

**(11) Financial company**

The term “financial company” means any company that—

(A) is incorporated or organized under any provision of Federal law or the laws of any State;

(B) is—

(i) a bank holding company, as defined in section 1841(a) of this title;

(ii) a nonbank financial company supervised by the Board of Governors;

(iii) any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 1843(k) of this title other than a company described in clause (i) or (ii); or

(iv) any subsidiary of any company described in any of clauses (i) through (iii) that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 1843(k) of this title (other than a subsidiary that is an insured depository institution or an insurance company); and

(C) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.), a governmental entity, or a regulated entity, as defined under section 4502(20) of this title.

**(12) Fund**

The term “Fund” means the Orderly Liquidation Fund established under section 5390(n) of this title.

**(13) Insurance company**

The term “insurance company” means any entity that is—

(A) engaged in the business of insurance;

(B) subject to regulation by a State insurance regulator; and

(C) covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company.

**(14) Nonbank financial company**

The term “nonbank financial company” has the same meaning as in section 5311(a)(4)(C) of this title.

**(15) Nonbank financial company supervised by the Board of Governors**

The term “nonbank financial company supervised by the Board of Governors” has the same meaning as in section 5311(a)(4)(D) of this title.

**(16) SIPC**

The term “SIPC” means the Securities Investor Protection Corporation.

**(b) Definitional criteria**

For purpose of the definition of the term “financial company” under subsection (a)(11), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 1843(k)

of this title, if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this subchapter, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

(Pub. L. 111-203, title II, §201, July 21, 2010, 124 Stat. 1442.)

## 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 Farm Credit Act of 1971, referred to in subsec. (a)(11)(C), is Pub. L. 92-181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

## EFFECTIVE DATE

Subchapter effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as a note under section 5301 of this title.

**§ 5382. Judicial review****(a) Commencement of orderly liquidation****(1) Petition to District Court****(A) District Court review****(i) Petition to District Court**

Subsequent to a determination by the Secretary under section 5383 of this title that a financial company satisfies the criteria in section 5383(b) of this title, the Secretary shall notify the Corporation and the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as receiver, the Secretary shall appoint the Corporation as receiver. If the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as receiver.

**(ii) Form and content of order**

The Secretary shall present all relevant findings and the recommendation made pursuant to section 5383(a) of this title to the Court. The petition shall be filed under seal.

**(iii) Determination**

On a strictly confidential basis, and without any prior public disclosure, the Court, after notice to the covered financial company and a hearing in which the covered financial company may oppose the petition, shall determine whether the deter-

mination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title is arbitrary and capricious.

**(iv) Issuance of order**

If the Court determines that the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title—

(I) is not arbitrary and capricious, the Court shall issue an order immediately authorizing the Secretary to appoint the Corporation as receiver of the covered financial company; or

(II) is arbitrary and capricious, the Court shall immediately provide to the Secretary a written statement of each reason supporting its determination, and afford the Secretary an immediate opportunity to amend and refile the petition under clause (i).

**(v) Petition granted by operation of law**

If the Court does not make a determination within 24 hours of receipt of the petition—

(I) the petition shall be granted by operation of law;

(II) the Secretary shall appoint the Corporation as receiver; and

(III) liquidation under this subchapter shall automatically and without further notice or action be commenced and the Corporation may immediately take all actions authorized under this subchapter.

**(B) Effect of determination**

The determination of the Court under subparagraph (A) shall be final, and shall be subject to appeal only in accordance with paragraph (2). The decision shall not be subject to any stay or injunction pending appeal. Upon conclusion of its proceedings under subparagraph (A), the Court shall provide immediately for the record a written statement of each reason supporting the decision of the Court, and shall provide copies thereof to the Secretary and the covered financial company.

**(C) Criminal penalties**

A person who recklessly discloses a determination of the Secretary under section 5383(b) of this title or a petition of the Secretary under subparagraph (A), or the pendency of court proceedings as provided for under subparagraph (A), shall be fined not more than \$250,000, or imprisoned for not more than 5 years, or both.

**(2) Appeal of decisions of the District Court**

**(A) Appeal to Court of Appeals**

**(i) In general**

Subject to clause (ii), the United States Court of Appeals for the District of Columbia Circuit shall have jurisdiction of an ap-

peal of a final decision of the Court filed by the Secretary or a covered financial company, through its board of directors, notwithstanding section 5390(a)(1)(A)(i) of this title, not later than 30 days after the date on which the decision of the Court is rendered or deemed rendered under this subsection.

**(ii) Condition of jurisdiction**

The Court of Appeals shall have jurisdiction of an appeal by a covered financial company only if the covered financial company did not acquiesce or consent to the appointment of a receiver by the Secretary under paragraph (1)(A).

**(iii) Expedition**

The Court of Appeals shall consider any appeal under this subparagraph on an expedited basis.

**(iv) Scope of review**

For an appeal taken under this subparagraph, review shall be limited to whether the determination of the Secretary that a covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title is arbitrary and capricious.

**(B) Appeal to the Supreme Court**

**(i) In general**

A petition for a writ of certiorari to review a decision of the Court of Appeals under subparagraph (A) may be filed by the Secretary or the covered financial company, through its board of directors, notwithstanding section 5390(a)(1)(A)(i) of this title, with the Supreme Court of the United States, not later than 30 days after the date of the final decision of the Court of Appeals, and the Supreme Court shall have discretionary jurisdiction to review such decision.

**(ii) Written statement**

In the event of a petition under clause (i), the Court of Appeals shall immediately provide for the record a written statement of each reason for its decision.

**(iii) Expedition**

The Supreme Court shall consider any petition under this subparagraph on an expedited basis.

**(iv) Scope of review**

Review by the Supreme Court under this subparagraph shall be limited to whether the determination of the Secretary that the covered financial company is in default or in danger of default and satisfies the definition of a financial company under section 5381(a)(11) of this title is arbitrary and capricious.

**(b) Establishment and transmittal of rules and procedures**

**(1) In general**

Not later than 6 months after July 21, 2010, the Court shall establish such rules and proce-

dures as may be necessary to ensure the orderly conduct of proceedings, including rules and procedures to ensure that the 24-hour deadline is met and that the Secretary shall have an ongoing opportunity to amend and refile petitions under subsection (a)(1).

**(2) Publication of rules**

The rules and procedures established under paragraph (1), and any modifications of such rules and procedures, shall be recorded and shall be transmitted to—

- (A) the Committee on the Judiciary of the Senate;
- (B) the Committee on Banking, Housing, and Urban Affairs of the Senate;
- (C) the Committee on the Judiciary of the House of Representatives; and
- (D) the Committee on Financial Services of the House of Representatives.

**(c) Provisions applicable to financial companies**

**(1) Bankruptcy Code**

Except as provided in this subsection, the provisions of the Bankruptcy Code and rules issued thereunder or otherwise applicable insolvency law, and not the provisions of this subchapter, shall apply to financial companies that are not covered financial companies for which the Corporation has been appointed as receiver.

**(2) This subchapter**

The provisions of this subchapter shall exclusively apply to and govern all matters relating to covered financial companies for which the Corporation is appointed as receiver, and no provisions of the Bankruptcy Code or the rules issued thereunder shall apply in such cases, except as expressly provided in this subchapter.

**(d) Time limit on receivership authority**

**(1) Baseline period**

Any appointment of the Corporation as receiver under this section shall terminate at the end of the 3-year period beginning on the date on which such appointment is made.

**(2) Extension of time limit**

The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary—

- (A) to—
  - (i) maximize the net present value return from the sale or other disposition of the assets of the covered financial company; or
  - (ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

(B) to protect the stability of the financial system of the United States.

**(3) Second extension of time limit**

**(A) In general**

The time limit under this subsection, as extended under paragraph (2), may be extended for up to 1 additional year, if the Chairperson of the Corporation, with the concurrence of the Secretary, submits the certifications described in paragraph (2).

**(B) Additional report required**

Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

**(4) Ongoing litigation**

The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if—

(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing—

- (i) the ongoing litigation justifying the need for an extension; and
- (ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

**(5) Regulations**

The Corporation may issue regulations governing the termination of receiverships under this subchapter.

**(6) No liability**

The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

**(e) Study of bankruptcy and orderly liquidation process for financial companies**

**(1) Study**

**(A) In general**

The Administrative Office of the United States Courts and the Comptroller General of the United States shall each monitor the

activities of the Court, and each such Office shall conduct separate studies regarding the bankruptcy and orderly liquidation process for financial companies under the Bankruptcy Code.

**(B) Issues to be studied**

In conducting the study under subparagraph (A), the Administrative Office of the United States Courts and the Comptroller General of the United States each shall evaluate—

- (i) the effectiveness of chapter 7 or chapter 11 of the Bankruptcy Code in facilitating the orderly liquidation or reorganization of financial companies;
- (ii) ways to maximize the efficiency and effectiveness of the Court; and
- (iii) ways to make the orderly liquidation process under the Bankruptcy Code for financial companies more effective.

**(2) Reports**

Not later than 1 year after July 21, 2010, in each successive year until the third year, and every fifth year after that date, the Administrative Office of the United States Courts and the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives separate reports summarizing the results of the studies conducted under paragraph (1).

**(f) Study of international coordination relating to bankruptcy process for financial companies**

**(1) Study**

**(A) In general**

The Comptroller General of the United States shall conduct a study regarding international coordination relating to the orderly liquidation of financial companies under the Bankruptcy Code.

**(B) Issues to be studied**

In conducting the study under subparagraph (A), the Comptroller General of the United States shall evaluate, with respect to the bankruptcy process for financial companies—

- (i) the extent to which international coordination currently exists;
- (ii) current mechanisms and structures for facilitating international cooperation;
- (iii) barriers to effective international coordination; and
- (iv) ways to increase and make more effective international coordination.

**(2) Report**

Not later than 1 year after July 21, 2010, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on the Judiciary of the Senate and the Committee on Financial Services and the Committee on the Judiciary of the House of Representatives and the Secretary a report summarizing

the results of the study conducted under paragraph (1).

**(g) Study of prompt corrective action implementation by the appropriate Federal agencies**

**(1) Study**

The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.

**(2) Issues to be studied**

In conducting the study under paragraph (1), the Comptroller General shall evaluate—

- (A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and
- (B) ways to make prompt corrective action a more effective tool to resolve the insured depository institutions at the least possible long-term cost to the Deposit Insurance Fund.

**(3) Report to Council**

Not later than 1 year after July 21, 2010, the Comptroller General shall submit a report to the Council on the results of the study conducted under this subsection.

**(4) Council report of action**

Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations made to the Federal primary financial regulatory agencies under section 5330 of this title.

(Pub. L. 111-203, title II, §202, July 21, 2010, 124 Stat. 1444.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(1)(A)(v)(III), (c), and (d)(5), 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.

**§ 5383. Systemic risk determination**

**(a) Written recommendation and determination**

**(1) Vote required**

**(A) In general**

On their own initiative, or at the request of the Secretary, the Corporation and the Board of Governors shall consider whether to make a written recommendation described in paragraph (2) with respect to whether the Secretary should appoint the Corporation as receiver for a financial company. Such recommendation shall be made upon a vote of not fewer than  $\frac{2}{3}$  of the members of the Board of Governors then serving and  $\frac{2}{3}$  of the members of the board of directors of the Corporation then serving.

**(B) Cases involving brokers or dealers**

In the case of a broker or dealer, or in which the largest United States subsidiary