

(A) has been convicted of an offense under section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1341, 1343, or 1344 of title 18, or of conspiring to commit such an offense, affecting any covered financial company; and

(B) is in default on any loan or other extension of credit from such covered financial company which, if not paid, will cause substantial loss to the Fund or the Corporation.

(3) Settlement of claims

Paragraphs (1) and (2) shall not apply to the sale or transfer by the Corporation of any asset of any covered financial company to any person, if the sale or transfer of the asset resolves or settles, or is part of the resolution or settlement, of 1 or more claims that have been, or could have been, asserted by the Corporation against the person.

(4) Definition of default

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

(s) Recoupment of compensation from senior executives and directors

(1) In general

The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

(2) Cost considerations

In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

(3) Rulemaking

The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term “compensation” to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

(Pub. L. 111-203, title II, §210, July 21, 2010, 124 Stat. 1460.)

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title II of Pub. L. 111-203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

The Securities Investor Protection Act of 1970, referred to in subsections. (a)(1)(O)(iv), (b)(6)(C), (D), (d)(3)(A), and (h)(2)(H)(iii), is Pub. L. 91-598, Dec. 30, 1970, 84 Stat. 1636, which is classified generally to chapter 2B-1 (§78aaa et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78aaa of Title 15 and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (a)(13), (14), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsec. (c)(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.

The Gramm-Leach-Bliley Act, referred to in subsec. (c)(15), 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. (c)(15), is title IV of H.R. 5660, as enacted by Pub. L. 106-554, §1(a)(5), Dec. 21, 2000, 114 Stat. 2763, 2763A-457, which is classified to sections 27 to 27f of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title of 2000 Amendment note set out under section 1 of Title 7 and Tables.

The Commodity Exchange Act, referred to in subsec. (c)(15), 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 Securities Exchange Act of 1934, referred to in subsec. (h)(2)(H)(i)(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.

This Act, referred to in subsec. (n)(8)(A)(i), is Pub. L. 111-203, July 21, 2010, 124 Stat. 1376, known as the Dodd-Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§8201 et seq.) and 109 (§8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (q)(2), is classified generally to Title 26, Internal Revenue Code.

§ 5391. Inspector General reviews

(a) to (c) Omitted

(d) FDIC Inspector General reviews

(1) Scope

The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this subchapter, including collecting and summarizing—

(A) a description of actions taken by the Corporation as receiver;

(B) a description of any material sales, transfers, mergers, obligations, purchases, and other material transactions entered into by the Corporation;

(C) an evaluation of the adequacy of the policies and procedures of the Corporation under section 5383(d) of this title and orderly liquidation plan under section 5390(n)(14)¹ of this title;

(D) an evaluation of the utilization by the Corporation of the private sector in carrying out its functions, including the adequacy of any conflict-of-interest reviews; and

¹ See References in Text note below.

(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company, including administrative costs, timeliness of liquidation process, and impact on the financial system.

(2) Frequency

Not later than 6 months after the date of appointment of the Corporation as receiver under this subchapter and every 6 months thereafter, the Inspector General of the Corporation shall conduct the audit and investigation described in paragraph (1).

(3) Reports and testimony

The Inspector General of the Corporation shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) Funding

(A) Initial funding

The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

(B) Additional funding

If the maximum amount available to the Corporation as receiver under this subchapter is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 5390 of this title.

(5) Termination of responsibilities

The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this subchapter.

(e) Treasury Inspector General reviews

(1) Scope

The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of any covered financial company under this subchapter, including collecting and summarizing—

(A) a description of actions taken by the Secretary under this subchapter;

(B) an analysis of the approval by the Secretary of the policies and procedures of the Corporation under section 5383 of this title and acceptance of the orderly liquidation plan of the Corporation under section 5390 of this title; and

(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 5390 of this title.

(2) Frequency

Not later than 6 months after the date of appointment of the Corporation as receiver

under this subchapter and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1).

(3) Reports and testimony

The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) Termination of responsibilities

The duties and responsibilities of the Inspector General of the Department of the Treasury under this subsection shall terminate 1 year after the date on which the obligations purchased by the Secretary from the Corporation under section 5390 of this title are fully redeemed.

(f) Primary financial regulatory agency Inspector General reviews

(1) Scope

Upon the appointment of the Corporation as receiver for a covered financial company supervised by a Federal primary financial regulatory agency or the Board of Governors under section 5365 of this title, the Inspector General of the agency or the Board of Governors shall make a written report reviewing the supervision by the agency or the Board of Governors of the covered financial company, which shall—

(A) evaluate the effectiveness of the agency or the Board of Governors in carrying out its supervisory responsibilities with respect to the covered financial company;

(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

(D) recommend appropriate administrative or legislative action.

(2) Reports and testimony

Not later than 1 year after the date of appointment of the Corporation as receiver under this subchapter, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing any actions

taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

(Pub. L. 111-203, title II, §211, July 21, 2010, 124 Stat. 1514.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (d)(1), (2), (4)(B), (5), (e)(1), (2), and (f)(2), was in the original “this title”, meaning title II of Pub. L. 111-203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

Section 5390(n)(14) of this title, referred to in subsec. (d)(1)(C), probably means section 5390(n)(9), because section 5390(n) of this title does not contain a par. (14) and section 5390(n)(9) of this title relates to orderly liquidation plans.

The Inspector General Act of 1978, referred to in subsecs. (d)(3) and (e)(3), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, which is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section is comprised of section 211 of Pub. L. 111-203. Subsecs. (a) to (c) of section 211 of Pub. L. 111-203 amended section 4403 of this title and section 1032 of title 18, Crimes and Criminal Procedure.

§ 5392. Prohibition of circumvention and prevention of conflicts of interest

(a) No other funding

Funds for the orderly liquidation of any covered financial company under this subchapter shall only be provided as specified under this subchapter.

(b) Limit on governmental actions

No governmental entity may take any action to circumvent the purposes of this subchapter.

(c) Conflict of interest

In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

(Pub. L. 111-203, title II, §212, July 21, 2010, 124 Stat. 1516.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (b), was in the original “this title”, meaning title II of Pub. L. 111-203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.

§ 5393. Ban on certain activities by senior executives and directors

(a) Prohibition authority

The Board of Governors or, if the covered financial company was not supervised by the Board of Governors, the Corporation, may exercise the authority provided by this section.

(b) Authority to issue order

The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that—

(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly—

(A) violated—

(i) any law or regulation;

(ii) any cease-and-desist order which has become final;

(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

(iv) any written agreement between such company and such agency;

(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or

(C) committed or engaged in any act, omission, or practice which constitutes a breach of the fiduciary duty of such senior executive or director;

(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

(3) such violation, practice, or breach—

(A) involves personal dishonesty on the part of such senior executive or director; or

(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

(c) Authorized actions

(1) In general

The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

(2) Procedures

The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) shall apply to actions under this section as if the covered financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act [12 U.S.C. 1811 et seq.].

(d) Regulations

The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

(Pub. L. 111-203, title II, §213, July 21, 2010, 124 Stat. 1517.)