which an insured credit union is a party, the conservator or liquidating agent for such credit union shall either—

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

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

(ii) the credit union 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 credit union except where such an interest is taken in contemplation of the credit union's insolvency or with the intent to hinder, delay, or defraud the credit union or the creditors of such credit union.

(13) Authority to enforce contracts

(A) In general

The conservator or liquidating agent may enforce any contract, other than a director's or officer's liability insurance contract or a credit union bond, entered into by the credit union 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 liquidating agent.

(B) Certain rights not affected

No provision of this paragraph may be construed as impairing or affecting any right of the conservator or liquidating agent to enforce or recover under a directors or officers liability insurance contract or credit union bond under other applicable law.

(C) Consent requirement

(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 credit union is a party, or to obtain possession of or exercise control over any property of the credit union or affect any contractual rights of the credit union, without the consent of the conservator or liquidating agent, 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 liquidating agent, as applicable.

³So in original. Probably should read "(or)".

⁴So in original. Probably should be "bridge depository institutions".

(ii) Certain exceptions

No provision of this subparagraph shall apply to a director or officer liability insurance contract or a credit union bond, or to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or shall be construed as permitting the conservator or liquidating agent 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.

(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) 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 [7 U.S.C. 27 to 27f], the securities laws (as that term is defined in section (a)(47)⁵ of the Securities Exchange Act of 1934), and the Commodity Exchange Act [7 U.S.C. 1 et seq.].

(d) Payment of insured deposits**(1) In general**

In case of the liquidation of any insured credit union, payment of the insured deposits in such credit union shall be made by the Board as soon as possible, subject to the provisions of subsection (e) of this section, either by cash or by making available to each account holder a transferred deposit in a new credit union in the same community or in another insured credit union in an amount equal to the insured deposit of such account holder.

(2) Proof of claims

The Board, 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 Administration regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Board may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect

to any deposit. A final determination made by the Board regarding any claim for insurance coverage shall be a final agency action reviewable in accordance with chapter 7 of title 5 by the United States district court for the Federal judicial district where the principal place of business of the credit union is located.

(4) Statute of limitations

Any request for review of a final determination by the Board 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.

(e) Subrogation of Board**(1) In general**

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Board, upon the payment to any account holder as provided in subsection (d) of this section in connection with any insured credit union described in such subsection or the assumption of any deposit in such credit union by another insured credit union pursuant to this section, shall be subrogated to all rights of the account holder against such credit union to the extent of such payment or assumption.

(2) Dividends on subrogated amounts

The subrogation of the Board under paragraph (1) with respect to any insured credit union shall include the right on the part of the Board to receive the same dividends from the proceeds of the assets of such credit union as would have been payable to the account holder on a claim for the insured deposit, but such account holder shall retain such claim for any uninsured or unassumed portion of the deposit.

(f) Valuation of claims in default**(1) In general**

Notwithstanding any other provision of Federal law or the law of any State, this subsection shall govern the rights of the creditors (other than insured account holders) of such credit union.

(2) Maximum liability

The maximum liability of the Board, acting as liquidating agent or in any other capacity, to any person having a claim against the liquidating agent or the insured credit union for which such liquidating agent is appointed shall equal the amount such claimant would have received if the Board had liquidated the assets and liabilities of such credit union without exercising the Board's authority under subsection (n) of this section.

(3) Additional payments authorized**(A) In general**

The Board 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. The Board shall not be obligated, as a result of having made

⁵ So in original. Probably should be section "3(a)(47)".

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 Board 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 credit union to induce the open insured credit union to accept liability for such claims.

(g) 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 Board as a conservator or a liquidating agent.

(h) Liability of directors and officers

A director or officer of an insured credit union may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Board, which action is prosecuted wholly or partially for the benefit of the Board—

(1) acting as conservator or liquidating agent of such insured credit union,

(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such liquidating agent 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 credit union or its affiliate in connection with assistance provided under section 1788 of this title,

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, if any, of the Board under other applicable law.

(i) Damages

In any proceeding related to any claim against an insured credit union's director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to an insured credit union, recoverable damages determined to result from the improvident or otherwise improper use or investment of any insured credit union's assets shall include principal losses and appropriate interest.

(j) Board as liquidating agent of State-chartered credit unions

Whenever any insured State-chartered credit union shall have been closed by action of its board of directors or by the commission, board, or authority having supervision of such credit union, as the case may be, or by a court of competent jurisdiction, on account of bankruptcy or insolvency, the Board shall accept appointment as liquidating agent therefor, if such appoint-

ment is tendered by the commission, board, or authority having supervision of such credit union, or by a court of competent jurisdiction, and is authorized or permitted by State law. With respect to any such State-chartered credit union, the Board as such liquidating agent shall possess all the rights, powers, and privileges granted by State law to a liquidating agent of a State-chartered credit union. For the purposes of this subsection, the term "liquidating agent" includes a liquidating agent, receiver, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a credit union.

(k) Insured amounts payable

(1) Net insured amount

(A) In general

(i) Net amount of insurance payable

Subject to clause (ii) and the provisions of paragraph (2), the net amount of share insurance payable to any member at an insured credit union shall not exceed the total amount of the shares or deposits in the name of the member (after deducting offsets), less any part thereof which is in excess of the standard maximum share insurance amount, as determined in accordance with this paragraph and paragraphs (5) and (6), and consistently with actions taken by the Federal Deposit Insurance Corporation under section 1821(a) of this title.

(ii) Insurance for noninterest-bearing transaction accounts

Notwithstanding clause (i), the Board shall fully insure the net amount that any member or depositor at an insured credit union maintains in a noninterest-bearing transaction account. Such amount shall not be taken into account when computing the net amount due to such member or depositor under clause (i).

(iii) Noninterest-bearing transaction account defined

For purposes of this subparagraph, the term "noninterest-bearing transaction account" means an account or deposit maintained at an insured credit union—

(I) with respect to which interest is neither accrued nor paid;

(II) on which the account holder or depositor is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and

(III) on which the insured credit union does not reserve the right to require advance notice of an intended withdrawal.

(B) Aggregation

Determination of the net amount of share insurance under subparagraph (A)(i), shall be in accordance with such regulations as the Board may prescribe, and, in determining the amount payable to any member, there

shall be added together all accounts in the credit union maintained by that member for that member's own benefit, either in the member's own name or in the names of others.

(C) Authority to define the extent of coverage

The Board may define, with such classifications and exceptions as it may prescribe, the extent of the share insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.

(2) Government depositors or members

(A) In general

Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of insurance available to any 1 depositor or member, deposits or shares of a government depositor or member shall be insured in an amount equal to the standard maximum share insurance amount (as determined under paragraph (5)), subject to subparagraph (C).

(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 the same in a credit union insured in accordance with this subchapter;

(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 the same in a credit union insured in accordance with this subchapter in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Panama Canal Zone, or of any territory or possession of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing the same in a credit union insured in accordance with this subchapter in the Commonwealth of Puerto Rico, the Panama Canal Zone, or any such territory or possession, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 1452(c) of title 25) or agency thereof having official custody of tribal funds and lawfully investing the same in a credit union insured in accordance with this subchapter.

(C) Authority to limit deposits

The Board may limit the aggregate amount of funds that may be invested or deposited in any credit union insured in accordance with this subchapter by any gov-

ernment depositor or member on the basis of the size of any such credit union in terms of its assets.

(3) Notwithstanding any limitation in this subchapter or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, funds invested in a credit union insured in accordance with this subchapter pursuant to a pension or profit-sharing plan described in section 401(d) of title 26, and funds invested in such an insured credit union in the form of individual retirement accounts as described in section 408(a) of title 26, shall be insured in the amount of "\$250,000⁶ (which amount shall be subject to inflation adjustments as provided under section 1821(a)(1)(F) of this title, except that \$250,000⁷ shall be substituted for \$100,000⁷ wherever such term appears in such section)"⁶ per account. As to any plan qualifying under section 401(d) or section 408(a) of title 26, the term "per account" means the present vested and ascertainable interest of each beneficiary under the plan, excluding any remainder interest created by, or as a result of, the plan.

(4) Coverage for certain employee benefit plan deposits

(A) Pass-through insurance

The Administration shall provide pass-through share insurance for the deposits or shares of any employee benefit plan.

(B) Prohibition on acceptance of deposits

An insured credit union that is not well capitalized or adequately capitalized may not accept employee benefit plan deposits.

(C) Definitions

For purposes of this paragraph, the following definitions shall apply:

(i) Capital standards

The terms "well capitalized" and "adequately capitalized" have the same meanings as in section 1790d(c) of this title.

(ii) Employee benefit plan

The term "employee benefit plan"—

(I) has the meaning given to such term in section 1002(3) of title 29;

(II) includes any plan described in section 401(d) of title 26; and

(III) includes any eligible deferred compensation plan described in section 457 of title 26.

(iii) Pass-through share insurance

The term "pass-through share insurance" means, with respect to an employee benefit plan, insurance coverage based on the interest of each participant, in accordance with regulations issued by the Administration.

(D) Rule of construction

No provision of this paragraph shall be construed as authorizing an insured credit union to accept the deposits of an employee benefit plan in an amount greater than such

⁶So in original. Quotation marks probably should not appear.

⁷So in original. Probably should be set off by quotation marks.

credit union is authorized to accept under any other provision of Federal or State law.

(5) Standard maximum share insurance amount defined

For purposes of this chapter, the term “standard maximum share insurance amount” means \$250,000, adjusted as provided under section 1821(a)(1)(F) of this title.

(l) Payment; discharge of liability

Payment of an insured account to any person by the Board shall discharge the Board to the same extent that payment to such person by the closed insured credit union would have discharged it from liability for the insured account.

(m) Undisclosed names

Except as otherwise prescribed by the Board, the Board shall not be required to recognize as the owner of any portion of an account appearing on the records of the closed credit union under a name other than that of the claimant any person whose name or interest as such owner is not disclosed on the records of such closed credit union as part owner of such account, if such recognition would increase the aggregate amount of the insured accounts in such closed credit union.

(n) Withholding of payment due to liability of credit union member

The Board may withhold payment of such portion of the insured account of any member of a closed credit union as may be required to provide for the payment of any direct or indirect liability of such member to the closed credit union or its liquidating agent, which is not offset against a claim due from such credit union, pending the determination and payment of such liability by such member or any other person liable therefor.

(o) Unclaimed insured accounts; limitations

If, after the Board shall have given at least four months’ notice to the member by mailing a copy thereof to his last-known address appearing on the records of the closed credit union, any member of the closed credit union shall fail to claim his insured account from the Board within 18 months after the appointment of the liquidating agent for the closed credit union, all rights of the member against the Board with respect to the insured accounts shall be barred, and all rights of the member against the closed credit union, or the estate to which the Board may have become subrogated, shall thereupon revert to the member.

(p) Sale of assets; security for loans; approval of court; agreements affecting interest of Board in any asset acquired by it

(1) Liquidating agents of insured credit unions closed for liquidation on account of bankruptcy or insolvency may offer the assets of such credit unions for sale to the Board or as security for loans from the Board, upon receiving permission from the commission, board, or authority having supervision of such credit union, in the case of an insured State-chartered credit union, in accordance with express provisions of State law. The proceeds of every such sale or loan shall be

utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such credit unions. The Board, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured credit union closed for liquidation on account of bankruptcy or insolvency, but in any case in which the Board is acting as liquidating agent of a closed insured credit union, no such loan or purchase shall be made without the approval of a court of competent jurisdiction.

(2) No agreement which tends to diminish or defeat the right, title, or interest of the Board in any asset acquired by it under this subsection, either as security for a loan or by purchase, shall be valid against the Board unless such agreement—

(A) shall be in writing;

(B) shall have been executed by the credit union and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the credit union;

(C) shall have been approved by the board of directors of the credit union, which approval shall be reflected in the minutes of such board; and

(D) shall have been, continuously, from the time of its execution, an official record of the credit union.

(q) Prohibition on certain acquisitions of assets

(1) Convicted debtors

Except as provided in paragraph (2), any individual who—

(A) has been convicted of an offense under section 215, 657, 1006, 1014, 1032, 1341, 1343, or 1344 of title 18 or of conspiring to commit any such offense, affecting any insured credit union for which the Board is appointed conservator or liquidating agent; and

(B) is in default on any loan or other extension of credit from such insured credit union which, if not paid, will cause substantial loss to the credit union, the National Credit Union Share Insurance Fund, or the Board,

may not purchase any asset of such credit union from the conservator or liquidating agent.

(2) Settlement of claims

Paragraph (1) shall not apply to the sale or transfer by the Board of any asset of any insured credit union to any individual 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 Board against the individual; or

(B) obligations owed by the individual to the insured credit union or the Board.

(r) Foreign investigations

The Board, as conservator or liquidating agent of any insured credit union and for purposes of carrying out any power, authority, or duty with respect to an insured credit union—

(1) may request the assistance of any foreign banking authority and provide assistance to

any foreign banking authority in accordance with section 1786(u) of this title; and

(2) may maintain an office to coordinate foreign investigations or investigations on behalf of foreign banking authorities.

(June 26, 1934, ch. 750, title II, §207, as added Pub. L. 91-468, §1(3), Oct. 19, 1970, 84 Stat. 1010; amended Pub. L. 93-495, title I, §§101(c), 104(a), Oct. 28, 1974, 88 Stat. 1501, 1503; Pub. L. 95-630, title V, §502(b), title XIV, §1401(c), Nov. 10, 1978, 92 Stat. 3681, 3712; Pub. L. 96-153, title III, §323(c), Dec. 21, 1979, 93 Stat. 1120; Pub. L. 96-221, title III, §308(c)(1), Mar. 31, 1980, 94 Stat. 148; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100-86, title VII, §714(a), (b), Aug. 10, 1987, 101 Stat. 654, 655; Pub. L. 101-73, title IX, §915(c), title XII, §1217(a), Aug. 9, 1989, 103 Stat. 486, 530; Pub. L. 101-647, title XXV, §§2521(a)(2), 2526(b), 2528(b), 2532(d), 2534(b), Nov. 29, 1990, 104 Stat. 4864, 4876, 4878, 4882, 4883; Pub. L. 103-394, title V, §501(c)(1), Oct. 22, 1994, 108 Stat. 4143; Pub. L. 105-219, title III, §301(b)(2), Aug. 7, 1998, 112 Stat. 930; Pub. L. 109-8, title IX, §§901(a)(2), (b)(2), (c)(2), (d)(2), (e)(2), (f)(2), (g)(2), (h)(2), (i)(2), 902(b), 903(b), 904(b), 905(b), 908(b), Apr. 20, 2005, 119 Stat. 147, 148, 150, 152, 154, 156-159, 162, 166, 183; Pub. L. 109-173, §2(d)(1), (2), Feb. 15, 2006, 119 Stat. 3602, 3604; Pub. L. 109-351, title VII, §§718(b), 720(b), 721(b), 722(b), 726(21)-(23), Oct. 13, 2006, 120 Stat. 1997-1999, 2003; Pub. L. 109-390, §§2(a)(2), (b)(2), (c)(2), 3(b), 6(b), Dec. 12, 2006, 120 Stat. 2693-2695, 2699; Pub. L. 110-289, div. A, title VI, §1604(b)(2), July 30, 2008, 122 Stat. 2829; Pub. L. 111-203, title III, §§335(b), 343(b)(1), (3), July 21, 2010, 124 Stat. 1540, 1545.)

AMENDMENT OF SUBSECTION (k)(1)

Pub. L. 111-203, title III, §343(b)(3), July 21, 2010, 124 Stat. 1545, provided that, effective January 1, 2013, subsection (k)(1) of this section is amended:

(1) in subparagraph (A)—

(A) by substituting “Subject to the provisions of paragraph (2), the net amount” for “(i) net amount of insurance payable.—” and all that follows through “paragraph (2), the net amount”; and

(B) by striking out clauses (ii) and (iii); and

(2) in subparagraph (B), by substituting “subparagraph (A)” for “subparagraph (A)(i)”.

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2)(G), (H), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Securities Exchange Act of 1934, referred to in subsec. (c)(8)(D)(v)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§78a et seq.) of Title 15, Commerce and Trade. Section 3(a)(47) of the Act is classified to section 78c of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Gramm-Leach-Bliley Act, referred to in subsec. (c)(8)(D)(vi), (15), is Pub. L. 106-102, Nov. 12, 1999, 113 Stat. 1338, as amended. For complete classification of this Act to the Code, see Short Title of 1999 Amendment note set out under section 1811 of this title and Tables.

The Legal Certainty for Bank Products Act of 2000, referred to in subsec. (c)(8)(D)(vi), (15), is title IV of H.R. 5660, as enacted by Pub. L. 106-554, §1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A-457, which is classified to sections 27 to 27f of Title 7, Agriculture. For complete

classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of Title 7 and Tables.

The Commodity Exchange Act, referred to in subsec. (c)(8)(D)(vi), (15), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

For definition of Canal Zone, referred to in subsec. (k)(2)(B)(iv), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

2010—Subsec. (k)(1)(A). Pub. L. 111-203, §343(b)(1)(A), designated existing provisions as cl. (i), inserted heading, substituted “Subject to clause (ii) and the provisions of paragraph (2), the net amount” for “Subject to the provisions of paragraph (2), the net amount”, and added cls. (ii) and (iii).

Subsec. (k)(1)(B). Pub. L. 111-203, §343(b)(1)(B), substituted “subparagraph (A)(i)” for “subparagraph (A)”.

Subsec. (k)(5). Pub. L. 111-203, §335(b), substituted “\$250,000” for “\$100,000”.

2008—Subsec. (c)(10)(C)(i). Pub. L. 110-289 substituted “bridge depository institution” for “bridge bank”.

2006—Subsec. (b)(2)(K). Pub. L. 109-351, §720(b), added subpar. (K).

Subsec. (b)(15)(D). Pub. L. 109-351, §722(b), designated existing provisions as cl. (i), inserted cl. heading, substituted “Except as provided in clause (ii), after the end of the 6-year period” for “After the end of the 6-year period”, and added cl. (ii).

Subsec. (c)(5)(B)(i)(I). Pub. L. 109-351, §726(21), inserted “and” after semicolon.

Subsec. (c)(8)(D)(ii)(I). Pub. L. 109-390, §2(a)(2)(A), substituted “a mortgage loan,” for “a mortgage loan, or” after “certificate of deposit,” and inserted before semicolon at end “(whether or not such repurchase or reverse repurchase transaction is a ‘repurchase agreement’, as defined in clause (v))”.

Subsec. (c)(8)(D)(ii)(IV). Pub. L. 109-390, §2(a)(2)(B), inserted “(including by novation)” after “the guarantee” and “(whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II))” before semicolon at end.

Subsec. (c)(8)(D)(ii)(VI) to (VIII). Pub. L. 109-390, §2(a)(2)(D), (E), added subcls. (VI) and (VII) and redesignated former subcl. (VI) as (VIII). Former subcl. (VIII) redesignated (X).

Subsec. (c)(8)(D)(ii)(IX). Pub. L. 109-390, §2(a)(2)(D), redesignated subcl. (VII) as (IX). Former subcl. (IX) redesignated (XI).

Pub. L. 109-390, §2(a)(2)(C), substituted “(VIII), (IX), or (X)” for “or (VII)” in two places.

Subsec. (c)(8)(D)(ii)(X) to (XII). Pub. L. 109-390, §2(a)(2)(D), redesignated subcls. (VIII) to (X) as (X) to (XII), respectively.

Subsec. (c)(8)(D)(iv)(I). Pub. L. 109-390, §2(b)(2), substituted “or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a ‘repurchase agreement’, as defined in clause (v))” for “transaction, reverse repurchase transaction”.

Subsec. (c)(8)(D)(vi). Pub. L. 109-390, §2(c)(2)(C), substituted in concluding provisions “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” for “the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000”.

Subsec. (c)(8)(D)(vi)(I). Pub. L. 109-390, §2(c)(2)(A), substituted “, precious metals, or other commodity” for “or precious metals” and “weather swap, option, fu-

ture, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement” for “or a weather swap, weather derivative, or weather option”.

Subsec. (c)(8)(D)(vi)(II). Pub. L. 109-390, §2(c)(2)(B), inserted “or other derivatives” after “dealings in the swap” and substituted “future, option, or spot transaction” for “future, or option”.

Subsec. (c)(8)(D)(ix). Pub. L. 109-390, §3(b), added cl. (ix).

Subsec. (c)(8)(G)(ii), (iii). Pub. L. 109-390, §6(b), added cls. (ii) and (iii) and struck out former cl. (ii) which defined walkaway clause.

Subsec. (c)(13)(C). Pub. L. 109-351, §718(b), which directed addition of subpar. (C) to subsec. (c)(12), was executed to par. (13) to reflect the probable intent of Congress because par. (12) does not contain subpars. and par. (12) was redesignated (13) by Pub. L. 109-8, §904(b)(1). See 2005 Amendment note below.

Subsec. (d)(3). Pub. L. 109-351, §721(b), added par. (3) and struck out former par. (3) which related to resolution of dispute and adjudication of claims.

Subsec. (d)(3)(A). Pub. L. 109-351, §726(22), which directed substitution of “with” for “to” in heading, could not be executed because there is no subpar. (A) heading after the amendment by Pub. L. 109-351, §721(b). See above.

Subsec. (d)(4), (5). Pub. L. 109-351, §721(b), added par. (4) and struck out former pars. (4) and (5) which related to review of the Board’s final determination and the statute of limitations.

Subsec. (f)(3)(A). Pub. L. 109-351, §726(23), substituted “category of claimants.” for “category or claimants.” in last sentence.

Subsec. (k). Pub. L. 109-173, §2(d)(1)(A), inserted subsec. heading.

Subsec. (k)(1). Pub. L. 109-173, §2(d)(1)(A), added par. (1) and struck out former par. (1) which read as follows: “Subject to the provisions of paragraph (2), for the purposes of this subsection, the term ‘insured account’ means the total amount of the account in the member’s name (after deducting offsets) less any part thereof which is in excess of \$100,000. Such amount shall be determined according to such regulations as the Board may prescribe, and, in determining the amount due to any member, there shall be added together all accounts in the credit union maintained by him for his own benefit either in his own name or in the names of others. The Board may define, with such classifications and exceptions as it may prescribe, the extent of the insurance coverage provided for member accounts, including member accounts in the name of a minor, in trust, or in joint tenancy.”

Subsec. (k)(2). Pub. L. 109-173, §2(d)(1)(B)(ii)–(iv), inserted par. heading, added subpar. (A), substituted subpar. (B) designation, heading, and introductory provisions for former subpar. (A) designation and introductory provisions which read “Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of insurance available for the account of any one depositor or member, in the case of a depositor or member who is—”, redesignated former subpar. (B) as (C), inserted heading, and substituted “government depositor or member” for “depositor or member referred to in subparagraph (A)”.

Subsec. (k)(2)(A). Pub. L. 109-173, §2(d)(1)(B)(i), substituted period for semicolon at end of cl. (v), realigned margins of cls. (i) to (v), and struck out concluding provisions which read as follows: “his account shall be insured in an amount not to exceed \$100,000 per account.”

Subsec. (k)(3). Pub. L. 109-173, §2(d)(2), substituted “\$250,000 (which amount shall be subject to inflation adjustments as provided under section 1821(a)(1)(F) of this title, except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such section)” for “\$100,000”.

Subsec. (k)(4), (5). Pub. L. 109-173, §2(d)(1)(C), added pars. (4) and (5).

2005—Subsec. (c)(8)(A). Pub. L. 109-8, §901(h)(2)(A)(i), substituted “paragraphs (9) and (10)” for “paragraph (12)” in introductory provisions.

Subsec. (c)(8)(A)(i). Pub. L. 109-8, §901(h)(2)(A)(ii), substituted “such person has to cause the termination, liquidation, or acceleration” for “to cause the termination or liquidation”.

Subsec. (c)(8)(A)(ii). Pub. L. 109-8, §901(h)(2)(A)(iii), added cl. (ii) and struck out former cl. (ii) which read as follows: “any right under any security arrangement relating to any contract or agreement described in clause (i); or”.

Subsec. (c)(8)(C)(i). Pub. L. 109-8, §901(i)(2), inserted “section 91 of this title or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,” before “the Board”.

Subsec. (c)(8)(D). Pub. L. 109-8, §901(a)(2)(A), substituted “subsection, the following definitions shall apply:” for “subsection—” in introductory provisions.

Subsec. (c)(8)(D)(i). Pub. L. 109-8, §901(a)(2)(B), inserted “, resolution, or order” after “any similar agreement that the Board determines by regulation”.

Subsec. (c)(8)(D)(ii). Pub. L. 109-8, §901(b)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘securities contract’—

“(I) has the meaning given to such term in section 741 of title 11, except that the term ‘security’ (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 78c(a)(41) of title 15), and any interest in any mortgage loan or mortgage-related security; and

“(II) does not include any participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term.”

Subsec. (c)(8)(D)(iii). Pub. L. 109-8, §901(c)(2), amended heading and text of cl. (iii) generally. Prior to amendment, text read as follows: “The term ‘forward contract’ has the meaning given to such term in section 101 of title 11.”

Subsec. (c)(8)(D)(iv). Pub. L. 109-8, §901(d)(2), amended heading and text of cl. (iv) generally. Prior to amendment, text read as follows: “The term ‘repurchase agreement’—

“(I) has the meaning given to such term in section 101 of title 11, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 78c(a)(41) of title 15, any mortgage loan, and any interest in any mortgage loan; and

“(II) does not include any participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term.”

Subsec. (c)(8)(D)(v). Pub. L. 109-8, §901(e)(2), amended heading and text of cl. (v) generally. Prior to amendment, text read as follows: “The term ‘transfer’ has the meaning given to such term in section 101 of title 11.”

Subsec. (c)(8)(D)(vi). Pub. L. 109-8, §901(f)(2), added cl. (vi).

Subsec. (c)(8)(D)(vii). Pub. L. 109-8, §905(b), added cl. (vii).

Subsec. (c)(8)(D)(viii). Pub. L. 109-8, §901(g)(2), added cl. (viii).

Subsec. (c)(8)(E). Pub. L. 109-8, §902(b)(1)(A), substituted “other than subsections (b)(9) and (c)(10)” for “other than paragraph (12) of this subsection, subsection (b)(9)” in introductory provisions.

Subsec. (c)(8)(E)(ii). Pub. L. 109-8, §901(h)(2)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: “any right under any security arrangement relating to such qualified financial contracts; or”.

Subsec. (c)(8)(F), (G). Pub. L. 109-8, §902(b)(1)(B), added subpars. (F) and (G).

Subsec. (c)(8)(H). Pub. L. 109-8, §908(b), added subpar. (H).

Subsec. (c)(9). Pub. L. 109-8, §903(b)(1), reenacted heading without change and amended text generally. Prior to amendment, text related to the transfer of qualified financial contracts, claims, and property of a credit union in default.

Subsec. (c)(10)(A). Pub. L. 109-8, §903(b)(2), substituted concluding provisions for former concluding provisions which read as follows: "the conservator or liquidating agent shall use such conservator's or liquidating agent's best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time), on the business day following such transfer."

Subsec. (c)(10)(B) to (D). Pub. L. 109-8, §903(b)(3), added subpars. (B) and (C) and redesignated former subpar. (B) as (D).

Subsec. (c)(11). Pub. L. 109-8, §904(b)(2), added par. (11). Former par. (11) redesignated (12).

Subsec. (c)(12). Pub. L. 109-8, §904(b)(1), redesignated par. (11) as (12). Former par. (12) redesignated (13).

Subsec. (c)(12)(A). Pub. L. 109-8, §902(b)(2), inserted "or the exercise of rights or powers by" after "the appointment of".

Subsec. (c)(13), (14). Pub. L. 109-8, §904(b)(1), redesignated pars. (12) and (13) as (13) and (14), respectively.

Subsec. (c)(15). Pub. L. 109-8, §904(b)(3), added par. (15).

1998—Subsec. (a)(1)(A). Pub. L. 105-219, §301(b)(2)(A), substituted "itself" for "himself".

Subsec. (a)(3). Pub. L. 105-219, §301(b)(2)(B), added par. (3).

1994—Subsec. (c)(8)(D). Pub. L. 103-394 substituted "section 741" for "section 741(7)" in cl. (ii)(I), "section 101" for "section 101(24)" in cl. (iii), "section 101" for "section 101(41)" in cl. (iv)(I), and "section 101" for "section 101(50)" in cl. (v).

1990—Subsec. (b)(2)(G), (H). Pub. L. 101-647, §2521(a)(2), added subpars. (G) and (H). Former subpar. (G) redesignated (I).

Subsec. (b)(2)(I). Pub. L. 101-647, §2534(b), added subpar. (I). Former subpar. (I) redesignated (J).

Pub. L. 101-647, §2521(a)(2), redesignated subpar. (G) as (I).

Subsec. (b)(2)(J). Pub. L. 101-647, §2534(b), redesignated subpar. (I) as (J).

Subsec. (b)(16). Pub. L. 101-647, §2528(b), added par. (16).

Subsec. (q). Pub. L. 101-647, §2526(b), added subsec. (q).

Subsec. (r). Pub. L. 101-647, §2532(d), added subsec. (r).

1989—Subsec. (a)(2), (3). Pub. L. 101-73, §1217(a)(1), redesignated par. (3) as (2) and struck out former par. (2) which detailed the duties of the Board in serving as liquidating agent for bankrupt or insolvent credit unions.

Subsec. (b). Pub. L. 101-73, §1217(a)(3), (4), added subsec. (b) and redesignated former subsec. (b) as (j).

Subsec. (c). Pub. L. 101-73, §1217(a)(3), (4), added subsec. (c) and redesignated former subsec. (c) as (k).

Subsec. (d). Pub. L. 101-73, §1217(a)(2), (4), added subsec. (d) and struck out former subsec. (d) which provided for subrogation by the Board to all rights of a member against a closed credit union to the extent of the Board's payment to the member.

Subsecs. (e) to (i). Pub. L. 101-73, §1217(a)(3), (4), added subsecs. (e) to (i) and redesignated former subsecs. (e) to (i) as (l) to (p), respectively.

Subsec. (j). Pub. L. 101-73, §1217(a)(2), (3), redesignated former subsec. (b) as (j) and struck out former subsec. (j) which provided that the power of the Board respecting liquidations was subject to the Board's own regulations or to regulations of other public authorities.

Subsec. (k). Pub. L. 101-73, §1217(a)(3), (5), redesignated former subsec. (c) as (k) and in par. (1), struck out first and fifth sentences which provided that, whenever an insured credit union was closed for liquidation on account of bankruptcy or insolvency, the Board was to pay insured accounts as soon as possible, and that in such cases the Board could investigate claims, require proof of them, and require determination by a court.

Subsec. (k)(1). Pub. L. 101-73, §915(c), inserted "may investigate said claims under section 1786(p) of this title," after "before paying the insured accounts," in last sentence.

Subsecs. (l) to (p). Pub. L. 101-73, §1217(a)(3), redesignated former subsecs. (e) to (i) as (l) to (p), respectively.

1987—Subsec. (a)(1). Pub. L. 100-86, §714(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (j). Pub. L. 100-86, §714(b), redesignated former section 1788(c) of this title as subsec. (j) of this section and substituted "subject only to the regulation of the Board, or, in cases where the Board has been appointed liquidating agent solely by a public authority having jurisdiction over the matter other than said Board, subject only to the regulation of such public authority" for "subject to the regulation of the court or other public body having jurisdiction over the matter".

1986—Subsec. (c)(3). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954" wherever appearing, which for purposes of codification was translated as "title 26" thus requiring no change in text.

1980—Subsec. (c)(1). Pub. L. 96-221 substituted "\$100,000" for "\$40,000".

1979—Subsec. (c)(2)(A)(v). Pub. L. 96-153 added cl. (v).

1978—Subsecs. (a), (b). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator" wherever appearing, "it" for "he" and "him", and "its" for "his", where appropriate.

Subsec. (c). Pub. L. 95-630, §§502(b), 1401(c), substituted in pars. (1) and (2) "Board" for "Administrator" wherever appearing and "it" and "its" for "he" and "his", respectively, where appropriate, and added par. (3).

Subsecs. (d) to (i). Pub. L. 95-630, §502(b), substituted "Board" for "Administrator" wherever appearing, and "it" and "its" for "him" and "his", respectively, where appropriate.

1974—Subsec. (c)(1). Pub. L. 93-495, §§101(c)(1), (2), 104(a), redesignated existing provisions as par. (1), substituted "Subject to the provisions of paragraph (2), for the purposes of this subsection" for "For the purposes of this subsection", and substituted "\$40,000" for "\$20,000". As enacted section 104(a) of Pub. L. 93-495 amended the first sentence; however the amendment was executed to the second sentence editorially since this would appear to be the probable intent of Congress.

Subsec. (c)(2). Pub. L. 93-495, §101(c)(3), added par. (2).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 335(b) of Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of this title.

Pub. L. 111-203, title III, §343(b)(2), July 21, 2010, 124 Stat. 1545, provided that: "The amendments made by paragraph (1) [amending this section] shall take effect upon the date of the enactment of this Act [July 21, 2010]."

Pub. L. 111-203, title III, §343(b)(3), July 21, 2010, 124 Stat. 1545, provided that the amendment made by section 343(b)(3) is effective Jan. 1, 2013.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-390 not applicable to any cases commenced under Title 11, Bankruptcy, or to appointments made under any Federal or State law, before Dec. 12, 2006, see section 7 of Pub. L. 109-390, set out as a note under section 101 of Title 11.

Amendment by Pub. L. 109-173 effective Apr. 1, 2006, see section 2(e) of Pub. L. 109-173, set out as a note under section 1785 of this title.

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-8 effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of Pub. L. 109-8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see sec-

tion 702 of Pub. L. 103-394, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-221 effective on Mar. 31, 1980, see section 308(e) of Pub. L. 96-221, set out as a note under section 1817 of this title.

APPLICABILITY OF 1980 AMENDMENT

Section 308(c)(2) of Pub. L. 96-221 provided that: "The amendment made by this subsection [amending this section] is not applicable to any claim arising out of the closing of a credit union for liquidation on account of bankruptcy or insolvency pursuant to section 207 of the Federal Credit Union Act (12 U.S.C. 1787) prior to the effective date of this section [see section 308(e) of Pub. L. 96-221, set out as an Effective Date of 1980 Amendment note under section 1817 of this title]."

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-153 applicable only to claims arising after Dec. 21, 1979, with respect to a closing of a bank, etc., see section 323(e) of Pub. L. 96-153, set out as an Effective and Termination Dates of 1979 Amendment note under section 1728 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 502(b) of Pub. L. 95-630 effective on expiration of 120 days after Nov. 10, 1978, and transitional provisions, see section 509 of Pub. L. 95-630, set out as a note under section 1752 of this title.

Section 1402 of title XIV of Pub. L. 95-630 provided that: "This title [amending this section and sections 1728 and 1821 of this title] shall take effect upon enactment [Nov. 10, 1978]."

EFFECTIVE DATE OF 1974 AMENDMENT

For effective date of amendment by section 101(c)(1), (2) of Pub. L. 93-495 see section 101(g) of Pub. L. 93-495, set out as a note under section 1813 of this title.

Section 104(b), (c) of Pub. L. 93-495 provided that:

"(b) The amendment made by this section [amending this section] is not applicable to any claim arising out of the closing of a credit union for liquidation on account of bankruptcy or insolvency pursuant to section 207 of title II of the Federal Credit Union Act (12 U.S.C. 1787) prior to the effective date of this section.

"(c) The amendment made by this section shall take effect on the thirtieth day beginning after the date of enactment of this Act [Oct. 28, 1974]."

TEMPORARY ADJUSTMENT IN STANDARD MAXIMUM SHARE INSURANCE AMOUNT

Subsec. (k)(5) of this section to apply with "\$250,000" substituted for "\$100,000" during period beginning on Oct. 3, 2008, and ending on Dec. 31, 2009, see section 5241(b)(1) of this title.

§ 1788. Special assistance to avoid liquidation

(a) Loans; purchase of assets; accounts; agreements affecting interest of Board in any asset acquired by it

(1) In order to reopen a closed insured credit union or in order to prevent the closing of an insured credit union which the Board has determined is in danger of closing or in order to assist in the voluntary liquidation of a solvent credit union, the Board, in its discretion, is authorized to make loans to, or purchase the assets of, or establish accounts in such insured credit union upon such terms and conditions as it may prescribe. Except with respect to the voluntary liquidation of a solvent credit union, such loans shall be made and such accounts shall be established only when, in the opinion of

the Board, such action is necessary to protect the fund or the interests of the members of the credit union.

(2) Whenever in the judgment of the Board such action will reduce the risk or avert a threatened loss to the fund and will facilitate a merger or consolidation of an insured credit union with another insured credit union, or will facilitate the sale of the assets of an open or closed insured credit union to and assumption of its liability by another person, the Board may, upon such terms and conditions as it may determine, make loans secured in whole or in part by assets of an open or closed insured credit union, which loans may be in subordination to the rights of members and creditors of such credit union, or the Board may purchase any of such assets or may guarantee any person against loss by reason of its assuming the liabilities and purchasing the assets of an open or closed insured credit union. For purposes of this paragraph, the term "person" means any credit union, individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(3) No agreement which tends to diminish or defeat the right, title, or interest of the Board, in any asset acquired by it under this subsection, either as security for a loan or by purchase, shall be valid against the Board unless such agreement—

(A) shall be in writing;

(B) shall have been executed by the credit union and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the credit union;

(C) shall have been approved by the board of directors of the credit union, which approval shall be reflected in the minutes of such board; and

(D) shall have been continuously, from the time of its execution, an official record of the credit union.

(b) Protection of Fund

For the protection of the Fund, the Board, without regard to chapters 1 to 11 of title 40 and division C (except sections 3302, 3307(e), 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41, may—

(1) deal with, complete, reconstruct, rent, renovate, modernize, insure, make contracts for the management of, sell for cash or credit, or lease, in its discretion, any real property acquired or held by it under this section; and

(2) assign or sell at public or private sale, or otherwise dispose of, any evidence of debt, contract, claim, personal property, or security assigned to or held by it under this section.

Section 6101 of title 41 shall not apply to any purchase or contract for services or supplies made or entered into by the Board under this section if the amount thereof does not exceed \$1,000, or to any contract for hazard insurance on any real property acquired or held by it under this section.

(c) Money paid into Fund

Money received by the Board in carrying out this section shall be paid into the Fund.