

(Pub. L. 106-102, title I, §115, Nov. 12, 1999, 113 Stat. 1371.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (d)(6), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

CODIFICATION

Section was enacted as part of the Gramm-Leach-Bliley Act, and not as part of the Federal Deposit Insurance Act which comprises this chapter.

EFFECTIVE DATE

Section effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as an Effective Date of 1999 Amendment note under section 24 of this title.

§ 1821. Insurance Funds

(a) Deposit insurance

(1) Insured amounts payable

(A) In general

The Corporation shall insure the deposits of all insured depository institutions as provided in this chapter.

(B) Net amount of insured deposit

(i) In general

Subject to clause (ii), the net amount due to any depositor at an insured depository institution shall not exceed the standard maximum deposit insurance amount as determined in accordance with subparagraphs (C), (D), (E) and (F) and paragraph (3).

(ii) Insurance for noninterest-bearing transaction accounts

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

(iii) Noninterest-bearing transaction account defined

For purposes of this subparagraph, the term “noninterest-bearing transaction account” means—

(I) a deposit or account maintained at an insured depository institution—

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

(bb) on which the depositor or account holder 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

(cc) on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal; and

(II) a trust account established by an attorney or law firm on behalf of a client, commonly known as an “Interest on Lawyers Trust Account”, or a functionally equivalent account, as determined by the Corporation.

(C) Aggregation of deposits

For the purpose of determining the net amount due to any depositor under subparagraph (B)(i), the Corporation shall aggregate the amounts of all deposits in the insured depository institution which are maintained by a depositor in the same capacity and the same right for the benefit of the depositor either in the name of the depositor or in the name of any other person, other than any amount in a trust fund described in paragraph (1) or (2) of section 1817(i) of this title or any funds described in section 1817(i)(3) of this title.

(D) Coverage for certain employee benefit plan deposits

(i) Pass-through insurance

The Corporation shall provide pass-through deposit insurance for the deposits of any employee benefit plan.

(ii) Prohibition on acceptance of benefit plan deposits

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

(iii) Definitions

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

(I) Capital standards

The terms “well capitalized” and “adequately capitalized” have the same meanings as in section 1831o of this title.

(II) Employee benefit plan

The term “employee benefit plan” has the same meaning as in paragraph (5)(B)(ii), and includes any eligible deferred compensation plan described in section 457 of title 26.

(III) Pass-through deposit insurance

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

(E) Standard maximum deposit insurance amount defined

For purposes of this chapter, the term “standard maximum deposit insurance amount” means \$250,000, adjusted as provided under subparagraph (F) after March 31, 2010. Notwithstanding any other provision of law, the increase in the standard maximum deposit insurance amount to \$250,000 shall apply to depositors in any institution for which the Corporation was appointed as receiver or conservator on or after January 1, 2008, and before October 3, 2008. The Corpora-

tion shall take such actions as are necessary to carry out the requirements of this section with respect to such depositors, without regard to any time limitations under this chapter. In implementing this and the preceding 2 sentences, any payment on a deposit claim made by the Corporation as receiver or conservator to a depositor above the standard maximum deposit insurance amount in effect at the time of the appointment of the Corporation as receiver or conservator shall be deemed to be part of the net amount due to the depositor under subparagraph (B).

(F) Inflation adjustment

(i) In general

By April 1 of 2010, and the 1st day of each subsequent 5-year period, the Board of Directors and the National Credit Union Administration Board shall jointly consider the factors set forth under clause (v), and, upon determining that an inflation adjustment is appropriate, shall jointly prescribe the amount by which the standard maximum deposit insurance amount and the standard maximum share insurance amount (as defined in section 1787(k) of this title) applicable to any depositor at an insured depository institution shall be increased by calculating the product of—

(I) \$100,000; and

(II) the ratio of the published annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), published by the Department of Commerce, for the calendar year preceding the year in which the adjustment is calculated under this clause, to the published annual value of such index for the calendar year preceding April 1, 2006.

The values used in the calculation under subclause (II) shall be, as of the date of the calculation, the values most recently published by the Department of Commerce.

(ii) Rounding

If the amount determined under clause (i) for any period is not a multiple of \$10,000, the amount so determined shall be rounded down to the nearest \$10,000.

(iii) Publication and report to the Congress

Not later than April 5 of any calendar year in which an adjustment is required to be calculated under clause (i) to the standard maximum deposit insurance amount and the standard maximum share insurance amount under such clause, the Board of Directors and the National Credit Union Administration Board shall—

(I) publish in the Federal Register the standard maximum deposit insurance amount, the standard maximum share insurance amount, and the amount of coverage under paragraph (3)(A) and section 1787(k)(3) of this title, as so calculated; and

(II) jointly submit a report to the Congress containing the amounts described in subclause (I).

(iv) 6-month implementation period

Unless an Act of Congress enacted before July 1 of the calendar year in which an adjustment is required to be calculated under clause (i) provides otherwise, the increase in the standard maximum deposit insurance amount and the standard maximum share insurance amount shall take effect on January 1 of the year immediately succeeding such calendar year.

(v) Inflation adjustment consideration

In making any determination under clause (i) to increase the standard maximum deposit insurance amount and the standard maximum share insurance amount, the Board of Directors and the National Credit Union Administration Board shall jointly consider—

(I) the overall state of the Deposit Insurance Fund and the economic conditions affecting insured depository institutions;

(II) potential problems affecting insured depository institutions; or

(III) whether the increase will cause the reserve ratio of the fund to fall below 1.15 percent of estimated insured deposits.

(2) Government depositors

(A) In general

Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of deposit insurance available to any 1 depositor—

(i) a government depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed to be a depositor separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in subparagraph (B); and

(ii) except as provided in subparagraph (C), the deposits of a government depositor shall be insured in an amount equal to the standard maximum deposit insurance amount (as determined under paragraph (1)).

(B) Government depositor

In this paragraph, the term “government depositor” means a depositor that is—

(i) an officer, employee, or agent of the United States having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution;

(ii) an officer, employee, or agent of any State of the United States, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in such State;

(iii) an officer, employee, or agent of the District of Columbia having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the District of Columbia;

(iv) an officer, employee, or agent of the Commonwealth of Puerto Rico, of the Virgin Islands, of American Samoa, of the Trust Territory of the Pacific Islands, or of Guam, or of any county, municipality, or political subdivision thereof having official custody of public funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution in the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam, respectively; or

(v) an officer, employee, or agent of any Indian tribe (as defined in section 1452(c) of title 25) or agency thereof having official custody of tribal funds and lawfully investing or depositing the same in time and savings deposits in an insured depository institution.

(C) Authority to limit deposits

The Corporation may limit the aggregate amount of funds that may be invested or deposited in deposits in any insured depository institution by any government depositor on the basis of the size of any such bank¹ in terms of its assets: *Provided, however*, such limitation may be exceeded by the pledging of acceptable securities to the government depositor when and where required.

(3) Certain retirement accounts

(A) In general

Notwithstanding any limitation in this chapter relating to the amount of deposit insurance available for the account of any 1 depositor, deposits in an insured depository institution made in connection with—

(i) any individual retirement account described in section 408(a) of title 26;

(ii) subject to the exception contained in paragraph (1)(D)(ii), any eligible deferred compensation plan described in section 457 of title 26; and

(iii) any individual account plan defined in section 1002(34) of title 29, and any plan described in section 401(d) of title 26, to the extent that participants and beneficiaries under such plan have the right to direct the investment of assets held in individual accounts maintained on their behalf by the plan,

shall be aggregated and insured in an amount not to exceed \$250,000 (which amount shall be subject to inflation adjustments as provided in paragraph (1)(F), except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such paragraph) per participant per insured depository institution.

(B) Amounts taken into account

For purposes of subparagraph (A), the amount aggregated for insurance coverage under this paragraph shall consist of the present vested and ascertainable interest of each participant under the plan, excluding any remainder interest created by, or as a result of, the plan.

(4) Deposit Insurance Fund

(A) Establishment

There is established the Deposit Insurance Fund, which the Corporation shall—

(i) maintain and administer;

(ii) use to carry out its insurance purposes, in the manner provided by this subsection; and

(iii) invest in accordance with section 1823(a) of this title.

(B) Uses

The Deposit Insurance Fund shall be available to the Corporation for use with respect to insured depository institutions the deposits of which are insured by the Deposit Insurance Fund.

(C) Limitation on use

Notwithstanding any provision of law other than section 1823(c)(4)(G) of this title, the Deposit Insurance Fund shall not be used in any manner to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this chapter) or—

(i) any insured depository institution for which the Corporation has been appointed conservator or receiver, in connection with any type of resolution by the Corporation;

(ii) any other insured depository institution in default or in danger of default, in connection with any type of resolution by the Corporation; or

(iii) any insured depository institution, in connection with the provision of assistance under this section or section 1823 of this title with respect to such institution, except that this clause shall not prohibit any assistance to any insured depository institution that is not in default, or that is not in danger of default, that is acquiring (as defined in section 1823(f)(8)(B) of this title) another insured depository institution.

(D) Deposits

All amounts assessed against insured depository institutions by the Corporation shall be deposited into the Deposit Insurance Fund.

(5) Certain investment contracts not treated as insured deposits

(A) In general

A liability of an insured depository institution shall not be treated as an insured deposit if the liability arises under any insured depository institution investment contract between any insured depository institution and any employee benefit plan which expressly permits benefit-responsive withdrawals or transfers.

(B) Definitions

For purposes of subparagraph (A)—

(i) **Benefit-responsive withdrawals or transfers**

The term “benefit-responsive withdrawals or transfers” means any withdrawal or

¹ So in original. Probably should be “depository institution”.

transfer of funds (consisting of any portion of the principal and any interest credited at a rate guaranteed by the insured depository institution investment contract) during the period in which any guaranteed rate is in effect, without substantial penalty or adjustment, to pay benefits provided by the employee benefit plan or to permit a plan participant or beneficiary to redirect the investment of his or her account balance.

(ii) Employee benefit plan

The term “employee benefit plan”—

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

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

(b) Liquidation as closing of depository institution

For the purposes of this chapter an insured depository institution shall be deemed to have been closed on account of inability to meet the demands of its depositors in any case in which it has been closed for the purpose of liquidation without adequate provision being made for payment of its depositors.

(c) Appointment of Corporation as conservator or receiver

(1) In general

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may accept appointment and act as conservator or receiver for any insured depository institution upon appointment in the manner provided in paragraph (2) or (3).

(2) Federal depository institutions

(A) Appointment

(i) Conservator

The Corporation may, at the discretion of the supervisory authority, be appointed conservator of any insured Federal depository institution and the Corporation may accept such appointment.

(ii) Receiver

The Corporation shall be appointed receiver, and shall accept such appointment, whenever a receiver is appointed for the purpose of liquidation or winding up the affairs of an insured Federal depository institution by the appropriate Federal banking agency, notwithstanding any other provision of Federal law.

(B) Additional powers

In addition to and not in derogation of the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver, the Corporation, to the extent not inconsistent with such powers and duties, shall have any other power conferred on or any duty (which is related to the exercise of such power) imposed on a conservator or receiver for any Federal depository institution under any other provision of law.

(C) Corporation not subject to any other agency

When acting as conservator or receiver pursuant to an appointment described in

subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of the Corporation’s rights, powers, and privileges.

(D) Depository institution in conservatorship subject to banking agency supervision

Notwithstanding subparagraph (C), any Federal depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate Federal banking agency.

(3) Insured State depository institutions

(A) Appointment by appropriate State supervisor

Whenever the authority having supervision of any insured State depository institution appoints a conservator or receiver for such institution and tenders appointment to the Corporation, the Corporation may accept such appointment.

(B) Additional powers

In addition to the powers conferred and the duties related to the exercise of such powers imposed by State law on any conservator or receiver appointed under the law of such State for an insured State depository institution, the Corporation, as conservator or receiver pursuant to an appointment described in subparagraph (A), shall have the powers conferred and the duties imposed by this section on the Corporation as conservator or receiver.

(C) Corporation not subject to any other agency

When acting as conservator or receiver pursuant to an appointment described in subparagraph (A), the Corporation shall not be subject to the direction or supervision of any other agency or department of the United States or any State in the exercise of its rights, powers, and privileges.

(D) Depository institution in conservatorship subject to banking agency supervision

Notwithstanding subparagraph (C), any insured State depository institution for which the Corporation has been appointed conservator shall remain subject to the supervision of the appropriate State bank or savings association supervisor.

(4) Appointment of Corporation by the Corporation

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation may appoint itself as sole conservator or receiver of any insured State depository institution if—

(A) the Corporation determines—

(i) that—

(I) a conservator, receiver, or other legal custodian has been appointed for such institution;

(II) such institution has been subject to the appointment of any such conservator, receiver, or custodian for a period of at least 15 consecutive days; and

(III) 1 or more of the depositors in such institution is unable to withdraw any amount of any insured deposit; or

(ii) that such institution has been closed by or under the laws of any State; and

(B) the Corporation determines that 1 or more of the grounds specified in paragraph (5)—

(i) existed with respect to such institution at the time—

(I) the conservator, receiver, or other legal custodian was appointed; or

(II) such institution was closed; or

(ii) exist at any time—

(I) during the appointment of the conservator, receiver, or other legal custodian; or

(II) while such institution is closed.

(5) Grounds for appointing conservator or receiver

The grounds for appointing a conservator or receiver (which may be the Corporation) for any insured depository institution are as follows:

(A) **ASSETS INSUFFICIENT FOR OBLIGATIONS.**—The institution's assets are less than the institution's obligations to its creditors and others, including members of the institution.

(B) **SUBSTANTIAL DISSIPATION.**—Substantial dissipation of assets or earnings due to—

(i) any violation of any statute or regulation; or

(ii) any unsafe or unsound practice.

(C) **UNSAFE OR UNSOUND CONDITION.**—An unsafe or unsound condition to transact business.

(D) **CEASE AND DESIST ORDERS.**—Any willful violation of a cease-and-desist order which has become final.

(E) **CONCEALMENT.**—Any concealment of the institution's books, papers, records, or assets, or any refusal to submit the institution's books, papers, records, or affairs for inspection to any examiner or to any lawful agent of the appropriate Federal banking agency or State bank or savings association supervisor.

(F) **INABILITY TO MEET OBLIGATIONS.**—The institution is likely to be unable to pay its obligations or meet its depositors' demands in the normal course of business.

(G) **LOSSES.**—The institution has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the institution to become adequately capitalized (as defined in section 1831o(b) of this title) without Federal assistance.

(H) **VIOLATIONS OF LAW.**—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

(i) cause insolvency or substantial dissipation of assets or earnings;

(ii) weaken the institution's condition; or

(iii) otherwise seriously prejudice the interests of the institution's depositors or the Deposit Insurance Fund.

(I) **CONSENT.**—The institution, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) **CESSATION OF INSURED STATUS.**—The institution ceases to be an insured institution.

(K) **UNDERCAPITALIZATION.**—The institution is undercapitalized (as defined in section 1831o(b) of this title), and—

(i) has no reasonable prospect of becoming adequately capitalized (as defined in that section);

(ii) fails to become adequately capitalized when required to do so under section 1831o(f)(2)(A) of this title;

(iii) fails to submit a capital restoration plan acceptable to that agency within the time prescribed under section 1831o(e)(2)(D) of this title; or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1831o(e)(2) of this title.

(L) **The institution—**

(i) is critically undercapitalized, as defined in section 1831o(b) of this title; or

(ii) otherwise has substantially insufficient capital.

(M) **MONEY LAUNDERING OFFENSE.**—The Attorney General notifies the appropriate Federal banking agency or the Corporation in writing that the insured depository institution has been found guilty of a criminal offense under section 1956 or 1957 of title 18 or section 5322 or 5324 of title 31.

(6) Appointment by Comptroller of the Currency

(A) Conservator

The Corporation may, at the discretion of the Comptroller of the Currency, be appointed conservator and the Corporation may accept any such appointment.

(B) Receiver

The Corporation may, at the discretion of the Comptroller of the Currency, be appointed receiver and the Corporation may accept any such appointment.

(7) Judicial review

If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10), the depository institution may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.

(8) Replacement of conservator of State depository institution**(A) In general**

In the case of any insured State depository institution for which the Corporation appointed itself as conservator pursuant to paragraph (4), the Corporation may, without any requirement of notice, hearing, or other action, replace itself as conservator with itself as receiver of such institution.

(B) Replacement treated as removal of incumbent

The replacement of a conservator with a receiver under subparagraph (A) shall be treated as the removal of the Corporation as conservator.

(C) Right of review of original appointment not affected

The replacement of a conservator with a receiver under subparagraph (A) shall not affect any right of the insured State depository institution to obtain review, pursuant to paragraph (7), of the original appointment of the conservator.

(9) Appropriate Federal banking agency may appoint Corporation as conservator or receiver for insured State depository institution to carry out section 1831o**(A) In general**

The appropriate Federal banking agency may appoint the Corporation as sole receiver (or, subject to paragraph (11), sole conservator) of any insured State depository institution, after consultation with the appropriate State supervisor, if the appropriate Federal banking agency determines that—

- (i) 1 or more of the grounds specified in subparagraphs (K) and (L) of paragraph (5) exist with respect to that institution; and
- (ii) the appointment is necessary to carry out the purpose of section 1831o of this title.

(B) Nondelegation

The appropriate Federal banking agency shall not delegate any action under subparagraph (A).

(10) Corporation may appoint itself as conservator or receiver for insured depository institution to prevent loss to Deposit Insurance Fund

The Board of Directors may appoint the Corporation as sole conservator or receiver of an insured depository institution, after consultation with the appropriate Federal banking agency and the appropriate State supervisor (if any), if the Board of Directors determines that—

- (A) 1 or more of the grounds specified in any subparagraph of paragraph (5) exist with respect to the institution; and
- (B) the appointment is necessary to reduce—
 - (i) the risk that the Deposit Insurance Fund would incur a loss with respect to the insured depository institution, or
 - (ii) any loss that the Deposit Insurance Fund is expected to incur with respect to that institution.

(11) Appropriate Federal banking agency shall not appoint conservator under certain provisions without giving Corporation opportunity to appoint receiver

The appropriate Federal banking agency shall not appoint a conservator for an insured depository institution under subparagraph (K) or (L) of paragraph (5) without the Corporation's consent unless the agency has given the Corporation 48 hours notice of the agency's intention to appoint the conservator and the grounds for the appointment.

(12) Directors not liable for acquiescing in appointment of conservator or receiver

The members of the board of directors of an insured depository institution shall not be liable to the institution's shareholders or creditors for acquiescing in or consenting in good faith to—

- (A) the appointment of the Corporation as conservator or receiver for that institution; or
- (B) an acquisition or combination under section 1831o(f)(2)(A)(iii) of this title.

(13) Additional powers

In any case in which the Corporation is appointed conservator or receiver under paragraph (4), (6), (9), or (10) for any insured State depository institution—

- (A) this section shall apply to the Corporation as conservator or receiver in the same manner and to the same extent as if that institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and
- (B) the Corporation as receiver of the institution may—
 - (i) liquidate the institution in an orderly manner; and
 - (ii) make any other disposition of any matter concerning the institution, as the Corporation determines is in the best interests of the institution, the depositors of the institution, and the Corporation.

(d) Powers and duties of Corporation as conservator or receiver**(1) Rulemaking authority of Corporation**

The Corporation may prescribe such regulations as the Corporation determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) General powers**(A) Successor to institution**

The Corporation shall, as conservator or receiver, and by operation of law, succeed to—

- (i) all rights, titles, powers, and privileges of the insured depository institution, and of any stockholder, member, account holder, depositor, officer, or director of such institution with respect to the institution and the assets of the institution; and
- (ii) title to the books, records, and assets of any previous conservator or other legal custodian of such institution.

(B) Operate the institution

The Corporation may (subject to the provisions of section 1831q of this title), as conservator or receiver—

(i) take over the assets of and operate the insured depository institution with all the powers of the members or shareholders, the directors, and the officers of the institution and conduct all business of the institution;

(ii) collect all obligations and money due the institution;

(iii) perform all functions of the institution in the name of the institution which are consistent with the appointment as conservator or receiver; and

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

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

The Corporation may, by regulation or order, provide for the exercise of any function by any member or stockholder, director, or officer of any insured depository institution for which the Corporation has been appointed conservator or receiver.

(D) Powers as conservator

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

(i) necessary to put the insured depository institution in a sound and solvent condition; and

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

(E) Additional powers as receiver

The Corporation may (subject to the provisions of section 1831q of this title), as receiver, place the insured depository institution in liquidation and proceed to realize upon the assets of the institution, having due regard to the conditions of credit in the locality.

(F) Organization of new institutions

The Corporation may, as receiver, with respect to any insured depository institution, organize a new depository institution under subsection (m) or a bridge depository institution under subsection (n).

(G) Merger; transfer of assets and liabilities**(i) In general**

The Corporation may, as conservator or receiver—

(I) merge the insured depository institution with another insured depository institution; or

(II) subject to clause (ii), transfer any asset or liability of the institution in default (including assets and liabilities associated with any trust business) without any approval, assignment, or consent with respect to such transfer.

(ii) Approval by appropriate Federal banking agency

No transfer described in clause (i)(II) may be made to another depository insti-

tution (other than a new depository institution or a bridge depository institution established pursuant to subsection (m) or (n) of this section) without the approval of the appropriate Federal banking agency for such institution.

(H) Payment of valid obligations

The Corporation, as conservator or receiver, shall pay all valid obligations of the insured depository institution in accordance with the prescriptions and limitations of this chapter.

(I) Subpoena authority**(i) In general**

The Corporation may, as conservator, receiver, or exclusive manager and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution (including determining any claim against the institution and determining and realizing upon any asset of any person in the course of collecting money due the institution), exercise any power established under section 1818(n) 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 of Directors

A subpoena or subpoena duces tecum may be issued under clause (i) only by, or with the written approval of, the Board of Directors or their designees (or, in the case of a subpoena or subpoena duces tecum issued by the Resolution Trust Corporation under this subparagraph and section 1441a(b)(4)² of this title, only by, or with the written approval of, the Board of Directors of such Corporation or their designees).

(iii) Rule of construction

This subsection shall not be construed as limiting any rights that the Corporation, in any capacity, might otherwise have under section 1820(c) of this title.

(J) Incidental powers

The Corporation may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this 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 Corporation determines is in the best interests of the depository institution, its depositors, or the Corporation.

(K) Utilization of private sector

In carrying out its responsibilities in the management and disposition of assets from insured depository institutions, as conservator, receiver, or in its corporate capacity,

² See References in Text note below.

the Corporation shall utilize the services of private persons, including real estate and loan portfolio asset management, property management, auction marketing, legal, and brokerage services, only if such services are available in the private sector and the Corporation determines utilization of such services is the most practicable, efficient, and cost effective.

(3) Authority of receiver to determine claims

(A) In general

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

(B) Notice requirements

The receiver, in any case involving the liquidation or winding up of the affairs of a closed depository institution, shall—

(i) promptly publish a notice to the depository institution's creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

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

(C) Mailing required

The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the institution's books—

(i) at the creditor's last address appearing in such books; or

(ii) upon discovery of the name and address of a claimant not appearing on the institution's books within 30 days after the discovery of such name and address.

(4) Rulemaking authority relating to determination of claims

(A) In general

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

(B) Final settlement payment procedure

(i) In general

In the handling of receiverships of insured depository institutions, to maintain essential liquidity and to prevent financial disruption, the Corporation may, after the declaration of an institution's insolvency, settle all uninsured and unsecured claims on the receivership with a final settlement payment which shall constitute full payment and disposition of the Corporation's obligations to such claimants.

(ii) Final settlement payment

For purposes of clause (i), a final settlement payment shall be payment of an amount equal to the product of the final settlement payment rate and the amount of the uninsured and unsecured claim on the receivership; and

(iii) Final settlement payment rate

For purposes of clause (ii), the final settlement payment rate shall be a percentage rate reflecting an average of the Corporation's receivership recovery experience, determined by the Corporation in such a way that over such time period as the Corporation may deem appropriate, the Corporation in total will receive no more or less than it would have received in total as a general creditor standing in the place of insured depositors in each specific receivership.

(iv) Corporation authority

The Corporation may undertake such supervisory actions and promulgate such regulations as may be necessary to assure that the requirements of this section can be implemented with respect to each insured depository institution in the event of its insolvency.

(5) Procedures for determination of claims

(A) Determination period

(i) In general

Before the end of the 180-day period beginning on the date any claim against a depository institution is filed with the Corporation as receiver, the Corporation shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) Extension of time

The period described in clause (i) may be extended by a written agreement between the claimant and the Corporation.

(iii) Mailing of notice sufficient

The requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

(I) on the depository institution's books;

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

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

(iv) Contents of notice of disallowance

If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

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

(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) Allowance of proven claims

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

(C) Disallowance of claims filed after end of filing period**(i) In general**

Except as provided in clause (ii), claims filed after the date specified in the notice published under paragraph (3)(B)(i) shall be disallowed and such disallowance shall be final.

(ii) Certain exceptions

Clause (i) shall not apply with respect to any claim filed by any claimant after the date specified in the notice published under paragraph (3)(B)(i) and such claim may be considered by the receiver if—

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

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

(D) Authority to disallow claims**(i) In general**

The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) Payments to less than fully secured creditors

In the case of a claim of a creditor against an insured depository institution which is secured by any property or other asset of such institution, any receiver appointed for any insured depository institution—

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

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

(iii) Exceptions

No provision of this paragraph shall apply with respect to—

(I) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(II) any security interest in the assets of the institution securing any such extension of credit.

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

No court may review the Corporation's determination pursuant to subparagraph (D) to disallow a claim.

(F) Legal effect of filing**(i) Statute of limitation tolled**

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

Subject to paragraph (12), the filing of a claim with the receiver shall not prejudice

any right of the claimant to continue any action which was filed before the appointment of the receiver.

(6) Provision for agency review or judicial determination of claims**(A) In general**

Before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a depository institution for which the Corporation is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i),

the claimant may request administrative review of the claim in accordance with subparagraph (A) or (B) of paragraph (7) or file suit on such claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the depository institution's principal place of business is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim).

(B) Statute of limitations

If any claimant fails to—

(i) request administrative review of any claim in accordance with subparagraph (A) or (B) of paragraph (7); or

(ii) file suit on such claim (or continue an action commenced before the appointment of the receiver),

before the end of the 60-day period described in subparagraph (A), the claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver) as of the end of such period, such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(7) Review of claims**(A) Administrative hearing**

If any claimant requests review under this subparagraph in lieu of filing or continuing any action under paragraph (6) and the Corporation agrees to such request, the Corporation shall consider the claim after opportunity for a hearing on the record. The final determination of the Corporation with respect to such claim shall be subject to judicial review under chapter 7 of title 5.

(B) Other review procedures**(i) In general**

The Corporation shall also establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) Criteria

In establishing alternative dispute resolution processes, the Corporation shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) Voluntary binding or nonbinding procedures

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

(iv) Consideration of incentives

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

(8) Expedited determination of claims**(A) Establishment required**

The Corporation shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any depository institution for which the Corporation has been appointed receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

(B) Determination period

Before the end of the 90-day period beginning on the date any claim is filed in accordance with the procedures established pursuant to subparagraph (A), the Corporation shall—

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established pursuant to paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) Period for filing or renewing suit

Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the claimant's rights with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Corporation denies the claim.

(D) Statute of limitations

If an action described in subparagraph (C) is not filed, or the motion to renew a previously filed suit is not made, before the end of the 30-day period beginning on the date on which such action or motion may be filed in accordance with subparagraph (B), the claim shall be deemed to be disallowed as of the end of such period (other than any portion of

such claim which was allowed by the receiver), such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim.

(E) Legal effect of filing**(i) Statute of limitation tolled**

For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) No prejudice to other actions

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

(9) Agreement as basis of claim**(A) Requirements**

Except as provided in subparagraph (B), any agreement which does not meet the requirements set forth in section 1823(e) of this title shall not form the basis of, or substantially comprise, a claim against the receiver or the Corporation.

(B) Exception to contemporaneous execution requirement

Notwithstanding section 1823(e)(2)² of this title, any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (A).

(10) Payment of claims**(A) In general**

The receiver may, in the receiver's discretion and to the extent funds are available, pay creditor claims which are allowed by the receiver, approved by the Corporation pursuant to a final determination pursuant to paragraph (7) or (8), or determined by the final judgment of any court of competent jurisdiction in such manner and amounts as are authorized under this chapter.

(B) Payment of dividends on claims

The receiver may, in the receiver's sole discretion, pay dividends on proved claims at any time, and no liability shall attach to the Corporation (in such Corporation's corporate capacity or as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) Rulemaking authority of Corporation

The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the re-

ceiver of the principal amount of all creditor claims.

(11) Depositor preference

(A) In general

Subject to section 1815(e)(2)(C) of this title, amounts realized from the liquidation or other resolution of any insured depository institution by any receiver appointed for such institution shall be distributed to pay claims (other than secured claims to the extent of any such security) in the following order of priority:

(i) Administrative expenses of the receiver.

(ii) Any deposit liability of the institution.

(iii) Any other general or senior liability of the institution (which is not a liability described in clause (iv) or (v)).

(iv) Any obligation subordinated to depositors or general creditors (which is not an obligation described in clause (v)).

(v) Any obligation to shareholders or members arising as a result of their status as shareholders or members (including any depository institution holding company or any shareholder or creditor of such company).

(B) Effect on State law

(i) In general

The provisions of subparagraph (A) shall not supersede the law of any State except to the extent such law is inconsistent with the provisions of such subparagraph, and then only to the extent of the inconsistency.

(ii) Procedure for determination of inconsistency

Upon the Corporation's own motion or upon the request of any person with a claim described in subparagraph (A) or any State which is submitted to the Corporation in accordance with procedures which the Corporation shall prescribe, the Corporation shall determine whether any provision of the law of any State is inconsistent with any provision of subparagraph (A) and the extent of any such inconsistency.

(iii) Judicial review

The final determination of the Corporation under clause (ii) shall be subject to judicial review under chapter 7 of title 5.

(C) Accounting report

Any distribution by the Corporation in connection with any claim described in subparagraph (A)(v) shall be accompanied by the accounting report required under paragraph (15)(B).

(12) Suspension of legal actions

(A) In general

After the appointment of a conservator or receiver for an insured depository institution, the conservator or receiver may request a stay for a period not to exceed—

(i) 45 days, in the case of any conservator; and

(ii) 90 days, in the case of any receiver,

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

(B) Grant of stay by all courts required

Upon receipt of a request by any conservator or receiver pursuant to subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(13) Additional rights and duties

(A) Prior final adjudication

The Corporation shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Corporation as conservator or receiver.

(B) Rights and remedies of conservator or receiver

In the event of any appealable judgment, the Corporation as conservator or receiver shall—

(i) have all the rights and remedies available to the insured depository institution (before the appointment of such conservator or receiver) and the Corporation in its corporate capacity, including removal to Federal court and all appellate rights; and

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

(C) No attachment or execution

No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) Limitation on judicial review

Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the Corporation has been appointed receiver, including assets which the Corporation may acquire from itself as such receiver; or

(ii) any claim relating to any act or omission of such institution or the Corporation as receiver.

(E) Disposition of assets

In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of any insured depository institution for which the Corporation has been appointed conservator or receiver, including any sale or disposition of assets acquired by the Corporation under section 1823(d)(1) of this title, the Corporation shall conduct its operations in a manner which—

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

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

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

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

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

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

(A) In general

Notwithstanding any provision of any contract, the applicable statute of limitations with regard to any action brought by the Corporation as conservator or receiver shall be—

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

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

(II) the period applicable under State law; and

(ii) in the case of any tort claim (other than a claim which is subject to section 1441a(b)(14)² of this title), the longer of—

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

(II) the period applicable under State law.

(B) Determination of the date on which a claim accrues

For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

(i) the date of the appointment of the Corporation as conservator or receiver; or

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

(C) Revival of expired State causes of action

(i) In general

In the case of any tort claim described in clause (ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Corporation as conservator or receiver, the Corporation may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) Claims described

A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the institution.

(15) Accounting and recordkeeping requirements

(A) In general

The Corporation as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Corporation, maintain a full accounting of each conservatorship and receivership

or other disposition of institutions in default.

(B) Annual accounting or report

With respect to each conservatorship or receivership to which the Corporation was appointed, the Corporation shall make an annual accounting or report, as appropriate, available to the Secretary of the Treasury, the Comptroller General of the United States, and the authority which appointed the Corporation as conservator or receiver.

(C) Availability of reports

Any report prepared pursuant to subparagraph (B) shall be made available by the Corporation upon request to any shareholder of the depository institution for which the Corporation was appointed conservator or receiver or any other member of the public.

(D) Recordkeeping requirement

(i) In general

Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Corporation is appointed as receiver of an insured depository institution, the Corporation may destroy any records of such institution which the Corporation, in the Corporation's discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) Old records

Notwithstanding clause (i), the Corporation may destroy records of an insured depository institution which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such depository institution in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(16) Contracts with State housing finance authorities

(A) In general

The Corporation may enter into contracts with any State housing finance authority for the sale of mortgage-related assets (as such terms are defined in section 1441a-1 of this title) of any depository institution in default (including assets and liabilities associated with any trust business), such contracts to be effective in accordance with their terms without any further approval, assignment, or consent with respect thereto.

(B) Factors to consider

In evaluating the disposition of mortgage related assets to any State housing finance authority the Corporation shall consider—

(i) the State housing finance authority's ability to acquire and service current, delinquent, and defaulted mortgage related assets;

(ii) the State housing finance authority's ability to further national housing policies;

(iii) the State housing finance authority's sensitivity to the impact of the sale of mortgage related assets upon the State and local communities;

(iv) the costs to the Federal Government associated with alternative ownership or disposition of the mortgage related assets;

(v) the minimization of future guaranties which may be required of the Federal Government;

(vi) the maximization of mortgage related asset values; and

(vii) the utilization of institutions currently established in mortgage related asset market activities.

(17) Fraudulent transfers

(A) In general

The Corporation, as conservator or receiver for any insured depository institution, and any conservator appointed by the Comptroller of the Currency may avoid a transfer of any interest of an institution-affiliated party, or any person who the Corporation or conservator determines is a debtor of the institution, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Corporation or conservator was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the insured depository institution, the Corporation or other conservator, or any other appropriate Federal banking agency.

(B) Right of recovery

To the extent a transfer is avoided under subparagraph (A), the Corporation or any conservator described in such subparagraph may recover, for the benefit of the insured depository institution, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

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

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

(C) Rights of transferee or obligee

The Corporation or any conservator described in subparagraph (A) may not recover under subparagraph (B) from—

(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

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

(D) Rights under this paragraph

The rights under this paragraph of the Corporation and any conservator described in subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11.

(18) Attachment of assets and other injunctive relief

Subject to paragraph (19), any court of competent jurisdiction may, at the request of—

(A) the Corporation (in the Corporation's capacity as conservator or receiver for any insured depository institution or in the Corporation's corporate capacity with respect to any asset acquired or liability assumed by the Corporation under this section or section 1822 or 1823 of this title); or

(B) any conservator appointed by the Comptroller of the Currency,

issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Corporation or such conservator under the control of the court and appointing a trustee to hold such assets.

(19) Standards

(A) Showing

Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (18) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(B) State proceeding

If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party's right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph (A)), the relief sought by the Corporation or a conservator pursuant to paragraph (18) may be requested under the laws of such State.

(20) Treatment of claims arising from breach of contracts executed by the receiver or conservator

Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for an insured depository institution for the breach of an agreement executed or approved by such receiver or conservator after the date of its appointment shall be paid as an administrative expense of the receiver or conservator. Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(e) Provisions relating to contracts entered into before appointment of conservator or receiver

(1) Authority to repudiate contracts

In addition to any other rights a conservator or receiver may have, the conservator or receiver for any insured depository institution may disaffirm or repudiate any contract or lease—

(A) to which such institution is a party;

(B) the performance of which the conservator or receiver, in the conservator's or re-

ceiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs.

(2) Timing of repudiation

The conservator or receiver appointed for any insured depository institution in accordance with subsection (c) of this section shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

(3) Claims for damages for repudiation

(A) In general

Except as otherwise provided in subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or receiver; or

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

(B) No liability for other damages

For purposes of subparagraph (A), the term "actual direct compensatory damages" does not include—

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or

(iii) damages for pain and suffering.

(C) Measure of damages for repudiation of financial contracts

In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

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

(ii) paid in accordance with this subsection and subsection (i) of this section except as otherwise specifically provided in this section.

(4) Leases under which the institution is the lessee

(A) In general

If the conservator or receiver disaffirms or repudiates a lease under which the insured depository institution was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined pursuant to subparagraph (B)) for the disaffirmance or repudiation of such lease.

(B) Payments of rent

Notwithstanding subparagraph (A), the lessor under a lease to which such subparagraph applies shall—

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

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

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;

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

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

(5) Leases under which the institution is the lessor

(A) In general

If the conservator or receiver repudiates an unexpired written lease of real property of the insured depository institution under which the institution is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

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

(ii) remain in possession of the leasehold interest for the balance of the term of the lease unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) Provisions applicable to lessee remaining in possession

If any lessee under a lease described in subparagraph (A) remains in possession of a leasehold interest pursuant to clause (ii) of such subparagraph—

(i) the lessee—

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

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

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

(6) Contracts for the sale of real property

(A) In general

If the conservator or receiver repudiates any contract (which meets the requirements of each paragraph of section 1823(e) 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 depository institution under the contract; and

(ii) the conservator or receiver shall—

- (I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);
- (II) deliver title to the purchaser in accordance with the provisions of the contract; and
- (III) have no obligation under the contract other than the performance required under subclause (II).

(C) Assignment and sale allowed

(i) In general

No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described in subparagraph (A) and sell the property subject to the contract and the provisions of this paragraph.

(ii) No liability after assignment and sale

If an assignment and sale described in clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described in subparagraph (A) or with respect to the real property which was the subject of such contract.

(7) Provisions applicable to service contracts

(A) Services performed before appointment

In the case of any contract for services between any person and any insured depository institution for which the Corporation has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

- (i) a claim to be paid in accordance with subsections (d) and (i) of this section; and
- (ii) deemed to have arisen as of the date the conservator or receiver was appointed.

(B) Services performed after appointment and prior to repudiation

If, in the case of any contract for services described in subparagraph (A), the conservator or receiver accepts performance by the

other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

- (i) the other party shall be paid under the terms of the contract for the services performed; and
- (ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) Acceptance of performance no bar to subsequent repudiation

The acceptance by any conservator or receiver of services referred to in subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

(8) Certain qualified financial contracts

(A) Rights of parties to contracts

Subject to paragraphs (9) and (10) of this subsection and notwithstanding any other provision of this chapter (other than subsection (d)(9) of this section and section 1823(e) 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 depository institution which arises upon the appointment of the Corporation as receiver for such institution at any time after such appointment;
- (ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);³
- (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 (d)(12) of this section shall apply in the case of any judicial action or proceeding brought against any receiver referred to in subparagraph (A), or the insured depository institution for which such receiver was appointed, by any party to a contract or agreement described in subparagraph (A)(i) with such institution.

(C) Certain transfers not avoidable

(i) In general

Notwithstanding paragraph (11), section 91 of this title or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers, the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or other property in

³ So in original. Probably should be followed by “or”.

connection with any qualified financial contract with an insured depository institution.

(ii) Exception for certain transfers

Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with an insured depository institution if the Corporation determines that the transferee had actual intent to hinder, delay, or defraud such institution, the creditors of such institution, or any conservator or receiver appointed for such institution.

(D) Certain contracts and agreements defined

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

(i) Qualified financial contract

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

(ii) Securities contract

The term “securities contract”—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v));

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

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

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such secu-

rity, 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));⁴

(V) means any margin loan;

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

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

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

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

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

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

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

(iii) Commodity contract

The term “commodity contract” means—

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

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

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

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract

⁴So in original. The semicolon probably should be preceded by an additional closing parenthesis.

market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

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

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

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

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

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

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

(iv) Forward contract

The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including,⁵ 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 Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

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

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

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction

⁵ So in original. The comma probably should not appear.

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 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 meas-

ures 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 (d)(9) and (e)(10) of this section, and section 1823(e) 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 depository institution in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);³

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) Clarification

No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

(G) Walkaway clauses not effective**(i) In general**

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

(ii) Limited suspension of certain obligations

In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

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

(iii) Walkaway clause defined

For purposes of this subparagraph, the term “walkaway clause” means any provi-

sion in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party’s status as a nondefaulting party in connection with the insolvency of an insured depository institution that is a party to the contract or the appointment of or the exercise of rights or powers by a conservator or receiver of such depository institution, and not as a result of a party’s exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.

(H) Recordkeeping requirements

The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 1831i of this title).

(9) Transfer of qualified financial contracts**(A) In general**

In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

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

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

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

(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

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

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

(B) Transfer to foreign bank, foreign financial institution, or branch or agency of a foreign bank or financial institution

In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) Transfer of contracts subject to the rules of a clearing organization

In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) Definitions

For purposes of this paragraph, the term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term “clearing organization” has the same meaning as in section 4402 of this title.

(10) Notification of transfer

(A) In general

If—

(i) the conservator or receiver for an insured depository institution in default makes any transfer of the assets and liabilities of such institution; and

(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

(B) Certain rights not enforceable

(i) Receivership

A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under para-

graph (8)(A) of this subsection or section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

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

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

(ii) Conservatorship

A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 4403 or 4404 of this title, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

(iii) Notice

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

(C) Treatment of bridge depository institutions

The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

(i) A bridge depository institution.

(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

(I) immediately upon the organization of the institution; or

(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.

(D) “Business day” defined

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

(11) Disaffirmance or repudiation of qualified financial contracts

In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a

party, the conservator or receiver for such institution shall either—

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

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

(ii) the depository institution in default; or

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

(12) Certain security interests not avoidable

No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

(13) Authority to enforce contracts

(A) In general

The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of or the exercise of rights or powers by a conservator or receiver.

(B) Certain rights not affected

No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director's or officer's liability insurance contract or depository institution bond under other applicable law.

(C) Consent requirement

(i) In general

Except as otherwise provided by this section or section 1825 of this title, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the depository institution is a party, or to obtain possession of or exercise control over any property of the institution or affect any contractual rights of the institution, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

(ii) Certain exceptions

No provision of this subparagraph shall apply to a director or officer liability insurance contract or a depository institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A

of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contract.

(iii) Rule of construction

Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11.

(14) Exception for Federal Reserve and Federal home loan banks

No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal home loan bank or Federal Reserve bank to any insured depository institution; or

(B) any security interest in the assets of the institution securing any such extension of credit.

(15) Selling credit card accounts receivable

(A) Notification required

An undercapitalized insured depository institution (as defined in section 1831o of this title) shall notify the Corporation in writing before entering into an agreement to sell credit card accounts receivable.

(B) Waiver by Corporation

The Corporation may at any time, in its sole discretion and upon such terms as it may prescribe, waive its right to repudiate an agreement to sell credit card accounts receivable if the Corporation—

(i) determines that the waiver is in the best interests of the Deposit Insurance Fund; and

(ii) provides a written waiver to the selling institution.

(C) Effect of waiver on successors

(i) In general

If, under subparagraph (B), the Corporation has waived its right to repudiate an agreement to sell credit card accounts receivable—

(I) any provision of the agreement that restricts solicitation of a credit card customer of the selling institution, or the use of a credit card customer list of the institution, shall bind any receiver or conservator of the institution; and

(II) the Corporation shall require any acquirer of the selling institution, or of substantially all of the selling institution's assets or liabilities, to agree to be bound by a provision described in subclause (I) as if the acquirer were the selling institution.

(ii) Exception

Clause (i)(II) does not—

(I) restrict the acquirer's authority to offer any product or service to any person identified without using a list of the selling institution's customers in violation of the agreement;

(II) require the acquirer to restrict any preexisting relationship between the acquirer and a customer; or

(III) apply to any transaction in which the acquirer acquires only insured deposits.

(D) Waiver not actionable

The Corporation shall not, in any capacity, be liable to any person for damages resulting from the waiver of or failure to waive the Corporation's right under this section to repudiate any contract or lease, including an agreement to sell credit card accounts receivable. No court shall issue any order affecting any such waiver or failure to waive.

(E) Other authority not affected

This paragraph does not limit any other authority of the Corporation to waive the Corporation's right to repudiate an agreement or lease under this section.

(16) Certain credit card customer lists protected

(A) In general

If any insured depository institution sells credit card accounts receivable under an agreement negotiated at arm's length that provides for the sale of the institution's credit card customer list, the Corporation shall prohibit any party to a transaction with respect to the institution under this section or section 1823 of this title from using the list, except as permitted under the agreement.

(B) Fraudulent transactions excluded

Subparagraph (A) does not limit the Corporation's authority to repudiate any agreement entered into with the intent to hinder, delay, or defraud the institution, the institution's creditors, or the Corporation.

(17) Savings clause

The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000 [7 U.S.C. 27 to 27f], the securities laws (as that 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.].

(f) Payment of insured deposits

(1) In general

In case of the liquidation of, or other closing or winding up of the affairs of, any insured depository institution, payment of the insured deposits in such institution shall be made by the Corporation as soon as possible, subject to the provisions of subsection (g) of this section, either by cash or by making available to each depositor a transferred deposit in a new insured depository institution in the same community or in another insured depository institution in an amount equal to the insured deposit of such depositor.

(2) Proof of claims

The Corporation, in its discretion, may require proof of claims to be filed and may ap-

prove or reject such claims for insured deposits.

(3) Resolution of disputes

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

(4) Review of Corporation determination

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

(5) Statute of limitations

Any request for review of a final determination by the Corporation regarding any claim for insurance coverage shall be filed with the appropriate United States district court not later than 60 days after the date on which such determination is issued.

(g) Subrogation of Corporation

(1) In general

Notwithstanding any other provision of Federal law, the law of any State, or the constitution of any State, the Corporation, upon the payment to any depositor as provided in subsection (f) of this section in connection with any insured depository institution or insured branch described in such subsection or the assumption of any deposit in such institution or branch by another insured depository institution pursuant to this section or section 1823 of this title, shall be subrogated to all rights of the depositor against such institution or branch to the extent of such payment or assumption.

(2) Dividends on subrogated amounts

The subrogation of the Corporation under paragraph (1) with respect to any insured depository institution shall include the right on the part of the Corporation to receive the same dividends from the proceeds of the assets of such institution and recoveries on account of stockholders' liability as would have been payable to the depositor on a claim for the insured deposit, but such depositor shall retain such claim for any uninsured or unassumed portion of the deposit.

(3) Waiver of certain claims

With respect to any bank which closes after May 25, 1938, the Corporation shall waive, in favor only of any person against whom stockholders' individual liability may be asserted, any claim on account of such liability in excess of the liability, if any, to the bank or its creditors, for the amount unpaid upon such stock in such bank; but any such waiver shall be effected in such manner and on such terms and conditions as will not increase recoveries

or dividends on account of claims to which the Corporation is not subrogated.

(4) Applicability of State law

Subject to subsection (d)(11) of this section, if the Corporation is appointed pursuant to subsection (c)(3) of this section, or determines not to invoke the authority conferred in subsection (c)(4) of this section, the rights of depositors and other creditors of any State depository institution shall be determined in accordance with the applicable provisions of State law.

(h) Conditions applicable to resolution proceedings

(1) Consideration of local economic impact required

The Corporation shall fully consider the adverse economic impact on local communities, including businesses and farms, of actions to be taken by it during the administration and liquidation of loans of a depository institution in default.

(2) Actions to alleviate adverse economic impact to be considered

The actions which the Corporation shall consider include the release of proceeds from the sale of products and services for family living and business expenses and shortening the undue length of the decisionmaking process for the acceptance of offers of settlement contingent upon third party financing.

(3) Guidelines required

The Corporation shall adopt and publish procedures and guidelines to minimize adverse economic effects caused by its actions on individual debtors in the community.

(4) Financial services industry impact analysis

After the appointment of the Corporation as conservator or receiver for any insured depository institution and before taking any action under this section or section 1823 of this title in connection with the resolution of such institution, the Corporation shall—

(A) evaluate the likely impact of the means of resolution, and any action which the Corporation may take in connection with such resolution, on the viability of other insured depository institutions in the same community; and

(B) take such evaluation into account in determining the means for resolving the institution and establishing the terms and conditions for any such action.

(i) Valuation of claims in default

(1) In general

Notwithstanding any other provision of Federal law or the law of any State and regardless of the method which the Corporation determines to utilize with respect to an insured depository institution in default or in danger of default, including transactions authorized under subsection (n) of this section and section 1823(c) of this title, this subsection shall govern the rights of the creditors (other than insured depositors) of such institution.

(2) Maximum liability

The maximum liability of the Corporation, acting as receiver or in any other capacity, to

any person having a claim against the receiver or the insured depository institution for which such receiver is appointed shall equal the amount such claimant would have received if the Corporation had liquidated the assets and liabilities of such institution without exercising the Corporation's authority under subsection (n) of this section or section 1823 of this title.

(3) Additional payments authorized

(A) In general

The Corporation may, in its discretion and in the interests of minimizing its losses, use its own resources to make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants. Notwithstanding any other provision of Federal or State law, or the constitution of any State, the Corporation shall not be obligated, as a result of having made any such payment or credited any such amount to or with respect to or for the account of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

(B) Manner of payment

The Corporation may make the payments or credit the amounts specified in subparagraph (A) directly to the claimants or may make such payments or credit such amounts to an open insured depository institution to induce such institution to accept liability for such claims.

(j) Limitation on court action

Except as provided in this section, no court may take any action, except at the request of the Board of Directors by regulation or order, to restrain or affect the exercise of powers or functions of the Corporation as a conservator or a receiver.

(k) Liability of directors and officers

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

(1) acting as conservator or receiver of such institution,

(2) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, or

(3) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed in whole or in part by an insured depository institution or its affiliate in connection with assistance provided under section 1823 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 of the Corporation under other applicable law.

(l) Damages

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

(m) New depository institutions**(1) Organization authorized**

As soon as possible after the default of an insured depository institution, the Corporation, if it finds that it is advisable and in the interest of the depositors of the insured depository institution in default or the public shall organize a new national bank or Federal savings association in the same community as the insured depository institution in default to assume the insured deposits of such depository institution in default and otherwise to perform temporarily the functions hereinafter provided for.

(2) Articles of association

The articles of association and the organization certificate of the new depository institution shall be executed by representatives designated by the Corporation.

(3) Capital stock

No capital stock need be paid in by the Corporation.

(4) Executive officer

The new depository institution shall not have a board of directors, but shall be managed by an executive officer appointed by the Board of Directors of the Corporation who shall be subject to its directions.

(5) Subject to laws relating to national banks

In all other respects the new depository institution shall be organized in accordance with the then existing provisions of law relating to the organization of national banking associations.

(6) New deposits

The new depository institution may, with the approval of the Corporation, accept new deposits which shall be subject to withdrawal on demand and which, except where the new depository institution is the only depository institution in the community, shall not exceed an amount equal to the standard maximum deposit insurance amount from any depositor.

(7) Insured status

The new depository institution, without application to or approval by the Corporation, shall be an insured depository institution and shall maintain on deposit with the Federal Reserve bank of its district reserves in the amount required by law for member banks, but it shall not be required to subscribe for stock of the Federal Reserve bank.

(8) Investments

Funds of the new depository institution shall be kept on hand in cash, invested in obli-

gations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Corporation, any Federal Reserve bank, or, to the extent of the insurance coverage on any such deposit, an insured depository institution.

(9) Conduct of business

The new depository institution, unless otherwise authorized by the Comptroller of the Currency, shall transact business only as authorized by this chapter and as may be incidental to its organization.

(10) Exempt status

Notwithstanding any other provision of Federal or State law, the new depository institution, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(11) Transfer of deposits

(A) Upon the organization of a new depository institution, the Corporation shall promptly make available to it an amount equal to the estimated insured deposits of such depository institution in default plus the estimated amount of the expenses of operating the new depository institution, and shall determine as soon as possible the amount due each depositor for the depositor's insured deposit in the insured depository institution in default, and the total expenses of operation of the new depository institution.

(B) Upon such determination, the amounts so estimated and made available shall be adjusted to conform to the amounts so determined.

(12) Earnings

Earnings of the new depository institution shall be paid over or credited to the Corporation in such adjustment.

(13) Losses

If any new depository institution, during the period it continues its status as such, sustains any losses with respect to which it is not effectively protected except by reason of being an insured depository institution, the Corporation shall furnish to it additional funds in the amount of such losses.

(14) Payment of insured deposits

(A) The new depository institution shall assume as transferred deposits the payment of the insured deposits of such depository institution in default to each of its depositors.

(B) Of the amounts so made available, the Corporation shall transfer to the new depository institution, in cash, such sums as may be necessary to enable it to meet its expenses of operation and immediate cash demands on such transferred deposits, and the remainder of such amounts shall be subject to withdrawal by the new depository institution on demand.

(15) Issuance of stock

(A) Whenever in the judgment of the Board of Directors it is desirable to do so, the Cor-

poration shall cause capital stock of the new depository institution to be offered for sale on such terms and conditions as the Board of Directors shall deem advisable in an amount sufficient, in the opinion of the Board of Directors, to make possible the conduct of the business of the new depository institution on a sound basis.

(B) The stockholders of the insured depository institution in default shall be given the first opportunity to purchase any shares of common stock so offered.

(16) Issuance of certificate

Upon proof that an adequate amount of capital stock in the new depository institution has been subscribed and paid for in cash, the Comptroller of the Currency,⁵ shall require the articles of association and the organization certificate to be amended to conform to the requirements for the organization of a national bank or Federal savings association, and thereafter, when the requirements of law with respect to the organization of a national bank or Federal savings association have been complied with, the Comptroller of the Currency,⁵ shall issue to the depository institution a certificate of authority to commence business, and thereupon the depository institution shall cease to have the status of a new depository institution, shall be managed by directors elected by its own shareholders, may exercise all the powers granted by law, and shall be subject to all provisions of law relating to national banks or Federal savings associations. Such depository institution shall thereafter be an insured national bank or Federal savings association, without certification to or approval by the Corporation.

(17) Transfer to other institution

If the capital stock of the new depository institution is not offered for sale, or if an adequate amount of capital for such new depository institution is not subscribed and paid for, the Board of Directors may offer to transfer its business to any insured depository institution in the same community which will take over its assets, assume its liabilities, and pay to the Corporation for such business such amount as the Board of Directors may deem adequate; or the Board of Directors in its discretion may change the location of the new depository institution to the office of the Corporation or to some other place or may at any time wind up its affairs as herein provided.

(18) Winding up

Unless the capital stock of the new depository institution is sold or its assets are taken over and its liabilities are assumed by an insured depository institution as above provided within 2 years after the date of its organization, the Corporation shall wind up the affairs of such depository institution, after giving such notice, if any, as the Comptroller of the Currency,⁵ may require, and shall certify to the Comptroller of the Currency,⁵ the termination of the new depository institution. Thereafter the Corporation shall be liable for the obligations of such depository institution and shall be the owner of its assets.

(19) Applicability of certain laws

The provisions of sections 181 and 182 of this title shall not apply to a new depository institution under this subsection.

(n) Bridge depository institutions

(1) Organization

(A) Purpose

When 1 or more insured depository institutions are in default, or when the Corporation anticipates that 1 or more insured depository institutions may become in default, the Corporation may, in its discretion, organize, and the Office of the Comptroller of the Currency, with respect to 1 or more insured banks or 1 or more insured savings associations, shall charter, 1 or more national banks or Federal savings associations, as appropriate, with respect thereto with the powers and attributes of national banking associations or Federal savings associations, as applicable, subject to the provisions of this subsection, to be referred to as "bridge depository institutions".

(B) Authorities

Upon the granting of a charter to a bridge depository institution, the bridge depository institution may—

(i) assume such deposits of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(ii) assume such other liabilities (including liabilities associated with any trust business) of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate;

(iii) purchase such assets (including assets associated with any trust business) of such insured depository institution or institutions that is or are in default or in danger of default as the Corporation may, in its discretion, determine to be appropriate; and

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

(C) Articles of association

The articles of association and organization certificate of a bridge depository institution as approved by the Corporation shall be executed by 3 representatives designated by the Corporation.

(D) Interim directors

A bridge depository institution shall have an interim board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) National bank or Federal savings association

A bridge depository institution shall be organized as a national bank, in the case of 1 or more insured banks, and as a Federal savings association, in the case of 1 or more insured savings associations.

(2) Chartering**(A) Conditions**

A national bank or Federal savings association may be chartered by the Comptroller of the Currency as a bridge depository institution only if the Board of Directors determines that—

(i) the amount which is reasonably necessary to operate such bridge depository institution will not exceed the amount which is reasonably necessary to save the cost of liquidating, including paying the insured accounts of, 1 or more insured depository institutions in default or in danger of default with respect to which the bridge depository institution is chartered;

(ii) the continued operation of such insured depository institution or institutions in default or in danger of default with respect to which the bridge depository institution is chartered is essential to provide adequate banking services in the community where each such depository institution in default or in danger of default is located; or

(iii) the continued operation of such insured depository institution or institutions in default or in danger of default with respect to which the bridge depository institution is chartered is in the best interest of the depositors of such depository institution or institutions in default or in danger of default or the public.

(B) Insured national bank or Federal savings association

A bridge depository institution shall be an insured depository institution from the time it is chartered as a national bank or Federal savings association.

(C) Bridge bank⁶ treated as being in default for certain purposes

A bridge depository institution shall be treated as an insured depository institution in default at such times and for such purposes as the Corporation may, in its discretion, determine.

(D) Management

A bridge depository institution, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Corporation.

(E) Bylaws

The board of directors of a bridge depository institution shall adopt such bylaws as may be approved by the Corporation.

(3) Transfer of assets and liabilities**(A) In general****(i) Transfer upon grant of charter**

Upon the granting of a charter to a bridge depository institution pursuant to this subsection, the Corporation, as receiver, or any other receiver appointed

with respect to any insured depository institution in default with respect to which the bridge depository institution is chartered may transfer any assets and liabilities of such depository institution in default to the bridge depository institution in accordance with paragraph (1).

(ii) Subsequent transfers

At any time after a charter is granted to a bridge depository institution, the Corporation, as receiver, or any other receiver appointed with respect to an insured depository institution in default may transfer any assets and liabilities of such insured depository institution in default as the Corporation may, in its discretion, determine to be appropriate in accordance with paragraph (1).

(iii) Treatment of trust business

For purposes of this paragraph, the trust business, including fiduciary appointments, of any insured depository institution in default is included among its assets and liabilities.

(iv) Effective without approval

The transfer of any assets or liabilities, including those associated with any trust business, of an insured depository institution in default transferred to a bridge depository institution shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(B) Intent of Congress regarding continuing operations

It is the intent of the Congress that, in order to prevent unnecessary hardship or losses to the customers of any insured depository institution in default with respect to which a bridge depository institution is chartered, especially creditworthy farmers, small businesses, and households, the Corporation should—

(i) continue to honor commitments made by the depository institution in default to creditworthy customers, and

(ii) not interrupt or terminate adequately secured loans which are transferred under subparagraph (A) and are being repaid by the debtor in accordance with the terms of the loan instrument.

(4) Powers of bridge banks⁷

Each bridge depository institution chartered under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, a national bank or Federal savings association, as appropriate, except that—

(A) the Corporation may—

(i) remove the interim directors and directors of a bridge depository institution;

(ii) fix the compensation of members of the interim board of directors and the board of directors and senior management, as determined by the Corporation in its

⁶So in original. Probably should be "Bridge depository institution".

⁷So in original. Probably should be "bridge depository institutions".

discretion, of a bridge depository institution; and

(iii) waive any requirement established under section 71, 72, 73, 74, or 75 of this title (relating to directors of national banks) or section 71a of this title which would otherwise be applicable with respect to directors of a bridge depository institution by operation of paragraph (2)(B);

(B) the Corporation may indemnify the representatives for purposes of paragraph (1)(B) and the interim directors, directors, officers, employees, and agents of a bridge depository institution on such terms as the Corporation determines to be appropriate;

(C) no requirement under any provision of law relating to the capital of a national bank shall apply with respect to a bridge depository institution;

(D) the Comptroller of the Currency may establish a limitation on the extent to which any person may become indebted to a bridge depository institution without regard to the amount of the bridge depository institution's capital or surplus;

(E)(i) the board of directors of a bridge depository institution shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Corporation; and

(ii) the board of directors of a bridge depository institution may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Corporation;

(F) a bridge depository institution shall not be required to purchase stock of any Federal Reserve bank;

(G) the Comptroller of the Currency shall waive any requirement for a fidelity bond with respect to a bridge depository institution at the request of the Corporation;

(H) any judicial action to which a bridge depository institution becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a depository institution in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge depository institution;

(I) no agreement which tends to diminish or defeat the right, title or interest of a bridge depository institution in any asset of an insured depository institution in default acquired by it shall be valid against the bridge depository institution unless such agreement—

(i) is in writing,

(ii) was executed by such insured depository institution in default and the person or persons claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by such insured depository institution in default,

(iii) was approved by the board of directors of such insured depository institution in default or its loan committee, which ap-

proval shall be reflected in the minutes of said board or committee, and

(iv) has been, continuously from the time of its execution, an official record of such insured depository institution in default;

(J) notwithstanding section 1823(e)(2) of this title, any agreement relating to an extension of credit between a Federal home loan bank or Federal Reserve bank and any insured depository institution which was executed before the extension of credit by such bank to such depository institution shall be treated as having been executed contemporaneously with such extension of credit for purposes of subparagraph (I); and

(K) except with the prior approval of the Corporation, a bridge depository institution may not, in any transaction or series of transactions, issue capital stock or be a party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction, or change its charter.

(5) Capital

(A) No capital required

The Corporation shall not be required to—

(i) issue any capital stock on behalf of a bridge depository institution chartered under this subsection; or

(ii) purchase any capital stock of a bridge depository institution, except that notwithstanding any other provision of Federal or State law, the Corporation may purchase and retain capital stock of a bridge depository institution in such amounts and on such terms as the Corporation, in its discretion, determines to be appropriate.

(B) Operating funds in lieu of capital

Upon the organization of a bridge depository institution, and thereafter, as the Board of Directors may, in its discretion, determine to be necessary or advisable, the Corporation may make available to the bridge depository institution, upon such terms and conditions and in such form and amounts as the Corporation may in its discretion determine, funds for the operation of the bridge depository institution in lieu of capital.

(C) Authority to issue capital stock

Whenever the Board of Directors determines it is advisable to do so, the Corporation shall cause capital stock of a bridge depository institution to be issued and offered for sale in such amounts and on such terms and conditions as the Corporation may, in its discretion, determine.

(D) Capital levels

A bridge depository institution shall not be considered an undercapitalized depository institution or a critically undercapitalized depository institution for purposes of section 347b(b) of this title.

(6) No Federal status**(A) Agency status**

A bridge depository institution is not an agency, establishment, or instrumentality of the United States.

(B) Employee status

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

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

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

(7) Assistance authorized

The Corporation may, in its discretion, provide assistance under section 1823(c) of this title to facilitate any transaction described in clause (i), (ii), or (iii) of paragraph (10)(A) with respect to any bridge depository institution in the same manner and to the same extent as such assistance may be provided under such section with respect to an insured depository institution in default, or to facilitate a bridge depository institution's acquisition of any assets or the assumption of any liabilities of an insured depository institution in default.

(8) Acquisition**(A) In general**

The responsible agency shall notify the Attorney General of any transaction involving the merger or sale of a bridge depository institution requiring approval under section 1828(c) of this title and if a report on competitive factors is requested within 10 days, such transaction may not be consummated before the 5th calendar day after the date of approval by the responsible agency with respect thereto. If the responsible agency has found that it must act immediately to prevent the probable failure of 1 of the depository institutions involved, the preceding sentence does not apply and the transaction may be consummated immediately upon approval by the agency.

(B) By out-of-State holding company

Any depository institution, including an out-of-State depository institution, or any out-of-State depository institution holding company may acquire and retain the capital stock or assets of, or otherwise acquire and retain a bridge depository institution if the

bridge depository institution at any time had assets aggregating \$500,000,000 or more, as determined by the Corporation on the basis of the bridge depository institution's reports of condition or on the basis of the last available reports of condition of any insured depository institution in default, which institution has been acquired, or whose assets have been acquired, by the bridge depository institution. The acquiring entity may acquire the bridge depository institution only in the same manner and to the same extent as such entity may acquire an insured depository institution in default under section 1823(f)(2) of this title.

(9) Duration of bridge depository institution

Subject to paragraphs (11) and (12), the status of a bridge depository institution as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Board of Directors may, in its discretion, extend the status of the bridge depository institution as such for 3 additional 1-year periods.

(10) Termination of bridge depository institution status

The status of any bridge depository institution as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge depository institution with a depository institution that is not a bridge depository institution;

(B) at the election of the Corporation, the sale of a majority of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(C) the sale of 80 percent, or more, of the capital stock of the bridge depository institution to an entity other than the Corporation and other than another bridge depository institution;

(D) at the election of the Corporation, either the assumption of all or substantially all of the deposits and other liabilities of the bridge depository institution by a depository institution holding company or a depository institution that is not a bridge depository institution, or the acquisition of all or substantially all of the assets of the bridge depository institution by a depository institution holding company, a depository institution that is not a bridge depository institution, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (9), or the earlier dissolution of the bridge depository institution as provided in paragraph (12).

(11) Effect of termination events**(A) Merger or consolidation**

A bridge depository institution that participates in a merger or consolidation as provided in paragraph (10)(A) shall be for all purposes a national bank or a Federal savings association, as the case may be, with all the rights, powers, and privileges thereof, and such merger or consolidation shall be

conducted in accordance with, and shall have the effect provided in, the provisions of applicable law.

(B) Charter conversion

Following the sale of a majority of the capital stock of the bridge depository institution as provided in paragraph (10)(B), the Corporation may amend the charter of the bridge depository institution to reflect the termination of the status of the bridge depository institution as such, whereupon the depository institution shall remain a national bank or a Federal savings association, as the case may be,⁸ with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(C) Sale of stock

Following the sale of 80 percent or more of the capital stock of a bridge depository institution as provided in paragraph (10)(C), the depository institution shall remain a national bank or a Federal savings association, as the case may be,⁸ with all of the rights, powers, and privileges thereof, subject to all laws and regulations applicable thereto.

(D) Assumption of liabilities and sale of assets

Following the assumption of all or substantially all of the liabilities of the bridge depository institution, or the sale of all or substantially all of the assets of the bridge depository institution, as provided in paragraph (10)(D), at the election of the Corporation the bridge depository institution may retain its status as such for the period provided in paragraph (9).

(E) Effect on holding companies

A depository institution holding company acquiring a bridge depository institution under section 1823(f) of this title, paragraph (8)(B) (or any predecessor provision), or both provisions, shall not be impaired or adversely affected by the termination of the status of a bridge depository institution as a result of subparagraph (A), (B), (C), or (D) of paragraph (10), and shall be entitled to the rights and privileges provided in section 1823(f) of this title.

(F) Amendments to charter

Following the consummation of a transaction described in subparagraph (A), (B), (C), or (D) of paragraph (10), the charter of the resulting institution shall be amended to reflect the termination of bridge depository institution status, if appropriate.

(12) Dissolution of bridge depository institution

(A) In general

Notwithstanding any other provision of State or Federal law, if the bridge depository institution's status as such has not previously been terminated by the occurrence of an event specified in subparagraph (A), (B), (C), or (D) of paragraph (10)—

(i) the Board of Directors may, in its discretion, dissolve a bridge depository insti-

tution in accordance with this paragraph at any time; and

(ii) the Board of Directors shall promptly commence dissolution proceedings in accordance with this paragraph upon the expiration of the 2-year period following the date the bridge depository institution was chartered, or any extension thereof, as provided in paragraph (9).

(B) Procedures

The Comptroller of the Currency shall appoint the Corporation as receiver for a bridge depository institution upon certification by the Board of Directors to the Comptroller of the Currency of its determination to dissolve the bridge depository institution. The Corporation as such receiver shall wind up the affairs of the bridge depository institution in conformity with the provisions of law relating to the liquidation of closed national banks or Federal savings associations, as appropriate. With respect to any such bridge depository institution, the Corporation as such receiver shall have all the rights, powers, and privileges and shall perform the duties related to the exercise of such rights, powers, or privileges granted by law to a receiver of any insured depository institution and notwithstanding any other provision of law in the exercise of such rights, powers, and privileges the Corporation shall not be subject to the direction or supervision of any State agency or other Federal agency.

(13) Multiple bridge depository institutions

Subject to paragraph (1)(B)(i), the Corporation may, in the Corporation's discretion, organize 2 or more bridge depository institutions under this subsection to assume any deposits of, assume any other liabilities of, and purchase any assets of a single depository institution in default.

(o) Supervisory records

In addition to the requirements of section 1817(a)(2) of this title to provide to the Corporation copies of reports of examination and reports of condition, whenever the Corporation has been appointed as receiver for an insured depository institution, the appropriate Federal banking agency shall make available all supervisory records to the receiver which may be used by the receiver in any manner the receiver determines to be appropriate.

(p) Certain sales of assets prohibited

(1) Persons who engaged in improper conduct with, or caused losses to, depository institutions

The Corporation shall prescribe regulations which, at a minimum, shall prohibit the sale of assets of a failed institution by the Corporation to—

(A) any person who—

(i) has defaulted, or was a member of a partnership or an officer or director of a corporation that has defaulted, on 1 or more obligations the aggregate amount of which exceed \$1,000,000, to such failed institution;

⁸ So in original.

(ii) has been found to have engaged in fraudulent activity in connection with any obligation referred to in clause (i); and

(iii) proposes to purchase any such asset in whole or in part through the use of the proceeds of a loan or advance of credit from the Corporation or from any institution for which the Corporation has been appointed as conservator or receiver;

(B) any person who participated, as an officer or director of such failed institution or of any affiliate of such institution, in a material way in transactions that resulted in a substantial loss to such failed institution;

(C) any person who has been removed from, or prohibited from participating in the affairs of, such failed institution pursuant to any final enforcement action by an appropriate Federal banking agency; or

(D) any person who has demonstrated a pattern or practice of defalcation regarding obligations to such failed institution.

(2) Convicted debtors

Except as provided in paragraph (3), any person who—

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008,² 1014, 1032, 1341, 1343, or 1344 of title 18 or of conspiring to commit such an offense, affecting any insured depository institution for which any conservator or receiver has been appointed; and

(B) is in default on any loan or other extension of credit from such insured depository institution which, if not paid, will cause substantial loss to the institution, the Deposit Insurance Fund, or the Corporation, may not purchase any asset of such institution from the conservator or receiver.

(3) Settlement of claims

Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any insured depository institution to any person if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of—

(A) 1 or more claims that have been, or could have been, asserted by the Corporation against the person; or

(B) obligations owed by the person to any insured depository institution or the Corporation.

(4) “Default” defined

For purposes of this subsection, the term “default” means a failure to comply with the terms of a loan or other obligation to such an extent that the property securing the obligation is foreclosed upon.

(q) Expedited procedures for certain claims

(1) Time for filing notice of appeal

The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Corporation against an insured depository institution’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository in-

stitution shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) Scheduling

Consistent with section 1657 of title 18,⁹ a court of the United States shall expedite the consideration of any case brought by the Corporation against an insured depository institution’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to an insured depository institution. As far as practicable the court shall give such case priority on its docket.

(3) Judicial discretion

The court may modify the schedule and limitations stated in paragraphs (1) and (2) in a particular case, based on a specific finding that the ends of justice that would be served by making such a modification would outweigh the best interest of the public in having the case resolved expeditiously.

(r) Foreign investigations

The Corporation, as conservator or receiver of any insured depository institution and for purposes of carrying out any power, authority, or duty with respect to an insured depository institution—

(1) may request the assistance of any foreign banking authority and provide assistance to any foreign banking authority in accordance with section 1818(v) of this title; and

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

(s) Prohibition on entering secrecy agreements and protective orders

The Corporation may not enter into any agreement or approve any protective order which prohibits the Corporation from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by the Corporation in its capacity as conservator or receiver for an insured depository institution.

(t) Agencies may share information without waiving privilege

(1) In general

A covered agency, in any capacity, shall not be deemed to have waived any privilege applicable to any information by transferring that information to or permitting that information to be used by—

(A) any other covered agency, in any capacity; or

(B) any other agency of the Federal Government (as defined in section 6 of title 18).

(2) Definitions

For purposes of this subsection:

(A) Covered agency

The term “covered agency” means any of the following:

⁹ So in original. Probably should be “title 28.”

- (i) Any Federal banking agency.
- (ii) The Farm Credit Administration.
- (iii) The Farm Credit System Insurance Corporation.
- (iv) The National Credit Union Administration.
- (v) The Government Accountability Office.
- (vii)¹⁰ Federal¹¹ Housing Finance Agency.

(B) Privilege

The term “privilege” includes any work-product, attorney-client, or other privilege recognized under Federal or State law.

(3) Rule of construction

Paragraph (1) shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (1) does not apply to the transfer or use of that information.

(u) Purchase rights of tenants

(1) Notice

Except as provided in paragraph (3), the Corporation may make available for sale a 1- to 4-family residence (including a manufactured home) to which the Corporation acquires title only after the Corporation has provided the household residing in the property notice (in writing and mailed to the property) of the availability of such property and the preference afforded such household under paragraph (2).

(2) Preference

In selling such a property, the Corporation shall give preference to any bona fide offer made by the household residing in the property, if—

- (A) such offer is substantially similar in amount to other offers made within such period (or expected by the Corporation to be made within such period);
- (B) such offer is made during the period beginning upon the Corporation making such property available and of a reasonable duration, as determined by the Corporation based on the normal period for sale of such properties; and
- (C) the household making the offer complies with any other requirements applicable to purchasers of such property, including any downpayment and credit requirements.

(3) Exceptions

Paragraphs (1) and (2) shall not apply to—

- (A) any residence transferred in connection with the transfer of substantially all of the assets of an insured depository institution for which the Corporation has been appointed conservator or receiver;
- (B) any eligible single family property (as such term is defined in section 1831q(p) of this title; or
- (C) any residence for which the household occupying the residence was the mortgagor under a mortgage on such residence and to

which the Corporation acquired title pursuant to default on such mortgage.

(v) Preference for sales for homeless families

Subject to subsection (u) of this section, in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in section 1831q(p) of this title) to which the Corporation acquires title, the Corporation shall give preference among offers to purchase the property that will result in the same net present value proceeds, to any offer that would provide for the property to be used, during the remaining useful life of the property, to provide housing or shelter for homeless persons (as such term is defined in section 11302 of title 42) or homeless families.

(w) Preferences for sales of certain commercial real properties

(1) Authority

In selling any eligible commercial real properties of the Corporation, the Corporation shall give preference, among offers to purchase the property that will result in the same net present value proceeds, to any offer—

- (A) that is made by a public agency or non-profit organization; and
- (B) under which the purchaser agrees that the property shall be used, during the remaining useful life of the property, for offices and administrative purposes of the purchaser to carry out a program to acquire residential properties to provide (i) homeownership and rental housing opportunities for very-low-, low-, and moderate-income families, or (ii) housing or shelter for homeless persons (as such term is defined in section 11302 of title 42) or homeless families.

(2) Definitions

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

(A) Eligible commercial real property

The term “eligible commercial real property” means any property (i) to which the Corporation acquires title, and (ii) that the Corporation, in the discretion of the Corporation, determines is suitable for use for the location of offices or other administrative functions involved with carrying out a program referred to in paragraph (1)(B).

(B) Nonprofit organization and public agency

The terms “nonprofit organization” and “public agency” have the same meanings as in section 1831q(p) of this title.

(Sept. 21, 1950, ch. 967, §2[11], 64 Stat. 884; Pub. L. 89-695, title III, §301(c), (d), Oct. 16, 1966, 80 Stat. 1055; Pub. L. 91-151, title I, §7(a)(3), (4), Dec. 23, 1969, 83 Stat. 375; Pub. L. 93-495, title I, §§101(a)(3), 102(a)(3), (4), Oct. 28, 1974, 88 Stat. 1500, 1502; Pub. L. 95-369, §6(c)(17)-(22), Sept. 17, 1978, 92 Stat. 619; Pub. L. 95-630, title XIV, §1401(a), Nov. 10, 1978, 92 Stat. 3712; Pub. L. 96-153, title III, §323(a), Dec. 21, 1979, 93 Stat. 1120; Pub. L. 96-221, title III, §308(a)(1)(C), (D), Mar. 31, 1980, 94 Stat. 147; Pub. L. 97-110, title I, §103(c), Dec. 26, 1981, 95 Stat. 1514; Pub. L. 97-320, title I, §113(j), (k), Oct. 15, 1982, 96 Stat. 1474; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095;

¹⁰ So in original. There is no cl. (vi).

¹¹ So in original. Probably should be preceded by “The”.

Pub. L. 100–86, title V, §§ 503(a), 507, Aug. 10, 1987, 101 Stat. 629, 634; Pub. L. 101–73, title II, §§ 201(a), 211–214, title IX, § 909, Aug. 9, 1989, 103 Stat. 187, 218–246, 477; Pub. L. 101–647, title XXV, §§ 2521(a)(1), 2526(a), 2527(a), 2528(a), 2532(b), 2534(a), Nov. 29, 1990, 104 Stat. 4863, 4875, 4877, 4880, 4882; Pub. L. 102–233, title I, § 102, title II, § 202(a), (b), title III, § 302(a), Dec. 12, 1991, 105 Stat. 1761, 1766, 1767; Pub. L. 102–242, title I, §§ 123(a), 133(a), (e), 141(b), (d), 161(a), (e), title II, § 241(c)(1), title III, § 311(a)(1), (b)(1), (2), (5)(B), (C), title IV, §§ 416, 426, 446, Dec. 19, 1991, 105 Stat. 2252, 2270, 2272, 2277, 2285, 2286, 2331, 2363, 2364, 2366, 2376, 2378, 2382; Pub. L. 102–550, title XV, §§ 1501(a), 1544, title XVI, §§ 1603(e)(1), 1604(c)(2), 1606(c), 1611(b), Oct. 28, 1992, 106 Stat. 4044, 4069, 4081, 4083, 4088, 4090; Pub. L. 103–66, title III, § 3001(a), (b), Aug. 10, 1993, 107 Stat. 336; Pub. L. 103–204, §§ 3(d), 4(b), 8(a)–(f), (i), 11, 15(b), 16(b), 17(b), 20, 27(b), 38(b), Dec. 17, 1993, 107 Stat. 2379, 2380, 2384–2389, 2399–2401, 2404, 2410, 2416; Pub. L. 103–325, title III, § 325, title IV, § 411(c)(2)(A), title VI, § 602(a)(21)–(33), Sept. 23, 1994, 108 Stat. 2228, 2253, 2289; Pub. L. 103–328, title II, § 201(a), Sept. 29, 1994, 108 Stat. 2368; Pub. L. 103–394, title V, § 501(c)(2), Oct. 22, 1994, 108 Stat. 4143; Pub. L. 104–208, div. A, title II, §§ 2602, 2704(d)(1)–(4), (6)(C), (14)(H), (I), 2705, Sept. 30, 1996, 110 Stat. 3009–469, 3009–487, 3009–488, 3009–492, 3009–495; Pub. L. 104–316, title I, § 106(i), Oct. 19, 1996, 110 Stat. 3831; Pub. L. 106–102, title I, § 117, title VII, § 736(a), (b)(2), Nov. 12, 1999, 113 Stat. 1372, 1479; Pub. L. 106–400, § 2, Oct. 30, 2000, 114 Stat. 1675; Pub. L. 106–569, title XII, § 1222, Dec. 27, 2000, 114 Stat. 3036; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108–386, § 8(a)(4), Oct. 30, 2004, 118 Stat. 2231; Pub. L. 109–8, title IX, §§ 901(a)(1), (b)(1), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), 902(a), 903(a), 904(a), 905(a), 908(a), Apr. 20, 2005, 119 Stat. 146, 147, 149, 151, 152, 155, 157–160, 165, 166, 183; Pub. L. 109–171, title II, §§ 2102(b), 2103(a)–(c), Feb. 8, 2006, 120 Stat. 9, 11; Pub. L. 109–173, §§ 2(a), (c)(1), 8(a)(11)–(14), Feb. 15, 2006, 119 Stat. 3601, 3602, 3611, 3612; Pub. L. 109–351, title VII, §§ 701(b), 718(a), 721(a), 722(a), 724, Oct. 13, 2006, 120 Stat. 1985, 1997–1999, 2001; Pub. L. 109–390, §§ 2(a)(1), (b)(1), (c)(1), 3(a), 6(a), Dec. 12, 2006, 120 Stat. 2692–2694, 2698; Pub. L. 110–289, div. A, title I, § 1161(i), title VI, § 1604(a), (c), (d), July 30, 2008, 122 Stat. 2781, 2826, 2829; Pub. L. 111–203, title III, §§ 335(a), 343(a)(1), (3), 363(5), July 21, 2010, 124 Stat. 1540, 1544, 1552; Pub. L. 111–343, § 1(a), Dec. 29, 2010, 124 Stat. 3609.)

AMENDMENT OF SUBSECTION (a)(1)

Pub. L. 111–203, title III, § 343(a)(3), July 21, 2010, 124 Stat. 1544, provided that, effective Jan. 1, 2013, subsection (a)(1) of this section is amended:

*(1) in subparagraph (B)—
(A) by substituting “deposit.—
“The net amount”*

*for “deposit.—” and all that follows through “clause (ii), the net amount”; and
(B) by striking out clauses (ii) and (iii); and
(2) in subparagraph (C), by substituting “subparagraph (B)” for “subparagraph (B)(i)”.*

REFERENCES IN TEXT

Section 1441a(b)(4) of this title, referred to in subsec. (d)(2)(I)(ii), was in the original “section 21A(b)(4)”,

which has been translated as reading “section 21A(b)(4) of the Federal Home Loan Bank Act”, to reflect the probable intent of Congress. Section 1441a of this title was repealed by Pub. L. 111–203, title III, § 364(b), July 21, 2010, 124 Stat. 1555.

Section 1823(e)(2) of this title, referred to in subsec. (d)(9)(B), was redesignated section 1823(e)(1)(B) of this title by Pub. L. 103–325, title III, § 317(1), Sept. 23, 1994, 108 Stat. 2223.

Section 1441a(b)(14) of this title, referred to in subsec. (d)(14)(A)(ii), was repealed by Pub. L. 111–203, title III, § 364(b), July 21, 2010, 124 Stat. 1555.

The Federal Rules of Civil Procedure, referred to in subsec. (d)(18), (19), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Securities Exchange Act of 1934, referred to in subsec. (e)(8)(D)(v)(I), is act June 6, 1934, ch. 404, 48 Stat. 881, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. 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. (e)(8)(D)(vi), (17), is Pub. L. 106–102, Nov. 12, 1999, 113 Stat. 1338. 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. (e)(8)(D)(vi), (17), 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. (e)(8)(D)(vi), (17), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, 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.

The Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (e)(13)(C)(ii), is Pub. L. 102–242, Dec. 19, 1991, 105 Stat. 2236. Subtitle A of title IV of the Act is classified generally to subchapter I (§ 4401 et seq.) of chapter 45 of this title. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1811 of this title and Tables.

Section 1008 of title 18, referred to in subsec. (p)(2)(A), was repealed by Pub. L. 101–73, title IX, § 961(g)(1), Aug. 9, 1989, 103 Stat. 500.

CODIFICATION

Amendments to subsec. (m) of this section by section 1604(a)(4)(J)(ii) of Pub. L. 110–289 were executed before amendments by section 1604(a)(4)(E) of Pub. L. 110–289, to reflect the probable intent of Congress.

Amendments to subsec. (n) of this section by section 1604(a)(5)(I) of Pub. L. 110–289 were executed before amendments by section 1604(a)(5)(E) and (G) of Pub. L. 110–289, to reflect the probable intent of Congress.

Amendments to subsec. (n) of this section by section 1604(a)(5)(O)(iv) and (P)(ii) of Pub. L. 110–289 were executed before amendments by section 1604(a)(5)(D) of Pub. L. 110–289, to reflect the probable intent of Congress.

PRIOR PROVISIONS

Section is derived from subsec. (l) of former section 264 of this title. See Codification note set out under section 1811 of this title.

AMENDMENTS

2010—Subsec. (a)(1)(B). Pub. L. 111–203, § 343(a)(1)(A), designated existing provisions as cl. (i), inserted heading, substituted “Subject to clause (ii), the net amount” for “The net amount”, and added cls. (ii) and (iii).

Subsec. (a)(1)(B)(iii). Pub. L. 111–343 substituted “means—” for “means a deposit” in introductory pro-

visions, inserted “(I a deposit” before “or account maintained”, redesignated former subcls. (I) to (III) as items (aa) to (cc) of subcl. (I), and added subcl. (II).

Subsec. (a)(1)(C). Pub. L. 111–203, § 343(a)(1)(B), substituted “subparagraph (B)(i)” for “subparagraph (B)”.

Subsec. (a)(1)(E). Pub. L. 111–203, § 335(a), substituted “\$250,000,” for “\$100,000,” and inserted at the end “Notwithstanding any other provision of law, the increase in the standard maximum deposit insurance amount to \$250,000 shall apply to depositors in any institution for which the Corporation was appointed as receiver or conservator on or after January 1, 2008, and before October 3, 2008. The Corporation shall take such actions as are necessary to carry out the requirements of this section with respect to such depositors, without regard to any time limitations under this chapter. In implementing this and the preceding 2 sentences, any payment on a deposit claim made by the Corporation as receiver or conservator to a depositor above the standard maximum deposit insurance amount in effect at the time of the appointment of the Corporation as receiver or conservator shall be deemed to be part of the net amount due to the depositor under subparagraph (B).”

Subsec. (c)(2)(A)(ii). Pub. L. 111–203, § 363(5)(A)(i), struck out “(other than section 1441a of this title)” before period at end.

Subsec. (c)(4). Pub. L. 111–203, § 363(5)(A)(ii), substituted “Notwithstanding” for “Except as otherwise provided in section 1441a of this title and notwithstanding” in introductory provisions.

Subsec. (c)(6). Pub. L. 111–203, § 363(5)(A)(iii)(I), substituted “Comptroller of the Currency” for “Director of the Office of Thrift Supervision” in heading.

Subsec. (c)(6)(A). Pub. L. 111–203, § 363(5)(A)(iii)(II), struck out “or the Resolution Trust Corporation” before “may, at the discretion” and substituted “Comptroller of the Currency” for “Director of the Office of Thrift Supervision”.

Subsec. (c)(6)(B). Pub. L. 111–203, § 363(5)(A)(iii)(III), amended subpar. (B) generally. Prior to amendment, subpar. (B) related to appointment of the Corporation or the Resolution Trust Corporation as receiver under subpar. (A) or (C) of section 1464(d)(2) of this title for the purpose of liquidation or winding up any savings association’s affairs.

Subsec. (c)(12)(A). Pub. L. 111–203, § 363(5)(A)(iv), struck out “or the Resolution Trust Corporation” before “as conservator”.

Subsec. (d)(17)(A), (18)(B). Pub. L. 111–203, § 363(5)(B), struck out “or the Director of the Office of Thrift Supervision” after “Comptroller of the Currency”.

Subsec. (m)(9), (16), (18). Pub. L. 111–203, § 363(5)(C), struck out “or the Director of the Office of Thrift Supervision, as appropriate” after “Comptroller of the Currency” wherever appearing.

Subsec. (n)(1)(A). Pub. L. 111–203, § 363(5)(D)(i), substituted “insured banks or” for “insured banks, or the Director of the Office of Thrift Supervision, with respect to” and “applicable,” for “applicable.,”.

Subsec. (n)(2)(A). Pub. L. 111–203, § 363(5)(D)(ii), struck out “or the Director of the Office of Thrift Supervision” before “as a bridge” in introductory provisions.

Subsec. (n)(4)(D), (G). Pub. L. 111–203, § 363(5)(D)(iii), (iv), struck out “and the Director of the Office of Thrift Supervision, as appropriate,” after “Comptroller of the Currency”.

Subsec. (n)(12)(B). Pub. L. 111–203, § 363(5)(D)(v), inserted “as” after “shall appoint the Corporation” and struck out “or the Director of the Office of Thrift Supervision, as appropriate,” after “Comptroller of the Currency” in two places.

Subsec. (p)(2)(B). Pub. L. 111–203, § 363(5)(E)(i), substituted “or the Corporation,” for “the Corporation, the FSLIC Resolution Fund, or the Resolution Trust Corporation,”.

Subsec. (p)(3)(B). Pub. L. 111–203, § 363(5)(E)(ii), struck out “, the FSLIC Resolution Fund, the Resolution Trust Corporation,” before “or the Corporation.”

Subsec. (r). Pub. L. 111–203, § 363(5)(F), struck out “and the Resolution Trust Corporation” before “, as conservator” in introductory provisions.

2008—Subsec. (d)(2)(F). Pub. L. 110–289, § 1604(a)(1)(A), substituted “as receiver, with respect to any insured depository institution, organize a new depository institution under subsection (m) or a bridge depository institution under subsection (n).” for “as receiver—

“(i) with respect to savings associations and by application to the Director of the Office of Thrift Supervision, organize a new Federal savings association to take over such assets or such liabilities as the Corporation may determine to be appropriate; and

“(ii) with respect to any insured bank, organize a new national bank under subsection (m) of this section or a bridge bank under subsection (n) of this section.”

Subsec. (d)(2)(G)(ii). Pub. L. 110–289, § 1604(a)(1)(B), substituted “new depository institution or a bridge depository institution” for “new bank or a bridge bank”.

Subsec. (e)(10)(C). Pub. L. 110–289, § 1604(a)(2), substituted “bridge depository institutions” for “bridge banks” in heading.

Subsec. (e)(10)(C)(i). Pub. L. 110–289, § 1604(a)(3), substituted “bridge depository institution” for “bridge bank”.

Subsec. (m). Pub. L. 110–289, § 1604(a)(4)(A)–(E), substituted “depository institutions” for “banks” in heading, “the insured depository institution in default to” for “the bank in default to” in par. (1), “the insured depository institution in default, and” for “the bank in default, and” in par. (11), “insured depository institution” for “insured bank” wherever appearing in pars. (1), (11)(A), (13), and (15)(B), and “new depository institution” for “new bank” and “such depository institution” for “such bank” wherever appearing in text. See Codification note above.

Subsec. (m)(1). Pub. L. 110–289, § 1604(a)(4)(F), inserted “or Federal savings association” after “national bank”.

Subsec. (m)(6). Pub. L. 110–289, § 1604(a)(4)(G), substituted “only depository institution” for “only bank”.

Subsec. (m)(9). Pub. L. 110–289, § 1604(a)(4)(H), inserted “or the Director of the Office of Thrift Supervision, as appropriate” after “Comptroller of the Currency”.

Subsec. (m)(15)(A). Pub. L. 110–289, § 1604(a)(4)(I), struck out “, but in no event less than that required by section 51 of this title for the organization of a national bank in the place where such new bank is located” before period at end.

Subsec. (m)(16). Pub. L. 110–289, § 1604(a)(4)(j)(iii)–(v), inserted “or Federal savings association” after “national bank” wherever appearing and “or Federal savings associations” after “national banks” and substituted “Such depository institution” for “Such bank”.

Pub. L. 110–289, § 1604(a)(4)(J)(ii), substituted “the depository institution” for “the bank” in two places. See Codification note above.

Pub. L. 110–289, § 1604(a)(4)(J)(i), inserted “or the Director of the Office of Thrift Supervision, as appropriate,” after “Comptroller of the Currency” in two places.

Subsec. (m)(18). Pub. L. 110–289, § 1604(a)(4)(K), inserted “or the Director of the Office of Thrift Supervision, as appropriate,” after “Comptroller of the Currency” in two places.

Subsec. (n). Pub. L. 110–289, § 1604(a)(5)(A)–(I), in heading substituted “depository institutions” for “banks” and in text substituted, wherever appearing, “bridge depository institution” for “bridge bank”, “bridge depository institutions” for “bridge banks” except in par. (1)(A), “bridge depository institutions” for “bridge bank’s”, “insured depository institution” for “insured bank” in pars. (2), (3), (4)(I), (7), and (8)(B), “insured depository institutions” for “insured banks”, “such depository institution” for “such bank” except in par. (4)(J), “the depository institution” for “the bank”, and “depository institution or institutions” for “bank or banks”. See Codification note above.

Subsec. (n)(1)(A). Pub. L. 110–289, § 1604(a)(5)(J), inserted “, with respect to 1 or more insured banks, or the Director of the Office of Thrift Supervision, with

respect to 1 or more insured savings associations,” after “Comptroller of the Currency”, “or Federal savings associations, as appropriate,” after “national banks”, and “or Federal savings associations, as applicable,” after “banking associations”, and substituted “as ‘bridge depository institutions’” for “as bridge banks”.

Subsec. (n)(1)(B)(i). Pub. L. 110-289, §1604(c), struck out “, except that if any insured deposits are assumed, all insured deposits shall be assumed by the bridge bank or another insured depository institution” before semicolon at end.

Pub. L. 110-289, §1604(a)(5)(K), struck out “of a bank” after “any insured deposits” and “of that bank” after “all insured deposits”.

Subsec. (n)(1)(E). Pub. L. 110-289, §1604(a)(5)(L), (M), inserted “or Federal savings association” after “National bank” in heading and “, in the case of 1 or more insured banks, and as a Federal savings association, in the case of 1 or more insured savings associations” after “national bank” in text.

Subsec. (n)(2)(A). Pub. L. 110-289, §1604(a)(5)(N)(i), (ii), inserted “or Federal savings association” after “national bank” and “or the Director of the Office of Thrift Supervision” after “Comptroller of the Currency” in introductory provisions.

Subsec. (n)(2)(B). Pub. L. 110-289, §1604(a)(5)(N)(i), (iii), inserted “or Federal savings association” after “national bank” in heading and introductory provisions.

Subsec. (n)(4). Pub. L. 110-289, §1604(a)(5)(O)(i), inserted “or Federal savings association, as appropriate” after “national bank” in introductory provisions.

Subsec. (n)(4)(C). Pub. L. 110-289, §1604(a)(5)(O)(ii), substituted “under any” for “under section 51 of this title or any other”.

Subsec. (n)(4)(D). Pub. L. 110-289, §1604(a)(5)(O)(iv), substituted “depository institution’s” for “bank’s”. See Codification note above.

Pub. L. 110-289, §1604(a)(5)(O)(iii), inserted “and the Director of the Office of Thrift Supervision, as appropriate,” after “Comptroller of the Currency”.

Subsec. (n)(4)(G). Pub. L. 110-289, §1604(a)(5)(O)(iii), inserted “and the Director of the Office of Thrift Supervision, as appropriate,” after “Comptroller of the Currency”.

Subsec. (n)(4)(H). Pub. L. 110-289, §1604(a)(5)(O)(v), substituted “a depository institution in default” for “a bank in default”.

Subsec. (n)(5)(D). Pub. L. 110-289, §1604(d), added subpar. (D).

Subsec. (n)(8)(A). Pub. L. 110-289, §1604(a)(5)(P)(i), substituted “the depository institutions” for “the banks”.

Subsec. (n)(8)(B). Pub. L. 110-289, §1604(a)(5)(P)(ii), substituted “depository institution’s” for “bank’s”. See Codification note above.

Subsec. (n)(9), (10). Pub. L. 110-289, §1604(a)(5)(Q), substituted “bridge depository institution” for “bridge bank” in heading.

Subsec. (n)(11)(A) to (C). Pub. L. 110-289, §1604(a)(5)(R), inserted “or a Federal savings association, as the case may be,” after “national bank”.

Subsec. (n)(12). Pub. L. 110-289, §1604(a)(5)(Q), substituted “bridge depository institution” for “bridge bank” in heading.

Subsec. (n)(12)(B). Pub. L. 110-289, §1604(a)(5)(S), inserted “or the Director of the Office of Thrift Supervision, as appropriate,” after “Comptroller of the Currency” in two places and “or Federal savings associations, as appropriate” after “national banks”.

Subsec. (n)(13). Pub. L. 110-289, §1604(a)(5)(Q), (T), substituted “bridge depository institutions” for “bridge banks” in heading and “single depository institution” for “single bank” in text.

Subsec. (t)(2)(A)(vii). Pub. L. 110-289, §1161(i), added cl. (vii).

2006—Subsec. (a)(1)(B). Pub. L. 109-171, §2103(a)(1), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: “The net amount due to any depositor at an insured depository

institution shall not exceed \$100,000 as determined in accordance with subparagraphs (C) and (D).”

Subsec. (a)(1)(D). Pub. L. 109-171, §2103(b), amended heading and text of subpar. (D) generally. Prior to amendment, subpar. (D) provided that for the purpose of determining the amount of insurance due under subpar. (B), the Corporation was to provide deposit insurance coverage with respect to deposits accepted by any insured depository institution on a pro rata or “pass-through” basis to a participant in or beneficiary of an employee benefit plan, including any eligible deferred compensation plan described in section 457 of title 26.

Subsec. (a)(1)(E), (F). Pub. L. 109-171, §2103(a)(2), added subpars. (E) and (F).

Subsec. (a)(2). Pub. L. 109-173, §2(a), inserted par. (2) heading and substituted subpar. (A) and heading and introductory provisions of subpar. (B) for introductory provisions of former subpar. (A) which related to exception to limitation relating to the amount of deposit insurance available for the account of any one depositor, struck out concluding provisions of former subpar. (A) which related to the status of certain depositors under former provisions, redesignated former subpar. (B) as (C), inserted heading, and substituted “government depositor” for “depositor referred to in subparagraph (A) of this paragraph” in two places.

Subsec. (a)(3)(A). Pub. L. 109-171, §2103(c), in concluding provisions substituted “\$250,000 (which amount shall be subject to inflation adjustments as provided in paragraph (1)(F), except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such paragraph)” for “\$100,000”.

Subsec. (a)(4). Pub. L. 109-173, §8(a)(11)(B), added par. (4) and struck out former par. (4) which set out general provisions relating to the Bank Insurance Fund and the Savings Association Insurance Fund.

Pub. L. 109-171, §2102(b), repealed Pub. L. 104-208, §2704(d)(1)–(3). See 1996 Amendment notes below.

Subsec. (a)(5) to (8). Pub. L. 109-173, §8(a)(11)(C), (D), redesignated par. (8) as (5) and struck out former pars. (5) to (7), which related to the establishment and operations of the Bank Insurance Fund and Savings Association Insurance Fund and provisions applicable to maintenance of accounts.

Pub. L. 109-171, §2102(b), repealed Pub. L. 104-208, §2704(d)(6)(C). See 1996 Amendment notes below.

Subsec. (c)(5)(H)(iii). Pub. L. 109-173, §8(a)(11)(A), substituted “Deposit Insurance Fund” for “deposit insurance fund”.

Subsec. (c)(7). Pub. L. 109-351, §701(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “If the Corporation appoints itself as conservator or receiver under paragraph (4), the insured State depository institution may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to remove itself as such conservator or receiver, and the court shall, upon the merits, dismiss such action or direct the Corporation to remove itself as such conservator or receiver.”

Subsec. (c)(10). Pub. L. 109-173, §8(a)(11)(A), substituted “Deposit Insurance Fund” for “deposit insurance fund” in heading and cls. (i) and (ii) of subpar. (B).

Subsec. (d)(15)(D). Pub. L. 109-351, §722(a), designated existing provisions as cl. (i), inserted 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. (e)(8)(D)(ii)(I). Pub. L. 109-390, §2(a)(1)(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. (e)(8)(D)(ii)(IV). Pub. L. 109-390, §2(a)(1)(B), inserted “(including by novation)” after “the guarantee” and “(whether or not such settlement is in connec-

tion with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II))” before semicolon at end.

Subsec. (e)(8)(D)(ii)(VI) to (VIII). Pub. L. 109-390, §2(a)(1)(D), (E), added subcls. (VI) and (VII) and redesignated former subcl. (VI) as (VIII). Former subcls. (VII) and (VIII) redesignated (IX) and (X), respectively.

Subsec. (e)(8)(D)(ii)(IX). Pub. L. 109-390, §2(a)(1)(D), redesignated subcl. (VII) as (IX). Former subcl. (IX) redesignated (XI).

Pub. L. 109-390, §2(a)(1)(C), substituted “(VIII), (IX), or (X)” for “or (VIII)” in two places.

Subsec. (e)(8)(D)(ii)(X) to (XII). Pub. L. 109-390, §2(a)(1)(D), redesignated subcls. (VIII) to (X) as (X) to (XII), respectively.

Subsec. (e)(8)(D)(iv)(I). Pub. L. 109-390, §2(b)(1), 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. (e)(8)(D)(vi). Pub. L. 109-390, §2(c)(1)(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. (e)(8)(D)(vi)(I). Pub. L. 109-390, §2(c)(1)(A), substituted “, precious metals, or other commodity” for “or precious metals” and “weather swap, option, future, 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. (e)(8)(D)(vi)(II). Pub. L. 109-390, §2(c)(1)(B), inserted “or other derivatives” after “dealings in the swap” and substituted “future, option, or spot transaction” for “future, or option”.

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

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

Subsec. (e)(13)(C). Pub. L. 109-351, §718(a), added subpar. (C).

Subsec. (e)(15)(B)(i). Pub. L. 109-173, §8(a)(11)(A), substituted “Deposit Insurance Fund” for “deposit insurance fund”.

Subsec. (f)(1). Pub. L. 109-173, §8(a)(12), substituted period at end for “, except that—

“(A) all payments made pursuant to this section on account of a closed Bank Insurance Fund member shall be made only from the Bank Insurance Fund, and

“(B) all payments made pursuant to this section on account of a closed Savings Association Insurance Fund member shall be made only from the Savings Association Insurance Fund.”

Pub. L. 109-171, §2102(b), repealed Pub. L. 104-208, §2704(d)(14)(H). See 1996 Amendment note below.

Subsec. (f)(3) to (5). Pub. L. 109-351, §721(a), added pars. (3) to (5) and struck out former pars. (3) to (5) which related to resolution of disputes, review of Corporation’s determination, and statute of limitations, respectively.

Subsec. (i)(3)(B), (C). Pub. L. 109-173, §8(a)(13), redesignated subpar. (C) as (B), substituted “subparagraph (A)” for “subparagraphs (A) and (B)”, and struck out heading and text of former subpar. (B). Text read as follows: “If the depository institution in default is a Bank Insurance Fund member, the Corporation may only make such payments out of funds held in the Bank Insurance Fund. If the depository institution in default is a Savings Association Insurance Fund member, the

Corporation may only make such payments out of funds held in the Savings Association Insurance Fund.”

Pub. L. 109-171, §2102(b), repealed Pub. L. 104-208, §2704(d)(14)(I). See 1996 Amendment note below.

Subsec. (m)(6). Pub. L. 109-173, §2(c)(1), substituted “an amount equal to the standard maximum deposit insurance amount” for “\$100,000”.

Subsec. (p)(2)(B). Pub. L. 109-173, §8(a)(11)(A), (14), substituted “the Deposit Insurance Fund” for “any deposit insurance fund”.

Subsec. (t)(1). Pub. L. 109-351, §724(1), inserted “, in any capacity,” after “A covered agency” in introductory provisions.

Subsec. (t)(2)(A)(i). Pub. L. 109-351, §724(2)(A), struck out “appropriate” before “Federal banking agency”.

Subsec. (t)(2)(A)(ii) to (vi). Pub. L. 109-351, §724(2)(B), (C), redesignated cls. (iii) to (vi) as (ii) to (v), respectively, and struck out former cl. (ii) which read as follows: “The Resolution Trust Corporation.”

2005—Subsec. (e)(8)(A). Pub. L. 109-8, §901(h)(1)(A), substituted “paragraphs (9) and (10)” for “paragraph (10)” in introductory provisions and “such person has to cause the termination, liquidation, or acceleration” for “to cause the termination or liquidation” in cl. (i), 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. (e)(8)(C)(i). Pub. L. 109-8, §901(i)(1), inserted “section 91 of this title or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,” before “the Corporation”.

Subsec. (e)(8)(D). Pub. L. 109-8, §901(a)(1)(A), substituted “subsection, the following definitions shall apply:” for “subsection—” in introductory provisions.

Subsec. (e)(8)(D)(i). Pub. L. 109-8, §901(a)(1)(B), inserted “, resolution, or order” after “any similar agreement that the Corporation determines by regulation”.

Subsec. (e)(8)(D)(ii). Pub. L. 109-8, §901(b)(1), 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 Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.”

Subsec. (e)(8)(D)(iii). Pub. L. 109-8, §901(c)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘commodity contract’ has the meaning given to such term in section 761 of title 11.”

Subsec. (e)(8)(D)(iv). Pub. L. 109-8, §901(d)(1), reenacted heading without change and amended text 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. (e)(8)(D)(v). Pub. L. 109-8, §901(e)(1), reenacted heading without change and amended text 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 Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term.”

Subsec. (e)(8)(D)(vi). Pub. L. 109-8, §901(f)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "The term 'swap agreement'—

"(I) means any agreement, including the terms and conditions incorporated by reference in any such agreement, which is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option purchased, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option purchased or any other similar agreement, and

"(II) includes any combination of such agreements and any option to enter into any such agreement."

Subsec. (e)(8)(D)(vii). Pub. L. 109-8, §905(a), amended heading and text of cl. (vii) generally. Prior to amendment, text read as follows: "Any master agreement for any agreements described in clause (vi)(I) together with all supplements to such master agreement shall be treated as 1 swap agreement."

Subsec. (e)(8)(D)(viii). Pub. L. 109-8, §901(g)(1), reenacted heading without change and amended text 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. (e)(8)(E). Pub. L. 109-8, §902(a)(1)(A), substituted "other than subsections (d)(9) and (e)(10)" for "other than paragraph (12) of this subsection, subsection (d)(9)" in introductory provisions.

Subsec. (e)(8)(E)(ii). Pub. L. 109-8, §901(h)(1)(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. (e)(8)(F), (G). Pub. L. 109-8, §902(a)(1)(B), added subpars. (F) and (G).

Subsec. (e)(8)(H). Pub. L. 109-8, §908(a), added subpar. (H).

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

Subsec. (e)(10)(A). Pub. L. 109-8, §903(a)(2), substituted concluding provisions for former concluding provisions which read as follows: "the conservator or receiver shall use such conservator's or receiver'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. (e)(10)(B) to (D). Pub. L. 109-8, §903(a)(3), added subpars. (B) and (C) and redesignated former subpar. (B) as (D).

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

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

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

Subsec. (e)(13) to (16). Pub. L. 109-8, §904(a)(1), redesignated pars. (12) to (15) as (13) to (16), respectively.

Subsec. (e)(17). Pub. L. 109-8, §904(a)(3), added par. (17).

2004—Subsec. (c)(2)(A)(i). Pub. L. 108-386, §8(a)(4)(A), struck out "or District bank" after "Federal depository institution".

Subsec. (c)(2)(A)(ii). Pub. L. 108-386, §8(a)(4)(B), struck out "or District bank" after "Federal depository institution" and "or the code of law for the District of Columbia" before period at end.

Subsec. (c)(3)(A). Pub. L. 108-386, §8(a)(4)(C), struck out "(other than a District depository institution)" after "State depository institution".

Subsec. (t)(2)(A)(vi). Pub. L. 108-271 substituted "Government Accountability Office" for "General Accounting Office".

2000—Subsec. (d)(10)(C). Pub. L. 106-569 added subpar. (C).

Subsecs. (v), (w)(1)(B)(ii). Pub. L. 106-400 made technical amendment to references in original act which appear in text as references to section 11302 of title 42.

1999—Subsec. (a)(4)(B). Pub. L. 106-102, §117, substituted "to benefit any shareholder or affiliate (other than an insured depository institution that receives assistance in accordance with the provisions of this chapter) of" for "to benefit any shareholder of" in introductory provisions.

Subsec. (a)(5). Pub. L. 106-102, §736(b)(2), amended Pub. L. 104-208, §2704(d)(4), (6)(C). See 1996 Amendment notes below.

Subsec. (a)(6). Pub. L. 106-102, §736(b)(2)(B), amended Pub. L. 104-208, §2704(d)(6)(C)(i). See 1996 Amendment note below.

Subsec. (a)(6)(L). Pub. L. 106-102, §736(a), struck out heading and text of subpar. (L). Text read as follows:

"(i) ESTABLISHMENT.—If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, there is established a Special Reserve of the Savings Association Insurance Fund, which shall be administered by the Corporation and shall be invested in accordance with section 1823(a) of this title.

"(ii) AMOUNTS IN SPECIAL RESERVE.—If, on January 1, 1999, the reserve ratio of the Savings Association Insurance Fund exceeds the designated reserve ratio, the amount by which the reserve ratio exceeds the designated reserve ratio shall be placed in the Special Reserve of the Savings Association Insurance Fund established by clause (i).

"(iii) LIMITATION.—The Corporation shall not provide any assessment credit, refund, or other payment from any amount in the Special Reserve of the Savings Association Insurance Fund.

"(iv) EMERGENCY USE OF SPECIAL RESERVE.—Notwithstanding clause (iii), the Corporation may, in its sole discretion, transfer amounts from the Special Reserve of the Savings Association Insurance Fund to the Savings Association Insurance Fund for the purposes set forth in paragraph (4), only if—

"(I) the reserve ratio of the Savings Association Insurance Fund is less than 50 percent of the designated reserve ratio; and

"(II) the Corporation expects the reserve ratio of the Savings Association Insurance Fund to remain at less than 50 percent of the designated reserve ratio for each of the next 4 calendar quarters.

"(v) EXCLUSION OF SPECIAL RESERVE IN CALCULATING RESERVE RATIO.—Notwithstanding any other provision of law, any amounts in the Special Reserve of the Savings Association Insurance Fund shall be excluded in calculating the reserve ratio of the Savings Association Insurance Fund."

Subsec. (a)(7), (8). Pub. L. 106-102, §736(b)(2)(B), (C), amended Pub. L. 104-208, §2704(d)(6)(C). See 1996 Amendment notes below.

1996—Subsec. (a)(4). Pub. L. 104-208, §2704(d)(1)(C), which directed substitution of "Establishment of the Deposit Insurance Fund" for "General provisions relating to funds" in heading, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (a)(4)(A) to (C). Pub. L. 104-208, §2704(d)(1)(A), (B), (2), which directed striking out subpar. (A), redesignating subpar. (B) as (C) and substituting "Deposit Insurance Fund" for "Bank Insurance Fund and the Savings Association Insurance Fund" in introductory provisions, and adding new subpars. (A) and (B), was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (a)(4)(D). Pub. L. 104-208, §2704(d)(3), which directed adding subpar. (D), was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (a)(5). Pub. L. 104-208, §2704(d)(6)(C), as amended by Pub. L. 106-102, §736(b)(2)(B), (C), which directed striking out par. (5) and redesignating par. (8) as (5), was repealed by Pub. L. 109-171. See Effective Date

of 1996 Amendment note below and 2006 Amendment note above.

Pub. L. 104-208, §2704(d)(4), which directed general amendment of par. (5), was repealed by Pub. L. 106-102, §736(b)(2)(A).

Subsec. (a)(6). Pub. L. 104-208, §2704(d)(6)(C)(i), as amended by Pub. L. 106-102, §736(b)(2)(B), which directed striking out par. (6), was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (a)(6)(L). Pub. L. 104-208, §2705, added subpar. (L).

Subsec. (a)(7), (8). Pub. L. 104-208, §2704(d)(6)(C), as amended by Pub. L. 106-102, §736(b)(2)(B), (C), which directed striking out par. (7) and redesignating par. (8) as (5), was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (d)(20). Pub. L. 104-208, §2602, added par. (20).

Subsec. (f)(1). Pub. L. 104-208, §2704(d)(14)(H), which directed substitution of a period for “, except that—” and subpars. (A) and (B), was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (i)(3)(B), (C). Pub. L. 104-208, §2704(d)(14)(I), which directed striking out subpar. (B) and redesignating subpar. (C) as (B) and substituting “subparagraph (A)” for “subparagraphs (A) and (B)”, was repealed by Pub. L. 109-171. See Effective Date of 1996 Amendment note below and 2006 Amendment note above.

Subsec. (t)(2)(A)(vi). Pub. L. 104-316 added cl. (vi).

1994—Subsec. (a)(4). Pub. L. 103-325, §602(a)(21), substituted “PROVISIONS” for “PROVISIONS” in heading.

Subsec. (c)(5)(M). Pub. L. 103-325, §411(c)(2)(A), substituted “section 5322 or 5324 of title 31” for “section 5322 of title 31”.

Subsec. (d)(2)(B)(iii). Pub. L. 103-325, §602(a)(22), substituted “are consistent” for “is consistent”.

Subsec. (d)(8)(B)(ii). Pub. L. 103-325, §602(a)(23), inserted “provide” before “a statement”.

Subsec. (d)(14)(B). Pub. L. 103-325, §602(a)(24), substituted “statute of limitations” for “statute of limitation”.

Subsec. (d)(14)(C). Pub. L. 103-328 added subpar. (C).

Subsec. (d)(16)(B)(iv). Pub. L. 103-325, §602(a)(25), substituted “disposition” for “dispositions”.

Subsec. (e)(8)(D). Pub. L. 103-394 substituted “section 741” for “section 741(7)” in cl. (ii)(I), “section 761” for “section 761(4)” in cl. (iii), “section 101” for “section 101(24)” in cl. (iv), “section 101” for “section 101(41)” in cl. (v)(I), and “section 101” for “section 101(50)” in cl. (viii).

Subsec. (e)(8)(D)(v)(I). Pub. L. 103-325, §602(a)(26), substituted “title 15,” for “title 15.”

Subsec. (e)(12)(B). Pub. L. 103-325, §602(a)(27), substituted “director’s or officer’s” for “directors or officers”.

Subsec. (e)(14), (15). Pub. L. 103-325, §325, added pars. (14) and (15).

Subsec. (f)(3)(A). Pub. L. 103-325, §602(a)(28), substituted “WITH” for “TO” in heading.

Subsec. (i)(3)(A). Pub. L. 103-325, §602(a)(29), substituted “other claimant or category of claimants” for “other claimant or category or claimants” in second sentence.

Subsec. (n)(4)(E)(i). Pub. L. 103-325, §602(a)(30), inserted “and” at end.

Subsec. (n)(12)(A). Pub. L. 103-325, §602(a)(31), substituted “subparagraph” for “subparagraphs”.

Subsec. (q)(1). Pub. L. 103-325, §602(a)(32), substituted “held” for “decided” in second sentence.

Subsec. (u)(3)(B). Pub. L. 103-325, §602(a)(33), substituted “section 1831q(p) of this title” for “subsection (c)(9)”.

1993—Subsec. (a)(1)(C). Pub. L. 103-204, §38(b), substituted “paragraph (1) or (2) of section 1817(i) of this title or any funds described in section 1817(i)(3) of this title” for “section 1817(i)(1) of this title”.

Subsec. (a)(4). Pub. L. 103-204, §11, substituted “PROVISIONS” for “PROVISION” in heading, and amended text

generally. Prior to amendment, text read as follows: “The Bank Insurance Fund established under paragraph (5) and the Savings Association Insurance Fund established under paragraph (6) shall each be—

“(A) maintained and administered by the Corporation;

“(B) maintained separately and not commingled; and

“(C) used by the Corporation to carry out its insurance purposes in the manner provided in this subsection.”

Subsec. (a)(6)(D) to (F). Pub. L. 103-204, §8(a)-(c), amended subpars. (D) to (F) generally. Prior to amendment, subpars. (D) to (F) related to the availability of funds for administrative expenses, Treasury payments to the Fund, and Treasury payments to maintain the net worth of the Fund, respectively.

Subsec. (a)(6)(G). Pub. L. 103-204, §8(i), substituted “subparagraph (D)” for “subparagraphs (E) and (F)” in heading and text.

Subsec. (a)(6)(H). Pub. L. 103-204, §8(d), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: “DISCRETIONARY RTC PAYMENTS.—If amounts available to the Savings Association Insurance Fund for purposes other than the payment of administrative expenses are insufficient for the Savings Association Insurance Fund to carry out the purposes of this chapter, the Corporation may request the Resolution Trust Corporation to provide, and the Thrift Depositor Protection Oversight Board of the Resolution Trust Corporation (in the discretion of the Thrift Depositor Protection Oversight Board) may pay, such amount as may be needed for such purposes.”

Subsec. (a)(6)(J). Pub. L. 103-204, §8(e), substituted “Subject to subparagraph (E), there are” for “There are” and “of subparagraph (D) for fiscal years 1994 through 1998, except that the aggregate amount appropriated pursuant to this authorization may not exceed \$8,000,000,000.” for “of this paragraph, except that—

“(i) the annual amount appropriated under subparagraph (F) shall not exceed \$2,000,000,000 in either fiscal year 1992 or fiscal year 1993; and

“(ii) the cumulative amount appropriated under subparagraph (F) for fiscal years 1992 through 2000 shall not exceed \$16,000,000,000.”

Subsec. (a)(6)(K). Pub. L. 103-204, §8(f), added subpar. (K).

Subsec. (c)(6)(B)(i). Pub. L. 103-204, §27(b)(1), substituted “such date as is determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title” for “October 1, 1993”.

Subsec. (c)(6)(B)(ii). Pub. L. 103-204, §27(b)(2), (3), substituted “on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title” for “after September 30, 1993” and “before such date” for “on or before such date”.

Subsec. (c)(6)(B)(iii). Pub. L. 103-204, §27(b)(2), substituted “on or after the date determined by the Chairperson of the Thrift Depositor Protection Oversight Board under section 1441a(b)(3)(A)(ii) of this title” for “after September 30, 1993”.

Subsec. (c)(13). Pub. L. 103-66, §3001(b)(1), in subpar. (A) struck out “subject to subparagraph (B),” before “this section shall” and inserted “and” at end, redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: “the Corporation shall apply the law of the State in which the institution is chartered insofar as that law gives the claims of depositors priority over those of other creditors or claimants; and”.

Subsec. (d)(2)(K). Pub. L. 103-204, §3(d), inserted “legal,” after “auction marketing,” and substituted “only if” for “if” and “the most practicable” for “practicable”.

Subsec. (d)(11). Pub. L. 103-66, §3001(a), amended par. (11) generally, substituting present provisions for former provisions relating to distribution of assets, which consisted of a subpar. (A) relating to subrogated

claims and claims of uninsured depositors and other creditors and a subpar. (B) relating to distribution to shareholders of amounts remaining after payment of all other claims and expenses.

Subsec. (d)(14)(A)(ii). Pub. L. 103-204, 4(b), inserted "(other than a claim which is subject to section 1441a(b)(14) of this title)" after "any tort claim".

Subsec. (g)(4). Pub. L. 103-66, §3001(b)(2), substituted "Subject to subsection (d)(11) of this section, if" for "If".

Subsec. (p). Pub. L. 103-204, §20, in heading, substituted "CERTAIN SALES OF ASSETS PROHIBITED" for "CERTAIN CONVICTED DEBTORS PROHIBITED FROM PURCHASING ASSETS", added par. (1), redesignated former pars. (1) and (2) as pars. (2) and (3), respectively, in par. (2) substituted "paragraph (3)" for "paragraph (2)" and "person" for "individual", in par. (3) substituted "Paragraphs (1) and (2)" for "Paragraph (1)" and "person" for "individual", wherever appearing, and added par. (4).

Subsec. (u). Pub. L. 103-204, §15(b), added subsec. (u).
 Subsec. (v). Pub. L. 103-204, §16(b), added subsec. (v).
 Subsec. (w). Pub. L. 103-204, §17(b), added subsec. (w).
 1992—Subsec. (c)(5)(M). Pub. L. 102-550, §1501(a), added subpar. (M).

Subsec. (c)(6)(B). Pub. L. 102-550, §1611(b)(2), substituted "subparagraph (A) or (C) of section 1464(d)(2) of this title" for "subparagraph (C) or (F) of section 1464(d)(2) of this title".

Pub. L. 102-550, §1611(b)(1), substituted "subparagraph (C) or (F) of section 1464(d)(2) of this title" for "section 1464(d)(2)(C) of this title".

Subsec. (d)(2)(B), (E). Pub. L. 102-550, §1604(c)(2), made technical amendment to reference to section 1831q of this title to reflect change in reference to corresponding section of original act.

Subsec. (d)(4)(A). Pub. L. 102-550, §1606(c), substituted "determination" for "determinations" after "administrative".

Subsec. (d)(5)(D)(iii)(I). Pub. L. 102-550, §1603(e)(1), substituted "insured depository institution" for "institution described in paragraph (3)(A)".

Subsec. (t). Pub. L. 102-550, §1544, added subsec. (t).
 1991—Subsec. (a)(1). Pub. L. 102-242, §311(b)(1), added par. (1) and struck out former par. (1) which read as follows: "The Corporation shall insure the deposits of all insured depository institutions as provided in this chapter. The maximum amount of the insured deposit of any depositor shall be \$100,000."

Subsec. (a)(2)(A). Pub. L. 102-242, §311(b)(5)(B), in closing provisions, substituted "such depositor shall, for the purpose of determining the amount of insured deposits under this subsection, be deemed a depositor in such custodial capacity separate and distinct from any other officer, employee, or agent of the United States or any public unit referred to in clause (ii), (iii), (iv), or (v) and the deposit of any such depositor shall be insured in an amount not to exceed \$100,000 per account" for "his deposit shall be insured" before "in an amount not to exceed \$100,000 per account."

Subsec. (a)(2)(B). Pub. L. 102-242, §311(b)(5)(C), substituted "(B)" for "(b)" as subpar. designation.

Subsec. (a)(3). Pub. L. 102-242, §311(b)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "Notwithstanding any limitation in this chapter or in any other provision of law relating to the amount of deposit insurance available for the account of any one depositor, time and savings deposits in an insured depository institution made pursuant to a pension or profit-sharing plan described in section 401(d) of title 26, or made in the form of individual retirement accounts as described in section 408(a) of title 26, shall be insured in the amount of \$100,000 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."

Subsec. (a)(6)(E). Pub. L. 102-233, §202(a), substituted "1993" for "1992" and "2000" for "1999".

Subsec. (a)(6)(J). Pub. L. 102-233, §202(b), substituted "1992" for "1991" and "1993" for "1992" in cl. (i), and "1992" for "1991" and "2000" for "1999" in cl. (ii).

Subsec. (a)(8). Pub. L. 102-242, §311(a)(1), added par. (8).

Subsec. (c)(5). Pub. L. 102-242, §133(a), amended par. (5) generally, revising and restating as subpars. (A) to (L) provisions of former subpars. (A) to (H).

Subsec. (c)(6)(B). Pub. L. 102-233, §102, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "Whenever the Director of the Office of Thrift Supervision appoints a receiver under the provisions of section 1464(d)(2)(C) of this title for the purpose of liquidation or winding up any savings association's affairs—

"(i) during the 3-year period beginning on August 9, 1989, the Resolution Trust Corporation shall be appointed; and

"(ii) after the end of the 3-year period referred to in clause (i), the Corporation shall be appointed."

Subsec. (c)(9). Pub. L. 102-242, §133(e), amended par. (9) generally. Prior to amendment, par. (9) read as follows: "In any case in which the Corporation is appointed conservator or receiver pursuant to paragraph (4) or (6)—

"(A) the provisions of this section shall be applicable to the Corporation, as conservator or receiver of any insured State depository institution in the same manner and to the same extent as if such institution were a Federal depository institution for which the Corporation had been appointed conservator or receiver; and

"(B) the Corporation as receiver of any insured State depository institution may—

"(i) liquidate such institution in an orderly manner; and

"(ii) make such other disposition of any matter concerning such institution as the Corporation determines is in the best interests of the institution, the depositors of such institution, and the Corporation."

Subsec. (c)(10) to (13). Pub. L. 102-242, §133(e), added pars. (10) to (13).

Subsec. (d)(2)(B). Pub. L. 102-242, §241(c)(1)(A), inserted "(subject to the provisions of section 1831q of this title)" before comma in introductory provisions.

Subsec. (d)(2)(E). Pub. L. 102-242, §241(c)(1)(B), inserted "(subject to the provisions of section 1831q of this title)" before first comma.

Subsec. (d)(2)(K). Pub. L. 102-242, §426, added subpar. (K).

Subsec. (d)(3)(A). Pub. L. 102-242, §161(a)(1), substituted "paragraph (4)" for "paragraph (4)(A)".

Subsec. (d)(4). Pub. L. 102-242, §416, amended par. (4) generally. Prior to amendment, par. (4) read as follows: "The Corporation may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination."

Subsec. (d)(5)(D). Pub. L. 102-242, §141(b), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver."

Subsec. (d)(11)(B). Pub. L. 102-242, §161(a)(2), substituted "paragraph (15)(B)" for "paragraph (14)(C)".

Subsec. (d)(13)(E). Pub. L. 102-242, §123(a), added subpar. (E).

Subsec. (e)(3)(C)(ii), (4)(B)(iii). Pub. L. 102-242, §161(a)(3), (4), substituted "subsection (i)" for "subsection (k)".

Subsec. (e)(8)(A), (E). Pub. L. 102-242, §161(a)(5), substituted "subsection (d)(9) of this section" for "subsections (d)(9) and (i)(4)(I) of this section".

Subsec. (h). Pub. L. 102-242, §141(d)(2), substituted "RESOLUTION" for "LIQUIDATION" in heading.

Subsec. (h)(4). Pub. L. 102-242, §141(d)(1), added par. (4).

Subsec. (i)(3)(A). Pub. L. 102-242, §161(e), substituted "Notwithstanding any other provision of Federal or

State law, or the constitution of any State, the" for "The".

Subsec. (n)(9). Pub. L. 102-242, §161(a)(6), substituted "paragraphs (11) and (12)" for "paragraphs (11) and (13)".

Subsec. (n)(11)(D). Pub. L. 102-242, §161(a)(7), substituted "paragraph (9)" for "paragraph (8)".

Subsec. (s). Pub. L. 102-242, §446, added subsec. (s).

1990—Subsec. (d)(2)(I), (J). Pub. L. 101-647, §2534(a), added subpar. (I) and redesignated former subpar. (I) as (J).

Subsec. (d)(17). Pub. L. 101-647, §2528(a), added par. (17).

Subsec. (d)(18), (19). Pub. L. 101-647, §2521(a)(1), added pars. (18) and (19).

Subsec. (p). Pub. L. 101-647, §2526(a), added subsec. (p).

Subsec. (q). Pub. L. 101-647, §2527, added subsec. (q).

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

1989—Subsec. (a)(1). Pub. L. 101-73, §211(1), added par. (1) and struck out former par. (1) which read as follows: "The Temporary Federal Deposit Insurance Fund and the Fund for Mutuals heretofore created pursuant to the provisions of section 12B of the Federal Reserve Act, as amended, are consolidated into a Permanent Insurance Fund for insuring deposits, and the assets therein shall be held by the Corporation for the uses and purposes of the Corporation: *Provided*, That the obligations to and rights of the Corporation, depositors, banks, and other persons arising out of any event or transaction prior to September 21, 1950, shall remain unimpaired. On and after August 23, 1935, the Corporation shall insure the deposits of all insured banks as provided in this chapter: *Provided further*, That the insurance shall apply only to deposits of insured banks which have been made available since March 10, 1933, for withdrawal in the usual course of the banking business: *Provided further*, That if any insured bank shall, without the consent of the Corporation, release or modify restrictions on or deferments of deposits which had not been made available for withdrawal in the usual course of the banking business on or before August 23, 1935, such deposits shall not be insured. Except as provided in paragraph (2), the maximum amount of the insured deposit of any depositor shall be \$100,000."

Subsec. (a)(2)(A). Pub. L. 101-73, §201(a), substituted "insured depository institution" for "insured bank" wherever appearing.

Subsec. (a)(2)(B). Pub. L. 101-73, §211(2), struck out "time and savings" after "deposited in".

Pub. L. 101-73, §201(a), substituted "insured depository institution" for "insured bank".

Subsec. (a)(3). Pub. L. 101-73, §201(a), substituted "insured depository institution" for "insured bank".

Subsec. (a)(4) to (7). Pub. L. 101-73, §211(3), added pars. (4) to (7).

Subsec. (b). Pub. L. 101-73, §201(a), substituted "insured depository institution" for "insured bank".

Subsec. (c). Pub. L. 101-73, §212(a), added subsec. (c) and struck out former subsec. (c) which related to Corporation as receiver.

Subsec. (d). Pub. L. 101-73, §212(a), added subsec. (d) and struck out former subsec. (d) which related to powers and duties of Corporation as receiver.

Subsec. (e). Pub. L. 101-73, §212(a), added subsec. (e) and struck out former subsec. (e) which related to Corporation as receiver of State banks.

Subsec. (f). Pub. L. 101-73, §212(a), added subsec. (f) and struck out former subsec. (f) which related to payment of insured deposits of closed insured bank or insured branch of a foreign bank.

Subsec. (g). Pub. L. 101-73, §212(a), added subsec. (g) and struck out former subsec. (g) which related to subrogation rights of Corporation in the case of a closed national bank, insured branch of a foreign bank, District bank, or closed insured Federal savings bank.

Subsec. (h). Pub. L. 101-73, §212(a), added subsec. (h) and struck out former subsec. (h) which related to organization, etc., of new national banks upon closing of insured banks. See subsec. (m) of this section.

Subsec. (i). Pub. L. 101-73, §212(a), added subsec. (i) and struck out former subsec. (i) which related to es-

tablishment, etc., of bridge banks. See subsec. (n) of this section.

Subsec. (j). Pub. L. 101-73, §212(a), added subsec. (j) and struck out former subsec. (j) which related to conditions applicable to liquidation proceedings.

Subsecs. (k), (l). Pub. L. 101-73, §212(a), added subsecs. (k) and (l).

Subsec. (m). Pub. L. 101-73, §213, added subsec. (m).

Subsec. (n). Pub. L. 101-73, §214, added subsec. (n).

Subsec. (o). Pub. L. 101-73, §909, added subsec. (o).

1987—Subsec. (h). Pub. L. 100-86, §503(a)(1), (2), designated existing provisions as par. (1) and redesignated former subsecs. (i) to (l) as pars. (2) to (5), respectively.

Subsec. (i). Pub. L. 100-86, §503(a)(2), (3), added subsec. (i). Former subsec. (i) redesignated subsec. (h)(2) of this section.

Subsec. (j). Pub. L. 100-86, §§503(a)(2), 507, added subsec. (j). Former subsec. (j) redesignated subsec. (h)(3) of this section.

Subsecs. (k), (l). Pub. L. 100-86, §503(a)(2), redesignated subsecs. (k) and (l) as pars. (4) and (5), respectively, of subsec. (h).

1986—Subsec. (a)(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.

1982—Subsec. (c). Pub. L. 97-320, §113(j), inserted provision relating to appointment of Corporation as receiver for an insured Federal savings bank by Federal Home Loan Bank Board.

Subsec. (g). Pub. L. 97-320, §113(k), inserted "or closed insured Federal savings bank," after "foreign bank, or District bank,".

1981—Subsec. (a)(2)(A)(iv). Pub. L. 97-110 inserted "the Trust Territory of the Pacific Islands," after "Virgin Islands, American Samoa," and "of the Trust Territory of the Pacific Islands," after "of American Samoa,".

1980—Subsec. (a)(1). Pub. L. 96-221, §308(a)(1)(C), substituted "\$100,000" for "\$40,000".

Subsec. (i). Pub. L. 96-221, §308(a)(1)(D), substituted "\$100,000" for "\$40,000".

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

1978—Subsec. (a)(3). Pub. L. 95-630 added par. (3).

Subsec. (c). Pub. L. 95-369, §6(c)(17), inserted "insured Federal branch of a foreign bank" after "any insured national bank".

Subsec. (e). Pub. L. 95-369, §6(c)(18), (19), inserted "or any insured branch (other than a Federal branch) of a foreign bank" after "(except a District bank)", and substituted "such insured State bank or insured branch of a foreign bank" for "such insured State bank".

Subsec. (f). Pub. L. 95-369, §6(c)(20), inserted "or insured branch of a foreign bank" after "Whenever an insured bank".

Subsec. (g). Pub. L. 95-369, §6(c)(21), (22), inserted "insured branch of a foreign bank" after "In the case of a closed national bank", and substituted "In the case of any closed insured bank or closed insured branch of a foreign bank, such subrogation" for "In the case of any closed insured bank, such subrogation".

1974—Subsec. (a). Pub. L. 93-495, §§101(a)(3), 102(a)(3), redesignated existing provisions as par. (1), inserted exception relating to applicability of par. (2), substituted "\$40,000" for "\$20,000", and added par. (2).

Subsec. (i). Pub. L. 93-495, §102(a)(4), substituted "\$40,000" for "\$20,000".

1969—Subsec. (a). Pub. L. 91-151, §7(a)(3), substituted \$20,000 for \$15,000 in last sentence.

Subsec. (i). Pub. L. 91-151, §7(a)(4), substituted \$20,000 for \$15,000 in fifth sentence.

1966—Subsec. (a). Pub. L. 89-695, §301(c), substituted in last sentence "\$15,000" for "\$10,000" and struck out "And provided further, That in the case of banks closing prior to September 21, 1950, the maximum amount of the insured deposit of any depositor shall be \$5,000".

Subsec. (i). Pub. L. 89-695, §301(d), substituted "\$15,000" for "\$10,000" in fifth sentence.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Com-

mittee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Oversight Board redesignated Thrift Depositor Protection Oversight Board, effective Feb. 1, 1992, see section 302(a) of Pub. L. 102-233, formerly set out as a note under section 1441a of this title. Thrift Depositor Protection Oversight Board abolished, see section 14(a)-(d) of Pub. L. 105-216, formerly set out as a note under section 1441a of this title.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-343, §1(b), Dec. 29, 2010, 124 Stat. 3609, provided that: "The amendments made by subsection (a) [amending this section] shall take effect on December 31, 2010."

Amendment by section 335(a) 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(a)(2), July 21, 2010, 124 Stat. 1544, provided that: "The amendments made by paragraph (1) [amending this section] shall take effect on December 31, 2010."

Pub. L. 111-203, title III, §343(a)(3), July 21, 2010, 124 Stat. 1544, provided that the amendment made by section 343(a)(3) is effective Jan. 1, 2013.

Amendment by section 363(5) of Pub. L. 111-203 effective on the transfer date, see section 351 of Pub. L. 111-203, set out as a note under section 906 of Title 2, The Congress.

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 subsection 701(b) of Pub. L. 109-351 applicable with respect to conservators or receivers appointed on or after Oct. 13, 2006, see section 701(c) of Pub. L. 109-351, set out as a note under section 191 of this title.

Amendment by section 2(a), (c)(1) of 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.

Amendment by section 8(a)(11)-(14) of Pub. L. 109-173 effective Mar. 31, 2006, see section 8(b) of Pub. L. 109-173, set out as a note under section 1813 of this title.

Amendment by section 2102(b) of Pub. L. 109-171 effective no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006, see section 2102(c) of Pub. L. 109-171, set out as a Merger of BIF and SAIF note below.

Pub. L. 109-171, title II, §2103(d), Feb. 8, 2006, 120 Stat. 12, provided that: "This section [amending this section] and the amendments made by this section shall take effect on the date the final regulations required under section 9(a)(2) [probably means section 2109(a)(2) of Pub. L. 109-171, set out as a Regulations note under section 1817 of this title] take effect [Apr. 1, 2006, see 71 F.R. 14629]."

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 2004 AMENDMENT

Amendment by Pub. L. 108-386 effective Oct. 30, 2004, and, except as otherwise provided, applicable with respect to fiscal year 2005 and each succeeding fiscal year, see sections 8(i) and 9 of Pub. L. 108-386, set out as notes under section 321 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by section 117 of Pub. L. 106-102 effective 120 days after Nov. 12, 1999, see section 161 of Pub. L. 106-102, set out as a note under section 24 of this title.

Pub. L. 106-102, title VII, §736(c), Nov. 12, 1999, 113 Stat. 1479, provided that: "This section [amending this section and provisions set out as a note under this section] and the amendments made by this section shall become effective on the date of the enactment of this Act [Nov. 12, 1999]."

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title II, §2704(c), Sept. 30, 1996, 110 Stat. 3009-487, which provided that section 2704 of div. A of Pub. L. 104-208 (amending this section, sections 24, 338a, 347b, 1431, 1441a, 1441b, 1464, 1467a, 1723i, 1735f-14, 1813, 1815 to 1817, 1821a, 1823 to 1825, 1827, 1828, 1831a, 1831e, 1831m, 1831o, 1833a, 1834, 1841, and 3341 of this title, and section 905 of Title 2, The Congress, repealing section 1831h of this title, and enacting provisions set out as notes under this section) was to become effective on Jan. 1, 1999, if no insured depository institution was a savings association on that date, was repealed by Pub. L. 109-171, title II, §2102(b), (c), Feb. 8, 2006, 120 Stat. 9, eff. no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006.

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

EFFECTIVE DATE OF 1993 AMENDMENT

Section 3001(c) of Pub. L. 103-66 provided that: "The amendments made by this section [amending this section] shall apply with respect to insured depository institutions for which a receiver is appointed after the date of the enactment of this Act [Aug. 10, 1993]."

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 1501(a) of Pub. L. 102-550 effective Dec. 20, 1992, see section 1501(c) of Pub. L. 102-550, set out as a note under section 1786 of this title.

Amendment by sections 1603(e)(1), 1604(c)(2), and 1606(c) of Pub. L. 102-550 effective as if included in the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. 102-242, as of Dec. 19, 1991, except that where amendment is to any provision of law added or amended by Pub. L. 102-242 effective after Dec. 19, 1992, then amendment by Pub. L. 102-550 effective on effective date of amendment by Pub. L. 102-242, see section 1609 of Pub. L. 102-550, set out as a note under section 191 of this title.

Section 1611(b)(2) of Pub. L. 102-550 provided that the amendment made by that section is effective one year after Dec. 19, 1991.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 133(a), (e) of Pub. L. 102-242 effective 1 year after Dec. 19, 1991, see section 133(g) of Pub. L. 102-242, set out as a note under section 191 of this title.

Section 311(c) of Pub. L. 102-242 provided that:
 "(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) and paragraphs (2) and (3) of subsection (b) [amending this section and section 1817 of this title] shall take effect at the end of the 2-year period beginning on the date of the enactment of this Act [Dec. 19, 1991]."

“(2) APPLICATION TO TIME DEPOSITS.—

“(A) CERTAIN DEPOSITS EXCLUDED.—Except with respect to the amendment referred to in paragraph (3), the amendments made by subsections (a) and (b) [amending this section and sections 1813 and 1817 of this title] shall not apply to any time deposit which—

“(i) was made before the date of enactment of this Act [Dec. 19, 1991]; and

“(ii) matures after the end of the 2-year period referred to in paragraph (1).

“(B) ROLLOVERS AND RENEWALS TREATED AS NEW DEPOSIT.—Any renewal or rollover of a time deposit described in subparagraph (A) after the date of the enactment of this Act shall be treated as a new deposit which is not described in such subparagraph.

“(3) EFFECTIVE DATE FOR AMENDMENT RELATING TO CERTAIN EMPLOYEE PLANS.—

“(A) Section 11(a)(1)(B) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(1)(B)] (as amended by subsection (b)(1) of this section) shall take effect on the earlier of—

“(i) the date of the enactment of this Act [Dec. 19, 1991]; or

“(ii) January 1, 1992.

“(B) Section 11(a)(3)(A) of the Federal Deposit Insurance Act (as amended by subsection (b)(2) of this section) shall take effect on the earlier of the dates described in clauses (i) and (ii) of subparagraph (A) with respect to plans described in clause (ii) of such section.”

EFFECTIVE DATE OF 1980 AMENDMENT

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

Amendment by section 308(a)(1) of Pub. L. 96-221 not applicable to any claim arising out of the closing of a bank prior to the effective date of section 308 of Pub. L. 96-221, see section 308(a)(2) of Pub. L. 96-221, set out as a note under section 1813 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 1757 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-630 effective Nov. 10, 1978, see section 1402 of Pub. L. 95-630, set out as a note under section 1787 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 101(a)(3) and 102(a)(3), (4) of Pub. L. 93-495 effective on thirtieth day beginning after Oct. 28, 1974, and amendment by section 102(a)(3), (4) of Pub. L. 93-495 not applicable to any claim arising out of the closing of any bank prior to such effective date, see sections 101(g) and 102(a)(3), (4) of Pub. L. 93-495, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-151 not applicable to any claim arising out of the closing of a bank where such closing took place prior to Dec. 23, 1969, see section 7(b) of Pub. L. 91-151, set out as a note under section 1813 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-695 not applicable to any claim arising out of the closing of a bank where such closing is prior to Oct. 16, 1966, see section 301(e) of Pub. L. 89-695, set out as a note under section 1813 of this title.

REGULATIONS

Section 311(b)(4) of Pub. L. 102-242 provided that:

“(A) REVIEW OF COVERAGE.—For the purpose of prescribing regulations, during the 1-year period beginning on the date of the enactment of this Act [Dec. 19, 1991], the Board of Directors shall review the capacities and rights in which deposit accounts are maintained and for which deposit insurance coverage is provided by the Corporation.

“(B) REGULATIONS.—After the end of the 1-year period referred to in subparagraph (A), the Board of Directors may prescribe regulations that provide for separate insurance coverage for the different capacities and rights in which deposit accounts are maintained if a determination is made by the Board of Directors that such separate insurance coverage is consistent with—

“(i) the purpose of protecting small depositors and limiting the undue expansion of deposit insurance coverage; and

“(ii) the insurance provisions of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.].

“(C) DELAYED EFFECTIVE DATE FOR REGULATIONS.—No regulation prescribed under subparagraph (B) may take effect before the 2-year period beginning on the date of the enactment of this Act [Dec. 19, 1991].”

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TEMPORARY ADJUSTMENT IN STANDARD MAXIMUM DEPOSIT INSURANCE AMOUNT

Subsec. (a)(1)(E) 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(a)(1) of this title.

MERGER OF BIF AND SAIF

Pub. L. 109-171, title II, §2102, Feb. 8, 2006, 120 Stat. 9, provided that:

“(a) IN GENERAL.—

“(1) MERGER.—The Bank Insurance Fund and the Savings Association Insurance Fund shall be merged into the Deposit Insurance Fund.

“(2) DISPOSITION OF ASSETS AND LIABILITIES.—All assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund shall be transferred to the Deposit Insurance Fund.

“(3) NO SEPARATE EXISTENCE.—The separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund shall cease on the effective date of the merger thereof under this section.

“(b) REPEAL OF OUTDATED MERGER PROVISION.—Section 2704 of the Deposit Insurance Funds Act of 1996 (12 U.S.C. 1821 note) [section 2704 of Pub. L. 104-208, which amended this section, sections 24, 338a, 347b, 1431, 1441a, 1441b, 1464, 1467a, 1723i, 1735f-14, 1813, 1815 to 1817, 1821a, 1823 to 1825, 1827, 1828, 1831a, 1831e, 1831m, 1831o, 1833a, 1834, 1841, and 3341 of this title, and section 905 of Title 2, The Congress, repealed section 1831h of this title, and enacted provisions set out as notes under this section] is repealed.

“(c) EFFECTIVE DATE.—This section shall take effect no later than the first day of the first calendar quarter that begins after the end of the 90-day period beginning on the date of the enactment of this Act [Feb. 8, 2006].”

Pub. L. 104-208, div. A, title II, §2704(a), (b), Sept. 30, 1996, 110 Stat. 3009-486, as amended by Pub. L. 106-102, title VII, §736(b)(1), Nov. 12, 1999, 113 Stat. 1479, which provided that the Bank Insurance Fund and the Savings Association Insurance Fund were to be merged into the Deposit Insurance Fund, that all assets and liabilities of the Bank Insurance Fund and the Savings Association Insurance Fund were to be transferred to the Deposit Insurance Fund, and that the separate existence of the Bank Insurance Fund and the Savings Association Insurance Fund was to cease, was repealed by Pub. L. 109-171, title II, §2102(b), (c), Feb. 8, 2006, 120 Stat. 9, eff. no later than the first day of the first cal-

endar quarter that begins after the end of the 90-day period beginning Feb. 8, 2006. See Effective Date of 1996 Amendment note and note above.

GAO REPORT

Section 8(g) of Pub. L. 103-204 provided that: "Not later than 60 days after receipt of any certification submitted pursuant to subparagraph (E) or (F) of section 11(a)(6) of the Federal Deposit Insurance Act [former 12 U.S.C. 1821(a)(6)], the Comptroller General shall transmit a report to the Congress evaluating any such certification."

SINGLE AGENCY FOR REAL PROPERTY DISPOSITION

Section 26(b) of Pub. L. 103-204 provided that:

"(1) STUDY.—The Comptroller General of the United States shall conduct a study to determine the feasibility and effectiveness of establishing a single Federal agency responsible for selling and otherwise disposing of real property owned or held by the Department of Housing and Urban Development, the Farmers Home Administration of the Department of Agriculture, the Federal Deposit Insurance Corporation, and the Resolution Trust Corporation. The study shall examine the real property disposition procedures of such agencies and corporations, analyze the feasibility of consolidating such procedures through such single agency, and determine the characteristics and authority necessary for any such single agency to efficiently carry out such disposition activities.

"(2) REPORT.—Not later than 12 months after the date of enactment of this Act [Dec. 17, 1993], the Comptroller General shall submit a report to the Congress on the study required under paragraph (1), which shall describe any findings under the study and contain any recommendations of the Comptroller General for the establishment of such single agency."

EXEMPTIONS FOR CERTAIN TRANSACTIONS

Section 37 of Pub. L. 103-204 provided that:

"(a) TRANSACTIONS INVOLVING CERTAIN INSTITUTIONS.—Section 11(a)(4)(B) of the Federal Deposit Insurance Act [12 U.S.C. 1821(a)(4)(B)] shall not prohibit assistance from the Bank Insurance Fund that otherwise meets all the criteria established in section 13(c) of such Act [12 U.S.C. 1823(c)] from being provided to an insured depository institution that became wholly-owned, either directly or through a wholly-owned subsidiary, by an entity or instrumentality of a State government during the period beginning on January 1, 1992, and ending on the date of enactment of this Act [Dec. 17, 1993].

"(b) TRANSACTIONS INVOLVING THE FDIC AS RECEIVER.—Notwithstanding the extension, pursuant to section 27 [12 U.S.C. 1831d], of the Resolution Trust Corporation's jurisdiction to be appointed conservator or receiver of certain savings associations after September 30, 1993, no provision of this Act [see Short Title of 1993 Amendment note set out under section 1421 of this title] or any amendment made by this Act shall invalidate or otherwise affect—

"(1) any appointment of the Federal Deposit Insurance Corporation as receiver for any savings association that became effective before the date of enactment of this Act; or

"(2) any action taken by the Federal Deposit Insurance Corporation as such receiver before, on, or after such date of enactment."

INFORMATIONAL STUDY

Section 311(d) of Pub. L. 102-242 provided that:

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

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

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

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

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

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

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

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

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

"(5) ANALYSIS BY FDIC.—The results of the survey under paragraph (4) shall be provided to the Federal Deposit Insurance Corporation before the end of the 1-year period beginning on the date of the enactment of this Act [Dec. 19, 1991] for analysis and inclusion in the informational study.

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

CONTINUATION OF HEALTH PLAN COVERAGE IN CASES OF FAILED FINANCIAL INSTITUTIONS

Section 451 of Pub. L. 102-242, as amended by Pub. L. 102-550, title XVI, §1606(g)(1), Oct. 28, 1992, 106 Stat. 4088, provided that:

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

"(1) shall, in its capacity as a successor of a failed depository institution (whether acting directly or through any bridge bank), have the same obligation to provide a group health plan meeting the requirements of section 602 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1162] (relating to continuation coverage requirements of group health plans) with respect to former employees of such institution as such institution would have had but for its failure, and

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

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

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

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

"(B) such entity is—

"(i) the Federal Deposit Insurance Corporation,

"(ii) any bridge bank, or

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

"(2) FAILED DEPOSITORY INSTITUTION.—The term 'failed depository institution' means any depository institution (as defined in section 3(c) of the Federal

Deposit Insurance Act [12 U.S.C. 1813(c)] for which a receiver has been appointed.

“(3) BRIDGE BANK.—The term ‘bridge bank’ has the meaning given such term by section 3(i)(2) of the Federal Deposit Insurance Act [12 U.S.C. 1813(i)(2)].

“(c) NO PREMIUM COSTS IMPOSED ON FDIC.—Subsection (a) shall not be construed as requiring the Federal Deposit Insurance Corporation to incur, by reason of this section, any obligation for any premium under any group health plan referred to in such subsection.

“(d) EFFECTIVE DATE.—This section shall apply to plan years beginning on or after the date of the enactment of this Act [Dec. 19, 1991], regardless of whether the qualifying event under section 603 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1163] occurred before, on, or after such date.”

DEFINITIONS

Section 2710 of div. A of Pub. L. 104–208 provided that: “For purposes of this subtitle [subtitle G (§§ 2701–2711) of title II of div. A of Pub. L. 104–208, see Short Title of 1996 Amendment note set out under section 1811 of this title], the following definitions shall apply:

“(1) BANK INSURANCE FUND.—The term ‘Bank Insurance Fund’ means the fund established pursuant to section 11(a)(5)(A) of the Federal Deposit Insurance Act [former 12 U.S.C. 1821(a)(5)(A)], as that section existed on the day before the date of enactment of this Act [Sept. 30, 1996].

“(2) BIF MEMBER, SAIF MEMBER.—The terms ‘Bank Insurance Fund member’ and ‘Savings Association Insurance Fund member’ have the same meanings as in section 7(l) of the Federal Deposit Insurance Act [12 U.S.C. 1817(l)].

“(3) VARIOUS BANKING TERMS.—The terms ‘bank’, ‘Board of Directors’, ‘Corporation’, ‘deposit’, ‘insured depository institution’, ‘Federal savings association’, ‘savings association’, ‘State savings bank’, and ‘State depository institution’ have the same meanings as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

“(4) DEPOSIT INSURANCE FUND.—The term ‘Deposit Insurance Fund’ means the fund established under section 11(a)(4) of the Federal Deposit Insurance Act [former 12 U.S.C. 1821(a)(4)] (as amended by section 2704(d) of this subtitle).

“(5) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term ‘depository institution holding company’ has the same meaning as in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

“(6) DESIGNATED RESERVE RATIO.—The term ‘designated reserve ratio’ has the same meaning as in section 7(b)(2)(A)(iv) of the Federal Deposit Insurance Act [former 12 U.S.C. 1817(b)(2)(A)(iv)], see 12 U.S.C. 1817(b)(3).

“(7) SAIF.—The term ‘Savings Association Insurance Fund’ means the fund established pursuant to section 11(a)(6)(A) of the Federal Deposit Insurance Act [former 12 U.S.C. 1821(a)(6)(A)], as that section existed on the day before the date of enactment of this Act [Sept. 30, 1996].

“(8) SAIF-ASSESSABLE DEPOSIT.—The term ‘SAIF-assessable deposit’—

“(A) means a deposit that is subject to assessment for purposes of the Savings Association Insurance Fund under the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] (including a deposit that is treated as insured by the Savings Association Insurance Fund under section 5(d)(3) of the Federal Deposit Insurance Act [12 U.S.C. 1815(d)(3)]); and

“(B) includes any deposit described in subparagraph (A) which is assumed after March 31, 1995, if the insured depository institution, the deposits of which are assumed, is not an insured depository institution when the special assessment is imposed under section 2702(a) [former 12 U.S.C. 1817 note].”

§ 1821a. FSLIC Resolution Fund

(a) Established

(1) In general

There is established a separate fund to be designated as the FSLIC Resolution Fund which shall be managed by the Corporation and separately maintained and not commingled.

(2) Transfer of FSLIC assets and liabilities

Except as provided in section 1441a¹ of this title, all assets and liabilities of the Federal Savings and Loan Insurance Corporation on the day before August 9, 1989, shall be transferred to the FSLIC Resolution Fund.

(3) Separate holding

Assets and liabilities transferred to the FSLIC Resolution Fund shall be the assets and liabilities of the Fund and not of the Corporation and shall not be consolidated with the assets and liabilities of the Deposit Insurance Fund or the Corporation for accounting, reporting, or any other purpose.

(4) Rights, powers, and duties

Effective August 10, 1989, the Corporation shall have all rights, powers, and duties to carry out the Corporation’s duties with respect to the assets and liabilities of the FSLIC Resolution Fund that the Corporation otherwise has under this chapter.

(5) Corporation as conservator or receiver

(A) In general

Effective August 10, 1989, the Corporation shall succeed the Federal Savings and Loan Insurance Corporation as conservator or receiver with respect to any depository institution—

- (i) the accounts of which were insured before August 10, 1989 by the Federal Savings and Loan Insurance Corporation; and
- (ii) for which a conservator or receiver was appointed before January 1, 1989.

(B) Rights, powers, and duties

When acting as conservator or receiver with respect to any depository institution described in subparagraph (A), the Corporation shall have all rights, powers, and duties that the Corporation otherwise has as conservator or receiver under this chapter.

(b) Source of funds

The FSLIC Resolution Fund shall be funded from the following sources to the extent funds are needed in the listed priority:

(1) Income earned on assets of the FSLIC Resolution Fund.

(2) Liquidating dividends and payments made on claims received by the FSLIC Resolution Fund from receiverships to the extent such funds are not required by the Resolution Funding Corporation pursuant to section 1441b of this title or the Financing Corporation pursuant to section 1441 of this title.

(3) Amounts borrowed by the Financing Corporation pursuant to section 1441 of this title.

¹ See References in Text note below.