

1501 of Pub. L. 109-8, set out as a note under section 101 of Title 11.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by 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, see section 1609(a) of Pub. L. 102-550, set out as a note under section 191 of this title.

§ 4403. Bilateral netting

(a) General rule

Notwithstanding any other provision of State or Federal law (other than section 1821(e) of this title, section 5390(c) of this title, section 4617 of this title, section 1787(c) of this title, or any order authorized under section 78eee(b)(2) of title 15), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be terminated, liquidated, accelerated, and netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11).

(b) Limitation on obligation to make payment

The only obligation, if any, of a financial institution to make payment with respect to covered contractual payment obligations to another financial institution shall be equal to its net obligation to such other financial institution, and no such obligation shall exist if there is no net obligation.

(c) Limitation on right to receive payment

The only right, if any, of a financial institution to receive payments with respect to covered contractual payment entitlements from another financial institution shall be equal to its net entitlement with respect to such other financial institution, and no such right shall exist if there is no net entitlement.

(d) Payment of net entitlement of failed financial institution

The net entitlement of any failed financial institution, if any, shall be paid to the failed financial institution in accordance with, and subject to the conditions of, the applicable netting contract.

(e) Effectiveness notwithstanding status as financial institution

This section shall be given effect notwithstanding that a financial institution is a failed financial institution.

(f) Enforceability of security agreements

The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and section 78eee(b)(2) of title 15).

(Pub. L. 102-242, title IV, § 403, Dec. 19, 1991, 105 Stat. 2374; Pub. L. 109-8, title IX, § 906(b), Apr. 20, 2005, 119 Stat. 168; Pub. L. 109-390, § 4(a), Dec. 12,

2006, 120 Stat. 2695; Pub. L. 111-203, title II, § 211(c), July 21, 2010, 124 Stat. 1514.)

AMENDMENTS

2010—Subsec. (a). Pub. L. 111-203 inserted “section 5390(c) of this title, section 4617 of this title,” after “section 1821(e) of this title,”.

2006—Subsec. (a). Pub. L. 109-390 struck out “paragraphs (8)(E), (8)(F), and (10)(B) of” before “section 1821(e)” and “section 1787(c)” and inserted “terminated, liquidated, accelerated, and” after “institutions shall be”.

Subsec. (f). Pub. L. 109-390, § 4(a)(1), struck out “paragraphs (8)(E), (8)(F), and (10)(B) of” before “section 1821(e)” and “section 1787(c)”.

2005—Subsec. (a). Pub. L. 109-8, § 906(b)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “Notwithstanding any other provision of law, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract.”

Subsec. (f). Pub. L. 109-8, § 906(b)(2), added subsec. (f).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by 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.

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.

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.

§ 4404. Clearing organization netting

(a) General rule

Notwithstanding any other provision of State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and any order authorized under section 78eee(b)(2) of title 15), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be terminated, liquidated, accelerated, and netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11).

(b) Limitation of obligation to make payment

The only obligation, if any, of a member of a clearing organization to make payment with respect to covered contractual payment obligations arising under a single netting contract to any other member of a clearing organization shall be equal to its net obligation arising under that netting contract, and no such obligation shall exist if there is no net obligation.

(c) Limitation on right to receive payment

The only right, if any, of a member of a clearing organization to receive payment with re-

spect to a covered contractual payment entitlement arising under a single netting contract from other members of a clearing organization shall be equal to its net entitlement arising under that netting contract, and no such right shall exist if there is no net entitlement.

(d) Entitlement of failed members

The net entitlement, if any, of any failed member of a clearing organization shall be paid to the failed member in accordance with, and subject to the conditions of, the applicable netting contract.

(e) Obligations of failed members

The net obligation, if any, of any failed member of a clearing organization shall be determined in accordance with, and subject to the conditions of, the applicable netting contract.

(f) Limitation on claims for entitlement

A failed member of a clearing organization shall have no recognizable claim against any member of a clearing organization for any amount based on such covered contractual payment entitlements other than its net entitlement.

(g) Effectiveness notwithstanding status as member

This section shall be given effect notwithstanding that a member is a failed member.

(h) Enforceability of security agreements

The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than section 1821(e) of this title, section 1787(c) of this title, and section 78eee(b)(2) of title 15).

(Pub. L. 102-242, title IV, § 404, Dec. 19, 1991, 105 Stat. 2374; Pub. L. 109-8, title IX, § 906(c), Apr. 20, 2005, 119 Stat. 168; Pub. L. 109-390, § 4(b), Dec. 12, 2006, 120 Stat. 2695.)

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-390 struck out “paragraphs (8)(E), (8)(F), and (10)(B) of” before “section 1821(e)” and “section 1787(c)” and inserted “terminated, liquidated, accelerated, and” after “organization shall be”.

Subsec. (h). Pub. L. 109-390, § 4(b)(1), struck out “paragraphs (8)(E), (8)(F), and (10)(B) of” before “section 1821(e)” and “section 1787(c)”.

2005—Subsec. (a). Pub. L. 109-8, § 906(c)(1), added subsec. (a) and struck out heading and text of former subsec. (a). Text read as follows: “Notwithstanding any other provision of law, the covered contractual payment obligations and covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract.”

Subsec. (h). Pub. L. 109-8, § 906(c)(2), added subsec. (h).

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, Bankruptcy.

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.

§ 4405. Preemption

No stay, injunction, avoidance, moratorium, or similar proceeding or order, whether issued or granted by a court, administrative agency, or otherwise, shall limit or delay application of otherwise enforceable netting contracts in accordance with sections 4403 and 4404 of this title.

(Pub. L. 102-242, title IV, § 405, Dec. 19, 1991, 105 Stat. 2375.)

§ 4406. Relationship to other payments systems

This chapter shall have no effect by implication or otherwise on the validity or legal enforceability of a netting arrangement of any payment system which is not subject to this chapter.

(Pub. L. 102-242, title IV, § 406, Dec. 19, 1991, 105 Stat. 2375.)

§ 4406a. Treatment of contracts with uninsured national banks, uninsured Federal branches and agencies, certain uninsured State member banks, and Edge Act corporations

(a) In general

Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act [12 U.S.C. 1821(e)] shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.], or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 4422¹ of this title, except that for such purpose—

(1) any reference to the “Corporation as receiver” or “the receiver or the Corporation” shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] or an uninsured State member bank;

(2) any reference to the “Corporation” (other than in section 11(e)(8)(D) of such Act [12 U.S.C. 1821(e)(8)(D)]), the “Corporation, whether acting as such or as conservator or receiver”, a “receiver”, or a “conservator” shall refer to the receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.] or an uninsured State member bank; and

¹ See References in Text note below.