FEDERAL DEPOSIT INSURANCE ACT

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(64 Stat. 873; 12 U.S.C. 1811 et seq.)

[As Amended Through P.L. 111–343, Enacted December 29, 2010]

SECTION 1. [12 U.S.C. 1811] FEDERAL DEPOSIT INSURANCE CORPORATION.[1]

(a) ESTABLISHMENT OF CORPORATION.—There is hereby established a Federal Deposit Insurance Corporation (hereinafter referred to as the "Corporation") which shall insure, as hereinafter provided, the deposits of all banks and savings associations which are entitled to the benefits of insurance under this Act, and which shall have the powers hereinafter granted.

(b) ASSET DISPOSITION DIVISION.—

(1) ESTABLISHMENT.—The Corporation shall have a separate division of asset disposition.

(2) MANAGEMENT.—The division of asset disposition shall have an administrator who shall be appointed by the Board of Directors.

(3) RESPONSIBILITIES OF DIVISION.—The division of asset disposition shall carry out all of the responsibilities of the Corporation under this Act relating to the liquidation of insured depository institutions and the disposition of assets of such institutions.

SEC. 2. [12 U.S.C. 1812] MANAGEMENT.

(a) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors consisting of 5 members—

(A) 1 of whom shall be the Comptroller of the Currency;

(B) 1 of whom shall be the Director of the Consumer Financial Protection Bureau; and

(C) 3 of whom shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, 1 of whom shall have State bank supervisory experience.

(2) POLITICAL AFFILIATION.—After February 28, 1993, not more than 3 of the members of the Board of Directors may be members of the same political party.

(b) CHAIRPERSON AND VICE CHAIRPERSON.—

(1) CHAIRPERSON.—1 of the appointed members shall be designated by the President, by and with the advice and con-

[1] The first section of the Act of September 21, 1950 (chapter 967; 64 Stat. 873) provides that the Act may be cited as the "Federal Deposit Insurance Act".

sent of the Senate, to serve as Chairperson of the Board of Directors for a term of 5 years.

(2) VICE CHAIRPERSON.—1 of the appointed members shall be designated by the President, by and with the advice and consent of the Senate, to serve as Vice Chairperson of the Board of Directors.

(3) ACTING CHAIRPERSON.—In the event of a vacancy in the position of Chairperson of the Board of Directors or during the absence or disability of the Chairperson, the Vice Chairperson shall act as Chairperson.

(c) TERMS.—

(1) APPOINTED MEMBERS.—Each appointed member shall be appointed for a term of 6 years.

(2) INTERIM APPOINTMENTS.—Any member appointed to fill a vacancy occurring before the expiration of the term for which such member's predecessor was appointed shall be appointed only for the remainder of such term.

(3) CONTINUATION OF SERVICE.—The Chairperson, Vice Chairperson, and each appointed member may continue to serve after the expiration of the term of office to which such member was appointed until a successor has been appointed and qualified.

(d) VACANCY.—

(1) IN GENERAL.—Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made.

(2) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the Comptroller of the Currency or the office of Director of the Consumer Financial Protection Bureau and pending the appointment of a successor, or during the absence or disability of the Comptroller of the Currency or the Director of the Consumer Financial Protection Bureau, the acting Comptroller of the Currency or the acting Director of the Consumer Financial Protection Bureau, as the case may be, shall be a member of the Board of Directors in the place of the Comptroller or Director.

(e) INELIGIBILITY FOR OTHER OFFICES.—

(1) POSTSERVICE RESTRICTION.—

(A) IN GENERAL.—No member of the Board of Directors may hold any office, position, or employment in any insured depository institution or any depository institution holding company during—

(i) the time such member is in office; and

(ii) the 2-year period beginning on the date such member ceases to serve on the Board of Directors.

(B) EXCEPTION FOR MEMBERS WHO SERVE FULL TERM.—The limitation contained in subparagraph (A)(ii) shall not apply to any member who has ceased to serve on the Board of Directors after serving the full term for which such member was appointed.

(2) RESTRICTION DURING SERVICE.—No member of the Board of Directors may—

(A) be an officer or director of any insured depository institution, depository institution holding company, Federal Reserve bank, or Federal home loan bank; or

(B) hold stock in any insured depository institution or depository institution holding company.

(3) CERTIFICATION.—Upon taking office, each member of the Board of Directors shall certify under oath that such member has complied with this subsection and such certification shall be filed with the secretary of the Board of Directors.

(f) STATUS OF EMPLOYEES.—

(1) IN GENERAL.—A director, member, officer, or employee of the Corporation has no liability under the Securities Act of 1933 with respect to any claim arising out of or resulting from any act or omission by such person within the scope of such person's employment in connection with any transaction involving the disposition of assets (or any interests in any assets or any obligations backed by any assets) by the Corporation. This subsection shall not be construed to limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other acts or omissions outside the scope of such person's employment.

(2) DEFINITION.—For purposes of this subsection, the term "employee of the Corporation" includes any employee of the Office of the Comptroller of the Currency or of the Consumer Financial Protection Bureau who serves as a deputy or assistant to a member of the Board of Directors of the Corporation in connection with activities of the Corporation.

(3) EFFECT ON OTHER LAW.—This subsection does not affect—

(A) any other immunities and protections that may be available to such person under applicable law with respect to such transactions, or

(B) any other right or remedy against the Corporation, against the United States under applicable law, or against any person other than a person described in paragraph (1) participating in such transactions.

This subsection shall not be construed to limit or alter in any way the immunities that are available under applicable law for Federal officials and employees not described in this subsection.

SEC. 3. [12 U.S.C. 1813] As used in this Act—

(a) DEFINITIONS OF BANK AND RELATED TERMS.—

(1) BANK.—The term "bank"—

(A) means any national bank and State bank, and any Federal branch and insured branch;

(B) includes any former savings association.

(2) STATE BANK.—The term "State bank" means any bank, banking association, trust company, savings bank, industrial bank (or similar depository institution which the Board of Directors finds to be operating substantially in the same manner as an industrial bank), or other banking institution which—

(A) is engaged in the business of receiving deposits, other than trust funds (as defined in this section); and

(B) is incorporated under the laws of any State or which is operating under the Code of Law for the District of Columbia,

including any cooperative bank or other unincorporated bank the deposits of which were insured by the Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(3) STATE.—The term "State" means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(b) DEFINITION OF SAVINGS ASSOCIATIONS AND RELATED TERMS.—

(1) SAVINGS ASSOCIATION.—The term "savings association" means—

(A) any Federal savings association;

(B) any State savings association; and

(C) any corporation (other than a bank) that the Board of Directors and the Comptroller of the Currency jointly determine to be operating in substantially the same manner as a savings association.

(2) FEDERAL SAVINGS ASSOCIATION.—The term "Federal savings association" means any Federal savings association or Federal savings bank which is chartered under section 5 of the Home Owners' Loan Act.

(3) STATE SAVINGS ASSOCIATION.—The term "State savings association" means—

(A) any building and loan association, savings and loan association, or homestead association; or

(B) any cooperative bank (other than a cooperative bank which is a State bank as defined in subsection (a)(2)), which is organized and operating according to the laws of the State (as defined in subsection (a)(3)) in which it is chartered or organized.

(c) DEFINITIONS RELATING TO DEPOSITORY INSTITUTIONS.—

(1) DEPOSITORY INSTITUTION.—The term "depository institution" means any bank or savings association.

(2) INSURED DEPOSITORY INSTITUTION.—The term "insured depository institution" means any bank or savings association the deposits of which are insured by the Corporation pursuant to this Act.

(3) INSTITUTIONS INCLUDED FOR CERTAIN PURPOSES.—The term "insured depository institution" includes any uninsured branch or agency of a foreign bank or a commercial lending company owned or controlled by a foreign bank for purposes of section 8 of this Act.

(4) FEDERAL DEPOSITORY INSTITUTION.—The term "Federal depository institution" means any national bank, any Federal savings association, and any Federal branch.

(5) STATE DEPOSITORY INSTITUTION.—The term "State depository institution" means any State bank, any State savings association, and any insured branch which is not a Federal branch.

(d) DEFINITIONS RELATING TO MEMBER BANKS.—

(1) NATIONAL MEMBER BANK.—The term "national member bank" means any national bank which is a member of the Federal Reserve System.

(2) STATE MEMBER BANK.—The term "State member bank" means any State bank which is a member of the Federal Reserve System.

(e) DEFINITIONS RELATING TO NONMEMBER BANKS.—

(1) NATIONAL NONMEMBER BANK.—The term "national nonmember bank" means any national bank which—

(A) is located in any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Northern Mariana Islands; and

(B) is not a member of the Federal Reserve System.

(2) STATE NONMEMBER BANK.—The term "State nonmember bank" means any State bank which is not a member of the Federal Reserve System.

(f) The term "mutual savings bank" means a bank without capital stock transacting a savings bank business, the net earnings of which inure wholly to the benefit of its depositors after payment of obligations for any advances by its organizers.

(g) SAVINGS BANK.—The term "savings bank" means a bank (including a mutual savings bank) which transacts its ordinary banking business strictly as a savings bank under State laws imposing special requirements on such banks governing the manner of investing their funds and of conducting their business.

(h) The term "insured bank" means any bank (including a foreign bank having an insured branch) the deposits of which are insured in accordance with the provisions of this Act; and the term "noninsured bank" means any bank the deposits of which are not so insured.

(i) NEW DEPOSITORY INSTITUTION AND BRIDGE DEPOSITORY INSTITUTION DEFINED.—

(1) NEW DEPOSITORY INSTITUTION.—The term "new depository institution" means a new national bank or Federal savings association, other than a bridge depository institution, organized by the Corporation in accordance with section 11(m).

(2) BRIDGE DEPOSITORY INSTITUTION.—The term "bridge depository institution" means a new national bank or Federal savings association organized by the Corporation in accordance with section 11(n).

(j) The term "receiver" includes a receiver, liquidating agent, conservator, commission, person, or other agency charged by law with the duty of winding up the affairs of a bank or savings association or of a branch of a foreign bank.

(k) The term "Board of Directors" means the Board of Directors of the Corporation.

(l) The term "deposit" means—

(1) the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certifi-

cate, certificate of indebtedness, or other similar name, or a check or draft drawn against a deposit account and certified by the bank or savings association, or a letter of credit or a traveler's check on which the bank or savings association is primarily liable: *Provided,* That, without limiting the generality of the term "money or its equivalent", any such account or instrument must be regarded as evidencing the receipt of the equivalent of money when credited or issued in exchange for checks or drafts or for a promissory note upon which the person obtaining any such credit or instrument is primarily or secondarily liable, or for a charge against a deposit account, or in settlement of checks, drafts, or other instruments forwarded to such bank or savings association for collection,

(2) trust funds as defined in this Act received or held by such bank or savings association, whether held in the trust department or held or deposited in any other department of such bank or savings association,

(3) money received or held by a bank or savings association, or the credit given for money or its equivalent received or held by a bank or savings association, in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including without being limited to, escrow funds, funds held as security for an obligation due to the bank or savings association or others (including funds held as dealers reserves) or for securities loaned by the bank or savings association, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States Government securities, funds held for distribution or purchase of securities, funds held to meet its acceptances or letters of credit, and withheld taxes: *Provided,* That there shall not be included funds which are received by the bank or savings association for immediate application to the reduction of an indebtedness to the receiving bank or savings association, or under condition that the receipt thereof immediately reduces or extinguishes such an indebtedness,

(4) outstanding draft (including advice or authorization to charge a bank's or a savings association's balance in another bank or savings association), cashier's check, money order, or other officer's check issued in the usual course of business for any purpose, including without being limited to those issued in payment for services, dividends, or purchases, and

(5) such other obligations of a bank or savings association as the Board of Directors, after consultation with the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System, shall find and prescribe by regulation to be deposit liabilities by general usage, except that the following shall not be a deposit for any of the purposes of this Act or be included as part of the total deposits or of an insured deposit:

(A) any obligation of a depository institution which is carried on the books and records of an office of such bank or savings association located outside of any State, unless—

(i) such obligation would be a deposit if it were carried on the books and records of the depository institution, and would be payable at, an office located in any State; and

(ii) the contract evidencing the obligation provides by express terms, and not by implication, for payment at an office of the depository institution located in any State;

(B) any international banking facility deposit, including an international banking facility time deposit, as such term is from time to time defined by the Board of Governors of the Federal Reserve System in regulation D or any successor regulation issued by the Board of Governors of the Federal Reserve System; and

(C) any liability of an insured depository institution that arises under an annuity contract, the income of which is tax deferred under section 72 of the Internal Revenue Code of 1986.

(m) INSURED DEPOSIT.—

(1) IN GENERAL.—Subject to paragraph (2), the term "insured deposit" means the net amount due to any depositor for deposits in an insured depository institution as determined under sections 7(i) and 11(a).

(2)[1] In the case of any deposit in a branch of a foreign bank, the term "insured deposit" means an insured deposit as defined in paragraph (1) of this subsection which—

(A) is payable in the United States to—

(i) an individual who is a citizen or resident of the United States,

(ii) a partnership, corporation, trust, or other legally cognizable entity created under the laws of the United States or any State and having its principal place of business within the United States or any State, or

(iii) an individual, partnership, corporation, trust, or other legally cognizable entity which is determined by the Board of Directors in accordance with its regulations to have such business or financial relationships in the United States as to make the insurance of such deposit consistent with the purposes of this Act; and

(B) meets any other criteria prescribed by the Board of Directors by regulation as necessary or appropriate in its judgment to carry out the purposes of this Act or to facilitate the administration thereof.

(3) UNINSURED DEPOSITS.—The term "uninsured deposit" means the amount of any deposit of any depositor at any insured depository institution in excess of the amount of the insured deposits of such depositor (if any) at such depository institution.

(4) PREFERRED DEPOSITS.—The term "preferred deposits" means deposits of any public unit (as defined in paragraph (1)) at any insured depository institution which are secured or collateralized as required under State law.

[1] Indentation so in law.

(n) The term "transferred deposit" means a deposit in a new bank or other insured depository institution made available to a depositor by the Corporation as payment of the insured deposit of such depositor in a closed bank, and assumed by such new bank or other insured depository institution.

(o) The term "domestic branch" includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands at which deposits are received or checks paid or money lent. The term "domestic branch" does not include an automated teller machine or a remote service unit. The term "foreign branch" means any office or place of business located outside the United States, its territories, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, at which banking operations are conducted.

(p) The term "trust funds" means funds held by an insured depository institution in a fiduciary capacity and includes, without being limited to, funds held as trustee, executor, administrator, guardian, or agent.

(q) APPROPRIATE FEDERAL BANKING AGENCY.—The term "appropriate Federal banking agency" means—

(1) the Office of the Comptroller of the Currency, in the case of—

(A) any national banking association;

(B) any Federal branch or agency of a foreign bank; and

(C) any Federal savings association;

(2) the Federal Deposit Insurance Corporation, in the case of—

(A) any State nonmember insured bank;

(B) any foreign bank having an insured branch; and

(C) any State savings association;

(3) the Board of Governors of the Federal Reserve System, in the case of—

(A) any State member bank;

(B) any branch or agency of a foreign bank with respect to any provision of the Federal Reserve Act which is made applicable under the International Banking Act of 1978;

(C) any foreign bank which does not operate an insured branch;

(D) any agency or commercial lending company other than a Federal agency;

(E) supervisory or regulatory proceedings arising from the authority given to the Board of Governors under section 7(c)(1) of the International Banking Act of 1978, including such proceedings under the Financial Institutions Supervisory Act of 1966;

(F) any bank holding company and any subsidiary (other than a depository institution) of a bank holding company; and

(G) any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company.

Under the rule set forth in this subsection, more than one agency may be an appropriate Federal banking agency with respect to any given institution.

(r) [1] STATE BANK SUPERVISOR.—

(1) IN GENERAL.—The term "State bank supervisor" means any officer, agency, or other entity of any State which has primary regulatory authority over State banks or State savings associations in such State.

(2) INTERSTATE APPLICATION.—The State bank supervisors of more than 1 State may be the appropriate State bank supervisor for any insured depository institution.

(s) DEFINITIONS RELATING TO FOREIGN BANKS AND BRANCHES.—

(1) FOREIGN BANK.—The term "foreign bank" has the meaning given to such term by section 1(b)(7) of the International Banking Act of 1978.

(2) FEDERAL BRANCH.—The term "Federal branch" has the meaning given to such term by section 1(b)(6) of the International Banking Act of 1978.

(3) INSURED BRANCH.—The term "insured branch" means any branch (as defined in section 1(b)(3) of the International Banking Act of 1978) of a foreign bank any deposits in which are insured pursuant to this Act.

(t) INCLUDES, INCLUDING.—

(1) IN GENERAL.—The terms "includes" and "including" shall not be construed more restrictively than the ordinary usage of such terms so as to exclude any other thing not referred to or described.

(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed as creating any inference that the term "includes" or "including" in any other provision of Federal law may be deemed to exclude any other thing not referred to or described.

(u) INSTITUTION-AFFILIATED PARTY.—The term "institution-affiliated party" means—

(1) any director, officer, employee, or controlling stockholder (other than a bank holding company or savings and loan holding company) of, or agent for, an insured depository institution;

(2) any other person who has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under section 7(j);

(3) any shareholder (other than a bank holding company or savings and loan holding company), consultant, joint venture partner, and any other person as determined by the appropriate Federal banking agency (by regulation or case-by-case)

[1] Section 1603(b)(2) of P.L. 102–550 (106 Stat. 4079) amended section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1992 by redesignating existing (b) as (c) and by inserting a new subsection (b). The new subsection (b) amends section 3(r) of the Federal Deposit Insurance Act to read as set forth above. The instructions made by section 1603(b)(2) of P.L. 102–550 probably should have been to the Federal Deposit Insurance Corporation Improvement Act of 1991.

who participates in the conduct of the affairs of an insured depository institution; and

(4) any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in—

(A) any violation of any law or regulation;

(B) any breach of fiduciary duty; or

(C) any unsafe or unsound practice,

which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution.

(v) VIOLATION.—The term "violation" includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

(w) DEFINITIONS RELATING TO AFFILIATES OF DEPOSITORY INSTITUTIONS.—

(1) DEPOSITORY INSTITUTION HOLDING COMPANY.—The term "depository institution holding company" means a bank holding company or a savings and loan holding company.

(2) BANK HOLDING COMPANY.—The term "bank holding company" has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

(3) SAVINGS AND LOAN HOLDING COMPANY.—The term "savings and loan holding company" has the meaning given to such term in section 10 of the Home Owners' Loan Act.

(4) SUBSIDIARY.—The term "subsidiary"—

(A) means any company which is owned or controlled directly or indirectly by another company; and

(B) includes any service corporation owned in whole or in part by an insured depository institution or any subsidiary of such a service corporation.

(5) CONTROL.—The term "control" has the meaning given to such term in section 2 of the Bank Holding Company Act of 1956.

(6) AFFILIATE.—The term "affiliate" has the meaning given to such term in section 2(k) of the Bank Holding Company Act of 1956.

(7) COMPANY.—The term "company" has the same meaning as in section 2(b) of the Bank Holding Company Act of 1956.

(x) DEFINITIONS RELATING TO DEFAULT.—

(1) DEFAULT.—The term "default" means, with respect to an insured depository institution, any adjudication or other official determination by any court of competent jurisdiction, the appropriate Federal banking agency, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for an insured depository institution or, in the case of a foreign bank having an insured branch, for such branch.

(2) IN DANGER OF DEFAULT.—The term "in danger of default" means an insured depository institution with respect to which (or in the case of a foreign bank having an insured branch, with respect to such insured branch) the appropriate Federal banking agency or State chartering authority has advised the Corporation (or, if the appropriate Federal banking

agency is the Corporation, the Corporation has determined) that—

(A) in the opinion of such agency or authority—

(i) the depository institution or insured branch is not likely to be able to meet the demands of the institution's or branch's depositors or pay the institution's or branch's obligations in the normal course of business; and

(ii) there is no reasonable prospect that the depository institution or insured branch will be able to meet such demands or pay such obligations without Federal assistance; or

(B) in the opinion of such agency or authority—

(i) the depository institution or insured branch has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(ii) there is no reasonable prospect that the capital of the depository institution or insured branch will be replenished without Federal assistance.

(y) DEFINITIONS RELATING TO DEPOSIT INSURANCE FUND.—

(1) DEPOSIT INSURANCE FUND.—The term "Deposit Insurance Fund" means the Deposit Insurance Fund established under section 11(a)(4).

(2) DESIGNATED RESERVE RATIO.—The term "designated reserve ratio" means the reserve ratio designated by the Board of Directors in accordance with section 7(b)(3).

(3) RESERVE RATIO.—The term "reserve ratio", when used with regard to the Deposit Insurance Fund other than in connection with a reference to the designated reserve ratio, means the ratio of the net worth of the Deposit Insurance Fund to the value of the aggregate estimated insured deposits, or such comparable percentage of the assessment base set forth in section 7(b)(2)(C).

(z) FEDERAL BANKING AGENCY.—The term "Federal banking agency" means the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation.

SEC. 4. [12 U.S.C. 1814] (a) CONTINUATION OF INSURANCE.—

(1) BANKS.—Each bank, which is an insured depository institution on the effective date of this amendment,[1] shall be and continue to be, without application or approval, an insured depository institution and shall be subject to the provisions of this Act.

(2) SAVINGS ASSOCIATIONS.—Each savings association the accounts of which were insured by the Federal Savings and Loan Insurance Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, shall be, without application or approval, an insured depository institution.

(b) CONTINUATION OF INSURANCE UPON BECOMING A MEMBER BANK.—In the case of an insured bank which is admitted to membership in the Federal Reserve System or an insured State bank

[1] Such effective date was August 9, 1989.

which is converted into a national member bank, the bank shall continue as an insured bank.

(c) CONTINUATION OF INSURANCE AFTER CONVERSION.—Subject to section 5(d) of this Act and section 5(i)(5) of the Home Owners' Loan Act—

(1) any State depository institution which results from the conversion of any insured Federal depository institution; and

(2) any Federal depository institution which results from the conversion of any insured State or Federal [1] depository institution,

shall continue as an insured depository institution.

(d) CONTINUATION OF INSURANCE AFTER MERGER OR CONSOLIDATION.—Any State depository institution or any Federal depository institution which results from the merger or consolidation of insured depository institutions, or from the merger or consolidation of a noninsured depository institution with an insured depository institution, shall continue as an insured depository institution.

SEC. 5. [12 U.S.C. 1815] DEPOSIT INSURANCE.

(a) APPLICATION TO CORPORATION REQUIRED.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), any depository institution which is engaged in the business of receiving deposits other than trust funds (as defined in section 3(p)), upon application to and examination by the Corporation and approval by the Board of Directors, may become an insured depository institution.

(2) INTERIM DEPOSITORY INSTITUTIONS.—In the case of any interim Federal depository institution that is chartered by the appropriate Federal banking agency and will not open for business, the depository institution shall be an insured depository institution upon the issuance of the institution's charter by the agency.

(3) APPLICATION AND APPROVAL NOT REQUIRED IN CASES OF CONTINUED INSURANCE.—Paragraph (1) shall not apply in the case of any depository institution whose insured status is continued pursuant to section 4.

(4) REVIEW REQUIREMENTS.—In reviewing any application under this subsection, the Board of Directors shall consider the factors described in section 6 in determining whether to approve the application for insurance.

(5) NOTICE OF DENIAL OF APPLICATION FOR INSURANCE.—If the Board of Directors votes to deny any application for insurance by any depository institution, the Board of Directors shall promptly notify the appropriate Federal banking agency and, in the case of any State depository institution, the appropriate State banking supervisor of the denial of such application, giving specific reasons in writing for the Board of Directors' determination with reference to the factors described in section 6.

(6) NONDELEGATION REQUIREMENT.—The authority of the Board of Directors to make any determination to deny any ap-

[1] The amendment made by section 608(b)(2) of Public Law 109–351 (120 Stat. 1983) to insert "or Federal" after "insured State[,]" was executed by inserting such text after "insured State" to reflect the probably intent of Congress.

plication under this subsection may not be delegated by the Board of Directors.

(b) Subject to the provisions of this Act and to such terms and conditions as the Board of Directors may impose, any branch of a foreign bank, upon application by the bank to the Corporation, and examination by the Corporation of the branch, and approval by the Board of Directors, may become an insured branch. Before approving any such application, the Board of Directors shall give consideration to—

(1) the financial history and condition of the bank,

(2) the adequacy of its capital structure,

(3) its future earnings prospects,

(4) the general character and fitness of its management, including but not limited to the management of the branch proposed to be insured,

(5) the risk presented to the Deposit Insurance Fund,

(6) the convenience and needs of the community to be served by the branch,

(7) whether or not its corporate powers, insofar as they will be exercised through the proposed insured branch, are consistent with the purposes of this Act, and

(8) the probable adequacy and reliability of information supplied and to be supplied by the bank to the Corporation to enable it to carry out its functions under this Act.

(c)(1) Before any branch of a foreign bank becomes an insured branch, the bank shall deliver to the Corporation or as the Corporation may direct a surety bond, a pledge of assets, or both, in such amounts and of such types as the Corporation may require or approve, for the purpose set forth in paragraph (4) of this subsection.

(2) After any branch of a foreign bank becomes an insured branch, the bank shall maintain on deposit with the Corporation, or as the Corporation may direct, surety bonds or assets or both, in such amounts and of such types as shall be determined from time to time in accordance with such regulations as the Board of Directors may prescribe. Such regulations may impose differing requirements on the basis of any factors which in the judgment of the Board of Directors are reasonably related to the purpose set forth in paragraph (4).

(3) The Corporation may require of any given bank larger deposits of bonds and assets than required under paragraph (2) of this subsection if, in the judgment of the Corporation, the situation of that bank or any branch thereof is or becomes such that the deposits of bonds and assets otherwise required under this section would not adequately fulfill the purpose set forth in paragraph (4). The imposition of any such additional requirements may be without notice or opportunity for hearing, but the Corporation shall afford an opportunity to any such bank to apply for a reduction or removal of any such additional requirements so imposed.

(4) The purpose of the surety bonds and pledges of assets required under this subsection is to provide protection to the Deposit Insurance Fund against the risks entailed in insuring the domestic deposits of a foreign bank whose activities, assets, and personnel are in large part outside the jurisdiction of the United States. In

the implementation of its authority under this subsection, however, the Corporation shall endeavor to avoid imposing requirements on such banks which would unnecessarily place them at a competitive disadvantage in relation to domestically incorporated banks.

(5) In the case of any failure or threatened failure of a foreign bank to comply with any requirement imposed under this subsection (c), the Corporation, in addition to all other administrative and judicial remedies, may apply to any United States district court, or United States court of any territory, within the jurisdiction of which any branch of the bank is located, for an injunction to compel such bank and any officer, employee, or agent thereof, or any other person having custody or control of any of its assets, to deliver to the Corporation such assets as may be necessary to meet such requirement, and to take any other action necessary to vest the Corporation with control of assets so delivered. If the court shall determine that there has been any such failure or threatened failure to comply with any such requirement, it shall be the duty of the court to issue such injunction. The propriety of the requirement may be litigated only as provided in chapter 7 of title 5 of the United States Code, and may not be made an issue in an action for an injuction under this paragraph.

(d) INSURANCE FEES.—

(1)[1] IN GENERAL.—Any institution that becomes insured by the Corporation, and any noninsured branch that becomes insured by the Corporation, shall pay the Corporation any fee which the Corporation may by regulation prescribe, after giving due consideration to the need to establish and maintain the reserve ratio of the Deposit Insurance Fund.

(2) FEE CREDITED TO THE DEPOSIT INSURANCE FUND.—The fee paid by the depository institution under paragraph (1) shall be credited to the Deposit Insurance Fund.

(3) EXCEPTION FOR CERTAIN DEPOSITORY INSTITUTIONS.—Any depository institution that becomes an insured depository institution by operation of section 4(a) shall not pay any fee.

(e) LIABILITY OF COMMONLY CONTROLLED DEPOSITORY INSTITUTIONS.—

(1) IN GENERAL.—

(A) LIABILITY ESTABLISHED.—Any insured depository institution shall be liable for any loss incurred by the Corporation, or any loss which the Corporation reasonably anticipates incurring, after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 in connection with—

(i) the default of a commonly controlled insured depository institution; or

(ii) any assistance provided by the Corporation to any commonly controlled insured depository institution in danger of default.

(B) PAYMENT UPON NOTICE.—An insured depository institution shall pay the amount of any liability to the Corporation under subparagraph (A) upon receipt of written

[1] The format for the heading provided for in the amendment in section 8(a)(5)(C) of Public Law 109–173 (119 Stat. 3611) is boldface type instead of lightface cap and small caps as follows: "UNINSURED INSTITUTIONS.—". Amendment executed to reflect the probable intent of Congress.

notice by the Corporation in accordance with this subsection.

(C) NOTICE REQUIRED TO BE PROVIDED WITHIN 2 YEARS OF LOSS.—No insured depository institution shall be liable to the Corporation under subparagraph (A) if written notice with respect to such liability is not received by such institution before the end of the 2-year period beginning on the date the Corporation incurred the loss.

(2) AMOUNT OF COMPENSATION; PROCEDURES.—

(A) USE OF ESTIMATES.—When an insured depository institution is in default or requires assistance to prevent default, the Corporation shall—

(i) in good faith, estimate the amount of the loss the Corporation will incur from such default or assistance;

(ii) if, with respect to such insured depository institution, there is more than 1 commonly controlled insured depository institution, estimate the amount of each such commonly controlled depository institution's share of such liability; and

(iii) advise each commonly controlled depository institution of the Corporation's estimate of the amount of such institution's liability for such losses.

(B) PROCEDURES; IMMEDIATE PAYMENT.—The Corporation, after consultation with the appropriate Federal banking agency and the appropriate State chartering agency, shall—

(i) on a case-by-case basis, establish the procedures and schedule under which any insured depository institution shall reimburse the Corporation for such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution; or

(ii) require any insured depository institution to make immediate payment of the amount of such institution's liability under paragraph (1) in connection with any commonly controlled insured depository institution.

(C) PRIORITY.—The liability of any insured depository institution under this subsection shall have priority with respect to other obligations and liabilities as follows:

(i) SUPERIORITY.—The liability shall be superior to the following obligations and liabilities of the depository institution:

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

(II) Any obligation or liability owed to any affiliate of the depository institution (including any other insured depository institution), other than any secured obligation which was secured as of May 1, 1989.

(ii) SUBORDINATION.—The liability shall be subordinate in right and payment to the following obligations and liabilities of the depository institution:

(I) Any deposit liability (which is not a liability described in clause (i)(II)).

(II) Any secured obligation, other than any obligation owed to any affiliate of the depository institution (including any other insured depository institution) which was secured after May 1, 1989.

(III) Any other general or senior liability (which is not a liability described in clause (i)).

(IV) Any obligation subordinated to depositors or other general creditors (which is not an obligation described in clause (i)).

(D) ADJUSTMENT OF ESTIMATED PAYMENT.—

(i) OVERPAYMENT.—If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is greater than the actual loss incurred by the Corporation, the Corporation shall reimburse each such commonly controlled depository institution its pro rata share of any overpayment.

(ii) UNDERPAYMENT.—If the amount of compensation estimated by and paid to the Corporation by 1 or more such commonly controlled depository institutions is less than the actual loss incurred by the Corporation, the Corporation shall redetermine in its discretion the liability of each such commonly controlled depository institution to the Corporation and shall require each such commonly controlled depository institution to make payment of any additional liability to the Corporation.

(3) REVIEW.—

(A) JUDICIAL.—Actions of the Corporation shall be reviewable pursuant to chapter 7 of title 5, United States Code.

(B) ADMINISTRATIVE.—The Corporation shall prescribe regulations and establish administrative procedures which provide for a hearing on the record for the review of—

(i) the amount of any loss incurred by the Corporation in connection with any insured depository institution;

(ii) the liability of individual commonly controlled depository institutions for the amount of such loss; and

(iii) the schedule of payments to be made by such commonly controlled depository institutions.

(4) LIMITATION ON RIGHTS OF PRIVATE PARTIES.—To the extent the exercise of any right or power of any person would impair the ability of any insured depository institution to perform such institution's obligations under this subsection—

(A) the obligations of such insured depository institution shall supersede such right or power; and

(B) no court may give effect to such right or power with respect to such insured depository institution.

(5) WAIVER AUTHORITY.—

(A) IN GENERAL.—The Corporation, in its discretion, may exempt any insured depository institution from the provisions of this subsection if the Corporation determines that such exemption is in the best interests of the Deposit Insurance Fund.

(B) CONDITION.—During the period any exemption granted to any insured depository institution under subparagraph (A) or (C) is in effect, such insured depository institution and all other insured depository institution affiliates of such depository institution shall comply fully with the restrictions of sections 23A and 23B of the Federal Reserve Act without regard to section 23A(d)(1).

(C) LIMITED PARTNERSHIPS.—

(i) IN GENERAL.—The Corporation may, in its discretion, exempt any limited partnership and any affiliate of any limited partnership (other than any insured depository institution which is a majority owned subsidiary of such partnership) from the provisions of this subsection if such limited partnership or affiliate has filed a registration statement with the Securities and Exchange Commission on or before April 10, 1989, indicating that as of the date of such filing such partnership intended to acquire 1 or more insured depository institutions.

(ii) REVIEW AND NOTICE.—Within 10 business days after the date of submission of any request for an exemption under this subparagraph together with such information as shall be reasonably requested by the Corporation, the Corporation shall make a determination on the request and shall so advise the applicant.

(6) EXCLUSION FOR INSTITUTIONS ACQUIRED IN DEBT COLLECTIONS.—Any depository institution shall not be treated as commonly controlled, for purposes of this subsection, during the 5-year period beginning on the date of an acquisition described in subparagraph (A) or such longer period as the Corporation may determine after written application by the acquirer, if—

(A) 1 depository institution controls another by virtue of ownership of voting shares acquired in securing or collecting a debt previously contracted in good faith; and

(B) during the period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and ending upon the expiration of the exclusion, the controlling bank and all other insured depository institution affiliates of such controlling bank comply fully with the restrictions of sections 23A and 23B of the Federal Reserve Act, without regard to section 23A(d)(1) of such Act, in transactions with the acquired insured depository institution.

(7) EXCEPTION FOR CERTAIN FSLIC ASSISTED INSTITUTIONS.—No depository institution shall have any liability to the

Corporation under this subsection as the result of the default of, or assistance provided with respect to, an insured depository institution which is an affiliate of such depository institution if—

(A) such affiliate was receiving cash payments from the Federal Savings and Loan Insurance Corporation under an assistance agreement or note entered into before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989;

(B) the Federal Savings and Loan Insurance Corporation, or such other entity which has succeeded to the payment obligations of such Corporation with respect to such assistance agreement or note, is unable to continue such payments; and

(C) such affiliate—

(i) is in default or in need of assistance solely as a result of the failure to meet the payment obligations referred to in subparagraph (B); and

(ii) is not otherwise in breach of the terms of any assistance agreement or note which would authorize the Federal Savings and Loan Insurance Corporation or such other successor entity, pursuant to the terms of such assistance agreement or note, to refuse to make such payments.

(8) COMMONLY CONTROLLED DEFINED.—For purposes of this subsection, depository institutions are commonly controlled if—

(A) such institutions are controlled by the same company; or

(B) 1 depository institution is controlled by another depository institution.

SEC. 6. [12 U.S.C. 1816] FACTORS TO BE CONSIDERED.

The factors that are required, under section 4, to be considered in connection with, and enumerated in, any certificate issued pursuant to section 4 and that are required, under section 5, to be considered by the Board of Directors in connection with any determination by such Board pursuant to section 5 are the following:

(1) The financial history and condition of the depository institution.

(2) The adequacy of the depository institution's capital structure.

(3) The future earnings prospects of the depository institution.

(4) The general character and fitness of the management of the depository institution.

(5) The risk presented by such depository institution to the Deposit Insurance Fund.

(6) The convenience and needs of the community to be served by such depository institution.

(7) Whether the depository institution's corporate powers are consistent with the purposes of this Act.

SEC. 7. [12 U.S.C. 1817] (a)(1) Each insured State nonmember bank and each foreign bank having an insured branch which is not

a Federal branch shall make to the Corporation reports of condition which shall be in such form and shall contain such information as the Board of Directors may require. Such reports shall be made to the Corporation on the dates selected as provided in paragraph (3) of this subsection and the deposit liabilities shall be reported therein in accordance with and pursuant to paragraphs (4) and (5) of this subsection. The Board of Directors may call for additional reports of condition on dates to be fixed by it and may call for such other reports as the Board may from time to time require. Any such bank which (A) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, or (B) inadvertently transmits or publishes any report which is minimally late, shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false or misleading information is not corrected. Such bank shall have the burden of proving that an error was inadvertent and that a report was inadvertently transmitted or published late. Any such bank which fails to make or publish any report required under this paragraph, within the period of time specified by the Corporation, or submits or publishes any false or misleading report or information, in a manner not described in the 2nd preceding sentence shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false or misleading information is not corrected. Notwithstanding the preceding sentence, if any such bank knowingly or with reckless disregard for the accuracy of any information or report described in such sentence submits or publishes any false or misleading report or information, the Corporation may assess a penalty of not more than $1,000,000 or 1 percent of total assets of such bank, whichever is less, per day for each day during which such failure continues or such false or misleading information is not corrected. Any penalty imposed under any of the 4 preceding sentences shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section. Any such bank against which any penalty is assessed under this subsection shall be afforded an agency hearing if such bank submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.

(2)(A) The Corporation and, with respect to any State depository institution, any appropriate State bank supervisor for such institution, shall have access to reports of examination made by, and reports of condition made to, the Comptroller of the Currency, the Federal Housing Finance Agency, any Federal home loan bank, or any Federal Reserve bank and to all revisions of reports of condition made to any of them, and they shall promptly advise the Corporation of any revisons or changes in respect to deposit liabilities made or required to be made in any report of condition. The Cor-

poration may accept any report made by or to any commission, board, or authority having supervision of a depository institution, and may furnish to the Comptroller of the Currency, to the Federal Housing Finance Agency, to any Federal home loan bank, to any Federal Reserve bank, and to any such commission, board, or authority, reports of examinations made on behalf of, and reports of condition made to, the Corporation.[1]

(B)[2] ADDITIONAL REPORTS.—The Board of Directors may from time to time require any insured depository institution to file such additional reports as the Corporation, after consultation with the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, as appropriate, may deem advisable for insurance purposes.

(C) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Corporation (with respect to all insured depository institutions, including a depository institution for which the Corporation has been appointed conservator or receiver) or an appropriate State bank supervisor (with respect to a State depository institution) under subparagraph (A) or (B), a Federal banking agency may, in the discretion of the agency, furnish any report of examination or other confidential supervisory information concerning any depository institution or other entity examined by such agency under authority of any Federal law, to—

(i) any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity;

(ii) any officer, director, or receiver of such depository institution or entity; and

(iii) any other person that the Federal banking agency determines to be appropriate.

(3) Each insured depository institution shall make to the appropriate Federal banking agency 4 reports of condition annually upon dates which shall be selected by the Chairman of the Board of Directors, the Comptroller of the Currency, and the Chairman of the Board of Governors of the Federal Reserve System. The dates selected shall be the same for all insured depository institutions, except that when any of said reporting dates is a nonbusiness day for any depository institution, the preceding business day shall be its reporting date. Such reports of condition shall be the basis for the certified statements to be filed pursuant to subsection (c). The deposit liabilities shall be reported in said reports of condition in accordance with and pursuant to paragraphs (4) and (5) of this subsection, and such other information shall be reported therein as may be required by the respective agencies. Each said report of condition shall contain a declaration by the president, a vice president, the cashier or the treasurer, or by any other officer designated by the board of directors or trustees of the reporting depos-

[1] Section 208(1)(D) of the Financial Institutions Improvement, Reform, and Enforcement Act of 1989 amended the last sentence of 7(a)(2)(A) by inserting "or savings associations" after "banks". This amendment could not be executed.

[2] Indentation so in law.

itory institution to make such declaration, that the report is true and correct to the best of his knowledge and belief. The correctness of said report of conditions shall be attested by the signatures of at least two directors or trustees of the reporting depository institution other than the officer making such declaration, with a declaration that the report has been examined by them and to the best of their knowledge and belief is true and correct. At the time of making said reports of condition each insured depository institution shall furnish to the Corporation a copy thereof containing such signed declaration and attestations. Nothing herein shall preclude any of the foregoing agencies from requiring the banks or savings associations under its jurisdiction to make additional reports of condition at any time.

(4) In the reports of condition required to be made by paragraph (3) of this subsection, each insured depository institution shall report the total amount of the liability of the depository institution for deposits in the main office and in any branch located in any State of the United States, the District of Columbia, any Territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Virgin Islands, according to the definition of the term "deposit" in and pursuant to subsection (1) of section 3 of this Act, without any deduction for indebtedness of depositors or creditors or any deduction for cash items in the process of collection drawn on others than the reporting depository institution: *Provided,* That the depository institution in reporting such deposits may (i) subtract from the deposit balance due to any depository institution the deposit balance due from the same depository institution (other than trust funds deposited by either depository institution) and any cash items in the process of collection due from or due to such depository institutions shall be included in determining such net balance, except that balances of time deposits of any depository institution and any balances standing to the credit of private depository institutions, of depository institutions in foreign countries, of foreign branches of other American depository institutions, and of American branches of foreign banks shall be reported gross without any such subtraction, and (ii) exclude any deposits received in any office of the depository institution for deposit in any other office of the depository institution: *And provided further,* That outstanding drafts (including advices and authorizations to charge depository institution's balance in another depository institution) drawn in the regular course of business by the reporting depository institution on depository institutions need not be reported as deposit liabilities. The amount of trust funds held in the depository institution's own trust department, which the reporting depository institution keeps segregated and apart from its general assets and does not use in the conduct of its business, shall not be included in the total deposits in such reports, but shall be separately stated in such reports. Deposits which are accumulated for the payment of personal loans and are assigned or pledged to assure payment of loans at maturity shall not be included in the total deposits in such reports, but shall be deducted from the loans for which such deposits are assigned or pledged to assure repayment.

(5) The deposits to be reported on such reports of condition shall be segregated between (i) time and savings deposits and (ii) demand deposits. For this purpose, the time and savings deposits shall consist of time certificates of deposit, time deposits-open account and savings deposits; and demand deposits shall consist of all deposits other than time and savings deposits.

(6)[1] LIFELINE ACCOUNT DEPOSITS.—In the reports of condition required to be reported under this subsection, the deposits in lifeline accounts (as defined in section 232(a)(3)(D) of the Bank Enterprise Act of 1991) shall be reported separately.

(7) The Board of Directors, after consultation with the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, may by regulation define the terms "cash items" and "process of collection", and shall classify deposits as "time," "savings," and "demand" deposits, for the purposes of this section.

(8) In respect of any report required or authorized to be supplied or published pursuant to this subsection or any other provision of law, the Board of Directors or the Comptroller of the Currency, as the case may be, may differentiate between domestic banks and foreign banks to such extent as, in their judgment, may be reasonably required to avoid hardship and can be done without substantial compromise of insurance risk or supervisory and regulatory effectiveness.

(9)[1] DATA COLLECTIONS.—In addition to or in connection with any other report required under this subsection, the Corporation shall take such action as may be necessary to ensure that—

(A) each insured depository institution maintains; and

(B) the Corporation receives on a regular basis from such institution,

information on the total amount of all insured deposits, preferred deposits, and uninsured deposits at the institution. In prescribing reporting and other requirements for the collection of actual and accurate information pursuant to this paragraph, the Corporation shall minimize the regulatory burden imposed upon insured depository institutions that are well capitalized (as defined in section 38) while taking into account the benefit of the information to the Corporation, including the use of the information to enable the Corporation to more accurately determine the total amount of insured deposits in each insured depository institution for purposes of compliance with this Act.

(10) A Federal banking agency may not, by regulation or otherwise, designate, or require an insured institution or an affiliate to designate, a corporation as highly leveraged or a transaction with a corporation as a highly leveraged transaction solely because such corporation is or has been a debtor or bankrupt under title 11, United States Code, if, after confirmation of a plan of reorganization, such corporation would not otherwise be highly leveraged.

(11) STREAMLINING REPORTS OF CONDITION.—

(A) REVIEW OF INFORMATION AND SCHEDULES.—Before the end of the 1-year period beginning on the date of en-

[1] Indentation so in law.

actment of the Financial Services Regulatory Relief Act of 2006 and before the end of each 5-year period thereafter, each Federal banking agency shall, in conjunction with the other relevant Federal banking agencies, review the information and schedules that are required to be filed by an insured depository institution in a report of condition required under paragraph (3).

(B) REDUCTION OR ELIMINATION OF INFORMATION FOUND TO BE UNNECESSARY.—After completing the review required by subparagraph (A), a Federal banking agency, in conjunction with the other relevant Federal banking agencies, shall reduce or eliminate any requirement to file information or schedules under paragraph (3) (other than information or schedules that are otherwise required by law) if the agency determines that the continued collection of such information or schedules is no longer necessary or appropriate.

(b) ASSESSMENTS.—

(1) RISK-BASED ASSESSMENT SYSTEM.—

(A) RISK-BASED ASSESSMENT SYSTEM REQUIRED.—The Board of Directors shall, by regulation, establish a risk-based assessment system for insured depository institutions.

(B) PRIVATE REINSURANCE AUTHORIZED.—In carrying out this paragraph, the Corporation may—

(i) obtain private reinsurance covering not more than 10 percent of any loss the Corporation incurs with respect to an insured depository institution; and

(ii) base that institution's assessment (in whole or in part) on the cost of the reinsurance.

(C) RISK-BASED ASSESSMENT SYSTEM DEFINED.—For purposes of this paragraph, the term "risk-based assessment system" means a system for calculating a depository institution's assessment based on—

(i) the probability that the Deposit Insurance Fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) different categories and concentrations of assets;

(II) different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

(III) any other factors the Corporation determines are relevant to assessing such probability;

(ii) the likely amount of any such loss; and

(iii) the revenue needs of the Deposit Insurance Fund.

(D) SEPARATE ASSESSMENT SYSTEMS.—The Board of Directors may establish separate risk-based assessment systems for large and small members of the Deposit Insurance Fund.

(E) INFORMATION CONCERNING RISK OF LOSS AND ECONOMIC CONDITIONS.—

(i) SOURCES OF INFORMATION.—For purposes of determining risk of losses at insured depository institutions and economic conditions generally affecting depository institutions, the Corporation shall collect information, as appropriate, from all sources the Board of Directors considers appropriate, including reports of condition, inspection reports, and other information from all Federal banking agencies, any information available from State bank supervisors, State insurance and securities regulators, the Securities and Exchange Commission (including information described in section 35), the Secretary of the Treasury, the Commodity Futures Trading Commission, the Farm Credit Administration, the Federal Trade Commission, any Federal reserve bank or Federal home loan bank, and other regulators of financial institutions, and any information available from credit rating entities, and other private economic [1] or business analysts.

(ii) CONSULTATION WITH FEDERAL BANKING AGENCIES.—

(I) IN GENERAL.—Except as provided in subclause (II), in assessing the risk of loss to the Deposit Insurance Fund with respect to any insured depository institution, the Corporation shall consult with the appropriate Federal banking agency of such institution.

(II) TREATMENT ON AGGREGATE BASIS.—In the case of insured depository institutions that are well capitalized (as defined in section 38) and, in the most recent examination, were found to be well managed, the consultation under subclause (I) concerning the assessment of the risk of loss posed by such institutions may be made on an aggregate basis.

(iii) RULE OF CONSTRUCTION.—No provision of this paragraph shall be construed as providing any new authority for the Corporation [1] to require submission of information by insured depository institutions to the Corporation [1].

(F) MODIFICATIONS TO THE RISK-BASED ASSESSMENT SYSTEM ALLOWED ONLY AFTER NOTICE AND COMMENT.—In revising or modifying the risk-based assessment system at any time after the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors may implement such revisions or modification in final form only after notice and opportunity for comment.

(2) SETTING ASSESSMENTS.—

[1] Effective on July 21, 2012, section 939(a)(1) of Public Law 111–203 amends section 7(b)(1)(E)(i) by striking "credit rating entities, and other private economic" and insert "private economic, credit,".

[1] The amendment by section 333(b)(2) of Public Law 111–203 to (iii) of section 7(b)(1)(E), by striking "Corporation" and inserting "Corporation, except as provided in section 7(a)(2)(B)" could not be executed. Such amendment did not specify to which occurence of the word "Corporation" to strike.

(A) IN GENERAL.—The Board of Directors shall set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary or appropriate, subject to subparagraph (D).

(B) FACTORS TO BE CONSIDERED.—In setting assessments under subparagraph (A), the Board of Directors shall consider the following factors:

(i) The estimated operating expenses of the Deposit Insurance Fund.

(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

(iv) The risk factors and other factors taken into account pursuant to paragraph (1) under the risk-based assessment system, including the requirement under such paragraph to maintain a risk-based system.

(v) Any other factors the Board of Directors may determine to be appropriate.

(D)[1] NOTICE OF ASSESSMENTS.—The Corporation shall notify each insured depository institution of that institution's assessment.

(E) BANK ENTERPRISE ACT REQUIREMENT.—The Corporation shall design the risk-based assessment system so that, insofar as the system bases assessments, directly or indirectly, on deposits, the portion of the deposits of any insured depository institution which are attributable to lifeline accounts established in accordance with the Bank Enterprise Act of 1991 shall be subject to assessment at a rate determined in accordance with such Act.

(3) DESIGNATED RESERVE RATIO.—

(A) ESTABLISHMENT.—

(i) IN GENERAL.—Before the beginning of each calendar year, the Board of Directors shall designate the reserve ratio applicable with respect to the Deposit Insurance Fund and publish the reserve ratio so designated.

(ii) RULEMAKING REQUIREMENT.—Any change to the designated reserve ratio shall be made by the Board of Directors by regulation after notice and opportunity for comment.

(B) MINIMUM RESERVE RATIO.—The reserve ratio designated by the Board of Directors for any year may not be less than 1.35 percent of estimated insured deposits, or the comparable percentage of the assessment base set forth in paragraph (2)(C).

(C) FACTORS.—In designating a reserve ratio for any year, the Board of Directors shall—

[1] There is no suparagraph (C) in law. See amendments made by section 331(a) of Public Law 111–203.

(i) take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions;

(ii) take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors;

(iii) seek to prevent sharp swings in the assessment rates for insured depository institutions; and

(iv) take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

(D) PUBLICATION OF PROPOSED CHANGE IN RATIO.—In soliciting comment on any proposed change in the designated reserve ratio in accordance with subparagraph (A), the Board of Directors shall include in the published proposal a thorough analysis of the data and projections on which the proposal is based.

(E) DIF RESTORATION PLANS.—

(i) IN GENERAL.—Whenever—

(I) the Corporation projects that the reserve ratio of the Deposit Insurance Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio; or

(II) the reserve ratio of the Deposit Insurance Fund actually falls below the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio without any determination under subclause (I) having been made,

the Corporation shall establish and implement a Deposit Insurance Fund restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Corporation determines to be appropriate.

(ii) REQUIREMENTS OF RESTORATION PLAN.—A Deposit Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the reserve ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (B)(ii) for the designated reserve ratio before the end of the 8-year period beginning upon the implementation of the plan (or such longer period as the Corporation may determine to be necessary due to extraordinary circumstances).

(iii) RESTRICTION ON ASSESSMENT CREDITS.—As part of any restoration plan under this subparagraph, the Corporation may elect to restrict the application of

assessment credits provided under subsection (e)(3) for any period that the plan is in effect.

(iv) LIMITATION ON RESTRICTION.—Notwithstanding clause (iii), while any restoration plan under this subparagraph is in effect, the Corporation shall apply credits provided to an insured depository institution under subsection (e)(3) against any assessment imposed on the institution for any assessment period in an amount equal to the lesser of—

(I) the amount of the assessment; or

(II) the amount equal to 3 basis points of the institution's assessment base.

(v) TRANSPARENCY.—Not more than 30 days after the Corporation establishes and implements a restoration plan under clause (i), the Corporation shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.

(4) DEPOSITORY INSTITUTION REQUIRED TO MAINTAIN ASSESSMENT-RELATED RECORDS.—Each insured depository institution shall maintain all records that the Corporation may require for verifying the correctness of any assessment on the insured depository institution under this subsection until the later of—

(A) the end of the 3-year period beginning on the due date of the assessment; or

(B) in the case of a dispute between the insured depository institution and the Corporation with respect to such assessment, the date of a final determination of any such dispute.

(5) EMERGENCY SPECIAL ASSESSMENTS.—In addition to the other assessments imposed on insured depository institutions under this subsection, the Corporation may impose 1 or more special assessments on insured depository institutions in an amount determined by the Corporation if the amount of any such assessment is necessary—

(A) to provide sufficient assessment income to repay amounts borrowed from the Secretary of the Treasury under section 14(a) in accordance with the repayment schedule in effect under section 14(c) during the period with respect to which such assessment is imposed;

(B) to provide sufficient assessment income to repay obligations issued to and other amounts borrowed from insured depository institutions under section 14(d); or

(C) for any other purpose that the Corporation may deem necessary.

(6) COMMUNITY ENTERPRISE CREDITS.—The Corporation shall allow a credit against any semiannual assessment to any insured depository institution which satisfies the requirements of the Community Enterprise Assessment Credit Board under section 233(a)(1) of the Bank Enterprise Act of 1991 in the amount determined by such Board by regulation.

(c) CERTIFIED STATEMENTS; PAYMENTS.—

(1) CERTIFIED STATEMENTS REQUIRED.—

(A) IN GENERAL.—Each insured depository institution shall file with the Corporation a certified statement containing such information as the Corporation may require for determining the institution's assessment.

(B) FORM OF CERTIFICATION.—The certified statement required under subparagraph (A) shall—

(i) be in such form and set forth such supporting information as the Board of Directors shall prescribe; and

(ii) be certified by the president of the depository institution or any other officer designated by its board of directors or trustees that to the best of his or her knowledge and belief, the statement is true, correct and complete, and in accordance with this Act and regulations issued hereunder.

(2) PAYMENTS REQUIRED.—

(A) IN GENERAL.—Each insured depository institution shall pay to the Corporation the assessment imposed under subsection (b).

(B) FORM OF PAYMENT.—The payments required under subparagraph (A) shall be made in such manner and at such time or times as the Board of Directors shall prescribe by regulation.

(3) NEWLY INSURED INSTITUTIONS.—To facilitate the administration of this section, the Board of Directors may waive the requirements of paragraphs (1) and (2) for the initial assessment period in which a depository institution becomes insured.

(4) PENALTY FOR FAILURE TO MAKE ACCURATE CERTIFIED STATEMENT.—

(A) FIRST TIER.—Any insured depository institution which—

(i) maintains procedures reasonably adapted to avoid any inadvertent error and, unintentionally and as a result of such an error, fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement; or

(ii) submits the statement at a time which is minimally after the time required in such paragraph,

shall be subject to a penalty of not more than $2,000 for each day during which such failure continues or such false and misleading information is not corrected. The institution shall have the burden of proving that an error was inadvertent or that a statement was inadvertently submitted late.

(B) SECOND TIER.—Any insured depository institution which fails to submit the certified statement under paragraph (1) within the period of time required under paragraph (1) or submits a false or misleading certified statement in a manner not described in subparagraph (A) shall be subject to a penalty of not more than $20,000 for each day during which such failure continues or such false and misleading information is not corrected.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), if any insured depository institution knowingly or with reckless disregard for the accuracy of any certified statement described in paragraph (1) submits a false or misleading certified statement under paragraph (1), the Corporation may assess a penalty of not more than $1,000,000 or not more than 1 percent of the total assets of the institution, whichever is less, per day for each day during which the failure continues or the false or misleading information in such statement is not corrected.

(D) ASSESSMENT PROCEDURE.—Any penalty imposed under this paragraph shall be assessed and collected by the Corporation in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) (for penalties imposed under such section) and any such assessment (including the determination of the amount of the penalty) shall be subject to the provisions of such section.

(E) HEARING.—Any insured depository institution against which any penalty is assessed under this paragraph shall be afforded an agency hearing if the institution submits a request for such hearing within 20 days after the issuance of the notice of the assessment. Section 8(h) shall apply to any proceeding under this subparagraph.

(d) CORPORATION EXEMPT FROM APPORTIONMENT.—Notwithstanding any other provision of law, amounts received pursuant to any assessment under this section and any other amounts received by the Corporation shall not be subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or under any other authority.

(e) REFUNDS, DIVIDENDS, AND CREDITS.—

(1) REFUNDS OF OVERPAYMENTS.—In the case of any payment of an assessment by an insured depository institution in excess of the amount due to the Corporation, the Corporation may—

(A) refund the amount of the excess payment to the insured depository institution; or

(B) credit such excess amount toward the payment of subsequent assessments until such credit is exhausted.

(2) DIVIDENDS FROM EXCESS AMOUNTS IN DEPOSIT INSURANCE FUND.—

(A) RESERVE RATIO IN EXCESS OF 1.5 PERCENT OF ESTIMATED INSURED DEPOSITS.—If, at the end of a calendar year, the reserve ratio of the Deposit Insurance Fund exceeds 1.5 percent of estimated insured deposits, the Corporation shall declare the amount in the Fund in excess of the amount required to maintain the reserve ratio at 1.5 percent of estimated insured deposits, as dividends to be paid to insured depository institutions.

(B) LIMITATION.—The Board of Directors may, in its sole discretion, suspend or limit the declaration of payment of dividends under subparagraph (A).

(C) NOTICE AND OPPORTUNITY FOR COMMENT.—The Corporation shall prescribe, by regulation, after notice and

opportunity for comment, the method for the declaration, calculation, distribution, and payment of dividends under this paragraph [1]

(3) ONE-TIME CREDIT BASED ON TOTAL ASSESSMENT BASE AT YEAR-END 1996.—

(A) IN GENERAL.—Before the end of the 270-day period beginning on the date of the enactment of the Federal Deposit Insurance Reform Act of 2005, the Board of Directors shall, by regulation after notice and opportunity for comment, provide for a credit to each eligible insured depository institution (or a successor insured depository institution), based on the assessment base of the institution on December 31, 1996, as compared to the combined aggregate assessment base of all eligible insured depository institutions, taking into account such factors as the Board of Directors may determine to be appropriate.

(B) CREDIT LIMIT.—The aggregate amount of credits available under subparagraph (A) to all eligible insured depository institutions shall equal the amount that the Corporation could collect if the Corporation imposed an assessment of 10.5 basis points on the combined assessment base of the Bank Insurance Fund and the Savings Association Insurance Fund as of December 31, 2001.

(C) ELIGIBLE INSURED DEPOSITORY INSTITUTION DEFINED.—For purposes of this paragraph, the term "eligible insured depository institution" means any insured depository institution that—

(i) was in existence on December 31, 1996, and paid a deposit insurance assessment prior to that date; or

(ii) is a successor to any insured depository institution described in clause (i).

(D) APPLICATION OF CREDITS.—

(i) IN GENERAL.—Subject to clause (ii), the amount of a credit to any eligible insured depository institution under this paragraph shall be applied by the Corporation, subject to subsection (b)(3)(E), to the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning after the effective date of regulations prescribed under subparagraph (A).

(ii) TEMPORARY RESTRICTION ON USE OF CREDITS.—The amount of a credit to any eligible insured depository institution under this paragraph may not be applied to more than 90 percent of the assessments imposed on such institution under subsection (b) that become due for assessment periods beginning in fiscal years 2008, 2009, and 2010.

(iii) REGULATIONS.—The regulations prescribed under subparagraph (A) shall establish the qualifica-

[1] No punctuation at the end of subparagraph (C) so in law. See amendment made by section 332(1)(B) of Public Law 111–203.

tions and procedures governing the application of assessment credits pursuant to clause (i).

(E) LIMITATION ON AMOUNT OF CREDIT FOR CERTAIN DEPOSITORY INSTITUTIONS.—In the case of an insured depository institution that exhibits financial, operational, or compliance weaknesses ranging from moderately severe to unsatisfactory, or is not adequately capitalized (as defined in section 38) at the beginning of an assessment period, the amount of any credit allowed under this paragraph against the assessment on that depository institution for such period may not exceed the amount calculated by applying to that depository institution the average assessment rate on all insured depository institutions for such assessment period.

(F) SUCCESSOR DEFINED.—The Corporation shall define the term "successor" for purposes of this paragraph, by regulation, and may consider any factors as the Board may deem appropriate.

(4) ADMINISTRATIVE REVIEW.—

(A) IN GENERAL.—The regulations prescribed under paragraphs (2) and (3) shall include provisions allowing an insured depository institution a reasonable opportunity to challenge administratively the amount of the credit or dividend determined under paragraph (2) or (3) for such institution.

(B) ADMINISTRATIVE REVIEW.—Any review under subparagraph (A) of any determination of the Corporation under paragraph (2) or (3) shall be final and not subject to judicial review.

(f) Any insured depository institution which fails to make any report of condition under subsection (a) of this section or to file any certified statement required to be filed by it in connection with determining the amount of any assessment payable by the depository institution to the Corporation may be compelled to make such report or file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Corporation against the depository institution and any officer or officers thereof in any court of the United States of competent jurisdiction in the District or Territory in which such depository institution is located.

(g) ASSESSMENT ACTIONS.—

(1) IN GENERAL.—The Corporation, in any court of competent jurisdiction, shall be entitled to recover from any insured depository institution the amount of any unpaid assessment lawfully payable by such insured depository institution.

(2) STATUTE OF LIMITATIONS.—The following provisions shall apply to actions relating to assessments, notwithstanding any other provision in Federal law, or the law of any State:

(A) Any action by an insured depository institution to recover from the Corporation the overpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exception in subparagraph (E).

(B) Any action by the Corporation to recover from an insured depository institution the underpaid amount of any assessment shall be brought within 3 years after the date the assessment payment was due, subject to the exceptions in subparagraphs (C) and (E).

(C) If an insured depository institution has made a false or fraudulent statement with intent to evade any or all of its assessment, the Corporation shall have until 3 years after the date of discovery of the false or fraudulent statement in which to bring an action to recover the underpaid amount.

(D) Except as provided in subparagraph (C), assessment deposit information contained in records no longer required to be maintained pursuant to subsection (b)(4) shall be considered conclusive and not subject to change.

(E) Any action for the underpaid or overpaid amount of any assessment that became due before the amendment to this subsection under the Federal Deposit Insurance Reform Act of 2005 took effect shall be subject to the statute of limitations for assessments in effect at the time the assessment became due.

(h) Should any national member bank or any insured national nonmember bank fail to make any report of condition under subsection (a) of this section or to file[2] any certified statement required to be filed by such bank under any provision of this section, or fail to pay any assessment required to be paid by such bank under any provision of this Act, and should the bank not correct such failure within thirty days after written notice has been given by the Corporation to an officer of the bank, citing this subsection, and stating that the bank has failed to make any report of condition under subsection (a) of this section or to file[2] or pay as required by law, all the rights, privileges, and franchises of the bank granted to it under the National Bank Act, as amended, the Federal Reserve Act, as amended, or this Act, shall be thereby forfeited. Whether or not the penalty provided in this subsection has been incurred shall be determined and adjudged in the manner provided in the sixth paragraph of section 2 of the Federal Reserve Act, as amended. The remedies provided in this subsection and in the two preceding subsections shall not be construed as limiting any other remedies against any insured depository institution, but shall be in addition thereto.

(i) INSURANCE OF TRUST FUNDS.—

(1) IN GENERAL.—Trust funds held on deposit by an insured depository institution in a fiduciary capacity as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement shall be insured in an amount not to exceed the standard maximum deposit insurance amount (as determined under section 11(a)(1)) for each trust estate.

[2] Section 3 of the Act of July 14, 1960 (Public Law 86–671) amended this subsection by "substituting for the words 'to file' in the first sentence of subsection (h) the words 'to make any report of condition under subsection (a) of this section or to file'". The term "to file" in the first sentence appeared twice. The amendment was executed to the second occurence of such term, according to the probable intent of Congress.

(2) INTERBANK DEPOSITS.—Trust funds described in paragraph (1) which are deposited by the fiduciary depository institution in another insured depository institution shall be similarly insured to the fiduciary depository institution according to the trust estates represented.

(3) BANK DEPOSIT FINANCIAL ASSISTANCE PROGRAM.—Notwithstanding paragraph (1), funds deposited by an insured depository institution pursuant to the Bank Deposit Financial Assistance Program of the Department of Energy shall be separately insured in an amount not to exceed the standard maximum deposit insurance amount (as determined under section 11(a)(1)) for each insured depository institution depositing such funds.

(4) REGULATIONS.—The Board of Directors may prescribe such regulations as may be necessary to clarify the insurance coverage under this subsection and to prescribe the manner of reporting and depositing such trust funds.

(j)(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured depository institution through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured depository institution unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or, in the discretion of the agency, extending for an additional 30 days [1] the period during which such a disapproval may issue.The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

(B) in the agency's judgment, any material information submitted is substantially inaccurate;

(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

(D) the agency determines that additional time is needed—

(i) to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code; or

(ii) to analyze the safety and soundness of any plans or proposals described in paragraph (6)(E) or the future prospects of the institution.

An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action.

(2)(A) NOTICE TO STATE AGENCY.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate State depository institution supervisory agency if the depository institution the voting

[1] P.L. 99–570, section 1360(a)(1), 100 Stat. 3207–29, left out "for" in the phrase it deleted.

shares of which are sought to be acquired is a State depository institution, and shall allow thirty days within which the views and recommendations of such State depository institution supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this paragraph, if the appropriate Federal banking agency determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable default of the depository institution involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of this paragraph or, if a copy of the notice is forwarded to the State depository institution supervisory agency, such Federal banking agency may request that the views and recommendations of such State depository institution supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

(C) REPORT.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.

(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, unless such agency determines that an emergency exists, within a reasonable period of time—

(i) publish the name of the insured depository institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency,

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.

(3) Within three days after its decision to disapprove any proposed acquisition, the appropriate Federal banking agency shall notify the acquiring party in writing of the disapproval. Such notice shall provide a statement of the basis for the disapproval.

(4) Within ten days of receipt of such notice of disapproval, the acquiring party may request an agency hearing on the proposed acquisition. In such hearing all issues shall be determined on the

record pursuant to section 554 of title 5, United States Code. The length of the hearing shall be determined by the appropriate Federal banking agency. At the conclusion thereof, the appropriate Federal banking agency shall by order approve or disapprove the proposed acquisition on the basis of the record made at such hearing.

(5) Any person whose proposed acquisition is disapproved after agency hearings under this subsection may obtain review by the United States court of appeals for the circuit in which the home office of the bank to be acquired is located, or the United States Court of Appeals for the District of Columbia Circuit, by filing a notice of appeal in such court within ten days from the date of such order, and simultaneously sending a copy of such notice by registered or certified mail to the appropriate Federal banking agency. The appropriate Federal banking agency shall promptly certify and file in such court the record upon which the disapproval was based. The findings of the appropriate Federal banking agency shall be set aside if found to be arbitrary or capricious or if found to violate procedures established by this subsection.

(6) Except as otherwise provided by regulation of the appropriate Federal banking agency, a notice filed pursuant to this subsection shall contain the following information:

(A) The identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made, including his material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a State or Federal court.

(B) A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of five fiscal years immediately preceding the date of the notice, together with related statements of income and source and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each such person, together with related statements of income and source and application of funds, as of a date not more than ninety days prior to the date of the filing of the notice.

(C) The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.

(D) The identity, source and amount of the funds or other consideration used or to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons.

(E) Any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it with any company or to make any other

major change in its business or corporate structure or management.

(F) The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of such employment, retainer, or arrangement for compensation.

(G) Copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

(H) Any additional relevant information in such form as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular notice.

(7) The appropriate Federal banking agency may disapprove any proposed acquisition if—

(A) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(C) either the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(D) the competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit such person to control the bank;

(E) any acquiring person neglects, fails, or refuses to furnish the appropriate Federal banking agency all the information required by the appropriate Federal banking agency; or

(F) the appropriate Federal banking agency determines that the proposed transaction would result in an adverse effect on the Deposit Insurance Fund.

(8) For the purposes of this subsection, the term—

(A) "person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity not specifically listed herein; and

(B) "control" means the power, directly or indirectly, to direct the management or policies of an insured depository institution or to vote 25 per centum or more of any class of voting securities of an insured depository institution.

(9)[1] REPORTING OF STOCK LOANS.—

(A) REPORT REQUIRED.—Any foreign bank, or any affiliate thereof, that has credit outstanding to any person or group of persons which is secured, directly or indirectly, by shares of an insured depository institution shall file a consolidated report with the appropriate Federal banking agency for such insured depository institution if the extensions of credit by the foreign bank or any affiliate thereof, in the aggregate, are secured, directly or indirectly, by 25 percent or more of any class of shares of the same insured depository institution.

(B) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) FOREIGN BANK.—The terms "foreign bank" and "affiliate" have the same meanings as in section 1 of the International Banking Act of 1978.

(ii) CREDIT OUTSTANDING.—The term "credit outstanding" includes—

(I) any loan or extension of credit,

(II) the issuance of a guarantee, acceptance, or letter of credit, including an endorsement or standby letter of credit, and

(III) any other type of transaction that extends credit or financing to the person or group of persons.

(iii) GROUP OF PERSONS.—The term "group of persons" includes any number of persons that the foreign bank or any affiliate thereof reasonably believes—

(I) are acting together, in concert, or with one another to acquire or control shares of the same insured depository institution, including an acquisition of shares of the same insured depository institution at approximately the same time under substantially the same terms; or

(II) have made, or propose to make, a joint filing under section 13 of the Securities Exchange Act of 1934 regarding ownership of the shares of the same insured depository institution.

(C) INCLUSION OF SHARES HELD BY THE FINANCIAL INSTITUTION.—Any shares of the insured depository institution held by the foreign bank or any affiliate thereof as principal shall be included in the calculation of the number of shares in which the foreign bank or any affiliate thereof has a security interest for purposes of subparagraph (A).

(D) REPORT REQUIREMENTS.—

(i) TIMING OF REPORT.—The report required under this paragraph shall be a consolidated report on behalf of the foreign bank and all affiliates thereof, and shall be filed in writing within 30 days of the date on which the foreign bank or affiliate thereof first believes that the security for any outstanding credit consists of 25

[1] Indentation so in law.

percent or more of any class of shares of an insured depository institution.

(ii) CONTENT OF REPORT.—The report under this paragraph shall indicate the number and percentage of shares securing each applicable extension of credit, the identity of the borrower, and the number of shares held as principal by the foreign bank and any affiliate thereof.

(iii) COPY TO OTHER AGENCIES.—A copy of any report under this paragraph shall be filed with the appropriate Federal banking agency for the foreign bank or any affiliate thereof (if other than the agency receiving the report under this paragraph).

(iv) OTHER INFORMATION.—Each appropriate Federal banking agency may require any additional information necessary to carry out the agency's supervisory responsibilities.

(E) EXCEPTIONS.—

(i) EXCEPTION WHERE INFORMATION PROVIDED BY BORROWER.—Notwithstanding subparagraph (A), a foreign bank or any affiliate thereof shall not be required to report a transaction under this paragraph if the person or group of persons referred to in such subparagraph has disclosed the amount borrowed from such foreign bank or any affiliate thereof and the security interest of the foreign bank or any affiliate thereof to the appropriate Federal banking agency for the insured depository institution in connection with a notice filed under this subsection, an application filed under the Bank Holding Company Act of 1956, section 10 of the Home Owners' Loan Act, or any other application filed with the appropriate Federal banking agency for the insured depository institution as a substitute for a notice under this subsection, such as an application for deposit insurance, membership in the Federal Reserve System, or a national bank charter.

(ii) EXCEPTION FOR SHARES OWNED FOR MORE THAN 1 YEAR.—Notwithstanding subparagraph (A), a foreign bank and any affiliate thereof shall not be required to report a transaction involving—

(I) a person or group of persons that has been the owner or owners of record of the stock for a period of 1 year or more; or

(II) stock issued by a newly chartered bank before the bank's opening.

(10) The reports required by paragraph (9) of this subsection shall contain such of the information referred to in paragraph (6) of this subsection, and such other relevant information, as the appropriate Federal banking agency may require by regulation or by specific request in connection with any particular report.

(11) The Federal banking agency receiving a notice or report filed pursuant to paragraph (1) or (9) shall immediately furnish to the other Federal banking agencies a copy of such notice or report.

(12) Whenever such a change in control occurs, each insured depository institution shall report promptly to the appropriate Federal banking agency any changes or replacement of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

(13) The appropriate Federal banking agencies are authorized to issue rules and regulations to carry out this subsection.

(14) Within two years after the effective date of the Change in Bank Control Act of 1978, and each year thereafter in each appropriate Federal banking agency's annual report to the Congress, the appropriate Federal banking agency shall report to the Congress the results of the administration of this subsection, and make any recommendations as to changes in the law which in the opinion of the appropriate Federal banking agency would be desirable.

(15) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

(A) INVESTIGATIONS.—The appropriate Federal banking agency may exercise any authority vested in such agency under section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

(B) ENFORCEMENT.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

(C) JURISDICTION.—

(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 8(n).

(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond. The resignation, termination of employment or participation, divestiture of control, or separation of or by an institution-affili-

ated party (including a separation caused by the closing of a depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice and proceed under this subsection against any such party, if such notice is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after the date of the enactment of this sentence).

(16)[1] CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any person who violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency under this subsection, shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any person who—

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such institution; or

(III) results in pecuniary gain or other benefit to such person,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any person who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of a depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such institution or a substantial pecuniary gain or other benefit to such person by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum

[1] Indentation so in law.

daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than a depository institution, an amount to not exceed $1,000,000; and

(ii) in the case of a depository institution, an amount not to exceed the lesser of—

(I) $1,000,000; or

(II) 1 percent of the total assets of such institution.

(E) ASSESSMENT; ETC.—Any penalty imposed under subparagraph (A), (B), or (C) shall be assessed and collected by the appropriate Federal banking agency in the manner provided in subparagraphs (E), (F), (G), and (I) of section 8(i)(2) for penalties imposed (under such section) and any such assessment shall be subject to the provisions of such section.

(F) HEARING.—The depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or other person submits a request for such hearing within 20 days after the issuance of the notice of assessment. Section 8(h) shall apply to any proceeding under this paragraph.

(G) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(17) EXCEPTIONS.—This subsection shall not apply with respect to a transaction which is subject to—

(A) section 3 of the Bank Holding Company Act of 1956;

(B) section 18(c) of this Act; or

(C) section 10 of the Home Owners' Loan Act.

(18) APPLICABILITY OF CHANGE IN CONTROL PROVISIONS TO OTHER INSTITUTIONS.—For purposes of this subsection, the term "insured depository institution" includes—

(A) any depository institution holding company; and

(B) any other company which controls an insured depository institution and is not a depository institution holding company.

(k) The appropriate Federal banking agencies are authorized to issue rules and regulations, including definitions of terms, to require the reporting and public disclosure of information by a bank or any executive officer or prinicipal shareholder thereof concerning extensions of credit by the bank to any of its executive officers or principal shareholders, or the related interests of such persons.

(l) DESIGNATION OF FUND MEMBERSHIP FOR NEWLY INSURED DEPOSITORY INSTITUTIONS; DEFINITIONS.—For purposes of this section:

(1) BANK INSURANCE FUND.—Any institution which—

(A) becomes an insured depository institution; and

(B) does not become a Savings Association Insurance Fund member pursuant to paragraph (2),

shall be a Bank Insurance Fund member.

(2) SAVINGS ASSOCIATION INSURANCE FUND.—Any savings association, other than any Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act, which becomes an insured depository institution shall be a Savings Association Insurance Fund member.

(3) TRANSITION PROVISION.—

(A) BANK INSURANCE FUND.—Any depository institution the deposits of which were insured by the Federal Deposit Insurance Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, including—

(i) any Federal savings bank chartered pursuant to section 5(o) of the Home Owners' Loan Act; and

(ii) any cooperative bank,

shall be a Bank Insurance Fund member as of such date of enactment.

(B) SAVINGS ASSOCIATION INSURANCE FUND.—Any savings association which is an insured depository institution by operation of section 4(a)(2) shall be a Savings Association Insurance Fund member as of the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(4) BANK INSURANCE FUND MEMBER.—The term "Bank Insurance Fund member" means any depository institution the deposits of which are insured by the Bank Insurance Fund.

(5) SAVINGS ASSOCIATION INSURANCE FUND MEMBER.—The term "Savings Association Insurance Fund member" means any depository institution the deposits of which are insured by the Savings Association Insurance Fund.

(6) BANK INSURANCE FUND RESERVE RATIO.—The term "Bank Insurance Fund reserve ratio" means the ratio of the net worth of the Bank Insurance Fund to the value of the aggregate estimated insured deposits held in all Bank Insurance Fund members.

(7) SAVINGS ASSOCIATION INSURANCE FUND RESERVE RATIO.—The term "Savings Association Insurance Fund reserve ratio" means the ratio of the net worth of the Savings Association Insurance Fund to the value of the aggregate estimated insured deposits held in all Savings Association Insurance Fund members.

(m) SECONDARY RESERVE OFFSETS AGAINST PREMIUMS.—

(1) OFFSETS IN CALENDAR YEARS BEGINNING BEFORE 1993.—Subject to the maximum amount limitation contained in paragraph (2) and notwithstanding any other provision of law, any insured savings association may offset such association's pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) of this section for any calendar year beginning before 1993.

(2) ANNUAL MAXIMUM AMOUNT LIMITATION.—The amount of any offset allowed for any savings association under paragraph (1) for any calendar year beginning before 1993 shall not exceed an amount which is equal to 20 percent of such associa-

tion's pro rata share of the statutorily prescribed amount (as computed for such calendar year).

(3) OFFSETS IN CALENDAR YEARS BEGINNING AFTER 1992.—Notwithstanding any other provision of law, a savings association may offset such association's pro rata share of the statutorily prescribed amount against any premium assessed against such association under subsection (b) for any calendar year beginning after 1992.

(4) TRANSFERABILITY.—No right, title, or interest of any insured depository institution in or with respect to its pro rata share of the secondary reserve shall be assignable or transferable whether by operation of law or otherwise, except to the extent that the Corporation may provide for transfer of such pro rata share in cases of merger or consolidation, transfer of bulk assets or assumption of liabilities, and similar transactions, as defined by the Corporation for purposes of this paragraph.

(5) PRO RATA DISTRIBUTION ON TERMINATION OF INSURED STATUS.—If—

(A) the status of any savings association as an insured depository institution is terminated pursuant to any provision of section 8 or the insurance of accounts of any such institution is otherwise terminated;

(B) a receiver or other legal custodian is appointed for the purpose of liquidation or winding up the affairs of any savings association; or

(C) the Corporation makes a determination that for the purposes of this subsection any savings association has otherwise gone into liquidation,

the Corporation shall pay in cash to such institution its pro rata share of the secondary reserve, in accordance with such terms and conditions as the Corporation may prescribe, or, at the option of the Corporation, the Corporation may apply the whole or any part of the amount which would otherwise be paid in cash toward the payment of any indebtedness or obligation, whether matured or not, of such institution to the Corporation, existing or arising before such payment in cash. Such payment or such application need not be made to the extent that the provisions of the exception in paragraph (4) are applicable.

(6) STATUTORILY PRESCRIBED AMOUNT DEFINED.—For purposes of this subsection, the term "statutorily prescribed amount" means, with respect to any calendar year which ends after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989—

(A) $823,705,000, minus

(B) the sum of—

(i) the aggregate amount of offsets made before such date of enactment by all insured institutions under section 404(e)(2) of the National Housing Act (as in effect before such date of enactment); and

(ii) the aggregate amount of offsets made by all savings associations under this subsection before the beginning of such calendar year.

(7) SAVINGS ASSOCIATION'S PRO RATA AMOUNT.—For purposes of this subsection, any savings association's pro rata share of the statutorily prescribed amount is the percentage which is equal to such association's share of the secondary reserve as determined under section 404(e) of the National Housing Act on the day before the date on which the Federal Savings and Loan Insurance Corporation ceased to recognize the secondary reserve (as such Act was in effect on the day before such date).

(8) YEAR OF ENACTMENT RULE.—With respect to the calendar year in which the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 is enacted, the Corporation shall make such adjustments as may be necessary—

(A) in the computation of the statutorily prescribed amount which shall be applicable for the remainder of such calendar year after taking into account the aggregate amount of offsets by all insured institutions under section 404(e)(2) of the National Housing Act (as in effect before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) after the beginning of such calendar year and before such date of enactment; and

(B) in the computation of the maximum amount of any savings association's offset for such calendar year under paragraph (1) after taking into account—

(i) the amount of any offset by such savings association under section 404(e)(2) of the National Housing Act (as in effect before such date of enactment) after the beginning of such calendar year and before such date of enactment; and

(ii) the change of such association's premium year from the 1-year period applicable under section 404(b) of the National Housing Act (as in effect before such date of enactment) to a calendar year basis.

(n) COLLECTIONS ON BEHALF OF THE COMPTROLLER OF THE CURRENCY.—When requested by the Comptroller of the Currency, the Corporation shall collect on behalf of the Comptroller assessments on Federal savings associations levied by the Comptroller under section 9 of the Home Owners' Loan Act. The Corporation shall be reimbursed for its actual costs for the collection of such assessments. Any such assessments by the Comptroller shall be in addition to any amounts assessed by the Corporation.

SEC. 8. [12 U.S.C. 1818] (a) TERMINATION OF INSURANCE.—

(1) VOLUNTARY TERMINATION.—Any insured depository institution which is not—

(A) a national member bank;

(B) a State member bank;

(C) a Federal branch;

(D) a Federal savings association; or

(E) an insured branch which is required to be insured under subsection (a) or (b) of section 6 of the International Banking Act of 1978,

may terminate such depository institution's status as an insured depository institution if such insured institution provides

written notice to the Corporation of the institution's intent to terminate such status not less than 90 days before the effective date of such termination.

(2) INVOLUNTARY TERMINATION.—

(A) NOTICE TO PRIMARY REGULATOR.—If the Board of Directors determines that—

(i) an insured depository institution or the directors or trustees of an insured depository institution have engaged or are engaging in unsafe or unsound practices in conducting the business of the depository institution;

(ii) an insured depository institution is in an unsafe or unsound condition to continue operations as an insured institution; or

(iii) an insured depository institution or the directors or trustees of the insured institution have violated any applicable law, regulation, order, condition imposed in writing by the Corporation in connection with the approval of any application or other request by the insured depository institution, or written agreement entered into between the insured depository institution and the Corporation,

the Board of Directors shall notify the appropriate Federal banking agency with respect to such institution (if other than the Corporation) or the State banking supervisor of such institution (if the Corporation is the appropriate Federal banking agency) of the Board's determination and the facts and circumstances on which such determination is based for the purpose of securing the correction of such practice, condition, or violation. Such notice shall be given to the appropriate Federal banking agency not less than 30 days before the notice required by subparagraph (B), except that this period for notice to the appropriate Federal banking agency may be reduced or eliminated with the agreement of such agency.

(B) NOTICE OF INTENTION TO TERMINATE INSURANCE.—If, after giving the notice required under subparagraph (A) with respect to an insured depository institution, the Board of Directors determines that any unsafe or unsound practice or condition or any violation specified in such notice requires the termination of the insured status of the insured depository institution, the Board shall—

(i) serve written notice to the insured depository institution of the Board's intention to terminate the insured status of the institution;

(ii) provide the insured depository institution with a statement of the charges on the basis of which the determination to terminate such institution's insured status was made (or a copy of the notice under subparagraph (A)); and

(iii) notify the insured depository institution of the date (not less than 30 days after notice under this subparagraph) and place for a hearing before the Board of Directors (or any person designated by the Board)

with respect to the termination of the institution's insured status.

(3) HEARING; TERMINATION.—If, on the basis of the evidence presented at a hearing before the Board of Directors (or any person designated by the Board for such purpose), in which all issues shall be determined on the record pursuant to section 554 of title 5, United States Code, and the written findings of the Board of Directors (or such person) with respect to such evidence (which shall be conclusive), the Board of Directors finds that any unsafe or unsound practice or condition or any violation specified in the notice to an insured depository institution under paragraph (2)(B) or subsection (w) has been established, the Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.

(4) APPEARANCE; CONSENT TO TERMINATION.—Unless the depository institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured depository institution and termination of such status thereupon may be ordered.

(5) JUDICIAL REVIEW.—Any insured depository institution whose insured status has been terminated by order of the Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section.

(6) PUBLICATION OF NOTICE OF TERMINATION.—The Corporation may publish notice of such termination and the depository institution shall give notice of such termination to each of its depositors at his last address of record on the books of the depository institution, in such manner and at such time as the Board of Directors may find to be necessary and may order for the protection of depositors.

(7) TEMPORARY INSURANCE OF DEPOSITS INSURED AS OF TERMINATION.—After the termination of the insured status of any depository institution under the provisions of this subsection, the insured deposits of each depositor in the depository institution on the date of such termination, less all subsequent withdrawals from any deposits of such depositor, shall continue for a period of at least 6 months or up to 2 years, within the discretion of the Board of Directors, to be insured, and the depository institution shall continue to pay to the Corporation assessments as in the case of an insured depository institution during such period. No additions to any such deposits and no new deposits in such depository institution made after the date of such termination shall be insured by the Corporation, and the depository institution shall not advertise or hold itself out as having insured deposits unless in the same connection it shall also state with equal prominence that such additions to deposits and new deposits made after such date are not so insured. Such depository institution shall, in all other respects, be subject to the duties and obligations of an insured depository institution for the period referred to in the 1st sentence

from the date of such termination, and in the event that such depository institution shall be closed on account of inability to meet the demands of its depositors within such period, the Corporation shall have the same powers and rights with respect to such depository institution as in case of an insured depository institution.

(8) TEMPORARY SUSPENSION OF INSURANCE.—

(A) IN GENERAL.—If the Board of Directors initiates a termination proceeding under paragraph (2), and the Board of Directors, after consultation with the appropriate Federal banking agency, finds that an insured depository institution (other than a savings association to which subparagraph (B) applies) has no tangible capital under the capital guidelines or regulations of the appropriate Federal banking agency, the Corporation may issue a temporary order suspending deposit insurance on all deposits received by the institution.

(B) SPECIAL RULE FOR CERTAIN SAVINGS INSTITUTIONS.—

(i) CERTAIN GOODWILL INCLUDED IN TANGIBLE CAPITAL.—In determining the tangible capital of a savings association for purposes of this paragraph, the Board of Directors shall include goodwill to the extent it is considered a component of capital under section 5(t) of the Home Owners' Loan Act. Any savings association which would be subject to a suspension order under subparagraph (A) but for the operation of this subparagraph, shall be considered by the Corporation to be a "special supervisory association".

(ii) SUSPENSION ORDER.—The Corporation may issue a temporary order suspending deposit insurance on all deposits received by a special supervisory association whenever the Board of Directors determines that—

(I) the capital of such association, as computed utilizing applicable accounting standards, has suffered a material decline;

(II) that such association (or its directors or officers) is engaging in an unsafe or unsound practice in conducting the business of the association;

(III) that such association is in an unsafe or unsound condition to continue operating as an insured association; or

(IV) that such association (or its directors or officers) has violated any applicable law, rule, regulation, or order, or any condition imposed in writing by a Federal banking agency, or any written agreement including a capital improvement plan entered into with any Federal banking agency, or that the association has failed to enter into a capital improvement plan which is acceptable to the Corporation within the time period set forth in section 5(t) of the Home Owners' Loan Act.

Nothing in this paragraph limits the right of the Corporation or the Comptroller of the Currency to enforce a contractual provision which authorizes the Corporation or the Comptroller of the Currency, as a successor to the Federal Savings and Loan Insurance Corporation or the Federal Home Loan Bank Board, to require a savings association to write down or amortize goodwill at a faster rate than otherwise required under this Act or under applicable accounting standards.

(C) EFFECTIVE PERIOD OF TEMPORARY ORDER.—Any order issued under subparagraph (A) shall become effective not earlier than 10 days from the date of service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized hereunder, such temporary order shall remain effective and enforceable until an order of the Board under paragraph (3) becomes final or until the Corporation dismisses the proceedings under paragraph (3).

(D) JUDICIAL REVIEW.—Before the close of the 10-day period beginning on the date any temporary order has been served upon an insured depository institution under subparagraph (A), such institution may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the home office of the institution is located, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order, and such court shall have jurisdiction to issue such injunction.

(E) CONTINUATION OF INSURANCE FOR PRIOR DEPOSITS.—The insured deposits of each depositor in such depository institution on the effective date of the order issued under this paragraph, minus all subsequent withdrawals from any deposits of such depositor, shall continue to be insured, subject to the administrative proceedings as provided in this Act.

(F) PUBLICATION OF ORDER.—The depository institution shall give notice of such order to each of its depositors in such manner and at such times as the Board of Directors may find to be necessary and may order for the protection of depositors.

(G) NOTICE BY CORPORATION.—If the Corporation determines that the depository institution has not substantially complied with the notice to depositors required by the Board of Directors, the Corporation may provide such notice in such manner as the Board of Directors may find to be necessary and appropriate.

(H) LACK OF NOTICE.—Notwithstanding subparagraph (A), any deposit made after the effective date of a suspension order issued under this paragraph shall remain insured to the extent that the depositor establishes that—

(i) such deposit consists of additions made by automatic deposit the depositor was unable to prevent; or

(ii) such depositor did not have actual knowledge of the suspension of insurance.

(9) FINAL DECISIONS TO TERMINATE INSURANCE.—Any decision by the Board of Directors to—

(A) issue a temporary order terminating deposit insurance; or

(B) issue a final order terminating deposit insurance (other than under subsection (p) or (q));

shall be made by the Board of Directors and may not be delegated.

(10) LOW- TO MODERATE-INCOME HOUSING LENDER.—In making any determination regarding the termination of insurance of a solvent savings association, the Corporation may consider the extent of the association's low- to moderate-income housing loans.

(b)(1) If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution-affiliated party is engaging or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution, or is violating or has violated, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request by the depository institution or institution-affiliated party, or any written agreement entered into with the agency, the appropriate Federal banking agency for the depository institution may issue and serve upon the depository institution or such party a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the depository institution or the institution-affiliated party. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the agency at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the depository institution or the institution-affiliated party an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the depository institution or its institution-affiliated parties to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the depository institution or other person concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(3) This subsection, subsections (c) through (s) and subsection (u) of this section, and section 50 of this Act shall apply to any bank holding company, and to any "subsidiary" (other than a bank) of a bank holding company, as those terms are defined in the Bank Holding Company Act of 1956, any savings and loan holding company and any subsidiary (other than a depository institution) of a savings and loan holding company (as such terms are defined in section 10 of Home Owners' Loan Act)), any noninsured State member bank and to any organization organized and operated under section 25(a)[1] of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, in the same manner as they apply to a State member insured bank. Nothing in this subsection or in subsection (c) of this section shall authorize any Federal banking agency, other than the Board of Governors of the Federal Reserve System, to issue a notice of charges or cease-and-desist order against a bank holding company or any subsidiary thereof (other than a bank or subsidiary of that bank) or against a savings and loan holding company or any subsidiary thereof (other than a depository institution or a subsidiary of such depository institution).

(4) This subsection, subsections (c) through (s) and subsection (u) of this section, and section 50 of this Act shall apply to any foreign bank or company to which subsection (a) of section 8 of the International Banking Act of 1978 applies and to any subsidiary (other than a bank) of any such foreign bank or company in the same manner as they apply to a bank holding company and any subsidiary thereof (other than a bank) under paragraph (3) of this subsection. For the purposes of this paragraph, the term "subsidiary" shall have the meaning assigned to it in section 2 of the Bank Holding Company Act of 1956.

(5) This section shall apply, in the same manner as it applies to any insured depository institution for which the appropriate Federal banking agency is the Comptroller of the Currency, to any national banking association chartered by the Comptroller of the Currency, including an uninsured association.

(6)[2] AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR PRACTICES.—The authority to issue an order under this subsection and subsection (c) which requires an insured depository institution or any institution-affiliated party to take affirmative action to correct or remedy any conditions resulting from any violation or practice with re-

[1] Section 25(a) of the Federal Reserve Act was redesignated as section 25A by section 142(e)(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991.

[2] Indentation so in law.

spect to which such order is issued includes the authority to require such depository institution or such party to—

(A) make restitution or provide reimbursement, indemnification, or guarantee against loss if—

(i) such depository institution or such party was unjustly enriched in connection with such violation or practice; or

(ii) the violation or practice involved a reckless disregard for the law or any applicable regulations or prior order of the appropriate Federal banking agency;

(B) restrict the growth of the institution;

(C) dispose of any loan or asset involved;

(D) rescind agreements or contracts; and

(E) employ qualified officers or employees (who may be subject to approval by the appropriate Federal banking agency at the direction of such agency); and

(F) take such other action as the banking agency determines to be appropriate.

(7)[2] AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this subsection or subsection (c) includes the authority to place limitations on the activities or functions of an insured depository institution or any institution-affiliated party.

(8) UNSATISFACTORY ASSET QUALITY, MANAGEMENT, EARNINGS, OR LIQUIDITY AS UNSAFE OR UNSOUND PRACTICE.—If an insured depository institution receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the appropriate Federal banking agency may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection.

(9) [Repealed]

(10) STANDARD FOR CERTAIN ORDERS.—No authority under this subsection or subsection (c) to prohibit any institution-affiliated party from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets, or other property may be exercised unless the appropriate Federal banking agency meets the standards of Rule 65 of the Federal Rules of Civil Procedure, without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(c)(1) Whenever the appropriate Federal banking agency shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the depository institution or any institution-affiliated party pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the depository institution, or is likely to weaken the condition of the depository institution or otherwise prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section, the agency may issue a temporary order

requiring the depository institution or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under subsection (b)(6). Such order shall become effective upon service upon the depository institution or such party participating in the conduct of the affairs of such depository institution and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the depository institution or such party, until the effective date of such order.

(2) Within ten days after the depository institution concerned or any institution-affiliated party has been served with a temporary cease-and-desist order, the depository institution or such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the depository institution or such party under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.

(3) INCOMPLETE OR INACCURATE RECORDS.—

(A) TEMPORARY ORDER.—If a notice of charges served under subsection (b)(1) specifies, on the basis of particular facts and circumstances, that an insured depository institution's books and records are so incomplete or inaccurate that the appropriate Federal banking agency is unable, through the normal supervisory process, to determine the financial condition of that depository institution or the details or purpose of any transaction or transactions that may have a material effect on the financial condition of that depository institution, the agency may issue a temporary order requiring—

(i) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(ii) affirmative action to restore such books or records to a complete and accurate state, until the completion of the proceedings under subsection (b)(1).

(B) EFFECTIVE PERIOD.—Any temporary order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless set aside, limited, or suspended by a court in proceedings under paragraph (2), shall remain in effect and enforceable until the earlier of—

(I) the completion of the proceeding initiated under subsection (b)(1) in connection with the notice of charges; or

(II) the date the appropriate Federal banking agency determines, by examination or otherwise, that the insured depository institution's books and records are accurate and reflect the financial condition of the depository institution.

(4) FALSE ADVERTISING OR MISUSE OF NAMES TO INDICATE INSURED STATUS.—

(A) TEMPORARY ORDER.—

(i) IN GENERAL.—If a notice of charges served under subsection (b)(1) specifies on the basis of particular facts that any person engaged or is engaging in conduct described in section 18(a)(4), the Corporation or other appropriate Federal banking agency may issue a temporary order requiring—

(I) the immediate cessation of any activity or practice described, which gave rise to the notice of charges; and

(II) affirmative action to prevent any further, or to remedy any existing, violation.

(ii) EFFECT OF ORDER.—Any temporary order issued under this subparagraph shall take effect upon service.

(B) EFFECTIVE PERIOD OF TEMPORARY ORDER.—A temporary order issued under subparagraph (A) shall remain effective and enforceable, pending the completion of an administrative proceeding pursuant to subsection (b)(1) in connection with the notice of charges—

(i) until such time as the Corporation or other appropriate Federal banking agency dismisses the charges specified in such notice; or

(ii) if a cease-and-desist order is issued against such person, until the effective date of such order.

(C) CIVIL MONEY PENALTIES.—Any violation of section 18(a)(4) shall be subject to civil money penalties, as set forth in subsection (i), except that for any person other than an insured depository institution or an institution-affiliated party that is found to have violated this paragraph, the Corporation or other appropriate Federal banking agency shall not be required to demonstrate any loss to an insured depository institution.

(d) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to paragraph (1) of subsection (c) of the section, the appropriate Federal banking agency may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

(e) REMOVAL AND PROHIBITION AUTHORITY.—

(1) AUTHORITY TO ISSUE ORDER.—Whenever the appropriate Federal banking agency determines that—

(A) any institution-affiliated party has, directly or indirectly—

(i) 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 banking agency in connection with any action on any application, notice, or request by such depository institution or institution-affiliated party; or

(IV) any written agreement between such depository institution and such agency;

(ii) engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution; or

(iii) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;

(B) by reason of the violation, practice, or breach described in any clause of subparagraph (A)—

(i) such insured depository institution or business institution has suffered or will probably suffer financial loss or other damage;

(ii) the interests of the insured depository institution's depositors have been or could be prejudiced; or

(iii) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

(C) such violation, practice, or breach—

(i) involves personal dishonesty on the part of such party; or

(ii) demonstrates willful or continuing disregard by such party for the safety or soundness of such insured depository institution or business institution,

the appropriate Federal banking agency for the depository institution may serve upon such party a written notice of the agency's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any insured depository institution.

(2) SPECIFIC VIOLATIONS.—

(A) IN GENERAL.—Whenever the appropriate Federal banking agency determines that—

(i) an institution-affiliated party has committed a violation of any provision of subchapter II of chapter 53 of title 31, United States Code, and such violation was not inadvertent or unintentional;

(ii) an officer or director of an insured depository institution has knowledge that an institution-affiliated party of the insured depository institution has violated any such provision or any provision of law referred to in subsection (g)(1)(A)(ii);

(iii) an officer or director of an insured depository institution has committed any violation of the Depository Institution Management Interlocks Act; or

(iv)[1] an institution-affiliated party of a subsidiary (other than a bank) of a bank holding company or of a subsidiary (other than a savings association) of a savings and loan holding company has been convicted of any criminal offense involving dishonesty or a breach of trust or a criminal offense under section 1956, 1957, or 1960 of title 18, United States Code, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense,

the agency may serve upon such party, officer, or director a written notice of the agency's intention to remove such party from office.

(B) FACTORS TO BE CONSIDERED.—In determining whether an officer or director should be removed as a result of the application of subparagraph (A)(ii), the agency shall consider whether the officer or director took appropriate action to stop, or to prevent the recurrence of, a violation described in such subparagraph.

(3) SUSPENSION ORDER.—

(A) SUSPENSION OR PROHIBITION AUTHORIZED.—If the appropriate Federal banking agency serves written notice under paragraph (1) or (2) to any institution-affiliated party of such agency's intention to issue an order under such paragraph, the appropriate Federal banking agency may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution, if the agency—

(i) determines that such action is necessary for the protection of the depository institution or the interests of the depository institution's depositors; and

(ii) serves such party with written notice of the suspension order.

(B) EFFECTIVE PERIOD.—Any suspension order issued under subparagraph (A)—

(i) shall become effective upon service; and

(ii) unless a court issues a stay of such order under subsection (f), shall remain in effect and enforceable until—

(I) the date the appropriate Federal banking agency dismisses the charges contained in the notice served under paragraph (1) or (2) with respect to such party; or

(II) the effective date of an order issued by the agency to such party under paragraph (1) or (2).

(C) COPY OF ORDER.—If an appropriate Federal banking agency issues a suspension order under subparagraph (A) to any institution-affiliated party, the agency shall

[1] The placement of clause (iv), as added by section 710(b)(3) of Public Law 109–351 (120 Stat. 1991), reflects the probable intent of Congress.

serve a copy of such order on any insured depository institution with which such party is associated at the time such order is issued.

(4)[1] A notice of intention to remove an institution-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of an insured depository institution, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such party, and for good cause shown, or (B) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice have been established, the agency may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the depository institution, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such depository institution and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

(5)[1] For the purpose of enforcing any law, rule, regulation, or cease-and-desist order in connection with an interlocking relationship, the term "officer" within the term "institution-affiliated party" as used in this subsection means an employee or officer with management functions, and the term "director" within the term "institution-affiliated party" as used in this subsection includes an advisory or honorary director, a trustee of a depository institution under the control of trustees, or any person who has a representative or nominee serving in any such capacity.

(6) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this subsection shall not—

(A) participate in any manner in the conduct of the affairs of any institution or agency specified in paragraph (7)(A);

(B) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subparagraph (A);

(C) violate any voting agreement previously approved by the appropriate Federal banking agency; or

(D) vote for a director, or serve or act as an institution-affiliated party.

(7) INDUSTRYWIDE PROHIBITION.—

[1] Indentation so in law.

(A) IN GENERAL.—Except as provided in subparagraph (B), any person who, pursuant to an order issued under this subsection or subsection (g), has been removed or suspended from office in an insured depository institution or prohibited from participating in the conduct of the affairs of an insured depository institution may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of—

(i) any insured depository institution;

(ii) any institution treated as an insured bank under subsection (b)(3) or (b)(4), or as a savings association under subsection (b)(9);

(iii) any insured credit union under the Federal Credit Union Act;

(iv) any institution chartered under the Farm Credit Act of 1971;

(v) any appropriate Federal depository institution regulatory agency; and

(vi) the Federal Housing Finance Agency and any Federal home loan bank.

(B) EXCEPTION IF AGENCY PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this subsection which removes or suspends from office any institution-affiliated party or prohibits such party from participating in the conduct of the affairs of an insured depository institution, such party receives the written consent of—

(i) the agency that issued such order; and

(ii) the appropriate Federal financial institutions regulatory agency of the institution described in any clause of subparagraph (A) with respect to which such party proposes to become an institution-affiliated party,

subparagraph (A) shall, to the extent of such consent, cease to apply to such party with respect to the institution described in each written consent. Any agency that grants such a written consent shall report such action to the Corporation and publicly disclose such consent.

(C) VIOLATION OF PARAGRAPH TREATED AS VIOLATION OF ORDER.—Any violation of subparagraph (A) by any person who is subject to an order described in such subparagraph shall be treated as a violation of the order.

(D) APPROPRIATE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCY DEFINED.—For purposes of this paragraph and subsection (j), the term "appropriate Federal financial institutions regulatory agency" means—

(i) the appropriate Federal banking agency, in the case of an insured depository institution;

(ii) the Farm Credit Administration, in the case of an institution chartered under the Farm Credit Act of 1971;

(iii) the National Credit Union Administration Board, in the case of an insured credit union (as de-

fined in section 101(7) of the Federal Credit Union Act); and

(iv) the Secretary of the Treasury, in the case of the Federal Housing Finance Agency and any Federal home loan bank.

(E) CONSULTATION BETWEEN AGENCIES.—The agencies referred to in clauses (i) and (ii) of subparagraph (B) shall consult with each other before providing any written consent described in subparagraph (B).

(F) APPLICABILITY.—This paragraph shall only apply to a person who is an individual, unless the appropriate Federal banking agency specifically finds that it should apply to a corporation, firm, or other business enterprise.

(f) Within ten days after any institution-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured depository institution under subsection (e)(3) of this section, such party may apply to the United States district court for the judicial district in which the home office of the depository institution is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such party under subsection (e)(1) or (e)(2) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(g) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.—

(1) SUSPENSION OR PROHIBITION.—

(A) IN GENERAL.—Whenever any institution-affiliated party is the subject of any information, indictment, or complaint, involving the commission of or participation in—

(i) a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, or

(ii) a criminal violation of section 1956, 1957, or 1960 of title 18, United States Code, or section 5322 or 5324 of title 31, United States Code,

the appropriate Federal banking agency may, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)), by written notice served upon such party, suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any depository institution.

(B) PROVISIONS APPLICABLE TO NOTICE.—

(i) COPY.—A copy of any notice under subparagraph (A) shall also be served upon any depository institution that the subject of the notice is affiliated with at the time the notice is issued.

(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint re-

ferred to in such subparagraph is finally disposed of or until terminated by the agency.

(C) REMOVAL OR PROHIBITION.—

(i) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against an institution-affiliated party in connection with a crime described in subparagraph (A)(i), at such time as such judgment is not subject to further appellate review, the appropriate Federal banking agency may, if continued service or participation by such party posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)), issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any depository institution without the prior written consent of the appropriate agency.

(ii) REQUIRED FOR CERTAIN OFFENSES.—In the case of a judgment of conviction or agreement against an institution-affiliated party in connection with a violation described in subparagraph (A)(ii), the appropriate Federal banking agency shall issue and serve upon such party an order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of any depository institution without the prior written consent of the appropriate agency.

(D) PROVISIONS APPLICABLE TO ORDER.—

(i) COPY.—A copy of any order under subparagraph (C) shall also be served upon any depository institution that the subject of the order is affiliated with at the time the order is issued, whereupon the institution-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such depository institution.

(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the agency from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in depository institution affairs, pursuant to paragraph (1), (2), or (3) of subsection (e) of this section.

(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this paragraph shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (3) unless terminated by the agency.

(E) RELEVANT DEPOSITORY INSTITUTION.—For purposes of this subsection, the term "relevant depository institution" means any depository institution of which the party

is or was an institution-affiliated party at the time at which—

(i) the information, indictment, or complaint described in subparagraph (A) was issued; or

(ii) the notice is issued under subparagraph (A) or the order is issued under subparagraph (C)(i).

(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

(3) Within thirty days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) of this subsection, the institution-affiliated party concerned may request in writing an opportunity to appear before the agency to show that the continued service to or participation in the conduct of the affairs of the depository institution by such party does not, or is not likely to, pose a threat to the interests of the bank's depositors or threaten to impair public confidence in the depository institution. Upon receipt of any such request, the appropriate Federal banking agency shall fix a time (not more than thirty days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the agency or designated employees of the agency to submit written materials (or, at the discretion of the agency, oral testimony) and oral argument. Within sixty days of such hearing, the agency shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the depository institution will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the depository institution will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the agency's decision, if adverse to such party. The Federal banking agencies are authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(h)(1) Any hearing provided for in this section (other than the hearing provided for in subsection (g)(3) of this section) shall be held in the Federal judicial district or in the territory in which the home office of the depository institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within ninety days after the appropriate Federal banking agency or Board of Governors of the Federal Reserve System has notified the parties that

the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the issuing agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the agency may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the depository institution or the institution-affiliated party concerned, or an order issued under paragraph (1) of subsection (g) of this section) by the filing in the court of appeals of the United States for the circuit in which the home office of the depository institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the agency, and thereupon the agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

(i)(1) The appropriate Federal banking agency may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, for the enforcement of any effective and outstanding notice or order issued under this section or under section 38 or 39, and such courts shall have jurisdiction and power to order and require compliance herewith; but except as otherwise provided in this section or under section 38 or 39 no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under any such section, or to review, modify, suspend, terminate, or set aside any such notice or order.

(2)[1] CIVIL MONEY PENALTY.—

(A) FIRST TIER.—Any insured depository institution which, and any institution-affiliated party who—

(i) violates any law or regulation;

(ii) violates any final order or temporary order issued pursuant to subsection (b), (c), (e), (g), or (s) or any final order under section 38 or 39;

(iii) violates any condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request by the depository institution or institution-affiliated party; or

(iv) violates any written agreement between such depository institution and such agency,

shall forfeit and pay a civil penalty of not more than $5,000 for each day during which such violation continues.

(B) SECOND TIER.—Notwithstanding subparagraph (A), any insured depository institution which, and any institution-affiliated party who—

(i)(I) commits any violation described in any clause of subparagraph (A);

(II) recklessly engages in an unsafe or unsound practice in conducting the affairs of such insured depository institution; or

(III) breaches any fiduciary duty;

(ii) which violation, practice, or breach—

(I) is part of a pattern of misconduct;

(II) causes or is likely to cause more than a minimal loss to such depository institution; or

(III) results in pecuniary gain or other benefit to such party,

shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such violation, practice, or breach continues.

(C) THIRD TIER.—Notwithstanding subparagraphs (A) and (B), any insured depository institution which, and any institution-affiliated party who—

(i) knowingly—

(I) commits any violation described in any clause of subparagraph (A);

(II) engages in any unsafe or unsound practice in conducting the affairs of such depository institution; or

(III) breaches any fiduciary duty; and

(ii) knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,

shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such violation, practice, or breach continues.

[1] Indentation so in law.

(D) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN SUBPARAGRAPH (C).—The maximum daily amount of any civil penalty which may be assessed pursuant to subparagraph (C) for any violation, practice, or breach described in such subparagraph is—

(i) in the case of any person other than an insured depository institution, an amount to not exceed $1,000,000; and

(ii) in the case of any insured depository institution, an amount not to exceed the lesser of—

(I) $1,000,000; or

(II) 1 percent of the total assets of such institution.

(E) ASSESSMENT.—

(i) WRITTEN NOTICE.—Any penalty imposed under subparagraph (A), (B), or (C) may be assessed and collected by the appropriate Federal banking agency by written notice.

(ii) FINALITY OF ASSESSMENT.—If, with respect to any assessment under clause (i), a hearing is not requested pursuant to subparagraph (H) within the period of time allowed under such subparagraph, the assessment shall constitute a final and unappealable order.

(F) AUTHORITY TO MODIFY OR REMIT PENALTY.—Any appropriate Federal banking agency may compromise, modify, or remit any penalty which such agency may assess or had already assessed under subparagraph (A), (B), or (C).

(G) MITIGATING FACTORS.—In determining the amount of any penalty imposed under subparagraph (A), (B), or (C), the appropriate agency shall take into account the appropriateness of the penalty with respect to—

(i) the size of financial resources and good faith of the insured depository institution or other person charged;

(ii) the gravity of the violation;

(iii) the history of previous violations; and

(iv) such other matters as justice may require.

(H) HEARING.—The insured depository institution or other person against whom any penalty is assessed under this paragraph shall be afforded an agency hearing if such institution or person submits a request for such hearing within 20 days after the issuance of the notice of assessment.

(I) COLLECTION.—

(i) REFERRAL.—If any insured depository institution or other person fails to pay an assessment after any penalty assessed under this paragraph has become final, the agency that imposed the penalty shall recover the amount assessed by action in the appropriate United States district court.

(ii) APPROPRIATENESS OF PENALTY NOT REVIEWABLE.—In any civil action under clause (i), the validity

and appropriateness of the penalty shall not be subject to review.

(J) DISBURSEMENT.—All penalties collected under authority of this paragraph shall be deposited into the Treasury.

(K) REGULATIONS.—Each appropriate Federal banking agency shall prescribe regulations establishing such procedures as may be necessary to carry out this paragraph.

(3) NOTICE UNDER THIS SECTION AFTER SEPARATION FROM SERVICE.—The resignation, termination of employment or participation, or separation of an institution-affiliated party (including a separation caused by the closing of an insured depository institution) shall not affect the jurisdiction and authority of the appropriate Federal banking agency to issue any notice or order and proceed under this section against any such party, if such notice or order is served before the end of the 6-year period beginning on the date such party ceased to be such a party with respect to such depository institution (whether such date occurs before, on, or after the date of the enactment of this paragraph).

(4) PREJUDGMENT ATTACHMENT.—

(A) IN GENERAL.—In any action brought by an appropriate Federal banking agency (excluding the Corporation when acting in a manner described in section 11(d)(18)) pursuant to this section, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought by such agency, the court may, upon application of the agency, issue a restraining order that—

(i) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

(ii) appoints a temporary receiver to administer the restraining order.

(B) STANDARD.—

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

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

(j) CRIMINAL PENALTY.—Whoever, being subject to an order in effect under subsection (e) or (g), without the prior written approval of the appropriate Federal financial institutions regulatory agency, knowingly participates, directly or indirectly, in any man-

ner (including by engaging in an activity specifically prohibited in such an order or in subsection (e)(6)) in the conduct of the affairs of—

(1) any insured depository institution;

(2) any institution treated as an insured bank under subsection (b)(3) or (b)(4)[1];

(3) any insured credit union (as defined in section 101(7) of the Federal Credit Union Act); or

(4) any institution chartered under the Farm Credit Act of 1971,

shall be fined not more than $1,000,000, imprisoned for not more than 5 years, or both.

(k)[1]

(l) Any service required or authorized to be made by the appropriate Federal banking agency under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the agency may by regulation or otherwise provide. Copies of any notice or order served by the agency upon any State depository institution or any institution-affiliated party, pursuant to the provisions of this section, shall also be sent to the appropriate State supervisory authority.

(m) In connection with any proceeding under subsection (b), (c)(1), or (e) of this section involving an insured State bank or any institution-affiliated party, the appropriate Federal banking agency shall provide the appropriate State supervisory authority with notice of the agency's intent to institute such a proceeding and the grounds therefor. Unless within such time as the Federal banking agency deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of the State supervisory authority, the agency may proceed as provided in this section. No bank or other party who is the subject of any notice or order issued by the agency under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

(n) In the course of or in connection with any proceeding under this section, or in connection with any claim for insured deposits or any examination or investigation under section 10(c), the agency conducting the proceeding, examination, or investigation or considering the claim for insured deposits, or any member or designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpenas and subpenas duces tecum; and such agency is empowered to make rules and regulations with respect to any such proceedings, claims, examinations, or investigations. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other

[1] The amendment made by section 363(3)(E)(i) of Public Law 111–203 strikes ", or as a savings association under subsection (b)(9) of this section" was executed by striking ", or as a savings association under subsection (b)(9)" in order to reflect the probable intent of Congress.

[1] So in law. Section 920(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 103 Stat. 488, amended section 8(k) by striking out all that follows "(k)".

place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any such agency or any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpena or subpena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured depository institution or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the depository institution or from its assets. Any person who willfully shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records, if in such person's power so to do, in obedience to the subpoena of the appropriate Federal banking agency, shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year or both.

(o) Whenever the insured status of a State member bank shall be terminated by action of the Board of Directors, the Board of Governors of the Federal Reserve System shall terminate its membership in the Federal Reserve System in accordance with the provisions of section 9 of the Federal Reserve Act, and whenever the insured status of a national member bank shall be so terminated the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation. Except as provided in subsection (c) or (d) of section 4, whenever a member bank shall cease to be a member of the Federal Reserve System, its status as an insured depository institution shall, without notice or other action by the Board of Directors, terminate on the date the bank shall cease to be a member of the Federal Reserve System, with like effect as if its insured status had been terminated on said date by the Board of Directors after proceedings under subsection (a) of this section. Whenever the insured status of an insured Federal savings bank shall be terminated by action of the Board of Directors, the Comptroller of the Currency shall appoint a receiver for the bank, which shall be the Corporation.

(p) Notwithstanding any other provision of law, whenever the Board of Directors shall determine that an insured depository institution is not engaged in the business of receiving deposits, other than trust funds as herein defined, the Corporation shall notify the depository institution that its insured status will terminate at the expiration of the first full assessment period following such notice. A finding by the Board of Directors that a depository institution is not engaged in the business of receiving deposits, other than such trust funds, shall be conclusive. The Board of Directors shall prescribe the notice to be given by the depository institution of such

termination and the Corporation may publish notice thereof. Upon the termination of the insured status of any such depository institution, its deposits shall thereupon cease to be insured and the depository institution shall thereafter be relieved of all future obligations to the Corporation, including the obligation to pay future assessments.

(q) Whenever the liabilities of an insured depository institution for deposits shall have been assumed by another insured depository institution or depository institutions, whether by way of merger, consolidation, or other statutory assumption, or pursuant to contract (1) the insured status of the depository institution whose liabilities are so assumed shall terminate on the date of receipt by the Corporation of satisfactory evidence of such assumption; (2) the separate insurance of all deposits so assumed shall terminate at the end of six months from the date such assumption takes effect or, in the case of any time deposit, the earliest maturity date after the six-month period. Where the deposits of an insured depository institution are assumed by a newly insured depository institution, the depository institution whose deposits are assumed shall not be required to pay any assessment with respect to the deposits which have been so assumed after the assessment period in which the assumption takes effect.

(r)(1) Except as otherwise specifically provided in this section, the provisions of this section shall be applied to foreign banks in accordance with this subsection.

(2) An act or practice outside the United States on the part of a foreign bank or any officer, director, employee, or agent thereof may not constitute the basis for any action by any officer or agency of the United States under this section, unless—

(A) such officer or agency alleges a belief that such act or practice has been, is, or is likely to be a cause of or carried on in connection with or in furtherance of an act or practice within any one or more States which, in and of itself, would constitute an appropriate basis for action by a Federal officer or agency under this section; or

(B) the alleged act or practice is one which, if proven, would, in the judgment of the Board of Directors, adversely affect the insurance risk assumed by the Corporation.

(3) In any case in which any action or proceeding is brought pursuant to an allegation under paragraph (2) of this subsection for the suspension or removal of any officer, director, or other person associated with a foreign bank, and such person fails to appear promptly as a party to such action or proceeding and to comply with any effective order or judgment therein, any failure by the foreign bank to secure his removal from any office he holds in such bank and from any further participation in its affairs shall, in and of itself, constitute grounds for termination of the insurance of the deposits in any branch of the bank.

(4) Where the venue of any judicial or administrative proceeding under this section is to be determined by reference to the location of the home office of a bank, the venue of such a proceeding with respect to a foreign bank having one or more branches or agencies in not more than one judicial district or other relevant jurisdiction shall be within such jurisdiction. Where such a bank

has branches or agencies in more than one such jurisdiction, the venue shall be in the jurisdiction within which the branch or branches or agency or agencies involved in the proceeding are located, and if there is more than one such jurisdiction, the venue shall be proper in any such jurisdiction in which the proceeding is brought or to which it may appropriately be transferred.

(5) Any service required or authorized to be made on a foreign bank may be made on any branch or agency located within any State, but if such service is in connection with an action or proceeding involving one or more branches or one or more agencies located in any State, service shall be made on at least one branch or agency so involved.

(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

(1) COMPLIANCE PROCEDURES REQUIRED.—Each appropriate Federal banking agency shall prescribe regulations requiring insured depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

(2) EXAMINATIONS OF DEPOSITORY INSTITUTION TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

(A) IN GENERAL.—Each examination of an insured depository institution by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured depository institution.

(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the appropriate Federal banking agency determines that an insured depository institution—

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such depository institution which was previously reported to the depository institution by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such depository institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

(t) AUTHORITY OF FDIC TO TAKE ENFORCEMENT ACTION AGAINST INSURED DEPOSITORY INSTITUTIONS AND INSTITUTION-AFFILIATED PARTIES.—

(1) RECOMMENDING ACTION BY APPROPRIATE FEDERAL BANKING AGENCY.—The Corporation, based on an examination of an insured depository institution by the Corporation or by the appropriate Federal banking agency or on other information, may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 7(j), this section, or section 18(j) with respect to any insured depository institution, any depository

institution holding company, or any institution-affiliated party. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) FDIC'S AUTHORITY TO ACT IF APPROPRIATE FEDERAL BANKING AGENCY FAILS TO FOLLOW RECOMMENDATION.—If the appropriate Federal banking agency does not, before the end of the 60-day period beginning on the date on which the agency receives the recommendation under paragraph (1), take the enforcement action recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the Corporation's concerns, the Corporation may take the recommended enforcement action if the Board of Directors determines, upon a vote of its members, that—

(A) the insured depository institution is in an unsafe or unsound condition;

(B) the institution or institution-affiliated party is engaging in unsafe or unsound practices, and the recommended enforcement action will prevent the institution or institution-affiliated party from continuing such practices;

(C) the conduct or threatened conduct (including any acts or omissions) poses a risk to the Deposit Insurance Fund, or may prejudice the interests of the institution's depositors or [1]

(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund, provided that such authority may not be used with respect to a depository institution holding company that is in generally sound condition and whose conduct does not pose a foreseeable and material risk of loss to the Deposit Insurance Fund; [2]

(3) EFFECT OF EXIGENT CIRCUMSTANCES.—

(A) AUTHORITY TO ACT.—The Corporation may, upon a vote of the Board of Directors, and after notice to the appropriate Federal banking agency, exercise its authority under paragraph (2) in exigent circumstances without regard to the time period set forth in paragraph (2).

(B) AGREEMENT ON EXIGENT CIRCUMSTANCES.—The Corporation shall, by agreement with the appropriate Federal banking agency, set forth those exigent circumstances in which the Corporation may act under subparagraph (A).

(4) CORPORATION'S POWERS; INSTITUTION'S DUTIES.—For purposes of this subsection—

(A) the Corporation shall have the same powers with respect to any insured depository institution and its affiliates as the appropriate Federal banking agency has with respect to the institution and its affiliates; and

(B) the institution and its affiliates shall have the same duties and obligations with respect to the Corpora-

[1] So in law. Probably should read "depositors; or". See amendment made by section 172(b)(2)(B) of Public Law 111–203.

[2] So in law. The semicolon at the end of subparagraph (D) probably should be a period. See amendment made by section 172(b)(2)(C) of Public Law 111–203.

tion as the institution and its affiliates have with respect to the appropriate Federal banking agency.

(5) REQUESTS FOR FORMAL ACTIONS AND INVESTIGATIONS.—

(A) SUBMISSION OF REQUESTS.—A regional office of an appropriate Federal banking agency (including a Federal Reserve bank) that requests a formal investigation of or civil enforcement action against an insured depository institution or institution-affiliated party shall submit the request concurrently to the chief officer of the appropriate Federal banking agency and to the Corporation.

(B) AGENCIES REQUIRED TO REPORT ON REQUESTS.—Each appropriate Federal banking agency shall report semiannually to the Corporation on the status or disposition of all requests under subparagraph (A), including the reasons for any decision by the agency to approve or deny such requests.

(6) POWERS AND DUTIES WITH RESPECT TO DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of exercising the backup authority provided in this subsection—

(A) the Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate Federal banking agency has with respect to the holding company and its affiliates; and

(B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate Federal banking agency.

(6)[1] REFERRAL TO BUREAU OF CONSUMER FINANCIAL PROTECTION.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, each appropriate Federal banking agency shall make a referral to the Bureau of Consumer Financial Protection when the Federal banking agency has a reasonable belief that a violation of an enumerated consumer law, as defined in the Consumer Financial Protection Act of 2010, has been committed by any insured depository institution or institution-affiliated party within the jurisdiction of that appropriate Federal banking agency.

(u) PUBLIC DISCLOSURES OF FINAL ORDERS AND AGREEMENTS.—

(1) IN GENERAL.—The appropriate Federal banking agency shall publish and make available to the public on a monthly basis—

(A) any written agreement or other written statement for which a violation may be enforced by the appropriate Federal banking agency, unless the appropriate Federal banking agency, in its discretion, determines that publication would be contrary to the public interest;

(B) any final order issued with respect to any administrative enforcement proceeding initiated by such agency under this section or any other law; and

[1] Two paragraph (6)s' so in law. The second paragraph (6) (relating to referral to bureau of consumer financial protection) was added by section 1090(1) of Public Law 111–203.

(C) any modification to or termination of any order or agreement made public pursuant to this paragraph.

(2) HEARINGS.—All hearings on the record with respect to any notice of charges issued by a Federal banking agency shall be open to the public, unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

(3) TRANSCRIPT OF HEARING.—A transcript that includes all testimony and other documentary evidence shall be prepared for all hearings commenced pursuant to subsection (i). A transcript of public hearings shall be made available to the public pursuant to section 552 of title 5, United States Code.

(4) DELAY OF PUBLICATION UNDER EXCEPTIONAL CIRCUMSTANCES.—If the appropriate Federal banking agency makes a determination in writing that the publication of a final order pursuant to paragraph (1)(B) would seriously threaten the safety and soundness of an insured depository institution, the agency may delay the publication of the document for a reasonable time.

(5) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The appropriate Federal banking agency may file any document or part of a document under seal in any administrative enforcement hearing commenced by the agency if disclosure of the document would be contrary to the public interest. A written report shall be made part of any determination to withhold any part of a document from the transcript of the hearing required by paragraph (2).

(6) RETENTION OF DOCUMENTS.—Each Federal banking agency shall keep and maintain a record, for a period of at least 6 years, of all documents described in paragraph (1) and all informal enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any administrative enforcement proceeding initiated by such agency under this section or any other laws.

(7) DISCLOSURES TO CONGRESS.—No provision of this subsection may be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee of the Congress.

(v) FOREIGN INVESTIGATIONS.—

(1) REQUESTING ASSISTANCE FROM FOREIGN BANKING AUTHORITIES.—In conducting any investigation, examination, or enforcement action under this Act, the appropriate Federal banking agency may—

(A) request the assistance of any foreign banking authority; and

(B) maintain an office outside the United States.

(2) PROVIDING ASSISTANCE TO FOREIGN BANKING AUTHORITIES.—

(A) IN GENERAL.—Any appropriate Federal banking agency may, at the request of any foreign banking authority, assist such authority if such authority states that the requesting authority is conducting an investigation to determine whether any person has violated, is violating, or is about to violate any law or regulation relating to bank-

ing matters or currency transactions administered or enforced by the requesting authority.

(B) INVESTIGATION BY FEDERAL BANKING AGENCY.—Any appropriate Federal banking agency may, in such agency's discretion, investigate and collect information and evidence pertinent to a request for assistance under subparagraph (A). Any such investigation shall comply with the laws of the United States and the policies and procedures of the appropriate Federal banking agency.

(C) FACTORS TO CONSIDER.—In deciding whether to provide assistance under this paragraph, the appropriate Federal banking agency shall consider—

(i) whether the requesting authority has agreed to provide reciprocal assistance with respect to banking matters within the jurisdiction of any appropriate Federal banking agency; and

(ii) whether compliance with the request would prejudice the public interest of the United States.

(D) TREATMENT OF FOREIGN BANKING AUTHORITY.—For purposes of any Federal law or appropriate Federal banking agency regulation relating to the collection or transfer of information by any appropriate Federal banking agency, the foreign banking authority shall be treated as another appropriate Federal banking agency.

(3) RULE OF CONSTRUCTION.—Paragraphs (1) and (2) shall not be construed to limit the authority of an appropriate Federal banking agency or any other Federal agency to provide or receive assistance or information to or from any foreign authority with respect to any matter.

(w) TERMINATION OF INSURANCE FOR MONEY LAUNDERING OR CASH TRANSACTION REPORTING OFFENSES.—

(1) IN GENERAL.—

(A) CONVICTION OF TITLE 18 OFFENSES.—

(i) DUTY TO NOTIFY.—If an insured State depository institution has been convicted of any criminal offense under section 1956 or 1957 of title 18, United States Code, the Attorney General shall provide to the Corporation a written notification of the conviction and shall include a certified copy of the order of conviction from the court rendering the decision.

(ii) NOTICE OF TERMINATION; PRETERMINATION HEARING.—After receipt of written notification from the Attorney General by the Corporation of such a conviction, the Board of Directors shall issue to the insured depository institution a notice of its intention to terminate the insured status of the insured depository institution and schedule a hearing on the matter, which shall be conducted in all respects as a termination hearing pursuant to paragraphs (3) through (5) of subsection (a).

(B) CONVICTION OF TITLE 31 OFFENSES.—If an insured State depository institution is convicted of any criminal offense under section 5322 or 5324 of title 31, United States Code, after receipt of written notification from the Attor-

ney General by the Corporation, the Board of Directors may initiate proceedings to terminate the insured status of the insured depository institution in the manner described in subparagraph (A).

(C) NOTICE TO STATE SUPERVISOR.—The Corporation shall simultaneously transmit a copy of any notice issued under this paragraph to the appropriate State financial institutions supervisor.

(2) FACTORS TO BE CONSIDERED.—In determining whether to terminate insurance under paragraph (1), the Board of Directors shall take into account the following factors:

(A) The extent to which directors or senior executive officers of the depository institution knew of, or were involved in, the commission of the money laundering offense of which the institution was found guilty.

(B) The extent to which the offense occurred despite the existence of policies and procedures within the depository institution which were designed to prevent the occurrence of any such offense.

(C) The extent to which the depository institution has fully cooperated with law enforcement authorities with respect to the investigation of the money laundering offense of which the institution was found guilty.

(D) The extent to which the depository institution has implemented additional internal controls (since the commission of the offense of which the depository institution was found guilty) to prevent the occurrence of any other money laundering offense.

(E) The extent to which the interest of the local community in having adequate deposit and credit services available would be threatened by the termination of insurance.

(3) NOTICE TO STATE BANKING SUPERVISOR AND PUBLIC.—When the order to terminate insured status initiated pursuant to this subsection is final, the Board of Directors shall—

(A) notify the State banking supervisor of any State depository institution described in paragraph (1), where appropriate, at least 10 days prior to the effective date of the order of termination of the insured status of such depository institution, including a State branch of a foreign bank; and

(B) publish notice of the termination of the insured status of the depository institution in the Federal Register.

(4) TEMPORARY INSURANCE OF PREVIOUSLY INSURED DEPOSITS.—Upon termination of the insured status of any State depository institution pursuant to paragraph (1), the deposits of such depository institution shall be treated in accordance with subsection (a)(7).

(5) SUCCESSOR LIABILITY.—This subsection shall not apply to a successor to the interests of, or a person who acquires, an insured depository institution that violated a provision of law described in paragraph (1), if the successor succeeds to the interests of the violator, or the acquisition is made, in good faith

and not for purposes of evading this subsection or regulations prescribed under this subsection.

(6) DEFINITION.—The term "senior executive officer" has the same meaning as in regulations prescribed under section 32(f) of this Act.

SEC. 9. [12 U.S.C. 1819] (a) IN GENERAL.—Upon the date of enactment of the Banking Act of 1933, the Corporation shall become a body corporate and as such shall have power—

First. To adopt and use a corporate seal.

Second. To have succession until dissolved by an Act of Congress.

Third. To make contracts.

Fourth. To sue and be sued, and complain and defend, by and through its own attorneys, in any court of law or equity, State or Federal.

Fifth. To appoint by its Board of Directors such officers and employees as are not otherwise provided for in this Act, to define their duties, fix their compensation, require bonds of them and fix the penalty thereof, and to dismiss at pleasure such officers or employees. Nothing in this or any other Act shall be construed to prevent the appointment and compensation as an officer or employee of the Corporation of any officer or employee of the United States in any board, commission, independent establishment, or executive department thereof.

Sixth. To prescribe, by its Board of Directors, bylaws not inconsistent with law, regulating the manner in which its general business may be conducted, and the privileges granted to it by law may be exercised and enjoyed.

Seventh. To exercise by its Board of Directors, or duly authorized officers or agents, all powers specifically granted by the provisions of this Act, and such incidental powers as shall be necessary to carry out the powers so granted.

Eighth. To make examinations of and to require information and reports from depository institutions, as provided in this Act.

Ninth. To act as receiver.

Tenth. To prescribe by its Board of Directors such rules and regulations as it may deem necessary to carry out the provisions of this Act or of any other law which it has the responsibility of administering or enforcing (except to the extent that authority to issue such rules and regulations has been expressly and exclusively granted to any other regulatory agency).

(b) AGENCY AUTHORITY.—

(1) STATUS.—The Corporation, in any capacity, shall be an agency of the United States for purposes of section 1345 of title 28, United States Code, without regard to whether the Corporation commenced the action.

(2) FEDERAL COURT JURISDICTION.—

(A) IN GENERAL.—Except as provided in subparagraph (D), all suits of a civil nature at common law or in equity to which the Corporation, in any capacity, is a party shall be deemed to arise under the laws of the United States.

(B) REMOVAL.—Except as provided in subparagraph (D), the Corporation may, without bond or security, remove any action, suit, or proceeding from a State court to

the appropriate United States district court before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the Corporation or the Corporation is substituted as a party.

(C) APPEAL OF REMAND.—The Corporation may appeal any order of remand entered by any United States district court.

(D) STATE ACTIONS.—Except as provided in subparagraph (E), any action—

(i) to which the Corporation, in the Corporation's capacity as receiver of a State insured depository institution by the exclusive appointment by State authorities, is a party other than as a plaintiff;

(ii) which involves only the preclosing rights against the State insured depository institution, or obligations owing to, depositors, creditors, or stockholders by the State insured depository institution; and

(iii) in which only the interpretation of the law of such State is necessary,

shall not be deemed to arise under the laws of the United States.

(E) RULE OF CONSTRUCTION.—Subparagraph (D) shall not be construed as limiting the right of the Corporation to invoke the jurisdiction of any United States district court in any action described in such subparagraph if the institution of which the Corporation has been appointed receiver could have invoked the jurisdiction of such court.

(3) SERVICE OF PROCESS.—The Board of Directors shall designate agents upon whom service of process may be made in any State, territory, or jurisdiction in which any insured depository institution is located.

(4) BONDS OR FEES.—The Corporation shall not be required to post any bond to pursue any appeal and shall not be subject to payments of any filing fees in United States district courts or courts of appeal.

SEC. 10. [12 U.S.C. 1820] (a) The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination. The Board of Directors of the Corporation shall determine and prescribe the manner in which its obligations shall be incurred and its expenses allowed and paid. The Corporation shall be entitled to the free use of the United States mails in the same manner as the executive departments of the Government. The Corporation with the consent of any Federal Reserve bank or of any board, commission, independent establishment, or executive department of the Government, including any field service thereof, may avail itself of the use of information, services, and facilities thereof in carrying out the provisions of this Act.

(b) EXAMINATIONS.—

(1) APPOINTMENT OF EXAMINERS AND CLAIMS AGENTS.—The Board of Directors shall appoint examiners and claims agents.

(2) REGULAR EXAMINATIONS.—Any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to examine—

(A) any insured State nonmember bank or insured State branch of any foreign bank;

(B) any depository institution which files an application with the Corporation to become an insured depository institution; and

(C) any insured depository institution in default,

whenever the Board of Directors determines an examination of any such depository institution is necessary.

(3) SPECIAL EXAMINATION OF ANY INSURED DEPOSITORY INSTITUTION.—

(A) IN GENERAL.—In addition to the examinations authorized under paragraph (2), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make any special examination of any insured depository institution or nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, whenever the Board of Directors determines that a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance purposes, or of such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) of the Financial Stability Act of 2010, for the purpose of implementing its authority to provide for orderly liquidation of any such company under title II of that Act, provided that such authority may not be used with respect to any such company that is in a generally sound condition.

(B) LIMITATION.—Before conducting a special examination of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Financial Stability Act of 2010, the Corporation shall review any available and acceptable resolution plan that the company has submitted in accordance with section 165(d) of that Act, consistent with the nonbinding effect of such plan, and available reports of examination, and shall coordinate to the maximum extent practicable with the Board of Governors, in order to minimize duplicative or conflicting examinations. [1]

(4) EXAMINATION OF AFFILIATES.—

(A) IN GENERAL.—In making any examination under paragraph (2) or (3), any examiner appointed under paragraph (1) shall have power, on behalf of the Corporation, to make such examinations of the affairs of any affiliate of any depository institution as may be necessary to disclose fully—

[1] Section 172(a)(2) of Public Law 111–203 amended section 10(b)(3) by striking "whenever the board of directors determines" and all that follows through the period and inserts new text in subparagraph (A) and a new subparagraph (B). The amendment probably should have been to strike "whenever the [B]oard of [D]irectors determines" and all that follows through the period and inserting such matter; however, such amendent was carried out to reflect the probable intent of Congress.

(i) the relationship between such depository institution and any such affiliate; and

(ii) the effect of such relationship on the depository institution.

(B) COMMITMENT BY FOREIGN BANKS TO ALLOW EXAMINATIONS OF AFFILIATES.—No branch or depository institution subsidiary of a foreign bank may become an insured depository institution unless such foreign bank submits a written binding commitment to the Board of Directors to permit any examination of any affiliate of such branch or depository institution subsidiary pursuant to subparagraph (A) to the extent determined by the Board of Directors to be necessary to carry out the purposes of this Act.

(5) EXAMINATION OF INSURED STATE BRANCHES.—The Board of Directors shall—

(A) coordinate examinations of insured State branches of foreign banks with examinations conducted by the Board of Governors of the Federal Reserve System under section 7(c)(1) of the International Banking Act of 1978; and

(B) to the extent possible, participate in any simultaneous examination of the United States operations of a foreign bank requested by the Board under such section.

(6) POWER AND DUTY OF EXAMINERS.—Each examiner appointed under paragraph (1) shall—

(A) have power to make a thorough examination of any insured depository institution or affiliate under paragraph (2), (3), (4), or (5); and

(B) shall make a full and detailed report of condition of any insured depository institution or affiliate examined to the Corporation.

(7) POWER OF CLAIM AGENTS.—Each claim agent appointed under paragraph (1) shall have power to investigate and examine all claims for insured deposits.

(c) In connection with examinations of insured depository institutions and any State nonmember bank, savings association, or other institution making application to become insured depository institutions, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, the appropriate Federal banking agency, or its designated representatives, are authorized to administer oaths and affirmations, and to examine and and to take and preserve testimony under oath as to any matter in respect to the affairs or ownership of any such bank or institution or affiliate thereof, and to exercise such other powers as are set forth in section 8(n) of this Act.

(d) ANNUAL ON-SITE EXAMINATIONS OF ALL INSURED DEPOSITORY INSTITUTIONS REQUIRED.—

(1) IN GENERAL.—The appropriate Federal banking agency shall, not less than once during each 12-month period, conduct a full-scope, on-site examination of each insured depository institution.

(2) EXAMINATIONS BY CORPORATION.—Paragraph (1) shall not apply during any 12-month period in which the Corpora-

tion has conducted a full-scope, on-site examination of the insured depository institution.

(3) STATE EXAMINATIONS ACCEPTABLE.—The examinations required by paragraph (1) may be conducted in alternate 12-month periods, as appropriate, if the appropriate Federal banking agency determines that an examination of the insured depository institution conducted by the State during the intervening 12-month period carries out the purpose of this subsection.

(4) 18-MONTH RULE FOR CERTAIN SMALL INSTITUTIONS.—Paragraphs (1), (2), and (3) shall apply with "18-month" substituted for "12-month" if—

(A) the insured depository institution has total assets of less than $500,000,000;

(B) the institution is well capitalized, as defined in section 38;

(C) when the institution was most recently examined, it was found to be well managed, and its composite condition—

(i) was found to be outstanding; or

(ii) was found to be outstanding or good, in the case of an insured depository institution that has total assets of not more than $100,000,000;

(D) the insured institution is not currently subject to a formal enforcement proceeding or order by the Corporation or the appropriate Federal banking agency; and

(E) no person acquired control of the institution during the 12-month period in which a full-scope, on-site examination would be required but for this paragraph.

(5) CERTAIN GOVERNMENT-CONTROLLED INSTITUTIONS EXEMPTED.—Paragraph (1) does not apply to—

(A) any institution for which the Corporation is conservator; or

(B) any bridge depository institution, none of the voting securities of which are owned by a person or agency other than the Corporation .

(6) COORDINATED EXAMINATIONS.—To minimize the disruptive effects of examinations on the operations of insured depository institutions—

(A) each appropriate Federal banking agency shall, to the extent practicable and consistent with principles of safety and soundness and the public interest—

(i) coordinate examinations to be conducted by that agency at an insured depository institution and its affiliates;

(ii) coordinate with the other appropriate Federal banking agencies in the conduct of such examinations;

(iii) work to coordinate with the appropriate State bank supervisor—

(I) the conduct of all examinations made pursuant to this subsection; and

(II) the number, types, and frequency of reports required to be submitted to such agencies and supervisors by insured depository institutions,

and the type and amount of information required to be included in such reports; and

(iv) use copies of reports of examinations of insured depository institutions made by any other Federal banking agency or appropriate State bank supervisor to eliminate duplicative requests for information; and

(B) not later than 2 years after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, the Federal banking agencies shall jointly establish and implement a system for determining which one of the Federal banking agencies or State bank supervisors [1] shall be the lead agency responsible for managing a unified examination of each insured depository institution and its affiliates, as required by this subsection.

(7) SEPARATE EXAMINATIONS PERMITTED.—Notwithstanding paragraph (6), each appropriate Federal banking agency may conduct a separate examination in an emergency or under other exigent circumstances, or when the agency believes that a violation of law may have occurred.

(8) REPORT.—At the time the system provided for in paragraph (6) is established, the Federal banking agencies shall submit a joint report describing the system to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives. Thereafter, the Federal banking agencies shall annually submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives regarding the progress of the agencies in implementing the system and indicating areas in which enhancements to the system, including legislature improvements, would be appropriate.

(9) STANDARDS FOR DETERMINING ADEQUACY OF STATE EXAMINATIONS.—The Federal Financial Institutions Examination Council shall issue guidelines establishing standards to be used at the discretion of the appropriate Federal banking agency for purposes of making a determination under paragraph (3).

(10) AGENCIES AUTHORIZED TO INCREASE MAXIMUM ASSET AMOUNT OF INSTITUTIONS FOR CERTAIN PURPOSES.—At any time after the end of the 2-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994, the appropriate Federal banking agency, in the agency's discretion, may increase the maximum amount limitation contained in paragraph (4)(C)(ii), by regulation, from $100,000,000 to an amount not to exceed $500,000,000 for purposes of such paragraph, if the agency determines that the greater amount would be consistent with the

[1] Section 2244(b) of P.L. 104–208 provides that "[s]ection 10(d)(6)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)(6)(B)) is amended by inserting 'or State bank supervisors' after 'one of the Federal agencies'". The amendment probably should have been to insert after "one of the Federal banking agencies".

principles of safety and soundness for insured depository institutions.

(e) EXAMINATION FEES.—

(1) REGULAR AND SPECIAL EXAMINATIONS OF DEPOSITORY INSTITUTIONS.—The cost of conducting any regular examination or special examination of any depository institution under subsection (b)(2), (b)(3), or (d) or of any entity described in section 3(q)(2) may be assessed by the Corporation against the institution or entity to meet the expenses of the Corporation in carrying out such examinations.

(2) EXAMINATION OF AFFILIATES.—The cost of conducting any examination of any affiliate of any insured depository institution under subsection (b)(4) may be assessed by the Corporation against each affiliate which is examined to meet the Corporation's expenses in carrying out such examination.

(3) ASSESSMENT AGAINST DEPOSITORY INSTITUTION IN CASE OF AFFILIATE'S REFUSAL TO PAY.—

(A) IN GENERAL.—Subject to subparagraph (B), if any affiliate of any insured depository institution—

(i) refuses to pay any assessment under paragraph (2); or

(ii) fails to pay any such assessment before the end of the 60-day period beginning on the date the affiliate receives notice of the assessment,

the Corporation may assess such cost against, and collect such cost from, the depository institution.

(B) AFFILIATE OF MORE THAN 1 DEPOSITORY INSTITUTION.—If any affiliate referred to in subparagraph (A) is an affiliate of more than 1 insured depository institution, the assessment under subparagraph (A) may be assessed against the depository institutions in such proportions as the Corporation determines to be appropriate.

(4) CIVIL MONEY PENALTY FOR AFFILIATE'S REFUSAL TO COOPERATE.—

(A) PENALTY IMPOSED.—If any affiliate of any insured depository institution—

(i) refuses to permit an examiner appointed by the Board of Directors under subsection (b)(1) to conduct an examination; or

(ii) refuses to provide any information required to be disclosed in the course of any examination,

the depository institution shall forfeit and pay a penalty of not more than $5,000 for each day that any such refusal continues.

(B) ASSESSMENT AND COLLECTION.—Any penalty imposed under subparagraph (A) shall be assessed and collected by the Corporation in the manner provided in section 8(i)(2).

(5) DEPOSITS OF EXAMINATION ASSESSMENT.—Amounts received by the Corporation under this subsection (other than paragraph (4)) may be deposited in the manner provided in section 13.

(f) PRESERVATION OF AGENCY RECORDS.—

(1) IN GENERAL.—A Federal banking agency may cause any and all records, papers, or documents kept by the agency or in the possession or custody of the agency to be—

(A) photographed or microphotographed or otherwise reproduced upon film; or

(B) preserved in any electronic medium or format which is capable of—

(i) being read or scanned by computer; and

(ii) being reproduced from such electronic medium or format by printing any other form of reproduction of electronically stored data.

(2) TREATMENT AS ORIGINAL RECORDS.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

(3) AUTHORITY OF THE FEDERAL BANKING AGENCIES.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be preserved in such manner as the Federal banking agency shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of as the Federal banking agency may direct.

(g) AUTHORITY TO PRESCRIBE REGULATIONS AND DEFINITIONS.—Except to the extent that authority under this Act is conferred on any of the Federal banking agencies other than the Corporation, the Corporation may—

(1) prescribe regulations to carry out this Act; and

(2) by regulation define terms as necessary to carry out this Act.

(h) COORDINATION OF EXAMINATION AUTHORITY.—

(1) STATE BANK SUPERVISORS OF HOME AND HOST STATES.—

(A) HOME STATE OF BANK.—The appropriate State bank supervisor of the home State of an insured State bank has authority to examine and supervise the bank.

(B) HOST STATE BRANCHES.—The State bank supervisor of the home State of an insured State bank and any State bank supervisor of an appropriate host State shall exercise its respective authority to supervise and examine the branches of the bank in a host State in accordance with the terms of any applicable cooperative agreement between the home State bank supervisor and the State bank supervisor of the relevant host State.

(C) SUPERVISORY FEES.—Except as expressly provided in a cooperative agreement between the State bank supervisors of the home State and any host State of an insured State bank, only the State bank supervisor of the home State of an insured State bank may levy or charge State supervisory fees on the bank.

(2) HOST STATE EXAMINATION.—

(A) IN GENERAL.—With respect to a branch operated in a host State by an out-of-State insured State bank that resulted from an interstate merger transaction approved under section 44, or that was established in such State pursuant to section 5155(g) of the Revised Statutes of the United States, the third undesignated paragraph of section 9 of the Federal Reserve Act or section 18(d)(4) of this Act, the appropriate State bank supervisor of such host State may—

(i) with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of such home State, examine such branch for the purpose of determining compliance with host State laws that are applicable pursuant to section 24(j), including those that govern community reinvestment, fair lending, and consumer protection; and

(ii) if expressly permitted under and subject to the terms of a cooperative agreement with the State bank supervisor of the bank's home State or if such out-of-State insured State bank has been determined to be in a troubled condition by either the State bank supervisor of the bank's home State or the bank's appropriate Federal banking agency, participate in the examination of the bank by the State bank supervisor of the bank's home State to ascertain that the activities of the branch in such host State are not conducted in an unsafe or unsound manner.

(B) NOTICE OF DETERMINATION.—

(i) IN GENERAL.—The State bank supervisor of the home State of an insured State bank shall notify the State bank supervisor of each host State of the bank if there has been a final determination that the bank is in a troubled condition.

(ii) TIMING OF NOTICE.—The State bank supervisor of the home State of an insured State bank shall provide notice under clause (i) as soon as is reasonably possible, but in all cases not later than 15 business days after the date on which the State bank supervisor has made such final determination or has received written notification of such final determination.

(3) HOST STATE ENFORCEMENT.—If the State bank supervisor of a host State determines that a branch of an out-of-State insured State bank is violating any law of the host State that is applicable to such branch pursuant to section 24(j), including a law that governs community reinvestment, fair lending, or consumer protection, the State bank supervisor of the host State or, to the extent authorized by the law of the host State, a host State law enforcement officer may, with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of the bank's home State, undertake such enforcement actions and proceedings as would

be permitted under the law of the host State as if the branch were a bank chartered by that host State.

(4) COOPERATIVE AGREEMENT.—

(A) IN GENERAL.—The State bank supervisors from 2 or more States may enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

(B) DEFINITION.—For purposes of this subsection, the term "cooperative agreement" means a written agreement that is signed by the home State bank supervisor and the host State bank supervisor to facilitate State regulatory supervision of State banks, and includes nationwide or multi-State cooperative agreements and cooperative agreements solely between the home State and host State.

(C) RULE OF CONSTRUCTION.—Except for State bank supervisors, no provision of this subsection relating to such cooperative agreements shall be construed as limiting in any way the authority of home State and host State law enforcement officers, regulatory supervisors, or other officials that have not signed such cooperative agreements to enforce host State laws that are applicable to a branch of an out-of-State insured State bank located in the host State pursuant to section 24(j).

(5) FEDERAL REGULATORY AUTHORITY.—No provision of this subsection shall be construed as limiting in any way the authority of any Federal banking agency.

(6) STATE TAXATION AUTHORITY NOT AFFECTED.—No provision of this subsection shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(7) DEFINITIONS.—For purpose of this section, the following definitions shall apply:

(A) HOST STATE, HOME STATE, OUT-OF-STATE BANK.—The terms "host State", "home State", and "out-of-State bank" have the same meanings as in section 44(g).

(B) STATE SUPERVISORY FEES.—The term "State supervisory fees" means assessments, examination fees, branch fees, license fees, and all other fees that are levied or charged by a State bank supervisor directly upon an insured State bank or upon branches of an insured State bank.

(C) TROUBLED CONDITION.—Solely for purposes of paragraph (2)(B), an insured State bank has been determined to be in "troubled condition" if the bank—

(i) has a composite rating, as determined in its most recent report of examination, of 4 or 5 under the Uniform Financial Institutions Ratings System;

(ii) is subject to a proceeding initiated by the Corporation for termination or suspension of deposit insurance; or

(iii) is subject to a proceeding initiated by the State bank supervisor of the bank's home State to vacate, revoke, or terminate the charter of the bank, or to liquidate the bank, or to appoint a receiver for the bank.

(D) FINAL DETERMINATION.—For purposes of paragraph (2)(B), the term "final determination" means the transmittal of a report of examination to the bank or transmittal of official notice of proceedings to the bank.

(i) FLOOD INSURANCE COMPLIANCE BY INSURED DEPOSITORY INSTITUTIONS.—

(1) EXAMINATIONS.—The appropriate Federal banking agency shall, during each scheduled on-site examination required by this section, determine whether the insured depository institution is complying with the requirements of the national flood insurance program.

(2) REPORT.—

(A) REQUIREMENT.—Not later than 1 year after the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994 and biennially thereafter for the next 4 years, each appropriate Federal banking agency shall submit a report to the Congress on compliance by insured depository institutions with the requirements of the national flood insurance program.

(B) CONTENTS.—Each report submitted under this paragraph shall include a description of the methods used to determine compliance, the number of institutions examined during the reporting year, a listing and total number of institutions found not to be in compliance, actions taken to correct incidents of noncompliance, and an analysis of compliance, including a discussion of any trends, patterns, and problems, and recommendations regarding reasonable actions to improve the efficiency of the examinations processes.

(j) CONSULTATION AMONG EXAMINERS.—

(1) IN GENERAL.—Each appropriate Federal banking agency shall take such action as may be necessary to ensure that examiners employed by the agency—

(A) consult on examination activities with respect to any depository institution; and

(B) achieve an agreement and resolve any inconsistencies in the recommendations to be given to such institution as a consequence of any examinations.

(2) EXAMINER-IN-CHARGE.—Each appropriate Federal banking agency shall consider appointing an examiner-in-charge with respect to a depository institution to ensure consultation on examination activities among all of the examiners of that agency involved in examinations of the institution.

(k)[1] ONE-YEAR RESTRICTIONS ON FEDERAL EXAMINERS OF FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—In addition to other applicable restrictions set forth in title 18, United States Code, the penalties set forth in paragraph (6) of this subsection shall apply to any person who—

(A) was an officer or employee (including any special Government employee) of a Federal banking agency or a Federal reserve bank;

(B) served 2 or more months during the final 12 months of his or her employment with such agency or entity as the senior examiner (or a functionally equivalent position) of a depository institution or depository institution holding company with continuing, broad responsibility for the examination (or inspection) of that depository institution or depository institution holding company on behalf of the relevant agency or Federal reserve bank; and

(C) within 1 year after the termination date of his or her service or employment with such agency or entity, knowingly accepts compensation as an employee, officer, director, or consultant from—

(i) such depository institution, any depository institution holding company that controls such depository institution, or any other company that controls such depository institution; or

(ii) such depository institution holding company or any depository institution that is controlled by such depository institution holding company.

(2) DEFINITIONS.—For purposes of this subsection—

(A) the term "depository institution" includes an uninsured branch or agency of a foreign bank, if such branch or agency is located in any State; and

(B) the term "depository institution holding company" includes any foreign bank or company described in section 8(a) of the International Banking Act of 1978.

(3) RULES OF CONSTRUCTION.—For purposes of this subsection, a foreign bank shall be deemed to control any branch or agency of the foreign bank, and a person shall be deemed to act as a consultant for a depository institution, depository institution holding company, or other company, only if such person directly works on matters for, or on behalf of, such depository institution, depository institution holding company, or other company.

(4) REGULATIONS.—

(A) IN GENERAL.—Each Federal banking agency shall prescribe rules or regulations to administer and carry out this subsection, including rules, regulations, or guidelines

[1] Subsection (k) was added by section 6303(b) of Public Law 108–458 (118 Stat. 3751). Subsection (d) of such section (118 Stat. 3754) provides:

(d) EFFECTIVE DATE.—Notwithstanding any other effective date established pursuant to this Act, subsection (a) shall become effective on the date of enactment of this Act, and the amendments made by subsections (b) and (c) shall become effective at the end of the 12-month period beginning on the date of enactment of this Act [December 17, 2004], whether or not final regulations are issued in accordance with the amendments made by this section as of that date of enactment.

to define the scope of persons referred to in paragraph (1)(B).

(B) CONSULTATION REQUIRED.—The Federal banking agencies shall consult with each other for the purpose of assuring that the rules and regulations issued by the agencies under subparagraph (A) are, to the extent possible, consistent, comparable, and practicable, taking into account any differences in the supervisory programs utilized by the agencies for the supervision of depository institutions and depository institution holding companies.

(5) WAIVER.—

(A) AGENCY AUTHORITY.—A Federal banking agency may grant a waiver, on a case by case basis, of the restriction imposed by this subsection to any officer or employee (including any special Government employee) of that agency, and the Board of Governors of the Federal Reserve System may grant a waiver of the restriction imposed by this subsection to any officer or employee of a Federal reserve bank, if the head of such agency certifies in writing that granting the waiver would not affect the integrity of the supervisory program of the relevant Federal banking agency.

(B) DEFINITION.—For purposes of this paragraph, the head of an agency is—

(i) the Comptroller of the Currency, in the case of the Office of the Comptroller of the Currency;

(ii) the Chairman of the Board of Governors of the Federal Reserve System, in the case of the Board of Governors of the Federal Reserve System; and

(iii) the Chairperson of the Board of Directors, in the case of the Corporation.

(6) PENALTIES.—

(A) IN GENERAL.—In addition to any other administrative, civil, or criminal remedy or penalty that may otherwise apply, whenever a Federal banking agency determines that a person subject to paragraph (1) has become associated, in the manner described in paragraph (1)(C), with a depository institution, depository institution holding company, or other company for which such agency serves as the appropriate Federal banking agency, the agency shall impose upon such person one or more of the following penalties:

(i) INDUSTRY-WIDE PROHIBITION ORDER.—The Federal banking agency shall serve a written notice or order in accordance with and subject to the provisions of section 8(e)(4) for written notices or orders under paragraph (1) or (2) of section 8(e), upon such person of the intention of the agency—

(I) to remove such person from office or to prohibit such person from further participation in the conduct of the affairs of the depository institution, depository institution holding company, or other company for a period of up to 5 years; and

(II) to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any insured depository institution for a period of up to 5 years.

(ii) CIVIL MONETARY PENALTY.—The Federal banking agency may, in an administrative proceeding or civil action in an appropriate United States district court, impose on such person a civil monetary penalty of not more than $250,000. Any administrative proceeding under this clause shall be conducted in accordance with section 8(i). In lieu of an action by the Federal banking agency under this clause, the Attorney General of the United States may bring a civil action under this clause in the appropriate United States district court.

(B) SCOPE OF PROHIBITION ORDER.—Any person subject to an order issued under subparagraph (A)(i) shall be subject to paragraphs (6) and (7) of section 8(e) in the same manner and to the same extent as a person subject to an order issued under such section.

(C) DEFINITIONS.—Solely for purposes of this paragraph, the "appropriate Federal banking agency" for a company that is not a depository institution or depository institution holding company shall be the Federal banking agency on whose behalf the person described in paragraph (1) performed the functions described in paragraph (1)(B).

SEC. 11. [12 U.S.C. 1821] (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 Act.

(B) NET AMOUNT OF INSURED DEPOSIT.—

(i) IN GENERAL.—Subject to clause (ii), the net amount 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 7(i) or any funds described in section 7(i)(3).

[**Note:** Effective on January 1, 2013, section 343(a)(3) of Public Law 111–203 (relating to a prospective repeal of amendments made by paragraph (1) of such section) provides for amendments to subparagraphs (B) and (C) of section 11(a)(1). Upon such date, subparagraphs (B) and (C) reads as follows:]

(B) NET AMOUNT OF INSURED DEPOSIT.—The net amount 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).

(C) AGGREGATION OF DEPOSITS.—For the purpose of determining the net amount due to any depositor under subparagraph (B), 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 7(i) or any funds described in section 7(i)(3).

(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 38.

(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 the Internal Revenue Code of 1986.

(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 Act, 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 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 Act. 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 in-

surance amount (as defined in section 207(k) of the Federal Credit Union Act) 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 the date this subparagraph takes effect under the Federal Deposit Insurance Reform Act of 2005.

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 (ii) 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 207(k)(3) of the Federal Credit Union Act, 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 Act 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 3(c) of the Indian Financing Act of 1974) or agency thereof having official cus-

tody 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 bank[2] 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 Act 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 the Internal Revenue Code of 1986;

(ii)[3] subject to the exception contained in paragraph (1)(D)(ii), any eligible deferred compensation plan described in section 457 of such Code; and

(iii) any individual account plan defined in section 3(34) of the Employee Retirement Income Security Act, and any plan described in section 401(d) of the Internal Revenue Code of 1986, 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 13(a).

(B) USES.—The Deposit Insurance Fund shall be available to the Corporation for use with respect to insured de-

[2] So in law. Probably should be "depository institution".

[3] Paragraph (3)(A) (as amended by section 311(b)(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991) shall apply with respect to plans described in clause (ii) of such paragraph as of December 19, 1991 (see section 311(c)(3)(B) of such Act, 105 Stat. 2366).

pository institutions the deposits of which are insured by the Deposit Insurance Fund.

(C) LIMITATION ON USE.—Notwithstanding any provision of law other than section 13(c)(4)(G), 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 Act) of—

(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 13 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 13(f)(8)(B)) 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 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 3(3) of the Employee Retirement Income Security Act of 1974; and

(II) includes any plan described in section 401(d) of the Internal Revenue Code of 1986.

(b) For the purposes of this Act 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 38(b)) 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 38(b)), 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 38(f)(2)(A);

(iii) fails to submit a capital restoration plan acceptable to that agency within the time prescribed under section 38(e)(2)(D); or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 38(e)(2).

(L) The institution—

(i) is critically undercapitalized, as defined in section 38(b); 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, United States Code, or section 5322 or 5324 of title 31, United States Code.

(6) APPOINTMENT BY COMPTROLLER OF THE CURRENCY [1].—

(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.

[1] The amendment to strike "DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION" and inserting "COMPTROLLER OF THE CURRENCY" in the heading of paragraph (6) by section 363(5)(A)(iii)(I) of Public Law 111–203 was carried out to reflect the probable intent of Congress. The first word for each of the striken and inserted words probably should have been set in all small caps type instead these words were set with inital letter casing in uppercase (i.e. initial letter show in caps and the remaining letters in small caps).

(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 38.—

(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 38.

(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 38(f)(2)(A)(iii).

(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, accountholder, 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 40), 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 40), 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 institution (other than a new depository institution or a bridge depository institution established pursuant to subsection (m) or (n)) 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 Act.

(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 8(n), 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 21A(b)(4), 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 10(c) of this Act.

(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 Act and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this Act,

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, 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, United States Code.

(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 13(e) 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 13(e)(2), 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 Act.

(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 receiver of the principal amount of all creditor claims.

(11) DEPOSITOR PREFERENCE.—

(A) IN GENERAL.—Subject to section 5(e)(2)(C), 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, United States Code.

(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 13(d)(1), 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 21A(b)(14) of the Federal Home Loan Bank Act), 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 1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) 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, United States Code.

(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 section 11, 12, or 13); 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 receiver's discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or re-

ceiver'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) 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) 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).

(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 13(e)) 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); 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 Act (other than subsection (d)(9) of this section and section 13(e)), 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);

(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) 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 5242 of the Revised Statutes of the United States 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 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 security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such settlement is in connection with any agreement or transaction

referred to in subclauses (I) through (XII) (other than subclause (II));

(V) means any margin loan;

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

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

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

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

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

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

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any 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 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, 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), 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 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 measures of economic or financial risk or value;

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

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

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

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, 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.

(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)[1] 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, United States Code.

(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (other than subsections (d)(9) and (e)(10) of this section, and section 13(e) of this Act), 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);

(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 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 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.

[1] Margin for clause (ix) so in law.

(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term "walkaway clause" means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party's status as a nondefaulting party in connection with the insolvency of an insured 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 32).

(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 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(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 paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corpora-

tion Improvement Act of 1991, 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 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 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.—[1] 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

[1] The casing for the last three words in the heading for subparagraph (C), as amended by section 1604(a)(2) of Public Law 110–289, probably should not be initial caps and lowercase. Also, the matter proposed to be struck by such amendment was executed by striking the text in the head as it appeared in all small caps in order to reflect the probable intent of Congress.

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 15, 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, United States Code.

(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 38) 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 13 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, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(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), 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 approve 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 relat-

ing 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, United States Code, 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) 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 13, 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), if the Corporation is appointed pursuant to subsection (c)(3), or determines not to invoke the authority conferred in subsection (c)(4), 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 13 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) and section 13(c), 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 13.

(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 13,

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 obligations 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 Act 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.

(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 Corporation 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, 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, shall issue to the depository institution[1] a certificate of authority to commence business, and thereupon the depository institution[1] 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 institu-

[1] Section 1604(a)(4)(E) of Public Law 110–289 amended section 11(m) of the Federal Deposit Insurance Act by striking "the bank" each place such term appears and inserting "the insured depository institution" while subparagraph (J)(ii) of section 1604(a)(4) of such Public Law amended section 11(m)(16) by striking "the bank" each place such term appears and inserting "the depository institution". This version reflects the latter, more specific, amendment.

tion 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, may require, and shall certify to the Comptroller of the Currency, 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 5220 and 5221 of the Revised Statutes 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 depository institutions 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 banks 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 banks 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 banks 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 Act.

(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 depository institutions, 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 banks 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 banks 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 banks 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 BANK 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 BANKS.—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 discretion, of a bridge depository institution; and

(iii) waive any requirement established under section 5145, 5146, 5147, 5148, or 5149 of the Revised Statutes (relating to directors of national banks) or section 31 of the Banking Act of 1933 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 ac-

quired 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 approval 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 13(e)(2), 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 10B(b) of the Federal Reserve Act.

(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, United States Code, 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 13(c) 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 18(c) 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 insti-

tution, 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 13(f)(2).

(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,,[1] 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,,[1] 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 13(f), 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 13(f).

(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)—

[1] Two commas in subparagraphs (B) and (C) of paragraph (11) are so in law. See amendment made by section 1604(a)(5)(R) of Public Law 110–289.

(i) the Board of Directors may, in its discretion, dissolve a bridge depository institution 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 7(a)(2) 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]

(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

[1] Section 20(b)(4) of the Resolution Trust Corporation Completion Act (P.L. 103–204; 107 Stat. 2405) amended this subsection by striking the heading and inserting "(p) CERTAIN SALES OF ASSETS PROHIBITED.—". The amendment probably should have included striking the subsection designation.

amount of which exceed $1,000,000, to such failed institution;

(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, 1014, 1032, 1341, 1343, or 1344 of title 18, United States Code, 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) 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.

(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 pro-

viding services to an insured depository institution 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, United States Code, 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 8(v); 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, United States Code).

(2) DEFINITIONS.—For purposes of this subsection:

(A) COVERED AGENCY.—The term "covered agency" means any of the following:

(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 General Accounting Office.

(vii)[1] Federal 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 40(p)); 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), in selling any real property (other than eligible residential property and eligible condominium property, as such terms are defined in section 40(p)) 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

[1] So in law. There is no clause (vi) in paragraph (2)(A).

section 103 of the Stewart B. McKinney Homeless Assistance Act) 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 nonprofit 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 103 of the Stewart B. McKinney Homeless Assistance Act) 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 40(p).

SEC. 11A. [12 U.S.C. 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 [1] as provided in section 21A of the Federal Home Loan Bank Act, all assets and liabilities of the Federal Savings and Loan Insurance Corporation on the day before the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 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.

[1] The format for the heading provided for in the amendment in section 8(a)(15)(A) of Public Law 109–173 (119 Stat. 3612) is boldface type instead of lightface cap and small caps as follows: "LIABILITIES.—". Amendment executed to reflect the probable intent of Congress.

(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 Act.

(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 Act.

(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 21B of the Federal Home Loan Bank Act or the Financing Corporation pursuant to section 21 of such Act.

(3) Amounts borrowed by the Financing Corporation pursuant to section 21 of the Federal Home Loan Bank Act.

(c) TREASURY BACKUP.—

(1) IN GENERAL.—If the funds described in subsections (a) and (b) are insufficient to satisfy the liabilities of the FSLIC Resolution Fund, the Secretary of the Treasury shall pay to the Fund such amounts as may be necessary, as determined by the Corporation and the Secretary, for FSLIC Resolution Fund purposes.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of the Treasury, without fiscal year limitation, such sums as may be necessary to carry out this section.

(d) LEGAL PROCEEDINGS.—Any judgment resulting from a proceeding to which the Federal Savings and Loan Insurance Corporation was a party prior to its dissolution or which is initiated against the Corporation with respect to the Federal Savings and Loan Insurance Corporation or with respect to the FSLIC Resolution Fund shall be limited to the assets of the FSLIC Resolution Fund.

(e) TRANSFER OF NET PROCEEDS FROM SALE OF RTC ASSETS.—The FSLIC Resolution Fund shall transfer to the Resolution Funding Corporation any net proceeds from the sale of assets acquired

from the Resolution Trust Corporation upon the termination of such Corporation pursuant to section 21A of the Federal Home Loan Bank Act.

(f) DISSOLUTION.—The FSLIC Resolution Fund shall be dissolved upon satisfaction of all debts and liabilities and sale of all assets. Upon dissolution any remaining funds shall be paid into the Treasury. Any administrative facilities and supplies, including offices and office supplies, shall be transferred to the Corporation for use by and to be held as assets of the Deposit Insurance Fund.

SEC. 12. [12 U.S.C. 1822] (a) BOND NOT REQUIRED; AGENTS; FEE.—The Corporation as receiver of an insured depository institution or branch of a foreign bank shall not be required to furnish bond and may appoint an agent or agents to assist it in its duties as such receiver. All fees, compensation, and expenses of liquidation and administration shall be fixed by the Corporation, and may be paid by it out of funds coming into its possession as such receiver.

(b) Payment of an insured deposit to any person by the Corporation shall discharge the Corporation, and payment of a transferred deposit to any person by the new depository institution or by an insured depository institution in which a transferred deposit has been made available shall discharge the Corporation and such new depository institution or other insured depository institution, to the same extent that payment to such person by the depository institution in default would have discharged it from liability for the insured deposit.

(c) Except as otherwise prescribed by the Board of Directors, neither the Corporation nor such new depository institution or other insured depository institution shall be required to recognize as the owner of any portion of a deposit appearing on the records of the depository institution in default under a name other than that of the claimant, any person whose name or interest as such owner is not disclosed on the records of such depository institution in default as part owner of said deposit, if such recognition would increase the aggregate amount of the insured deposits in such depository institution in default.

(d) The Corporation may withhold payment of such portion of the insured deposit of any depositor in a depository institution in default as may be required to provide for the payment of any liability of such depositor to the depository institution in default or its receiver, which is not offset against a claim due from such depository institution, pending the determination and payment of such liability by such depositor or any other person liable therefor.

(e) DISPOSITION OF UNCLAIMED DEPOSITS.—

(1) NOTICES.—

(A) FIRST NOTICE.—Within 30 days after the initiation of the payment of insured deposits under section 11(f), the Corporation shall provide written notice to all insured depositors that they must claim their deposit from the Corporation, or if the deposit has been transferred to another institution, from the transferee institution.

(B) SECOND NOTICE.—A second notice containing this information shall be mailed by the Corporation to all insured depositors who have not responded to the first no-

tice, 15 months after the Corporation initiates such payment of insured depositors.

(C) ADDRESS.—The notices shall be mailed to the last known address of the depositor appearing on the records of the insured depository institution in default.

(2) TRANSFER TO APPROPRIATE STATE.—If an insured depositor fails to make a claim for his, her, or its insured or transferred deposit within 18 months after the Corporation initiates the payment of insured deposits under section 11(f)—

(A) any transferee institution shall refund the deposit to the Corporation, and all rights of the depositor against the transferee institution shall be barred; and

(B) with the exception of United States deposits, the Corporation shall deliver the deposit to the custody of the appropriate State as unclaimed property, unless the appropriate State declines to accept custody. Upon delivery to the appropriate State, all rights of the depositor against the Corporation with respect to the deposit shall be barred and the Corporation shall be deemed to have made payment to the depositor for purposes of section 11(g)(1).

(3) REFUSAL OF APPROPRIATE STATE TO ACCEPT CUSTODY.—If the appropriate State declines to accept custody of the deposit tendered pursuant to paragraph (2)(B), the deposit shall not be delivered to any State, and the insured depositor shall claim the deposit from the Corporation before the receivership is terminated, or all rights of the depositor with respect to such deposit shall be barred.

(4) TREATMENT OF UNITED STATES DEPOSITS.—If the deposit is a United States deposit it shall be delivered to the Secretary of the Treasury for deposit in the general fund of the Treasury. Upon delivery to the Secretary of the Treasury, all rights of the depositor against the Corporation with respect to the deposit shall be barred and the Corporation shall be deemed to have made payment to the depositor for purposes of section 11(g)(1).

(5) REVERSION.—If a depositor does not claim the deposit delivered to the custody of the appropriate State pursuant to paragraph (2)(B) within 10 years of the date of delivery, the deposit shall be immediately refunded to the Corporation and become its property. All rights of the depositor against the appropriate State with respect to such deposit shall be barred as of the date of the refund to the Corporation.

(6) DEFINITIONS.—For purposes of this subsection—

(A) the term "transferee institution" means the insured depository institution in which the Corporation has made available a transferred deposit pursuant to section 11(f)(1);

(B) the term "appropriate State" means the State to which notice was mailed under paragraph (1)(C), except that if the notice was not mailed to an address that is within a State it shall mean the State in which the depository institution in default has its main office; and

(C) the term "United States deposit" means an insured or transferred deposit for which the deposit records of the depository institution in default disclose that title to the

deposit is held by the United States, any department, agency, or instrumentality of the Federal Government, or any officer or employee thereof in such person's official capacity.

(f) CONFLICT OF INTEREST.—

(1) APPLICABILITY OF OTHER PROVISIONS.—

(A) CLARIFICATION OF STATUS OF CORPORATION.—The Corporation is, and has been since its creation, an agency for purposes of title 18, United States Code.

(B) TREATMENT OF CONTRACTORS.—Any individual who, pursuant to a contract or any other arrangement, performs functions or activities of the Corporation, under the direct supervision of an officer or employee of the Corporation, shall be deemed to be an employee of the Corporation for purposes of title 18, United States Code and this Act. Any individual who, pursuant to a contract or any other agreement, acts for or on behalf of the Corporation, and who is not otherwise treated as an officer or employee of the United States for purposes of title 18, United States Code, shall be deemed to be a public official for purposes of section 201 of title 18, United States Code.

(2) REGULATIONS CONCERNING EMPLOYEE CONDUCT.—The officers and employees of the Corporation and those individuals under contract to the Corporation who are deemed, under paragraph (1)(B), to be employees of the Corporation for purposes of title 18, United States Code, shall be subject to the ethics and conflict of interest rules and regulations issued by the Office of Government Ethics, including those concerning employee conduct, financial disclosure, and post-employment activities. The Board of Directors may prescribe regulations that supplement such rules and regulations only with the concurrence of that Office.

(3) REGULATIONS CONCERNING INDEPENDENT CONTRACTORS.—The Board of Directors shall prescribe regulations applicable to those independent contractors who are not deemed, under paragraph (1)(B), to be employees of the Corporation for purposes of title 18, United States Code, governing conflicts of interest, ethical responsibilities, and the use of confidential information consistent with the goals and purposes of titles 18 and 41, United States Code. Any such regulations shall be in addition to, and not in lieu of, any other statute or regulation which may apply to the conduct of such independent contractors.

(4) DISAPPROVAL OF CONTRACTORS.—

(A) IN GENERAL.—The Board of Directors shall prescribe regulations establishing procedures for ensuring that any individual who is performing, directly or indirectly, any function or service on behalf of the Corporation meets minimum standards of competence, experience, integrity, and fitness.

(B) PROHIBITION FROM SERVICE ON BEHALF OF CORPORATION.—The procedures established under subparagraph (A) shall provide that the Corporation shall prohibit

any person who does not meet the minimum standards of competence, experience, integrity, and fitness from—

(i) entering into any contract with the Corporation; or

(ii) becoming employed by the Corporation or otherwise performing any service for or on behalf of the Corporation.

(C) INFORMATION REQUIRED TO BE SUBMITTED.—The procedures established under subparagraph (A) shall require that any offer submitted to the Corporation by any person under this section and any employment application submitted to the Corporation by any person shall include—

(i) a list and description of any instance during the 5 years preceding the submission of such application in which the person or a company under such person's control defaulted on a material obligation to an insured depository institution; and

(ii) such other information as the Board may prescribe by regulation.

(D) SUBSEQUENT SUBMISSIONS.—

(i) IN GENERAL.—No offer submitted to the Corporation may be accepted unless the offeror agrees that no person will be employed, directly or indirectly, by the offeror under any contract with the Corporation unless—

(I) all applicable information described in subparagraph (C) with respect to any such person is submitted to the Corporation; and

(II) the Corporation does not disapprove of the direct or indirect employment of such person.

(ii) FINALITY OF DETERMINATION.—Any determination made by the Corporation pursuant to this paragraph shall be in the Corporation's sole discretion and shall not be subject to review.

(E) PROHIBITION REQUIRED IN CERTAIN CASES.—The standards established under subparagraph (A) shall require the Corporation to prohibit any person who has—

(i) been convicted of any felony;

(ii) been removed from, or prohibited from participating in the affairs of, any insured depository institution pursuant to any final enforcement action by any appropriate Federal banking agency;

(iii) demonstrated a pattern or practice of defalcation regarding obligations to insured depository institutions; or

(iv) caused a substantial loss to the Deposit Insurance Fund (or any predecessor deposit insurance fund);

from performing any service on behalf of the Corporation.

(5) ABROGATION OF CONTRACTS.—The Corporation may rescind any contract with a person who—

(A) fails to disclose a material fact to the Corporation;

(B) would be prohibited under paragraph (6) from providing services to, receiving fees from, or contracting with the Corporation; or

(C) has been subject to a final enforcement action by any Federal banking agency.

(6) PRIORITY OF FDIC RULES.—To the extent that the regulations under this subsection conflict with rules of other agencies or Government corporations, officers, directors, employees, and independent contractors of the Corporation who are also subject to the conflict of interest or ethical rules of another agency or Government corporation, shall be governed by the regulations prescribed by the Board of Directors under this subsection when acting for or on behalf of the Corporation. Notwithstanding the preceding sentence, the rules of the Corporation shall not take priority over the ethics and conflict of interest rules and regulations promulgated by the Office of Government Ethics unless specifically authorized by that Office.

SEC. 13. [12 U.S.C. 1823] (a) INVESTMENT OF CORPORATION'S FUNDS.—

(1) AUTHORITY.—Funds held in the Deposit Insurance Fund or the FSLIC Resolution Fund, that are not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States.

(2) LIMITATION.—The Corporation shall not sell or purchase any obligations described in paragraph (1) for its own account, at any one time aggregating in excess of $100,000, without the approval of the Secretary of the Treasury. The Secretary may approve a transaction or class of transactions subject to the provisions of this paragraph under such conditions as the Secretary may determine.

(b) The depository accounts of the Corporation shall be kept with the Treasurer of the United States, or, with the approval of the Secretary of the Treasury, with a Federal Reserve bank, or with a depository institution designated as a depositary or fiscal agent of the United States: *Provided,* That the Secretary of the Treasury may waive the requirements of this subsection under such conditions as he may determine: *And provided further,* That this subsection shall not apply to the establishment and maintenance in any depository institution for temporary purposes of depository accounts not in excess of $50,000 in any one depository institution, or to the establishment and maintenance in any depository institution of any depository accounts to facilitate the payment of insured desposits, or the making of loans to, or the purchase of assets of, insured depository institutions. When designated for that purpose by the Secretary of the Treasury, the Corporation shall be a depositary of public moneys, except receipts from customs, under such regulations as may be prescribed by the said Secretary, and may also be employed as a financial agent of the Government. It shall perform all such reasonable duties as depositary of public moneys and financial agent of the Government as may be required of it.

(c)(1) The Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe, to make loans to, to make deposits in, to purchase the assets or securities of, to assume the liabilities of, or to make contributions to, any insured depository institution—

(A) if such action is taken to prevent the default of such insured depository institution;

(B) if, with respect to an insured bank in default, such action is taken to restore such insured bank to normal operation; or

(C) if, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, such action is taken in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(2)(A) In order to facilitate a merger or consolidation of another insured depository institution described in subparagraph (B) with another insured depository institution or the sale of any or all of the assets of such insured depository institution or the assumption of any or all of such insured depository institution's liabilities by another insured depository institution, or the acquisition of the stock of such insured depository institution, the Corporation is authorized, in its sole discretion and upon such terms and conditions as the Board of Directors may prescribe—

(i) to purchase any such assets or assume any such liabilities;

(ii) to make loans or contributions to, or deposits in, or purchase the securities of, such insured institution [1] or the company which controls or will acquire control of such insured institution; [1]

(iii) to guarantee such insured institution [1] or the company which controls or will acquire control of such insured institution [1] against loss by reason of such insured institution's merging or consolidating with or assuming the liabilities and purchasing the assets of such insured depository institution or by reason of such company acquiring control of such insured depository institution; or

(iv) to take any combination of the actions referred to in subparagraphs (i) through (iii).

(B) For the purpose of subparagraph (A), the insured depository institution must be an insured depository institution—

(i) which is in default;

(ii) which, in the judgment of the Board of Directors, is in danger of default; or

(iii) which, when severe financial conditions exist which threaten the stability of a significant number of insured depository institutions or of insured depository institutions possessing significant financial resources, is determined by the Corporation, in its sole discretion, to require assistance under

[1] Section 217(3)(D) of of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 103 Stat. 225, amended section 13(c)(2)(A) by striking "such insured institution" and inserting "such other insured depository institution" without specifying at which of the 4 places such term appears the amendment should be executed.

subparagraph (A) in order to lessen the risk to the Corporation posed by such insured depository institution under such threat of instability.

(C)[2] Any action to which the Corporation is or becomes a party by acquiring any asset or exercising any other authority set forth in this section shall be stayed for a period of 60 days at the request of the Corporation.

(3) The Corporation may provide any person acquiring control of, merging with, consolidating with or acquiring the assets of an insured depository institution under subsection (f) or (k) of this section with such financial assistance as it could provide an insured institution under this subsection.

(4)[2] LEAST-COST RESOLUTION REQUIRED.—

(A) IN GENERAL.—Notwithstanding any other provision of this Act, the Corporation may not exercise any authority under this subsection or subsection (d), (f), (h), (i), or (k) with respect to any insured depository institution unless—

(i) the Corporation determines that the exercise of such authority is necessary to meet the obligation of the Corporation to provide insurance coverage for the insured deposits in such institution; and

(ii) the total amount of the expenditures by the Corporation and obligations incurred by the Corporation (including any immediate and long-term obligation of the Corporation and any direct or contingent liability for future payment by the Corporation) in connection with the exercise of any such authority with respect to such institution is the least costly to the Deposit Insurance Fund of all possible methods for meeting the Corporation's obligation under this section.

(B) DETERMINING LEAST COSTLY APPROACH.—In determining how to satisfy the Corporation's obligations to an institution's insured depositors at the least possible cost to the Deposit Insurance Fund, the Corporation shall comply with the following provisions:

(i) PRESENT-VALUE ANALYSIS; DOCUMENTATION REQUIRED.—The Corporation shall—

(I) evaluate alternatives on a present-value basis, using a realistic discount rate;

(II) document that evaluation and the assumptions on which the evaluation is based, including any assumptions with regard to interest rates, asset recovery rates, asset holding costs, and payment of contingent liabilities; and

(III) retain the documentation for not less than 5 years.

(ii) FOREGONE TAX REVENUES.—Federal tax revenues that the Government would forego as the result of a proposed transaction, to the extent reasonably ascertainable, shall be treated as if they were revenues foregone by the Deposit Insurance Fund.

(C) TIME OF DETERMINATION.—

[2] Indentation so in law.

(i) GENERAL RULE.—For purposes of this subsection, the determination of the costs of providing any assistance under paragraph (1) or (2) or any other provision of this section with respect to any depository institution shall be made as of the date on which the Corporation makes the determination to provide such assistance to the institution under this section.

(ii) RULE FOR LIQUIDATIONS.—For purposes of this subsection, the determination of the costs of liquidation of any depository institution shall be made as of the earliest of—

(I) the date on which a conservator is appointed for such institution;

(II) the date on which a receiver is appointed for such institution; or

(III) the date on which the Corporation makes any determination to provide any assistance under this section with respect to such institution.

(D) LIQUIDATION COSTS.—In determining the cost of liquidating any depository institution for the purpose of comparing the costs under subparagraph (A) (with respect to such institution), the amount of such cost may not exceed the amount which is equal to the sum of the insured deposits of such institution as of the earliest of the dates described in subparagraph (C), minus the present value of the total net amount the Corporation reasonably expects to receive from the disposition of the assets of such institution in connection with such liquidation.

(E) DEPOSIT INSURANCE FUND AVAILABLE FOR INTENDED PURPOSE ONLY.—

(i) IN GENERAL.—After December 31, 1994, or at such earlier time as the Corporation determines to be appropriate, the Corporation may not take any action, directly or indirectly, with respect to any insured depository institution that would have the effect of increasing losses to the Deposit Insurance Fund by protecting—

(I) depositors for more than the insured portion of deposits (determined without regard to whether such institution is liquidated); or

(II) creditors other than depositors.

(ii) DEADLINE FOR REGULATIONS.—The Corporation shall prescribe regulations to implement clause (i) not later than January 1, 1994, and the regulations shall take effect not later than January 1, 1995.

(iii) PURCHASE AND ASSUMPTION TRANSACTIONS.—No provision of this subparagraph shall be construed as prohibiting the Corporation from allowing any person who acquires any assets or assumes any liabilities of any insured depository institution for which the Corporation has been appointed conservator or receiver to acquire uninsured deposit liabilities of such institution so long as the insurance fund does not incur any loss with respect to such deposit liabilities

in an amount greater than the loss which would have been incurred with respect to such liabilities if the institution had been liquidated.

(F) DISCRETIONARY DETERMINATIONS.—Any determination which the Corporation may make under this paragraph shall be made in the sole discretion of the Corporation.

(G) SYSTEMIC RISK.—

(i) EMERGENCY DETERMINATION BY SECRETARY OF THE TREASURY.—Notwithstanding subparagraphs (A) and (E), if, upon the written recommendation of the Board of Directors (upon a vote of not less than two-thirds of the members of the Board of Directors) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that—

(I) the Corporation's compliance with subparagraphs (A) and (E) with respect to an insured depository institution for which the Corporation has been appointed receiver for which the Corporation has been appointed receiver would have serious adverse effects on economic conditions or financial stability; and

(II) any action or assistance under this subparagraph would avoid or mitigate such adverse effects,

the Corporation may take other action or provide assistance under this section for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver as necessary to avoid or mitigate such effects.

(ii) REPAYMENT OF LOSS.—

(I) IN GENERAL.—The Corporation shall recover the loss to the Deposit Insurance Fund arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) from 1 or more special assessments on insured depository institutions, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the Corporation determines to be appropriate.

(II) TREATMENT OF DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of this clause, sections 7(c)(2) and 18(h) shall apply to depository institution holding companies as if they were insured depository institutions.

(III) REGULATIONS.—The Corporation shall prescribe such regulations as it deems necessary to implement this clause. In prescribing such regulations, defining terms, and setting the appropriate assessment rate or rates, the Corporation shall establish rates sufficient to cover the losses

incurred as a result of the actions of the Corporation under clause (i) and shall consider: the types of entities that benefit from any action taken or assistance provided under this subparagraph; economic conditions, the effects on the industry, and such other factors as the Corporation deems appropriate and relevant to the action taken or the assistance provided. Any funds so collected that exceed actual losses shall be placed in the Deposit Insurance Fund.

(iii) DOCUMENTATION REQUIRED.—The Secretary of the Treasury shall—

(I) document any determination under clause (i); and

(II) retain the documentation for review under clause (iv).

(iv) GAO REVIEW.—The Comptroller General of the United States shall review and report to the Congress on any determination under clause (i), including—

(I) the basis for the determination;

(II) the purpose for which any action was taken pursuant to such clause; and

(III) the likely effect of the determination and such action on the incentives and conduct of insured depository institutions and uninsured depositors.

(v) NOTICE.—

(I) IN GENERAL.—Not later than 3 days after making a determination under clause (i), the Secretary of the Treasury shall provide written notice of any determination under clause (i) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(II) DESCRIPTION OF BASIS OF DETERMINATION.—The notice under subclause (I) shall include a description of the basis for any determination under clause (i).

(H) RULE OF CONSTRUCTION.—No provision of law shall be construed as permitting the Corporation to take any action prohibited by paragraph (4) unless such provision expressly provides, by direct reference to this paragraph, that this paragraph shall not apply with respect to such action.

(5) The Corporation may not use its authority under this subsection to purchase the voting or common stock of an insured depository institution. Nothing in the preceding sentence shall be construed to limit the ability of the Corporation to enter into and enforce covenants and agreements that it determines to be necessary to protect its financial interest.

(6)(A) During any period in which an insured depository institution has received assistance under this subsection and such as-

sistance is still outstanding, such insured depository institution may defer the payment of any State or local tax which is determined on the basis of the deposits held by such insured depository institution or of the interest or dividends paid on such deposits.

(B) When such insured depository institution no longer has any outstanding assistance, such insured depository institution shall pay all taxes which were deferred under subparagraph (A). Such payments shall be made in accordance with a payment plan established by the Corporation, after consultation with the applicable State and local taxing authorities.

(7) The transfer of any assets or liabilities associated with any trust business of an insured depository institution in default under subparagraph (2)(A) shall be effective without any State or Federal approval, assignment, or consent with respect thereto.

(8)[1] ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(A) IN GENERAL.—Subject to the least-cost provisions of paragraph (4), the Corporation shall consider providing direct financial assistance under this section for depository institutions before the appointment of a conservator or receiver for such institution only under the following circumstances:

(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

(I) grounds for the appointment of a conservator or receiver exist or likely will exist in the future unless the depository institution's capital levels are increased; and

(II) it is unlikely that the institution can meet all currently applicable capital standards without assistance.

(ii) OTHER CRITERIA.—The depository institution meets the following criteria:

(I) The appropriate Federal banking agency and the Corporation have determined that, during such period of time preceding the date of such determination as the agency or the Corporation considers to be relevant, the institution's management has been competent and has complied with applicable laws, rules, and supervisory directives and orders.

(II) The institution's management did not engage in any insider dealing, speculative practice, or other abusive activity.

(B) PUBLIC DISCLOSURE.—Any determination under this paragraph to provide assistance under this section shall be made in writing and published in the Federal Register.

(9) Any assistance provided under this subsection may be in subordination to the rights of depositors and other creditors.

[1] Indentation so in law.

(10) In its annual report to the Congress, the Corporation shall report the total amount it has saved, or estimates it has saved, by exercising the authority provided in this subsection.

(11) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—No provision contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly—

(A) affects, restricts, or limits the ability of any person to offer to acquire or acquire,

(B) prohibits any person from offering to acquire or acquiring, or

(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,

all or part of any insured depository institution, including any liabilities, assets, or interest therein, in connection with any transaction in which the Corporation exercises its authority under section 11 or 13, shall be enforceable against or impose any liability on such person, as such enforcement or liability shall be contrary to public policy.

(d) SALE OF ASSETS TO CORPORATION.—

(1) IN GENERAL.–Any conservator, receiver, or liquidator appointed for any insured depository institution in default, including the Corporation acting in such capacity, shall be entitled to offer the assets of such depository institutions for sale to the Corporation or as security for loans from the Corporation.

(2) PROCEEDS.—The proceeds of every sale or loan of assets to the Corporation shall be utilized for the same purposes and in the same manner as other funds realized from the liquidation of the assets of such depository institutions.

(3) RIGHTS AND POWERS OF CORPORATION.—

(A) IN GENERAL.—With respect to any asset acquired or liability assumed pursuant to this section, the Corporation shall have all of the rights, powers, privileges, and authorities of the Corporation as receiver under sections 11 and 15(b).

(B) RULE OF CONSTRUCTION.—Such rights, powers, privileges, and authorities shall be in addition to and not in derogation of any rights, powers, privileges, and authorities otherwise applicable to the Corporation.

(C) FIDUCIARY RESPONSIBILITY.—In exercising any right, power, privilege, or authority described in subparagraph (A), the Corporation shall continue to be subject to the fiduciary duties and obligations of the Corporation as receiver to claimants against the insured depository institution in receivership.

(D) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority described in subparagraph (A) regarding the sale or disposition of assets sold to the Corporation pursuant to paragraph (1), 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.

(4) LOANS.—The Corporation, in its discretion, may make loans on the security of or may purchase and liquidate or sell any part of the assets of an insured depository institution which is now or may hereafter be in default.

(e) AGREEMENTS AGAINST INTERESTS OF CORPORATION.—

(1) IN GENERAL.—No agreement which tends to diminish or defeat the interest of the Corporation in any asset acquired by it under this section or section 11, either as security for a loan or by purchase or as receiver of any insured depository institution, shall be valid against the Corporation unless such agreement—

(A) is in writing,

(B) was executed by the depository institution and any person claiming an adverse interest thereunder, including the obligor, contemporaneously with the acquisition of the asset by the depository institution,

(C) was approved by the board of directors of the depository institution or its loan committee, which approval shall be reflected in the minutes of said board or committee, and

(D) has been, continuously, from the time of its execution, an official record of the depository institution.

(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.

(f) ASSISTED EMERGENCY INTERSTATE ACQUISITIONS.—(1) This subsection shall apply only to an acquisition of an insured bank or

a holding company by an out-of-State bank savings association [1] or out-of-State holding company for which the Corporation provides assistance under subsection (c).

(2)(A) Whenever an insured bank with total assets of $500,000,000 or more (as determined from its most recent report of condition) is in default, the Corporation, as receiver, may, in its discretion and upon such terms and conditions as the Corporation may determine, arrange the sale of assets of the closed bank [2] and the assumption of the liabilities of the closed bank, [2] including the sale of such assets to and the assumption of such liabilities by an insured depository institution located in the State where the closed bank [3] was chartered but established by an out-of-State bank or holding company. Where otherwise lawfully required, a transaction under this subsection must be approved by the primary Federal or State supervisor of all parties thereto.

(B)(i) Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State bank supervisor of the State in which the insured bank in default was chartered.

(ii) The State bank supervisor shall be given a reasonable opportunity, and in no event less than forty-eight hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) If the State supervisor objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent of the Board of Directors. The Board of Directors shall provide to the State supervisor, as soon as practicable, a written certification of its determination.

(3) EMERGENCY INTERSTATE ACQUISITIONS OF INSURED BANKS IN DANGER OF DEFAULT [1].—

(A) ACQUISITION OF INSURED BANKS IN DANGER OF DEFAULT.—One or more out-of-State banks or out-of-State holding companies may acquire and retain all or part of the shares or assets of, or otherwise acquire and retain—

(i) an insured bank in danger of default which has total assets of $500,000,000 or more; or

(ii) 2 or more affiliated insured banks in danger of default which have aggregate total assets of $500,000,000 or more, if the aggregate total assets of such banks is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks.

(B) ACQUISITION OF A HOLDING COMPANY OR OTHER BANK AFFILIATE.—If one or more out-of-State banks or out-of-State

[1] Section 217(5)(C) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, which inserted the term "savings associations", should probably have inserted a comma before and after such term.

[2] Section 217(5)(B) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 103 Stat. 257, amended section 13(f) by striking "closed bank" and inserting "bank in default" without specifying at which of the places the term appears the amendment should be executed.

[3] See footnote 2.

[1] Section 217(5)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 103 Stat. 257, amended section 13(f) by striking "closing" each place it appears and inserting "default" but did not amend the heading of this paragraph. Section 602(a)(38) of P.L. 103–325 attempted to amend section 13(f)(3), by striking "CLOSING" in the heading and inserting "DEFAULT". This amendment probably should have capitalized both "CLOSING" and "DEFAULT".

holding companies acquire 1 or more affiliated insured banks under subparagraph (A) the aggregate total assets of which is equal to or greater than 33 percent of the aggregate total assets of all affiliated insured banks, any such out-of-State bank or out-of-State holding company may also, as part of the same transaction, acquire and retain the shares or assets of, or otherwise acquire and retain—

(i) the holding company which controls the affiliated insured banks so acquired; or

(ii) any other affiliated insured bank.

(C) REQUEST FOR ASSISTANCE BY CORPORATE BOARD OF DIRECTORS.—The Corporation may assist an acquisition or merger authorized under subparagraph (A) only if the board of directors or trustees of each insured bank in danger of default which is being acquired has requested in writing that the Corporation assist the acquisition or merger.

(D) CERTAIN ACQUISITIONS AUTHORIZED AFTER ASSISTANCE IS PROVIDED.—Notwithstanding paragraph (1), if—

(i) at any time after the date of the enactment of the Financial Institutions Emergency Acquisitions Amendments of 1987, the Corporation provides any assistance under subsection (c) to an insured bank; and

(ii) at the time such assistance is granted, the insured bank, the holding company which controls the insured bank (if any), or any affiliated insured bank is eligible to be acquired by an out-of-State bank or out-of-State holding company under this paragraph,

the insured bank, the holding company, and such other affiliated insured bank shall remain eligible, subject to such terms and conditions as the Corporation (in the Corporation's discretion) may impose, to be acquired by an out-of-State bank or out-of-State holding company under this paragraph as long as any portion of such assistance remains outstanding.

(E) STATE BANK SUPERVISOR APPROVAL.—The Corporation may take no final action in connection with any acquisition under this paragraph unless the State bank supervisor of the State in which the bank in danger of default is located approves the acquisition.

(F) OTHER REQUIREMENTS NOT AFFECTED.—This paragraph does not affect any other requirement under Federal or State law for regulatory approval of an acquisition under this paragraph.

(G) ACQUISITION MAY BE CONDITIONED ON RECEIPT OF CONSIDERATION FOR CORPORATION'S ASSISTANCE.—Any acquisition described in subparagraph (D) may be conditioned on the receipt of such consideration for the Corporation's assistance as the Board of Directors deems appropriate.

(4)(A) ACQUISITIONS NOT SUBJECT TO CERTAIN OTHER LAWS.—Section 3(d) of the Bank Holding Company Act of 1956, any provision of State law, and section 408(e)(3) of the National Housing

Act[1] shall not apply to prohibit any acquisition under paragraph (2) or (3), except that an out-of-State bank may make such an acquisition only if such ownership is otherwise specifically authorized.

(B) Any subsidiary created by operation of this subsection may retain and operate any existing branch or branches of the institution merged with or acquired under paragraph (2) or (3), but otherwise shall be subject to the conditions upon which a national bank may establish and operate branches in the State in which such insured institution is located.

(C) No insured institution acquired under this subsection shall after it is acquired move its principal office or any branch office which it would be prohibited from moving if the institution were a national bank.

(D) SUBSEQUENT NONEMERGENCY INTERSTATE ACQUISITIONS SUBJECT TO STATE LAW.—

(i) IN GENERAL.—Any out-of-State bank holding company which acquires control of an insured bank in any State under paragraph (2) or (3) may acquire any other insured bank and establish branches in such State to the same extent as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State may acquire any other insured bank or establish branches.

(ii) DELAYED DATE OF APPLICABILITY.—Clause (i) shall not apply with respect to any out-of-State bank holding company referred to in such clause before the earlier of—

(I) the end of the 2-year period beginning on the date the acquisition referred to in such clause with respect to such company is consummated; or

(II) the end of any period established under State law during which such out-of-State bank holding company may not be treated as a bank holding company whose insured bank subsidiaries' operations are principally conducted in such State for purposes of acquiring other insured banks or establishing bank branches.

(iii) DETERMINATION OF PRINCIPALLY CONDUCTED.—For purposes of this subparagraph, the State in which the operations of a holding company's insured bank subsidiaries are principally conducted is the State determined under section 3(d) of the Bank Holding Company Act of 1956 with respect to such holding company.

(E) CERTAIN STATE INTERSTATE BANKING LAWS INAPPLICABLE.—Any holding company which acquires control of any insured bank or holding company under paragraph (2) or (3) or subparagraph (D) of this paragraph shall not, by reason of such acquisition, be required under the law of any State to divest any other insured bank or be prevented from acquiring any other bank or holding company.

(5) In determining whether to arrange a sale of assets and assumption of liabilities or an acquisition or a merger under the authority of paragraph (2) or (3), the Corporation may solicit such of-

[1] Section 408 of the National Housing Act was repealed by section 407 of P.L. 101–73 (103 Stat. 363). The reference should probably be to section 10(e)(3) of the Home Owners' Loan Act.

fers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the bank in default [1] or the bank in danger of default.

(6)(A) If, after receiving offers, the offer presenting the lowest expense to the Corporation, that is in a form and with conditions acceptable to the Corporation (hereinafter referred to as the "lowest acceptable offer"), is from an offeror that is not an existing in-State bank of the same type as the bank that is in default or is in danger of default (or, where the bank is an insured bank other than a mutual savings bank, the lowest acceptable offer is not from an in-State holding company), the Corporation shall permit the offeror which made the initial lowest acceptable offer and each offeror who made an offer the estimated cost of which to the Corporation was within 15 per centum or $15,000,000, whichever is less, of the initial lowest acceptable offer to submit a new offer.

(B) In considering authorizations under this subsection, the Corporation shall give consideration to the need to minimize the cost of financial assistance and to the maintenance of specialized depository institutions. The Corporation shall authorize transactions under this subsection considering the following priorities:

(i) First, between depository institutions of the same type within the same State.

(ii) Second, between depository institutions of the same type—

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(iii) Third, between depository institutions of the same type in different States other than the States described in clause (ii).

(iv) Fourth, between depository institutions of different types in the same State.

(v) Fifth, between depository institutions of different types—

(I) in different States which by statute specifically authorize such acquisitions; or

(II) in the absence of such statutes, in different States which are contiguous.

(vi) Sixth, between depository institutions of different types in different States other than the States described in clause (v).

(C) MINORITY BANK PRIORITY.—In the case of a minority-controlled bank, the Corporation shall seek an offer from other minority-controlled banks before proceeding with the bidding priorities set forth in subparagraph (B).

(D) In determining the cost of offers and reoffers, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers and reoffers.

[1] Section 217(5)(B) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 103 Stat. 257, amended section 13(f) by striking "closed bank" and inserting "bank in default" without specifying at which of the places such term appears the amendment should be executed.

(7) No sale may be made under the provisions of paragraph (2) or (3)—

(A) which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States;

(B) whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Corporation finds that the anticompetitive effects of the proposed transactions are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; or

(C) if in the opinion of the Corporation the acquisition threatens the safety and soundness of the acquirer or does not result in the future viability of the resulting depository institution.

(8) As used in this subsection—

(A) the term "in-State depository institution or in-State holding company" means an existing insured depository institution currently operating in the State in which the bank in default [1] or the bank in danger of default is chartered or a company that is operating an insured depository institution subsidiary in the State in which the bank in default [1] or the bank in danger of default is chartered;

(B) the term "acquire" means to acquire, directly or indirectly, ownership or control through—

(i) an acquisition of shares;

(ii) an acquisition of assets or assumption of liabilities;

(iii) a merger or consolidation; or

(iv) any similar transaction;

(C) the term "affiliated insured bank" means—

(i) when used in connection with a reference to a holding company, an insured bank which is a subsidiary of such holding company; and

(ii) when used in connection with a reference to 2 or more insured banks, insured banks which are subsidiaries of the same holding company; and

(D) the term "subsidiary" has the meaning given to such term in section 2(d) of the Bank Holding Company Act of 1956.

(9) NO ASSISTANCE AUTHORIZED FOR CERTAIN SUBSIDIARIES OF HOLDING COMPANIES.—

(A) IN GENERAL.—The Corporation shall not provide any assistance to a subsidiary, other than a subsidiary that is an insured depository institution, of a holding company in connection with any acquisition under this subsection.

(B) INTERMEDIATE HOLDING COMPANY PERMITTED.—This paragraph does not prohibit an intermediate holding company or an affiliate of an insured depository institution from being

[1] Section 217(5)(B) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 103 Stat. 257, amended section 13(f) by striking "closed bank" and inserting "bank in default" without specifiying at which of the places the term appears the amendment should be executed.

a conduit for assistance ultimately intended for an insured bank.

(10) ANNUAL REPORT.—

(A) REQUIRED.—In its annual report to Congress the Corporation shall include a report on the acquisitions under this subsection during the preceding year.

(B) CONTENTS.—The report required under subparagraph (A) shall contain the following information:

(i) The number of acquisitions under this subsection.

(ii) A brief description of each such acquisition and the circumstances under which such acquisition occurred.

(11) DETERMINATION OF TOTAL ASSETS.—For purposes of this subsection, the total assets of any insured bank shall be determined on the basis of the most recent report of condition of such bank which is available at the time of such determination.

(12)[2] ACQUISITION OF MINORITY BANK BY MINORITY BANK HOLDING COMPANY WITHOUT REGARD TO ASSET SIZE.—

(A) IN GENERAL.—For the purpose of ensuring continued minority control of a minority-controlled bank, paragraphs (2) and (3) shall apply with respect to the acquisition of a minority-controlled bank by an out-of-State minority-controlled depository institution or depository institution holding company without regard to the fact that the total assets of such minority-controlled bank are less than $500,000,000.

(B) DEFINITIONS.—For purposes of this paragraph:

(i) MINORITY BANK.—The term "minority bank" means any depository institution described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act—

(I) more than 50 percent of the ownership or control of which is held by one or more minority individuals; and

(II) more than 50 percent of the net profit or loss of which accrues to minority individuals.

(ii) MINORITY.—The term "minority" means any Black American, Native American, Hispanic American, or Asian American.

(g) Prior to July 1, 1951, the Corporation shall pay out of its capital account to the Secretary of the Treasury an amount equal to 2 per centum simple interest per annum on amounts advanced to the Corporation on stock subscriptions by the Secretary of the Treasury and the Federal Reserve banks, from the time of such advances until the amounts thereof were repaid. The amount payable hereunder shall be paid in two equal installments, the first installment to be paid prior to December 31, 1950.

(h) The powers conferred on the Board of Directors and the Corporation by this section to take action to reopen an insured depository institution in default or to avert the default of an insured depository institution may be used with respect to an insured branch of a foreign bank if, in the judgment of the Board of Direc-

[2] Indentation so in law.

tors, the public interest in avoiding the closing[1] of such branch substantially outweighs any additional risk of loss to the Deposit Insurance Fund which the exercise of such powers would entail.

[Subsection (i) repealed. See section 206(a) of the Garn-St Germain Depository Institutions Act of 1982, as amended by section 1(a) of Public Law 97–457 (96 Stat. 2507), and section 509(b) of the Competitive Equality Banking Act of 1987 (101 Stat. 635).]

(j) LOAN LOSS AMORTIZATION FOR CERTAIN BANKS.—

(1) ELIGIBILITY.—The appropriate Federal banking agency shall permit an agricultural bank to take the actions referred to in paragraph (2) if it finds that—

(A) there is no evidence that fraud or criminal abuse on the part of the bank led to the losses referred to in paragraph (2); and

(B) the agricultural bank has a plan to restore its capital, not later than the close of the amortization period established under paragraph (2), to a level prescribed by the appropriate Federal banking agency.

(2) SEVEN-YEAR LOSS AMORTIZATION.—(A) Any loss on any qualified agricultural loan that an agricultural bank would otherwise be required to show on its annual financial statement for any year between December 31, 1983, and January 1, 1992, may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(B) An agricultural bank may reappraise any real estate or other property, real or personal, that it acquired coincident to the making of a qualified agricultural loan and that it owned on January 1, 1983, and any such additional property that it acquires prior to January 1, 1992. Any loss that such bank would otherwise be required to show on its annual financial statements as the result of any such reappraisal may be amortized on its financial statements over a period of not to exceed 7 years, as provided in regulations issued by the appropriate Federal banking agency.

(3) REGULATIONS.—Not later than 90 days after the date of enactment of this subsection, the appropriate Federal banking agency shall issue regulations implementing this subsection with respect to banks that it supervises, including regulations implementing the capital restoration requirement of paragraph (1)(B).

(4) DEFINITIONS.—As used in this subsection—

(A) the term "agricultural bank" means a bank—

(i) the deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) which is located in an area the economy of which is dependent on agriculture;

(iii) which has assets of $100,000,000 or less; and

(iv) which has—

(I) at least 25 percent of its total loans in qualified agricultural loans; or

[1] So in law. Probably should be "default".

(II) fewer than 25 percent of its total loans in qualified agricultural loans but which the appropriate Federal banking agency or State bank commissioner recommends to the Corporation for eligibility under this section, or which the Corporation, on its motion, deems eligible; and

(B) the term "qualified agricultural loan" means a loan made to finance the production of agricultural products or livestock in the United States, a loan secured by farmland or farm machinery, or such other category of loans as the appropriate Federal banking agency may deem eligible.

(5) MAINTENANCE OF PORTFOLIO.—As a condition of eligibility under this subsection, the agricultural bank must agree to maintain in its loan portfolio a percentage of agricultural loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986.

(k) EMERGENCY ACQUISITIONS.—

(1) IN GENERAL.—

(A) ACQUISITIONS AUTHORIZED.—

(i) TRANSACTIONS DESCRIBED.—Notwithstanding any provision of State law, upon determining that severe financial conditions threaten the stability of a significant number of savings associations, or of savings associations possessing significant financial resources, the Corporation, in its discretion and if it determines such authorization would lessen the risk to the Corporation, may authorize—

(I) a savings association that is eligible for assistance pursuant to subsection (c) to merge or consolidate with, or to transfer its assets and liabilities to, any other savings association or any insured bank,

(II) any other savings association to acquire control of such savings association, or

(III) any company to acquire control of such savings association or to acquire the assets or assume the liabilities thereof.

The Corporation may not authorize any transaction under this subsection unless the Corporation determines that the authorization will not present a substantial risk to the safety or soundness of the savings association to be acquired or any acquiring entity.

(ii) TERMS OF TRANSACTIONS.—Mergers, consolidations, transfers, and acquisitions under this subsection shall be on such terms as the Corporation shall provide.

(iii) APPROVAL BY APPROPRIATE AGENCY.—Where otherwise required by law, transactions under this subsection must be approved by the appropriate Federal banking agency of every party thereto.

(iv) ACQUISITIONS BY SAVINGS ASSOCIATIONS.—Any Federal savings association that acquires another savings association pursuant to clause (i) may, with the concurrence of the Comptroller of the Currency, hold

that savings association as a subsidiary notwithstanding the percentage limitations of section 5(c)(4)(B) of the Home Owners' Loan Act.S

(v) DUAL SERVICE.—Dual service by a management official that would otherwise be prohibited under the Depository Institution Management Interlocks Act may, with the approval of the Corporation, continue for up to 10 years.

(vi) CONTINUED APPLICABILITY OF CERTAIN STATE RESTRICTIONS.—Nothing in this subsection overrides or supersedes State laws restricting or limiting the activities of a savings association on behalf of another entity.

(B) CONSULTATION WITH STATE OFFICIAL.—

(i) CONSULTATION REQUIRED.—Before making a determination to take any action under subparagraph (A), the Corporation shall consult the State official having jurisdiction of the acquired institution.

(ii) PERIOD FOR STATE RESPONSE.—The official shall be given a reasonable opportunity, and in no event less than 48 hours, to object to the use of the provisions of this paragraph. Such notice may be provided by the Corporation prior to its appointment as receiver, but in anticipation of an impending appointment.

(iii) APPROVAL OVER OBJECTION OF STATE OFFICIAL.—If the official objects during such period, the Corporation may use the authority of this paragraph only by a vote of 75 percent or more of the voting members of the Board of Directors. The Corporation shall provide to the official, as soon as practicable, a written certification of its determination.

(2) SOLICITATION OF OFFERS.—

(A) IN GENERAL.—In considering authorizations under this subsection, the Corporation may solicit such offers or proposals as are practicable from any prospective purchasers or merger partners it determines, in its sole discretion, are both qualified and capable of acquiring the assets and liabilities of the savings association.

(B) MINORITY-CONTROLLED INSTITUTIONS.—In the case of a minority-controlled depository institution, the Corporation shall seek an offer from other minority-controlled depository institutions before seeking an offer from other persons or entities.

(3) DETERMINATION OF COSTS.—In determining the cost of offers under this subsection, the Corporation's calculations and estimations shall be determinative. The Corporation may set reasonable time limits on offers.

(4) BRANCHING PROVISIONS.—

(A) IN GENERAL.—If a merger, consolidation, transfer, or acquisition under this subsection involves a savings association eligible for assistance and a bank or bank holding company, a savings association may retain and operate any existing branch or branches or any other existing fa-

cilities. If the savings association continues to exist as a separate entity, it may establish and operate new branches to the same extent as any savings association that is not affiliated with a bank holding company and the home office of which is located in the same State.

(B) RESTRICTIONS.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), if—

(I) a savings association described in such subparagraph does not have its home office in the State of the bank holding company bank subsidiary, and

(II) such association does not qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986, or does not meet the asset composition test imposed by subparagraph (C) of that section on institutions seeking so to qualify,

such savings association shall be subject to the conditions upon which a bank may retain, operate, and establish branches in the State in which the savings association is located.

(ii) TRANSITION PERIOD.—The Corporation, for good cause shown, may allow a savings association up to 2 years to comply with the requirements of clause (i).

(5) ASSISTANCE BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(A) ASSISTANCE PROPOSALS.—The Corporation shall consider proposals by savings associations for assistance pursuant to subsection (c) before grounds exist for appointment of a conservator or receiver for such member under the following circumstances:

(i) TROUBLED CONDITION CRITERIA.—The Corporation determines—

(I) that grounds for appointment of a conservator or receiver exist or likely will exist in the future unless the member's tangible capital is increased;

(II) that it is unlikely that the member can achieve positive tangible capital without assistance; and

(III) that providing assistance pursuant to the member's proposal would be likely to lessen the risk to the Corporation.

(ii) OTHER CRITERIA.—The member meets the following criteria:

(I) Before enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the member was solvent under applicable regulatory accounting principles but had negative tangible capital.

(II) The member's negative tangible capital position is substantially attributable to its partici-

pation in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons.

(III) The member is a qualified thrift lender (as defined in section 10(m) of the Home Owners' Loan Act) or would be a qualified thrift lender if commercial real estate owned and nonperforming commercial loans acquired in acquisition and merger transactions that were instituted by the Federal Home Loan Bank Board or the Federal Savings and Loan Insurance Corporation for supervisory reasons were excluded from the member's total assets.

(IV) The appropriate Federal banking agency has determined that the member's management is competent and has complied with applicable laws, rules, and supervisory directives and orders.

(V) The member's management did not engage in insider dealing or speculative practices or other activities that jeopardized the member's safety and soundness or contributed to its impaired capital position.

(VI) The member's offices are located in an economically depressed region.

(B) CORPORATION CONSIDERATION OF ASSISTANCE PROPOSAL.—If a member meets the requirements of clauses (i) and (ii) of subparagraph (A), the Corporation shall consider providing direct financial assistance.

(C) ECONOMICALLY DEPRESSED REGION DEFINED.—For purposes of this paragraph, the term "economically depressed region" means any geographical region which the Corporation determines by regulation to be a region within which real estate values have suffered serious decline due to severe economic conditions, such as a decline in energy or agricultural values or prices.

SEC. 14. [12 U.S.C. 1824] BORROWING AUTHORITY.

(a) BORROWING FROM TREASURY.—

(1) IN GENERAL.—The Corporation is authorized to borrow from the Treasury, and the Secretary of the Treasury is authorized and directed to loan to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds as in the judgment of the Board of Directors of the Corporation are from time to time required for insurance purposes, not exceeding in the aggregate $100,000,000,000 outstanding at any one time, subject to the approval of the Secretary of the Treasury: *Provided,* That the rate of interest to be charged in connection with any loan made pursuant to this subsection shall not be less than an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. For such purpose the Secretary of the Treasury is authorized to use as a public-debt

transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under the Second Liberty Bond Act,[1] as amended, are extended to include such loans. Any such loan shall be used by the Corporation solely in carrying out its functions with respect to such insurance. All loans and repayments under this subsection shall be treated as public-debt transactions of the United States. The Corporation may employ any funds obtained under this section for purposes of the Deposit Insurance Fund and the borrowing shall become a liability of the Deposit Insurance Fund to the extent funds are employed therefor.

(2) FUNDING.—There are hereby appropriated to the Secretary, for fiscal year 1989 and each fiscal year thereafter, such sums as may be necessary to carry out this subsection.

(3) TEMPORARY INCREASES AUTHORIZED.—

(A) RECOMMENDATIONS FOR INCREASE.—During the period beginning on the date of enactment of this paragraph and ending on December 31, 2010, if, upon the written recommendation of the Board of Directors (upon a vote of not less than two-thirds of the members of the Board of Directors) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that additional amounts above the $100,000,000,000 amount specified in paragraph (1) are necessary, such amount shall be increased to the amount so determined to be necessary, not to exceed $500,000,000,000.

(B) REPORT REQUIRED.—If the borrowing authority of the Corporation is increased above $100,000,000,000 pursuant to subparagraph (A), the Corporation shall promptly 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 reasons and need for the additional borrowing authority and its intended uses.

(C) RESTRICTION ON USAGE.—The Corporation may not borrow pursuant to subparagraph (A) to fund obligations of the Corporation incurred as a part of a program established by the Secretary of the Treasury pursuant to the Emergency Economic Stabilization Act of 2008 to purchase or guarantee assets.

(b) BORROWING FROM FEDERAL FINANCING BANK.—The Corporation is authorized to issue and sell the Corporation's obligations, on behalf of the Deposit Insurance Fund, to the Federal Financing Bank established by the Federal Financing Bank Act of 1973. The Federal Financing Bank is authorized to purchase and sell the Corporation's obligations on terms and conditions determined by the Federal Financing Bank. Any such borrowings shall be obligations subject to the obligation limitation of section 15(c) of

[1] The Second Liberty Bond Act was repealed by section 5 of P.L. 97–258. The substance of such Act was reenacted as subchapter I of chapter 31 of title 31, United States Code.

this Act. This subsection does not affect the eligibility of any other entity to borrow from the Federal Financing Bank.

(c) REPAYMENT SCHEDULES REQUIRED FOR ANY BORROWING.—

(1) IN GENERAL.—No amount may be provided by the Secretary of the Treasury to the Corporation under subsection (a) unless an agreement is in effect between the Secretary and the Corporation which—

(A) provides a schedule for the repayment of the outstanding amount of any borrowing under such subsection; and

(B) demonstrates that income to the Corporation from assessments under this Act will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance.

(2) CONSULTATION WITH AND REPORT TO CONGRESS.—The Secretary of the Treasury and the Corporation shall—

(A) consult with the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the terms of any repayment schedule agreement described in paragraph (1) relating to repayment, including terms relating to any emergency special assessment under section 7(b)(7) [1]; and

(B) submit a copy of each repayment schedule agreement entered into under paragraph (1) to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before the end of the 30-day period beginning on the date any amount is provided by the Secretary of the Treasury to the Corporation under subsection (a).

(d) BORROWING FOR THE DEPOSIT INSURANCE FUND FROM INSURED DEPOSITORY INSTITUTIONS.—

(1) BORROWING AUTHORITY.—The Corporation may issue obligations to insured depository institutions, and may borrow from insured depository institutions and give security for any amount borrowed, and may pay interest on (and any redemption premium with respect to) any such obligation or amount to the extent—

(A) the proceeds of any such obligation or amount are used by the Corporation solely for purposes of carrying out the Corporation's functions with respect to the Deposit Insurance Fund; and

(B) the terms of the obligation or instrument limit the liability of the Corporation or the Deposit Insurance Fund for the payment of interest and the repayment of principal to the amount which is equal to the amount of assessment income received by the Fund from assessments under section 7.

(2) LIMITATIONS ON BORROWING.—

[1] So in law. Probably should refer to "section 7(b)(6)".

(A) APPLICABILITY OF PUBLIC DEBT LIMIT.—For purposes of the public debt limit established in section 3101(b) of title 31, United States Code, any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an obligation to which such limit applies.

(B) APPLICABILITY OF FDIC BORROWING LIMIT.—For purposes of the dollar amount limitation established in section 14(a) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a)), any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall be considered to be an amount borrowed from the Treasury under such section.

(C) INTEREST RATE LIMIT.—The rate of interest payable in connection with any obligation issued, or amount borrowed, by the Corporation under paragraph (1) shall not exceed an amount determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(D) OBLIGATIONS TO BE HELD ONLY BY BIF MEMBERS.—The terms of any obligation issued by the Corporation under paragraph (1) shall provide that the obligation will be valid only if held by a insured depository institution.

(3) LIABILITY OF THE DEPOSIT INSURANCE FUND.—Any obligation issued or amount borrowed under paragraph (1) shall be a liability of the Deposit Insurance Fund.

(4) TERMS AND CONDITIONS.—Subject to paragraphs (1) and (2), the Corporation shall establish the terms and conditions for obligations issued or amounts borrowed under paragraph (1), including interest rates and terms to maturity.

(5) INVESTMENT BY INSURED DEPOSITORY INSTITUTIONS.—

(A) AUTHORITY TO INVEST.—Subject to subparagraph (B) and notwithstanding any other provision of Federal law or the law of any State, any insured depository institution may purchase and hold for investment any obligation issued by the Corporation under paragraph (1) without limitation, other than any limitation the appropriate Federal banking agency may impose specifically with respect to such obligations.

(B) INVESTMENT ONLY FROM CAPITAL AND RETAINED EARNINGS.—Any insured depository institution may purchase obligations or make loans to the Corporation under paragraph (1) only to the extent the purchase money or the money loaned is derived from the member's capital or retained earnings.

(6) ACCOUNTING TREATMENT.—In accounting for any investment in an obligation purchased from, or any loan made to, the Corporation for purposes of determining compliance with any capital standard and preparing any report required pursuant to section 7(a), the amount of such investment or loan shall be treated as an asset.

(e) BORROWING FOR THE DEPOSIT INSURANCE FUND FROM FEDERAL HOME LOAN BANKS.—

(1) IN GENERAL.—The Corporation may borrow from the Federal home loan banks, with the concurrence of the Federal Housing Finance Board, such funds as the Corporation considers necessary for the use of the Deposit Insurance Fund.

(2) TERMS AND CONDITIONS.—Any loan from any Federal home loan bank under paragraph (1) to the Deposit Insurance Fund shall—

(A) bear a rate of interest of not less than the current marginal cost of funds to that bank, taking into account the maturities involved;

(B) be adequately secured, as determined by the Federal Housing Finance Board;

(C) be a direct liability of the Deposit Insurance Fund; and

(D) be subject to the limitations of section 15(c).

SEC. 15. [12 U.S.C. 1825] (a) GENERAL RULE.—All notes, debentures, bonds, or other such obligations issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) 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: *Provided,* That interest upon or any income from any such obligations and gain from the sale or other disposition of such obligations shall not have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereto. The Corporation, including its franchise, its capital, reserves, and surplus, and its 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, except that any real property of the Corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(b) OTHER EXEMPTIONS.—When acting as a receiver, the following provisions shall apply with respect to the Corporation:

(1) The Corporation including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of such property's value, such value, and the tax thereon, shall be determined as of the period for which such tax is imposed.

(2) No property of the Corporation shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Corporation, nor shall any involuntary lien attach to the property of the Corporation.

(3) The Corporation shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal

property, probate, or recording tax or any recording or filing fees when due.

(4) EXEMPTION FROM CRIMINAL PROSECUTION.—The Corporation shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by the institution, or persons acting on behalf of the institution, prior to the appointment of the Corporation as receiver.

This subsection shall not apply with respect to any tax imposed (or other amount arising) under the Internal Revenue Code of 1986.

(c) LIMITATION ON BORROWING.—

(1) COST ESTIMATE FOR OUTSTANDING OBLIGATIONS, GUARANTEES, AND LIABILITIES.—As soon as practicable after the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Corporation shall estimate the aggregate cost to the Corporation for all outstanding obligations and guarantees of the Corporation which were issued, and all outstanding liabilities which were incurred, by the Corporation before such date.

(2) ESTIMATE OF NOTES AND OTHER OBLIGATIONS REQUIRED.—Before issuing an obligation or making a guarantee, the Corporation shall estimate the cost of such obligations or guarantees.

(3) INCLUSION OF ESTIMATES IN FINANCIAL STATEMENTS.—The Corporation shall—

(A) reflect in its financial statements the estimates made by the Corporation under paragraphs (1) and (2) of the aggregate amount of the costs to the Corporation for outstanding obligations and other liabilities, and

(B) make such adjustments as are appropriate in the estimate of such aggregate amount not less frequently than quarterly.

(4) ESTIMATE OF OTHER ASSETS REQUIRED.—The Corporation shall—

(A) estimate the market value of assets held by it as a result of case resolution activities, with a reduction for expenses expected to be incurred by the Corporation in connection with the management and sale of such assets;

(B) reflect the amounts so estimated in its financial statements; and

(C) make such adjustments as are appropriate of such market value not less than quarterly.

(5) MAXIMUM AMOUNT LIMITATION ON OUTSTANDING OBLIGATIONS.—Notwithstanding any other provisions of this Act, the Corporation may not issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of obligations of the Deposit Insurance Fund outstanding would exceed the sum of—

(A) the amount of cash or the equivalent of cash held by the Deposit Insurance Fund;

(B) the amount which is equal to 90 percent of the Corporation's estimate of the fair market value of assets

held by the Deposit Insurance Fund, other than assets described in subparagraph (A); and

(C) the total of the amounts authorized to be borrowed from the Secretary of the Treasury pursuant to section 14(a).

(6) OBLIGATION DEFINED.—

(A) IN GENERAL.—For purposes of paragraph (5), the term "obligation" includes—

(i) any guarantee issued by the Corporation, other than deposit guarantees;

(ii) any amount borrowed pursuant to section 14; and

(iii) any other obligation for which the Corporation has a direct or contingent liability to pay any amount.

(B) VALUATION OF CONTINGENT LIABILITIES.—The Corporation shall value any contingent liability at its expected cost to the Corporation.

(d) FULL FAITH AND CREDIT.—The full faith and credit of the United States is pledged to the payment of any obligation issued after the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 by the Corporation, with respect to both principal and interest, if—

(1) the principal amount of such obligation is stated in the obligation; and

(2) the term to maturity or the date of maturity of such obligation is stated in the obligation.

SEC. 16. [12 U.S.C. 1826] In order that the Corporation may be supplied with such forms of notes, debentures, bonds, or other such obligations as it may need for issuance under this Act, the Secretary of the Treasury is authorized to prepare such forms as shall be suitable and approved by the Corporation, to be held in the Treasury subject to delivery, upon order of the Corporation. The engraved plates, dies, bed pieces, and other material executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Corporation shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such notes, debentures, bonds, or other such obligations.

SEC. 17. [12 U.S.C. 1827] (a) ANNUAL REPORTS ON THE DEPOSIT INSURANCE FUND AND THE FSLIC RESOLUTION FUND.—

(1) IN GENERAL.—The Corporation shall annually submit a full report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period. The report shall include, with respect to the Deposit Insurance Fund and the FSLIC Resolution Fund, an analysis by the Corporation of—

(A) the current financial condition of each such fund;

(B) the purpose, effect, and estimated cost of each resolution action taken for an insured depository institution during the preceding year;

(C) the extent to which the actual costs of assistance provided to, or for the benefit of, an insured depository institution during the preceding year exceeded the estimated costs of such assistance reported in a previous year under paragraph (A);

(D) the exposure of the Deposit Insurance Fund to changes in those economic factors most likely to affect the condition of that fund;

(E) a current estimate of the resources needed for the Deposit Insurance Fund or the FSLIC Resolution Fund to achieve the purposes of this Act; and

(F) any findings, conclusions, and recommendations for legislative and administrative actions considered appropriate to future resolution activities by the Corporation.

(2) MANNER OF SUBMISSION.—Such report shall be submitted to the President of the Senate and the Speaker of the House of Representatives, who shall cause the same to be printed for the information of Congress, and the President as soon as practicable after the first day of January each year.

(3) COORDINATION WITH OTHER REPORT REQUIREMENTS.—The report required under this subsection shall include the report required under section 18(f)(7) of the Federal Trade Commission Act.

(b) QUARTERLY REPORTS TO TREASURY.—

(1) FINANCIAL OPERATING PLANS AND FORECASTS.—Before the beginning of each fiscal quarter, the Corporation shall provide to the Secretary of the Treasury a copy of the Corporation's financial operating plans and forecasts.

(2) FINANCIAL CONDITION AND REPORTS OF OPERATIONS.—As soon as practicable after the end of each fiscal quarter, the Corporation shall submit to the Secretary of the Treasury a copy of the report of the Corporation's financial condition as of the end of such fiscal quarter and the results of the Corporation's operations during such fiscal quarter.

(3) ITEMS TO BE INCLUDED.—The plans, forecasts, and reports required under this subsection shall reflect the estimates required to be made under section 15(b) of the liabilities and obligations of the Corporation described in such section.

(4) RULE OF CONSTRUCTION.—The requirement to provide plans, forecasts, and reports to the Secretary of the Treasury under this subsection may not be construed as implying any obligation on the part of the Corporation to obtain the consent or approval of such Secretary with respect to such plans, forecasts, and reports.

(c) REPORTS TO OMB.—

(1) FINANCIAL INFORMATION.—The Corporation shall continue to provide to the Director of the Office of Management and Budget financial information consistent with that contained in the reports that were being provided to the Director immediately prior to the effective date of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) FINANCIAL OPERATING PLANS AND FORECASTS.—The Corporation shall also provide to the Director copies of the Corporation's financial operating plans and forecasts as prepared by the Corporation in the ordinary course of its operations, and copies of the quarterly reports of the Corporation's financial condition and results of operations as prepared by the Corporation in the ordinary course of its operations.

(3) RULE OF CONSTRUCTION.—This subsection may not be construed as implying any obligation on the part of the Corporation to consult with or obtain the consent or approval of the Director with respect to any reports, plans, forecasts, or other information referred to in paragraph (1) or (2) or any jurisdiction or oversight over the affairs or operations of the Corporation.

(d) AUDIT.—

(1) AUDIT REQUIRED.—The Comptroller General shall audit annually the financial transactions of the Corporation the [1] Deposit Insurance Fund and the FSLIC Resolution Fund in accordance with generally accepted government auditing standards.

(2) ACCESS TO BOOKS AND RECORDS.—All books, records, accounts, reports, files, and property belonging to or used by the Corporation, the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund, or by an independent certified public accountant retained to audit the Fund's financial statements, shall be made available to the Comptroller General.

(e) The financial transactions of the Corporation shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation pertaining to its financial transactions and necessary to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers and property of the Corporation shall remain in possession and custody of the Corporation. The audit shall begin with financial transactions occurring on and after August 31, 1948. The Corporation shall be audited at least once in every three years.

(f) A report of each audit conducted under subsection (b) of this section shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of the last year covered by such audit. The report to the Congress shall set forth the scope of the audit and shall include a statement of assets and liabilities and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expenses; a statement of sources and application of funds and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Corporation, together with such recommendations with respect thereto as the Comptroller General may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or

[1] So in law. A comma probably should appear before "the Deposit Insurance Fund" in subsection (d)(1). See amendment made by section 8(a)(27) of Public Law 109–173 (119 Stat. 3615).

undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary of the Treasury, and to the Corporation at the time submitted to the Congress.

(g) For the purpose of conducting such audit the Comptroller General is authorized in his discretion to employ by contract, without regard to section 3709 of the Revised Statutes, professional services of firms and organizations of certified public accountants, with the concurrence of the Corporation, for temporary periods or for special purposes. The Corporation shall reimburse the General Accounting Office for the cost of any such audit as billed therefor by the Comptroller General, and the General Accounting Office shall deposit the sums so reimbursed into the Treasury as miscellaneous receipts.

SEC. 18. [12 U.S.C. 1828] (a) REPRESENTATIONS OF DEPOSIT INSURANCE.—

(1) INSURED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—Each insured depository institution shall display at each place of business maintained by that institution a sign or signs relating to the insurance of the deposits of the institution, in accordance with regulations to be prescribed by the Corporation.

(B) STATEMENT TO BE INCLUDED.—Each sign required under subparagraph (A) shall include a statement that insured deposits are backed by the full faith and credit of the United States Government.

(2) REGULATIONS.—The Corporation shall prescribe regulations to carry out this subsection, including regulations governing the substance of signs required by paragraph (1) and the manner of display or use of such signs.

(3) PENALTIES.—For each day that an insured depository institution continues to violate paragraph (1) or any regulation issued under paragraph (2), it shall be subject to a penalty of not more than $100, which the Corporation may recover for its use.

(4) FALSE ADVERTISING, MISUSE OF FDIC NAMES, AND MISREPRESENTATION TO INDICATE INSURED STATUS.—

(A) PROHIBITION ON FALSE ADVERTISING AND MISUSE OF FDIC NAMES.—No person may represent or imply that any deposit liability, obligation, certificate, or share is insured or guaranteed by the Corporation, if such deposit liability, obligation, certificate, or share is not insured or guaranteed by the Corporation—

(i) by using the terms "Federal Deposit", "Federal Deposit Insurance", "Federal Deposit Insurance Corporation", any combination of such terms, or the abbreviation "FDIC" as part of the business name or firm name of any person, including any corporation, partnership, business trust, association, or other business entity; or

(ii) by using such terms or any other terms, sign, or symbol as part of an advertisement, solicitation, or other document.

(B) PROHIBITION ON MISREPRESENTATIONS OF INSURED STATUS.—No person may knowingly misrepresent—

(i) that any deposit liability, obligation, certificate, or share is insured, under this Act, if such deposit liability, obligation, certificate, or share is not so insured; or

(ii) the extent to which or the manner in which any deposit liability, obligation, certificate, or share is insured under this Act, if such deposit liability, obligation, certificate, or share is not so insured, to the extent or in the manner represented.

(C) AUTHORITY OF THE APPROPRIATE FEDERAL BANKING AGENCY.—The appropriate Federal banking agency shall have enforcement authority in the case of a violation of this paragraph by any person for which the agency is the appropriate Federal banking agency, or any institution-affiliated party thereof.

(D) CORPORATION AUTHORITY IF THE APPROPRIATE FEDERAL BANKING AGENCY FAILS TO FOLLOW RECOMMENDATION.—

(i) RECOMMENDATION.—The Corporation may recommend in writing to the appropriate Federal banking agency that the agency take any enforcement action authorized under section 8 for purposes of enforcement of this paragraph with respect to any person for which the agency is the appropriate Federal banking agency or any institution-affiliated party thereof.

(ii) AGENCY RESPONSE.—If the appropriate Federal banking agency does not, within 30 days of the date of receipt of a recommendation under clause (i), take the enforcement action with respect to this paragraph recommended by the Corporation or provide a plan acceptable to the Corporation for responding to the situation presented, the Corporation may take the recommended enforcement action against such person or institution-affiliated party.

(E) ADDITIONAL AUTHORITY.—In addition to its authority under subparagraphs (C) and (D), for purposes of this paragraph, the Corporation shall have, in the same manner and to the same extent as with respect to a State nonmember insured bank—

(i) jurisdiction over—

(I) any person other than a person for which another agency is the appropriate Federal banking agency or any institution-affiliated party thereof; and

(II) any person that aids or abets a violation of this paragraph by a person described in subclause (I); and

(ii) for purposes of enforcing the requirements of this paragraph, the authority of the Corporation under—

(I) section 10(c) to conduct investigations; and

(II) subsections (b), (c), (d) and (i) of section 8 to conduct enforcement actions.

(F) OTHER ACTIONS PRESERVED.—No provision of this paragraph shall be construed as barring any action otherwise available, under the laws of the United States or any State, to any Federal or State agency or individual.

(b) No insured depository institution shall pay any dividends on its capital stock or interest on its capital notes or debentures (if such interest is required to be paid only out of net profits) or distribute any of its capital assets while it remains in default in the payment of any assessment due to the Corporation; and any director or officer of any insured depository institution who participates in the declaration or payment of any such dividend or interest or in any such distribution shall, upon conviction, be fined not more than $1,000 or imprisoned not more than one year, or both: *Provided,* That, if such default is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment, this subsection shall not apply if the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(c)(1) Except with the prior written approval of the responsible agency, which shall in every case referred to in this paragraph be the Corporation, no insured depository institution shall—

(A) merge or consolidate with any noninsured bank or institution;

(B) assume liability to pay any deposits (including liabilities which would be "deposits" except for the proviso in section 3(l)(5) of this Act) made in, or similar liabilities of, any noninsured bank or institution; or

(C) transfer assets to any noninsured bank or institution in consideration of the assumption of liabilities for any portion of the deposits made in such insured depository institution.

(2) No insured depository institution shall merge or consolidate with any other insured depository institution or, either directly or indirectly, acquire the assets of, or assume liability to pay any deposits made in, any other insured depository institution except with the prior written approval of the responsible agency, which shall be—

(A) the Comptroller of the Currency if the acquiring, assuming, or resulting bank is to be a national bank or a Federal savings association;

(B) the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is to be a State member bank; and

(C) the Corporation if the acquiring, assuming, or resulting bank is to be a State nonmember insured bank or a State savings association.

(3) Notice of any proposed transaction for which approval is required under paragraph (1) or (2) (referred to hereafter in this subsection as a "merger transaction") shall, unless the responsible agency finds that it must act immediately in order to prevent the probable default of one of the banks or savings associations involved, be published—

(A) prior to the granting of approval of such transaction,

(B) in a form approved by the responsible agency,

(C) at appropriate intervals during a period at least as long as the period allowed for furnishing reports under paragraph (4) of this subsection, and

(D) in a newspaper of general circulation in the community or communities where the main offices of the banks or savings associations involved are located, or, if there is no such newspaper in any such community, then in the newspaper of general circulation published nearest thereto.

(4) REPORTS ON COMPETITIVE FACTORS.—

(A) REQUEST FOR REPORT.—In the interests of uniform standards and subject to subparagraph (B), before acting on any application for approval of a merger transaction, the responsible agency shall—

(i) request a report on the competitive factors involved from the Attorney General of the United States; and

(ii) provide a copy of the request to the Corporation (when the Corporation is not the responsible agency).

(B) FURNISHING OF REPORT.—The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency—

(i) not later than 30 calendar days after the date on which the Attorney General received the request; or

(ii) not later than 10 calendar days after such date, if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.

(C) EXCEPTIONS.—A responsible agency may not be required to request a report under subparagraph (A) if—

(i) the responsible agency finds that it must act immediately in order to prevent the probable failure of 1 of the insured depository institutions involved in the merger transaction; or

(ii) the merger transaction involves solely an insured depository institution and 1 or more of the affiliates of such depository institution.

(5) The responsible agency shall not approve—

(A) any proposed merger transaction which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States, or

(B) any other proposed merger transaction whose effect in any section of the country may be substantially to lessen competition, or to tend to create a monopoly, or which in any other manner would be in restraint of trade, unless it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

In every case, the responsible agency shall take into consideration the financial and managerial resources and future prospects of the

existing and proposed institutions, the convenience and needs of the community to be served, and the risk to the stability of the United States banking or financial system.

(6) The responsible agency shall immediately notify the Attorney General of any approval by it pursuant to this subsection of a proposed merger transaction. If the agency has found that it must act immediately to prevent the probable failure of one of the insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and 1 or more of its affiliates, and the report on the competitive factors has been dispensed with, the transaction may be consummated immediately upon approval by the agency. If the agency has advised the Attorney General under paragraph (4)(B)(ii) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency. In all other cases, the transaction may not be consummated before the thirtieth calendar day after the date of approval by the agency or, if the agency has not received any adverse comment from the Attorney General of the United States relating to competitive factors, such shorter period of time as may be prescribed by the agency with the concurrence of the Attorney General, but in no event less than 15 calendar days after the date of approval.

(7)(A) Any action brought under the antitrust laws arising out of a merger transaction shall be commenced prior to the earliest time under paragraph (6) at which a merger transaction approved under paragraph (5) might be consummated. The commencement of such an action shall stay the effectiveness of the agency's approval unless the court shall otherwise specifically order. In any such action, the court shall review de novo the issues presented.

(B) In any judicial proceeding attacking a merger transaction approved under paragraph (5) on the ground that the merger transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the banking agencies are directed to apply under paragraph (5).

(C) Upon the consummation of a merger transaction in compliance with this subsection and after the termination of any antitrust litigation commenced within the period prescribed in this paragraph, or upon the termination of such period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this subsection shall exempt any bank or savings association resulting from a merger transaction from complying with the antitrust laws after the consummation of such transaction.

(D) In any action brought under the antitrust laws arising out of a merger transaction approved by a Federal supervisory agency pursuant to this subsection, such agency, and any State banking supervisory agency having jurisdiction within the State involved,

may appear as a party of its own motion and as of right, and be represented by its counsel.

(8) For the purposes of this subsection, the term "antitrust laws" means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in pari materia.

(9) Each of the responsible agencies shall include in its annual report to the Congress a description of each merger transaction approved by it during the period covered by the report, along with—

(A) the name and total resources of each bank or savings association involved;

(B) whether a report was submitted by the Attorney General under paragraph (4), and, if so, a summary by the Attorney General of the substance of such report; and

(C) a statement by the responsible agency of the basis for its approval.

(10) Until June 30, 1976, the responsible agency shall not grant any approval required by law which has the practical effect of permitting a conversion from the mutual to the stock form of organization, including approval of any application pending on the date of enactment of this subsection, except that this sentence shall not be deemed to limit now or hereafter the authority of the responsible agency to grant approvals in cases where the responsible agency finds that it must act in order to maintain the safety, soundness, and stability of an insured depository institution. The responsible agency may by rule, regulation, or otherwise and under such civil penalties (which shall be cumulative to any other remedies) as it may prescribe take whatever action it deems necessary or appropriate to implement or enforce this subsection.

(11) MONEY LAUNDERING.—In every case, the responsible agency, shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities, including in overseas branches.

(12) The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

(13)(A) Except as provided in subparagraph (B), the responsible agency may not approve an application for an interstate merger transaction if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) Subparagraph (A) shall not apply to an interstate merger transaction that involves 1 or more insured depository institutions in default or in danger of default, or with respect to which the Corporation provides assistance under section 13.

(C) In this paragraph—

(i) the term "interstate merger transaction" means a merger transaction involving 2 or more insured depository institutions that have different home States and that are not affiliates; and

(ii) the term "home State" means—

(I) with respect to a national bank, the State in which the main office of the bank is located;

(II) with respect to a State bank or State savings association, the State by which the State bank or State savings association is chartered; and

(III) with respect to a Federal savings association, the State in which the home office (as defined by the regulations of the Director of the Office of Thrift Supervision, or, on and after the transfer date, the Comptroller of the Currency) of the Federal savings association is located.

(d)(1) No State nonmember insured bank shall establish and operate any new domestic branch unless it shall have the prior written consent of the Corporation, and no State nonmember insured bank shall move its main office or any such branch from one location to another without such consent. No foreign bank may move any insured branch from one location to another without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this subsection shall be those enumerated in section 6 of this Act.

(2) No State nonmember insured bank shall establish or operate any foreign branch, except with the prior written consent of the Corporation and upon such conditions and pursuant to such regulations as the Corporation may prescribe from time to time.

(3)[1] EXCLUSIVE AUTHORITY FOR ADDITIONAL BRANCHES.—

(A) IN GENERAL.—Effective June 1, 1997, a State nonmember bank may not acquire, establish, or operate a branch in any State other than the bank's home State (as defined in section 44(f)(4)) or a State in which the bank already has a branch unless the acquisition, establishment, or operation of a branch in such State by a State nonmember bank is authorized under this subsection or section 13(f), 13(k), or 44.

(B) RETENTION OF BRANCHES.—In the case of a State nonmember bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State which was the bank's home State (as defined in section 44(f)(4)) before the relocation of such office only to the extent the bank would be authorized, under this section or any other provision of law referred to in subparagraph (A), to acquire, establish, or commence to operate a branch in such State if—

(i) the bank had no branches in such State; or

(ii) the branch resulted from—

(I) an interstate merger transaction approved pursuant to section 44; or

(II) a transaction after May 31, 1997, pursuant to which the bank received assistance from the Corporation under section 13(c).

(4) STATE "OPT-IN" ELECTION TO PERMIT INTERSTATE BRANCHING THROUGH DE NOVO BRANCHES.—

[1] Indentation so in law.

(A) IN GENERAL.—Subject to subparagraph (B), the Corporation may approve an application by an insured State nonmember bank to establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if—

(i) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the bank were a State bank chartered by such State; and

(ii) the conditions established in, or made applicable to this paragraph by, subparagraph (B) are met.

(B) CONDITIONS ON ESTABLISHMENT AND OPERATION OF INTERSTATE BRANCH.—

(i) ESTABLISHMENT.—An application by an insured State nonmember bank to establish and operate a de novo branch in a host State shall be subject to the same requirements and conditions to which an application for a merger transaction is subject under paragraphs (1), (3), and (4) of section 44(b).

(ii) OPERATION.—Subsections (c) and (d)(2) of section 44 shall apply with respect to each branch of an insured State nonmember bank which is established and operated pursuant to an application approved under this paragraph in the same manner and to the same extent such provisions of such section apply to a branch of a State bank which resulted from a merger transaction under such section 44.

(C) DE NOVO BRANCH DEFINED.—For purposes of this paragraph, the term "de novo branch" means a branch of a State bank which—

(i) is originally established by the State bank as a branch; and

(ii) does not become a branch of such bank as a result of—

(I) the acquisition by the bank of an insured depository institution or a branch of an insured depository institution; or

(II) the conversion, merger, or consolidation of any such institution or branch.

(D) HOME STATE DEFINED.—The term "home State" means the State by which a State bank is chartered.

(E) HOST STATE DEFINED.—The term "host State" means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(e) The Corporation may require any insured depository institution to provide protection and indemnity against burglary, defalcation, and other similar insurable losses. Whenever any insured depository institution refuses to comply with any such requirement the Corporation may contract for such protection and indemnity and add the cost thereof to the assessment otherwise payable by such bank.

(f) Whenever any insured depository institution (except a national bank), after written notice of the recommendations of the

Corporation based on a report of examination of such insured depository institution by an examiner of the Corporation, shall fail to comply with such recommendations within one hundred and twenty days after such notice, the Corporation shall have the power, and is hereby authorized, to publish only such part of such report of examination as relates to any recommendation not complied with: *Provided,* That notice of intention to make such publication shall be given to the insured depository institution at least ninety days before such publication is made.

(g) [Repealed]

(h) PENALTY FOR FAILURE TO TIMELY PAY ASSESSMENTS.—

(1) IN GENERAL.—Subject to paragraph (3), any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(2) EXCEPTION IN CASE OF DISPUTE.—Paragraph (1) shall not apply if—

(A) the failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(B) the insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(3) SPECIAL RULE FOR SMALL ASSESSMENT AMOUNTS.—If the amount of the assessment which an insured depository institution fails or refuses to pay is less than $10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (1) shall not exceed $100 for each day that such violation continues.

(4) AUTHORITY TO MODIFY OR REMIT PENALTY.—The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (1) upon a finding that good cause prevented the timely payment of an assessment.

(i)(1) No insured State nonmember bank shall, without the prior consent of the Corporation, reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures.

(2) No insured Federal depository institution shall convert into an insured State depository institution if its capital stock or its surplus will be less than the capital stock or surplus, respectively, of the converting bank at the time of the shareholder's meeting approving such conversion, without the prior written consent of—

(A) the Board of Governors of the Federal Reserve System if the resulting bank is to be a State member bank;

(B) the Corporation if the resulting bank is to be a State nonmember insured bank; and

(C)[1] the Corporation if the resulting institution is to be an insured State savings association.

(3) Without the prior written consent of the Corporation, no insured depository institution shall convert into a noninsured bank or institution.

(4) In granting or withholding consent under this subsection, the responsible agency shall consider—

(A) the financial history and condition of the bank,

(B) the adequacy of its capital structure,

(C) its future earnings prospects,

(D) the general character and fitness of its management,

(E) the convenience and needs of the community to be served, and

(F) whether or not its corporate powers are consistent with the purposes of this Act.

(j) RESTRICTIONS ON TRANSACTIONS WITH AFFILIATES AND INSIDERS.—

(1) TRANSACTIONS WITH AFFILIATES.—

(A) IN GENERAL.—Sections 23A and 23B of the Federal Reserve Act shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(B) AFFILIATE DEFINED.—For the purpose of subparagraph (A), any company that would be an affiliate (as defined in sections 23A and 23B) of a nonmember insured bank if the nonmember insured bank were a member bank shall be deemed to be an affiliate of that nonmember insured bank.

(2) EXTENSIONS OF CREDIT TO OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—Subsections (g) and (h) of section 22 of the Federal Reserve Act shall apply with respect to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(3) AVOIDING EXTRATERRITORIAL APPLICATION TO FOREIGN BANKS.—

(A) TRANSACTIONS WITH AFFILIATES.—Paragraph (1) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch.

(B) EXTENSIONS OF CREDIT TO OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS.—Paragraph (2) shall not apply with respect to a foreign bank solely because the foreign bank has an insured branch, but shall apply with respect to the insured branch.

(C) FOREIGN BANK DEFINED.—For purposes of this paragraph, the term "foreign bank" has the same meaning as in section 1(b)(7) of the International Banking Act of 1978.

(k) AUTHORITY TO REGULATE OR PROHIBIT CERTAIN FORMS OF BENEFITS TO INSTITUTION-AFFILIATED PARTIES.—

(1) GOLDEN PARACHUTES AND INDEMNIFICATION PAYMENTS.—The Corporation may prohibit or limit, by regulation

[1] Margin so in law.

or order, any golden parachute payment or indemnification payment.

(2) FACTORS TO BE TAKEN INTO ACCOUNT.—The Corporation shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) which may include such factors as the following:

(A) Whether there is a reasonable basis to believe that the institution-affiliated party has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or covered company that has had a material affect on the financial condition of the institution.

(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for—

(i) the insolvency of the depository institution or covered company;

(ii) the appointment of a conservator or receiver for the depository institution; or

(iii) the troubled condition of the depository institution (as defined in the regulations prescribed pursuant to section 32(f)).

(C) Whether there is a reasonable basis to believe that the institution-affiliated party has materially violated any applicable Federal or State banking law or regulation that has had a material affect on the financial condition of the institution.

(D) Whether there is a reasonable basis to believe that the institution-affiliated party has violated or conspired to violate—

(i) section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18, United States Code; or

(ii) section 1341 or 1343 of such title affecting a federally insured financial institution.

(E) Whether the institution-affiliated party was in a position of managerial or fiduciary responsibility.

(F) The length of time the party was affiliated with the insured depository institution or covered company, and the degree to which—

(i) the payment reasonably reflects compensation earned over the period of employment; and

(ii) the compensation involved represents a reasonable payment for services rendered.

(3) CERTAIN PAYMENTS PROHIBITED.—No insured depository institution or covered company may prepay the salary or any liability or legal expense of any institution-affiliated party if such payment is made—

(A) in contemplation of the insolvency of such institution or covered company or after the commission of an act of insolvency; and

(B) with a view to, or has the result of—

(i) preventing the proper application of the assets of the institution to creditors; or

(ii) preferring one creditor over another.

(4) GOLDEN PARACHUTE PAYMENT DEFINED.—For purposes of this subsection—

(A) IN GENERAL.—The term "golden parachute payment" means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or covered company for the benefit of any institution-affiliated party pursuant to an obligation of such institution or covered company that—

(i) is contingent on the termination of such party's affiliation with the institution or covered company; and

(ii) is received on or after the date on which—

(I) the insured depository institution or covered company, or any insured depository institution subsidiary of such covered company, is insolvent;

(II) any conservator or receiver is appointed for such institution;

(III) the institution's appropriate Federal banking agency determines that the insured depository institution is in a troubled condition (as defined in the regulations prescribed pursuant to section 32(f));

(IV) the insured depository institution has been assigned a composite rating by the appropriate Federal banking agency or the Corporation of 4 or 5 under the Uniform Financial Institutions Rating System; or

(V) the insured depository institution is subject to a proceeding initiated by the Corporation to terminate or suspend deposit insurance for such institution.

(B) CERTAIN PAYMENTS IN CONTEMPLATION OF AN EVENT.—Any payment which would be a golden parachute payment but for the fact that such payment was made before the date referred to in subparagraph (A)(ii) shall be treated as a golden parachute payment if the payment was made in contemplation of the occurrence of an event described in any subclause of such subparagraph.

(C) CERTAIN PAYMENTS NOT INCLUDED.—The term "golden parachute payment" shall not include—

(i) any payment made pursuant to a retirement plan which is qualified (or is intended to be qualified) under section 401 of the Internal Revenue Code of 1986 or other nondiscriminatory benefit plan;

(ii) any payment made pursuant to a bona fide deferred compensation plan or arrangement which the Board determines, by regulation or order, to be permissible; or

(iii) any payment made by reason of the death or disability of an institution-affiliated party.

(5) OTHER DEFINITIONS.—For purposes of this subsection—

(A) INDEMNIFICATION PAYMENT.—Subject to paragraph (6), the term "indemnification payment" means any pay-

ment (or any agreement to make any payment) by any insured depository institution or covered company for the benefit of any person who is or was an institution-affiliated party, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by the appropriate Federal banking agency which results in a final order under which such person—

(i) is assessed a civil money penalty;

(ii) is removed or prohibited from participating in conduct of the affairs of the insured depository institution; or

(iii) is required to take any affirmative action described in section 8(b)(6) with respect to such institution.

(B) LIABILITY OR LEGAL EXPENSE.—The term "liability or legal expense" means—

(i) any legal or other professional expense incurred in connection with any claim, proceeding, or action;

(ii) the amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(iii) the amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(C) PAYMENT.—The term "payment" includes—

(i) any direct or indirect transfer of any funds or any asset; and

(ii) any segregation of any funds or assets for the purpose of making, or pursuant to an agreement to make, any payment after the date on which such funds or assets are segregated, without regard to whether the obligation to make such payment is contingent on—

(I) the determination, after such date, of the liability for the payment of such amount; or

(II) the liquidation, after such date, of the amount of such payment.

(D) COVERED COMPANY.—The term "covered company" means any depository institution holding company (including any company required to file a report under section 4(f)(6) of the Bank Holding Company Act of 1956), or any other company that controls an insured depository institution.

(6) CERTAIN COMMERCIAL INSURANCE COVERAGE NOT TREATED AS COVERED BENEFIT PAYMENT.—No provision of this subsection shall be construed as prohibiting any insured depository institution or covered company, from purchasing any commercial insurance policy or fidelity bond, except that, subject to any requirement described in paragraph (5)(A)(iii), such insurance policy or bond shall not cover any legal or liability expense of the institution or covered company which is described in paragraph (5)(A).

(l) When authorized by State law, a State nonmember insured bank may, but only with the prior written consent of the Corporation and upon such conditions and under such regulations as the Corporation may prescribe from time to time, acquire and hold, directly or indirectly, stock or other evidences of ownership in one or more banks or other entities organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the Board of Directors, shall be incidental to the international or foreign business of such foreign bank or entity; and, notwithstanding the provisions of subsection (j) of this section, such State nonmember insured bank may, as to such foreign bank or entity, engage in transactions that would otherwise be covered thereby, but only in the manner and within the limit prescribed by the Corporation by general or specific regulation or ruling.

(m) ACTIVITIES OF SAVINGS ASSOCIATIONS AND THEIR SUBSIDIARIES.—

(1) PROCEDURES.—When an insured savings association establishes or acquires a subsidiary or when an insured savings association elects to conduct any new activity through a subsidiary that the insured savings association controls, the insured savings association—

(A) shall notify the Corporation or the Comptroller of the Currency, as appropriate, not less than 30 days prior to the establishment, or acquisition, of any such subsidiary, and not less than 30 days prior to the commencement of any such activity, and in either case shall provide at that time such information as each such agency may, by regulation, require; and

(B) shall conduct the activities of the subsidiary in accordance with regulations of the Comptroller of the Currency and orders of the Corporation and the Comptroller of the Currency.

(2) ENFORCEMENT POWERS.—With respect to any subsidiary of an insured savings association:

(A) the Corporation and the Comptroller of the Currency, as appropriate, shall each have, with respect to such subsidiary, the respective powers that each has with respect to the insured savings association pursuant to this section or section 8; and

(B) the Corporation or the Comptroller of the Currency, as appropriate, may determine, after notice and opportunity for hearing, that the continuation by the insured savings association of its ownership or control of, or its relationship to, the subsidiary—

(i) constitutes a serious risk to the safety, soundness, or stability of the insured savings association, or

(ii) is inconsistent with sound banking principles or with the purposes of this Act.

Upon making any such determination, the Corporation or the Office of the Comptroller of the Currency, as appropriate, shall have authority to order the insured savings association to divest itself of control of the subsidiary. The

Corporation or the Comptroller of the Currency, as appropriate, may take any other corrective measures with respect to the subsidiary, including the authority to require the subsidiary to terminate the activities or operations posing such risks, as the Corporation or the Comptroller of the Currency, respectively, may deem appropriate.

(3) ACTIVITIES INCOMPATIBLE WITH DEPOSIT INSURANCE.—

(A) IN GENERAL.—The Corporation may determine by regulation or order that any specific activity poses a serious threat to the Deposit Insurance Fund. Prior to adopting any such regulation, the Corporation shall, in the case of a Federal savings association, consult with the Comptroller of the Currency and shall provide appropriate State supervisors the opportunity to comment thereon, and the Corporation shall specifically take such comments into consideration. Any such regulation shall be issued in accordance with section 553 of title 5, United States Code. If the Board of Directors makes such a determination with respect to an activity, the Corporation shall have authority to order that no savings association may engage in the activity directly.

(B) AUTHORITY OF COMPTROLLER OF THE CURRENCY [1].—This section does not limit the authority of the Comptroller of the Currency to issue regulations to promote safety and soundness, or to enforce compliance as to Federal savings associations with other applicable laws.

(C) ADDITIONAL AUTHORITY OF FDIC TO PREVENT SERIOUS RISKS TO INSURANCE FUND.—Notwithstanding subparagraph (A), the Corporation may prescribe and enforce such regulations and issue such orders as the Corporation determines to be necessary to prevent actions or practices of savings associations that pose a serious threat to the Deposit Insurance Fund.

(4) "SUBSIDIARY" DEFINED.—As used in this subsection, the term "subsidiary" does not include an insured depository institution.

(5) APPLICABILITY TO CERTAIN SAVINGS BANKS.—Subparagraphs (A) and (B) of paragraph (1) of this subsection do not apply to—

(A) any Federal savings bank that was chartered prior to October 15, 1982, as a savings bank under State law, or

(B) a savings association that acquired its principal assets from an institution that was chartered prior to October 15, 1982, as a savings bank under State law.

(n) CALCULATION OF CAPITAL.—No appropriate Federal banking agency shall allow any insured depository institution to include an unidentifiable intangible asset in its calculation of compliance with the appropriate capital standard, if such unidentifiable intan-

[1] The amendment made by section 363(7)(7)(D)(iii)(II)(aa) to the heading of subparagraph (B) by striking "DIRECTOR" and inserting "COMPTROLLER OF THE CURRENCY" was executed to reflect the probable intent of Congress. The casing for the first letter of the word proposed to be struck probably should have been small caps and the first letter of the first word of the matter inserted probably should have been set in small cap.

gible asset was acquired after April 12, 1989, except to the extent permitted under section 5(t) of the Home Owners' Loan Act.

(o) REAL ESTATE LENDING.—

(1) UNIFORM REGULATIONS.—Not more than 9 months after the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are—

(A) secured by liens on interests in real estate; or

(B) made for the purpose of financing the construction of a building or other improvements to real estate.

(2) STANDARDS.—

(A) CRITERIA.—In prescribing standards under paragraph (1), the agencies shall consider—

(i) the risk posed to the Deposit Insurance Fund by such extensions of credit;

(ii) the need for safe and sound operation of insured depository institutions; and

(iii) the availability of credit.

(B) VARIATIONS PERMITTED.—In prescribing standards under paragraph (1), the appropriate Federal banking agencies may differentiate among types of loans—

(i) as may be required by Federal statute;

(ii) as may be warranted, based on the risk to the Deposit Insurance Fund; or

(iii) as may be warranted, based on the safety and soundness of the institutions.

(3) LOAN EVALUATION STANDARD.—No appropriate Federal banking agency shall adversely evaluate an investment or a loan made by an insured depository institution, or consider such a loan to be nonperforming, solely because the loan is made to or the investment is in commercial, residential, or industrial property, unless such investment or loan may affect the institution's safety and soundness.

(4) EFFECTIVE DATE.—The regulations adopted under paragraph (1) shall become effective not later than 15 months after the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991. Such regulations shall continue in effect except as uniformly amended by the appropriate Federal banking agencies, acting in concert.

(p) PERIODIC REVIEW OF CAPITAL STANDARDS.—Each appropriate Federal banking agency shall, in consultation with the other Federal banking agencies, biennially review its capital standards for insured depository institutions to determine whether those standards require sufficient capital to facilitate prompt corrective action to prevent or minimize loss to the Deposit Insurance Fund, consistent with section 38.

(q) SOVEREIGN RISK.—Section 25C of the Federal Reserve Act shall apply to every nonmember insured bank in the same manner and to the same extent as if the nonmember insured bank were a member bank.

(r) SUBSIDIARY DEPOSITORY INSTITUTIONS AS AGENTS FOR CERTAIN AFFILIATES.—

(1) IN GENERAL.—Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for a depository institution affiliate.

(2) BANK ACTING AS AGENT IS NOT A BRANCH.—Notwithstanding any other provision of law, a bank acting as an agent in accordance with paragraph (1) for a depository institution affiliate shall not be considered to be a branch of the affiliate.

(3) PROHIBITIONS ON ACTIVITIES.—A depository institution may not—

(A) conduct any activity as an agent under paragraph (1) or (6) which such institution is prohibited from conducting as a principal under any applicable Federal or State law; or

(B) as a principal, have an agent conduct any activity under paragraph (1) or (6) which the institution is prohibited from conducting under any applicable Federal or State law.

(4) EXISTING AUTHORITY NOT AFFECTED.—No provision of this subsection shall be construed as affecting—

(A) the authority of any depository institution to act as an agent on behalf of any other depository institution under any other provision of law; or

(B) whether a depository institution which conducts any activity as an agent on behalf of any other depository institution under any other provision of law shall be considered to be a branch of such other institution.

(5) AGENCY RELATIONSHIP REQUIRED TO BE CONSISTENT WITH SAFE AND SOUND BANKING PRACTICES.—An agency relationship between depository institutions under paragraph (1) or (6) shall be on terms that are consistent with safe and sound banking practices and all applicable regulations of any appropriate Federal banking agency.

(6) AFFILIATED INSURED SAVINGS ASSOCIATIONS.—An insured savings association which was an affiliate of a bank on July 1, 1994, may conduct activities as an agent on behalf of such bank in the same manner as an insured bank affiliate of such bank may act as agent for such bank under this subsection to the extent such activities are conducted only in—

(A) any State in which—

(i) the bank is not prohibited from operating a branch under any provision of Federal or State law; and

(ii) the savings association maintained an office or branch and conducted business as of July 1, 1994; or

(B) any State in which—

(i) the bank is not expressly prohibited from operating a branch under a State law described in section 44(a)(2); and

(ii) the savings association maintained a main office and conducted business as of July 1, 1994.

(s) PROHIBITION ON CERTAIN AFFILIATIONS.—

(1) IN GENERAL.—No depository institution may be an affiliate of, be sponsored by, or accept financial support, directly or indirectly, from any Government-sponsored enterprise.

(2) EXCEPTION FOR MEMBERS OF A FEDERAL HOME LOAN BANK.—Paragraph (1) shall not apply with respect to the membership of a depository institution in a Federal home loan bank.

(3) ROUTINE BUSINESS FINANCING.—Paragraph (1) shall not apply with respect to advances or other forms of financial assistance provided by a Government-sponsored enterprise pursuant to the statutes governing such enterprise.

(4) STUDENT LOANS.—

(A) IN GENERAL.—This subsection shall not apply to any arrangement between the Holding Company (or any subsidiary of the Holding Company other than the Student Loan Marketing Association) and a depository institution, if the Secretary approves the affiliation and determines that—

(i) the reorganization of such Association in accordance with section 440 of the Higher Education Act of 1965, as amended, will not be adversely affected by the arrangement;

(ii) the dissolution of the Association pursuant to such reorganization will occur before the end of the 2-year period beginning on the date on which such arrangement is consummated or on such earlier date as the Secretary deems appropriate: *Provided,* That the Secretary may extend this period for not more than 1 year at a time if the Secretary determines that such extension is in the public interest and is appropriate to achieve an orderly reorganization of the Association or to prevent market disruptions in connection with such reorganization, but no such extensions shall in the aggregate exceed 2 years;

(iii) the Association will not purchase or extend credit to, or guarantee or provide credit enhancement to, any obligation of the depository institution;

(iv) the operations of the Association will be separate from the operations of the depository institution; and

(v) until the "dissolution date" (as that term is defined in section 440 of the Higher Education Act of 1965, as amended) has occurred, such depository institution will not use the trade name or service mark "Sallie Mae" in connection with any product or service it offers if the appropriate Federal banking agency for such depository institution determines that—

(I) the depository institution is the only institution offering such product or service using the "Sallie Mae" name; and

(II) such use would result in the depository institution having an unfair competitive advantage over other depository institutions.

(B) TERMS AND CONDITIONS.—In approving any arrangement referred to in subparagraph (A) the Secretary may impose any terms and conditions on such an arrangement that the Secretary considers appropriate, including—

(i) imposing additional restrictions on the issuance of debt obligations by the Association; or

(ii) restricting the use of proceeds from the issuance of such debt.

(C) ADDITIONAL LIMITATIONS.—In the event that the Holding Company (or any subsidiary of the Holding Company) enters into such an arrangement, the value of the Association's "investment portfolio" shall not at any time exceed the lesser of—

(i) the value of such portfolio on the date of the enactment of this subsection; or

(ii) the value of such portfolio on the date such an arrangement is consummated. The term "investment portfolio" shall mean all investments shown on the consolidated balance sheet of the Association other than—

(I) any instrument or assets described in section 439(d) of the Higher Education Act of 1965, as such section existed on the day before the date of the repeal of such section;

(II) any direct noncallable obligations of the United States or any agency thereof for which the full faith and credit of the United States is pledged; or

(III) cash or cash equivalents.

(D) ENFORCEMENT.—The terms and conditions imposed under subparagraph (B) may be enforced by the Secretary in accordance with section 440 of the Higher Education Act of 1965.

(E) DEFINITIONS.—For purposes of this paragraph, the following definition [1] shall apply—

(i) ASSOCIATION; HOLDING COMPANY.—Notwithstanding any provision in section 3, the terms "Association" and "Holding Company" have the same meanings as in section 440(i) of the Higher Education Act of 1965.

(ii) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(5) GOVERNMENT-SPONSORED ENTERPRISE DEFINED.—For purposes of this subsection, the term "Government-sponsored enterprise" has the meaning given to such term in section 1404(e)(1)(A) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(t) RECORDKEEPING REQUIREMENTS.—

(1) REQUIREMENTS.—Each appropriate Federal banking agency, after consultation with and consideration of the views of the Commission, shall establish recordkeeping requirements for banks relying on exceptions contained in paragraphs (4)

[1] So in law. Probably should be "definitions".

and (5) of section 3(a) of the Securities Exchange Act of 1934. Such recordkeeping requirements shall be sufficient to demonstrate compliance with the terms of such exceptions and be designed to facilitate compliance with such exceptions.

(2) AVAILABILITY TO COMMISSION; CONFIDENTIALITY.—Each appropriate Federal banking agency shall make any information required under paragraph (1) available to the Commission upon request. Notwithstanding any other provision of law, the Commission shall not be compelled to disclose any such information. Nothing in this paragraph shall authorize the Commission to withhold information from Congress, or prevent the Commission from complying with a request for information from any other Federal department or agency or any self-regulatory organization requesting the information for purposes within the scope of its jurisdiction, or complying with an order of a court of the United States in an action brought by the United States or the Commission. For purposes of section 552 of title 5, United States Code, this paragraph shall be considered a statute described in subsection (b)(3)(B) of such section 552.

(3) DEFINITION.—As used in this subsection the term "Commission" means the Securities and Exchange Commission.

(u) LIMITATION ON CLAIMS.—

(1) IN GENERAL.—No person may bring a claim against any Federal banking agency (including in its capacity as conservator or receiver) for the return of assets of an affiliate or controlling shareholder of the insured depository institution transferred to, or for the benefit of, an insured depository institution by such affiliate or controlling shareholder of the insured depository institution, or a claim against such Federal banking agency for monetary damages or other legal or equitable relief in connection with such transfer, if at the time of the transfer—

(A) the insured depository institution is subject to any direction issued in writing by a Federal banking agency to increase its capital; and

(B) for that portion of the transfer that is made by an entity covered by section 5(g) of the Bank Holding Company Act of 1956 or section 45 of this Act, the Federal banking agency has followed the procedure set forth in such section.

(2) DEFINITION OF CLAIM.—For purposes of paragraph (1), the term "claim"—

(A) means a cause of action based on Federal or State law that—

(i) provides for the avoidance of preferential or fraudulent transfers or conveyances; or

(ii) provides similar remedies for preferential or fraudulent transfers or conveyances; and

(B) does not include any claim based on actual intent to hinder, delay, or defraud pursuant to such a fraudulent transfer or conveyance law.

(v) LOANS BY INSURED INSTITUTIONS ON THEIR OWN STOCK.—

(1) GENERAL PROHIBITION.—No insured depository institution may make any loan or discount on the security of the shares of its own capital stock.

(2) EXCLUSION.—For purposes of this subsection, an insured depository institution shall not be deemed to be making a loan or discount on the security of the shares of its own capital stock if it acquires the stock to prevent loss upon a debt previously contracted for in good faith.

(w) WRITTEN EMPLOYMENT REFERENCES MAY CONTAIN SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIVITY.—

(1) AUTHORITY TO DISCLOSE INFORMATION.—Notwithstanding any other provision of law, any insured depository institution, and any director, officer, employee, or agent of such institution, may disclose in any written employment reference relating to a current or former institution-affiliated party of such institution which is provided to another insured depository institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in potentially unlawful activity.

(2) INFORMATION NOT REQUIRED.—Nothing in paragraph (1) shall be construed, by itself, to create any affirmative duty to include any information described in paragraph (1) in any employment reference referred to in paragraph (1).

(3) MALICIOUS INTENT.—Notwithstanding any other provision of this subsection, voluntary disclosure made by an insured depository institution, and any director, officer, employee, or agent of such institution, under this subsection concerning potentially unlawful activity that is made with malicious intent, shall not be shielded from liability from the person identified in the disclosure.

(4) DEFINITION.—For purposes of this subsection, the term "insured depository institution" includes any uninsured branch or agency of a foreign bank.

(x) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

(1) IN GENERAL.—The submission by any person of any information to any Federal banking agency, State bank supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such agency, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such agency, supervisor, or authority.

(2) RULE OF CONSTRUCTION.—No provision of paragraph (1) may be construed as implying or establishing that—

(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

(B) any person would waive any privilege applicable to any information by submitting the information to any Federal banking agency, State bank supervisor, or foreign banking authority, but for this subsection.

(z) GENERAL PROHIBITION ON SALE OF ASSETS.—

(1) IN GENERAL.—An insured depository institution may not purchase an asset from, or sell an asset to, an executive officer, director, or principal shareholder of the insured depository institution, or any related interest of such person (as such terms are defined in section 22(h) of Federal Reserve Act), unless—

(A) the transaction is on market terms; and

(B) if the transaction represents more than 10 percent of the capital stock and surplus of the insured depository institution, the transaction has been approved in advance by a majority of the members of the board of directors of the insured depository institution who do not have an interest in the transaction.

(2) RULEMAKING.—The Board of Governors of the Federal Reserve System may issue such rules as may be necessary to define terms and to carry out the purposes this subsection. Before proposing or adopting a rule under this paragraph, the Board of Governors of the Federal Reserve System shall consult with the Comptroller of the Currency and the Corporation as to the terms of the rule.

(y)[1] STATE LENDING LIMIT TREATMENT OF DERIVATIVES TRANSACTIONS.—An insured State bank may engage in a derivative transaction, as defined in section 5200(b)(3) of the Revised Statutes of the United States (12 U.S.C. 84(b)(3)), only if the law with respect to lending limits of the State in which the insured State bank is chartered takes into consideration credit exposure to derivative transactions.

SEC. 19. [12 U.S.C. 1829] PENALTY FOR UNAUTHORIZED PARTICIPATION BY CONVICTED INDIVIDUAL.

(a) PROHIBITION.—

(1) IN GENERAL.—Except with the prior written consent of the Corporation—

(A) any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such offense, may not—

(i) become, or continue as, an institution-affiliated party with respect to any insured depository institution;

(ii) own or control, directly or indirectly, any insured depository institution; or

(iii) otherwise participate, directly or indirectly, in the conduct of the affairs of any insured depository institution; and

(B) any insured depository institution may not permit any person referred to in subparagraph (A) to engage in any conduct or continue any relationship prohibited under such subparagraph.

(2) MINIMUM 10-YEAR PROHIBITION PERIOD FOR CERTAIN OFFENSES.—

[1] The order of subsection (y) following subsection (z) is so in law. See repective effective dates and amendment instructions for sections 611 and 615 of Public Law 111–203.

(A) IN GENERAL.—If the offense referred to in paragraph (1)(A) in connection with any person referred to in such paragraph is—

(i) an offense under—

(I) section 215, 656, 657, 1005, 1006, 1007, 1008, 1014, 1032, 1344, 1517, 1956, or 1957 of title 18, United States Code; or

(II) section 1341 or 1343 of such title which affects any financial institution (as defined in section 20 of such title); or

(ii) the offense of conspiring to commit any such offense,

the Corporation may not consent to any exception to the application of paragraph (1) to such person during the 10-year period beginning on the date the conviction or the agreement of the person becomes final.

(B) EXCEPTION BY ORDER OF SENTENCING COURT.—

(i) IN GENERAL.—On motion of the Corporation, the court in which the conviction or the agreement of a person referred to in subparagraph (A) has been entered may grant an exception to the application of paragraph (1) to such person if granting the exception is in the interest of justice.

(ii) PERIOD FOR FILING.—A motion may be filed under clause (i) at any time during the 10-year period described in subparagraph (A) with regard to the person on whose behalf such motion is made.

(b)[1] PENALTY.—Whoever knowingly violates subsection (a) shall be fined not more than $1,000,000 for each day such prohibition is violated or imprisoned for not more than 5 years, or both.

(d) BANK HOLDING COMPANIES.—

(1) IN GENERAL.—Subsections (a) and (b) shall apply to any company (other than a foreign bank) that is a bank holding company and any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, as if such bank holding company or organization were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting "Board of Governors of the Federal Reserve System" for "Corporation" each place that term appears in such subsections.

(2) AUTHORITY OF BOARD.—The Board of Governors of the Federal Reserve System may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.

(e) SAVINGS AND LOAN HOLDING COMPANIES.—

(1) IN GENERAL.—Subsections (a) and (b) shall apply to any savings and loan holding company as if such savings and loan holding company were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting "Board of Governors of the Federal Re-

[1] There is no subsection (c).

serve System" for "Corporation" each place that term appears in such subsections.

(2) AUTHORITY OF DIRECTOR.—The Board of Governors of the Federal Reserve System may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.

SEC. 20. [12 U.S.C. 1829a] (a) A State nonmember insured bank may not—

(1) deal in lottery tickets;

(2) deal in bets used as a means or substitute for participation in a lottery;

(3) announce, advertise, or publicize the existence of any lottery; or

(4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

(b) A State nonmember insured bank may not permit—

(1) the use of any part of any of its banking offices by any person for any purpose forbidden to the bank under subsection (a), or

(2) direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank under subsection (a).

(c) As used in this section—

(1) The term "deal in" includes making, taking, buying, selling, redeeming, or collecting.

(2) The term "lottery" includes any arrangement whereby three or more persons (the "participants") advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the "winners") will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes—

(A) a random selection;

(B) a game, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.

(3) The term "lottery ticket" includes any right, privilege, or possibility (and any ticket, receipt, record, or other evidence of any such right, privilege, or possibility) of becoming a winner in a lottery.

(d) Nothing contained in this section prohibits a State nonmember insured bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.

(e) The Board of Directors shall prescribe such regulations as may be necessary to the strict enforcement of this section and the prevention of evasions thereof.

SEC. 21. [12 U.S.C. 1829b] (a) CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE.—

(1) FINDINGS.—Congress finds that—

(A) adequate records maintained by insured depository institutions have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings, and that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against domestic and international terrorism; and

(B) microfilm or other reproductions and other records made by insured depository institutions of checks, as well as records kept by such institutions, of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in proceedings described in subparagraph (A).

(2) PURPOSE.—It is the purpose of this section to require the maintenance of appropriate types of records by insured depository institutions in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, recognizing that, given the threat posed to the security of the Nation on and after the terrorist attacks against the United States on September 11, 2001, such records may also have a high degree of usefulness in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

(b) RECORDKEEPING REGULATIONS.—

(1) IN GENERAL.—Where the Secretary of the Treasury (referred to in this section as the "Secretary") determines that the maintenance of appropriate types of records and other evidence by insured depository institutions has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

(2) DOMESTIC FUNDS TRANSFERS.—Whenever the Secretary and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") determine that the maintenance of records, by insured depository institutions, of payment orders which direct transfers of funds over wholesale funds transfer systems has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, the Secretary and the Board shall jointly prescribe regulations to carry out the purposes of this section with respect to the maintenance of such records.

(3) INTERNATIONAL FUNDS TRANSFERS.—

(A) IN GENERAL.—The Secretary and the Board shall jointly prescribe, after consultation with State banking supervisors, final regulations requiring that insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks or other similar instruments maintain such records of payment orders which—

(i) involve international transactions; and

(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks or similar instruments,

that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

(B) FACTORS FOR CONSIDERATION.—In prescribing the regulations required under subparagraph (A), the Secretary and the Board shall consider—

(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and

(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

(C) Availability of records.—Any records required to be maintained pursuant to the regulations prescribed under subparagraph (A) shall be submitted or made available to the Secretary or the Board upon request.

(c) Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b), each insured depository institution shall maintain such records and other evidence, in such form as the Secretary shall require, of the identity of each person having an account in the United States with the insured depository institution and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement otherwise imposed under this subsection as are consistent with the purposes of this section.

(d) Each insured depository institution shall make, to the extent that the regulations of the Secretary so require—

(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment; and

(2) a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be deposited or collected, unless the insured depository institution has already made a record of the party's identity pursuant to subsection (c).

(e) Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b), whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured depository institution which is required to be reported or recorded under the Currency and Foreign Transactions Reporting Act, the insured depository institution shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances.

(f) Subject to the requirements of any regulations prescribed jointly by the Secretary and the Board under paragraph (2) or (3) of subsection (b) and in addition to or in lieu of the records and evidence otherwise referred to in this section, each insured depository institution shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

(g) Any type of record or evidence required under this section shall be retained for such period as the Secretary may prescribe for the type in question. Any period so prescribed shall not exceed six years unless the Secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

(h) The Secretary shall include in his annual report to the Congress information on his implementation of the authority conferred by this section and any similar authority with respect to recordkeeping or reporting requirements conferred by other provisions of law.

(i) The provisions of this section shall not apply to any foreign bank except with respect to the transactions and records of any insured branch of such a bank.

(j) CIVIL PENALTIES.—

(1) PENALTY IMPOSED.—Any insured depository institution and any director, officer, or employee of an insured depository institution who willfully or through gross negligence violates, or any person who willfully causes such a violation, any regulation prescribed under subsection (b) shall be liable to the United States for a civil penalty of not more than $10,000.

(2) TREATMENT OF CONTINUING VIOLATION.—A separate violation of any regulation prescribed under subsection (b) of this section occurs for each day the violation continues and at each office, branch, or place of business at which such violation occurs.

(3) ASSESSMENT.—Any penalty imposed under paragraph (1) shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of title 31, United States Code.

SEC. 22. [12 U.S.C. 1830] NONDISCRIMINATION.

It is not the purpose of this Act to discriminate in any manner against State nonmember banks or State savings associations and in favor of national or member banks or Federal savings associations, respectively. It is the purpose of this Act to provide all banks and savings associations with the same opportunity to obtain and enjoy the benefits of this Act.

SEC. 23. [12 U.S.C. 1831] The provisions of this Act limiting the insurance of the deposits of any depositor to a maximum less than the full amount shall be independent and separable from each and all of the provisions of this Act.

SEC. 24. [12 U.S.C. 1831a] ACTIVITIES OF INSURED STATE BANKS.

(a) PERMISSIBLE ACTIVITIES.—

(1) IN GENERAL.—After the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, an insured

State bank may not engage as principal in any type of activity that is not permissible for a national bank unless—

(A) the Corporation has determined that the activity would pose no significant risk to the Deposit Insurance Fund; and

(B) the State bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(2) PROCESSING PERIOD.—

(A) IN GENERAL.—The Corporation shall make a determination under paragraph (1)(A) not later than 60 days after receipt of a completed application that may be required under this subsection.

(B) EXTENSION OF TIME PERIOD.—The Corporation may extend the 60-day period referred to in subparagraph (A) for not more than 30 additional days, and shall notify the applicant of any such extension.

(b) INSURANCE UNDERWRITING.—

(1) IN GENERAL.—Notwithstanding subsection (a), an insured State bank may not engage in insurance underwriting except to the extent that activity is permissible for national banks.

(2) EXCEPTION FOR CERTAIN FEDERALLY REINSURED CROP INSURANCE.—Notwithstanding any other provision of law, an insured State bank or any of its subsidiaries that provided insurance on or before September 30, 1991, which was reinsured in whole or in part by the Federal Crop Insurance Corporation may continue to provide such insurance.

(c) EQUITY INVESTMENTS BY INSURED STATE BANKS.—

(1) IN GENERAL.—An insured State bank may not, directly or indirectly, acquire or retain any equity investment of a type that is not permissible for a national bank.

(2) EXCEPTION FOR CERTAIN SUBSIDIARIES.—Paragraph (1) shall not prohibit an insured State bank from acquiring or retaining an equity investment in a subsidiary of which the insured State bank is a majority owner.

(3) EXCEPTION FOR QUALIFIED HOUSING PROJECTS.—

(A) EXCEPTION.—Notwithstanding any other provision of this subsection, an insured State bank may invest as a limited partner in a partnership, the sole purpose of which is direct or indirect investment in the acquisition, rehabilitation, or new construction of a qualified housing project.

(B) LIMITATION.—The aggregate of the investments of any insured State bank pursuant to this paragraph shall not exceed 2 percent of the total assets of the bank.

(C) QUALIFIED HOUSING PROJECT DEFINED.—As used in this paragraph—

(i) QUALIFIED HOUSING PROJECT.—The term "qualified housing project" means residential real estate that is intended to primarily benefit lower income people throughout the period of the investment.

(ii) LOWER INCOME.—The term "lower income" means income that is less than or equal to the median

income based on statistics from State or Federal sources.

(4) TRANSITION RULE.—

(A) IN GENERAL.—The Corporation shall require any insured State bank to divest any equity investment the retention of which is not permissible under this subsection as quickly as can be prudently done, and in any event before the end of the 5-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT.—With respect to any equity investment held by any insured State bank on the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991 which was lawfully acquired before such date, the bank shall be deemed not to be in violation of the prohibition in this subsection on retaining such investment so long as the bank complies with the applicable requirements established by the Corporation for divesting such investments.

(d) SUBSIDIARIES OF INSURED STATE BANKS.—

(1) IN GENERAL.—After the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, a subsidiary of an insured State bank may not engage as principal in any type of activity that is not permissible for a subsidiary of a national bank unless—

(A) the Corporation has determined that the activity poses no significant risk to the Deposit Insurance Fund; and

(B) the bank is, and continues to be, in compliance with applicable capital standards prescribed by the appropriate Federal banking agency.

(2) INSURANCE UNDERWRITING PROHIBITED.—

(A) PROHIBITION.—Notwithstanding paragraph (1), no subsidiary of an insured State bank may engage in insurance underwriting except to the extent such activities are permissible for national banks.

(B) CONTINUATION OF EXISTING ACTIVITIES.—Notwithstanding subparagraph (A), a well-capitalized insured State bank or any of its subsidiaries that was lawfully providing insurance as principal in a State on November 21, 1991, may continue to provide, as principal, insurance of the same type to residents of the State (including companies or partnerships incorporated in, organized under the laws of, licensed to do business in, or having an office in the State, but only on behalf of their employees resident in or property located in the State), individuals employed in the State, and any other person to whom the bank or subsidiary has provided insurance as principal, without interruption, since such person resided in or was employed in such State.

(C) EXCEPTION.—Subparagraph (A) does not apply to a subsidiary of an insured State bank if—

(i) the insured State bank was required, before June 1, 1991, to provide title insurance as a condition of the bank's initial chartering under State law; and

(ii) control of the insured State bank has not changed since that date.

(3) PROCESSING PERIOD.—

(A) IN GENERAL.—The Corporation shall make a determination under paragraph (1)(A) not later than 60 days after receipt of a completed application that may be required under this subsection.

(B) EXTENSION OF TIME PERIOD.—The Corporation may extend the 60-day period referred to in subparagraph (A) for not more than 30 additional days, and shall notify the applicant of any such extension.

(e) SAVINGS BANK LIFE INSURANCE.—

(1) IN GENERAL.—No provision of this Act shall be construed as prohibiting or impairing the sale or underwriting of savings bank life insurance, or the ownership of stock in a savings bank life insurance company, by any insured bank which—

(A) is located in the Commonwealth of Massachusetts or the State of New York or Connecticut; and

(B) meets applicable consumer disclosure requirements with respect to such insurance.

(2) FDIC FINDING AND ACTION REGARDING RISK.—

(A) FINDING.—Before the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, the Corporation shall make a finding whether savings bank life insurance activities of insured banks pose or may pose any significant risk to the Deposit Insurance Fund.

(B) ACTIONS.—

(i) IN GENERAL.—The Corporation shall, pursuant to any finding made under subparagraph (A), take appropriate actions to address any risk that exists or may subsequently develop with respect to insured banks described in paragraph (1)(A).

(ii) AUTHORIZED ACTIONS.—Actions the Corporation may take under this subparagraph include requiring the modification, suspension, or termination of insurance activities conducted by any insured bank if the Corporation finds that the activities pose a significant risk to any insured bank described in paragraph (1)(A) or to the Deposit Insurance Fund.

(f) COMMON AND PREFERRED STOCK INVESTMENT.—

(1) IN GENERAL.—An insured State bank shall not acquire or retain, directly or indirectly, any equity investment of a type or in an amount that is not permissible for a national bank or is not otherwise permitted under this section.

(2) EXCEPTION FOR BANKS IN CERTAIN STATES.—Notwithstanding paragraph (1), an insured State bank may, to the extent permitted by the Corporation, acquire and retain ownership of securities described in paragraph (1) to the extent the aggregate amount of such investment does not exceed an

amount equal to 100 percent of the bank's capital if such bank—

(A) is located in a State that permitted, as of September 30, 1991, investment in common or preferred stock listed on a national securities exchange or shares of an investment company registered under the Investment Company Act of 1940; and

(B) made or maintained an investment in such securities during the period beginning on September 30, 1990, and ending on November 26, 1991.

(3) EXCEPTION FOR CERTAIN TYPES OF INSTITUTIONS.—Notwithstanding paragraph (1), an insured State bank may—

(A) acquire not more than 10 percent of a corporation that only—

(i) provides directors', trustees', and officers' liability insurance coverage or bankers' blanket bond group insurance coverage for insured depository institutions; or

(ii) reinsures such policies; and

(B) acquire or retain shares of a depository institution if—

(i) the institution engages only in activities permissible for national banks;

(ii) the institution is subject to examination and regulation by a State bank supervisor;

(iii) 20 or more depository institutions own shares of the institution and none of those institutions owns more than 15 percent of the institution's shares; and

(iv) the institution's shares (other than directors' qualifying shares or shares held under or initially acquired through a plan established for the benefit of the institution's officers and employees) are owned only by the institution.

(4) TRANSITION PERIOD FOR COMMON AND PREFERRED STOCK INVESTMENTS.—

(A) IN GENERAL.—During each year in the 3-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, each insured State bank shall reduce by not less than 1/3 of its shares (as of such date of enactment) the bank's ownership of securities in excess of the amount equal to 100 percent of the capital of such bank.

(B) COMPLIANCE AT END OF PERIOD.—By the end of the 3-year period referred to in subparagraph (A), each insured State bank and each subsidiary of a State bank shall be in compliance with the maximum amount limitations on investments referred to in paragraph (1).

(5) LOSS OF EXCEPTION UPON ACQUISITION.—Any exception applicable under paragraph (2) with respect to any insured State bank shall cease to apply with respect to such bank upon any change in control of such bank or any conversion of the charter of such bank.

(6) NOTICE AND APPROVAL.—An insured State bank may only engage in any investment pursuant to paragraph (2) if—

(A) the bank has filed a 1-time notice of the bank's intention to acquire and retain investments described in paragraph (1); and

(B) the Corporation has determined, within 60 days of receiving such notice, that acquiring or retaining such investments does not pose a significant risk to the Deposit Insurance Fund.

(7) DIVESTITURE.—

(A) IN GENERAL.—The Corporation may require divestiture by an insured State bank of any investment permitted under this subsection if the Corporation determines that such investment will have an adverse effect on the safety and soundness of the bank.

(B) REASONABLE STANDARD.—The Corporation shall not require divestiture by any bank pursuant to subparagraph (A) without reason to believe that such investment will have an adverse effect on the safety and soundness of the bank.

(g) DETERMINATIONS.—The Corporation shall make determinations under this section by regulation or order.

(h) ACTIVITY DEFINED.—For purposes of this section, the term "activity" includes acquiring or retaining any investment.

(i) OTHER AUTHORITY NOT AFFECTED.—This section shall not be construed as limiting the authority of any appropriate Federal banking agency or any State supervisory authority to impose more stringent restrictions.

(j) ACTIVITIES OF BRANCHES OF OUT-OF-STATE BANKS.—

(1) APPLICATION OF HOST STATE LAW.—The laws of a host State, including laws regarding community reinvestment, consumer protection, fair lending, and establishment of intrastate branches, shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch.

(2) ACTIVITIES OF BRANCHES.—An insured State bank that establishes a branch in a host State may conduct any activity at such branch that is permissible under the laws of the home State of such bank, to the extent such activity is permissible either for a bank chartered by the host State (subject to the restrictions in this section) or for a branch in the host State of an out-of-State national bank.

(3) SAVINGS PROVISION.—No provision of this subsection shall be construed as affecting the applicability of—

(A) any State law of any home State under subsection (b), (c), or (d) of section 44; or

(B) Federal law to State banks and State bank branches in the home State or the host State.

(4) DEFINITIONS.—The terms "host State", "home State", and "out-of-State bank" have the same meanings as in section 44(f).

SEC. 25. [12 U.S.C. 1831b] (a) No insured depository institution, insured branch of a foreign bank, or mutual savings or cooperative bank which is not an insured depository institution, shall make any federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the insured depository institution, insured branch, or bank. At the request of the Corporation, the insured depository institution, insured branch, or bank shall report to the Corporation on the identity of such person and the nature and amount of the loan, discount, or other extension of credit.

(b) In addition to other available remedies, this section may be enforced with respect to mutual savings and cooperative banks which are not insured depository institutions in accordance with section 8 of this Act, and for such purpose such mutual savings and cooperative banks shall be held and considered to be State nonmember insured banks and the appropriate Federal agency with respect to such mutual savings and cooperative banks shall be the Federal Deposit Insurance Corporation.

SEC. 26. [12 U.S.C. 1831c] ASSURING CONSISTENT OVERSIGHT OF SUBSIDIARIES OF HOLDING COMPANIES.

(a) DEFINITIONS.—For purposes of this section:

(1) BOARD.—The term "Board'" means the Board of Governors of the Federal Reserve System.

(2) FUNCTIONALLY REGULATED SUBSIDIARY.—The term "functionally regulated subsidiary" has the same meaning as in section 5(c)(5) of the Bank Holding Company Act.

(3) LEAD INSURED DEPOSITORY INSTITUTION.—The term "lead insured depository institution" has the same meaning as in section 2(o)(8) of the Bank Holding Company Act.

(b) EXAMINATION REQUIREMENTS.—Subject to subtitle B of the Consumer Financial Protection Act of 2010, the Board shall examine the activities of a nondepository institution subsidiary (other than a functionally regulated subsidiary or a subsidiary of a depository institution) of a depository institution holding company that are permissible for the insured depository institution subsidiaries of the depository institution holding company in the same manner, subject to the same standards, and with the same frequency as would be required if such activities were conducted in the lead insured depository institution of the depository institution holding company.

(c) STATE COORDINATION.—

(1) CONSULTATION AND COORDINATION.—If a nondepository institution subsidiary is supervised by a State bank supervisor or other State regulatory authority, the Board, in conducting the examinations required in subsection (b), shall consult and coordinate with such State regulator.

(2) ALTERNATING EXAMINATIONS PERMITTED.—The examinations required under subsection (b) may be conducted in joint or alternating manner with a State regulator, if the Board determines that an examination of a nondepository institution subsidiary conducted by the State carries out the purposes of this section.

(d) APPROPRIATE FEDERAL BANKING AGENCY BACKUP EXAMINATION AUTHORITY.—

(1) IN GENERAL.—In the event that the Board does not conduct examinations required under subsection (b) in the same manner, subject to the same standards, and with the same frequency as would be required if such activities were conducted by the lead insured depository institution subsidiary of the depository institution holding company, the appropriate Federal banking agency for the lead insured depository institution may recommend in writing (which shall include a written explanation of the concerns giving rise to the recommendation) that the Board perform the examination required under subsection (b).

(2) EXAMINATION BY AN APPROPRIATE FEDERAL BANKING AGENCY.—If the Board does not, before the end of the 60-day period beginning on the date on which the Board receives a recommendation under paragraph (1), begin an examination as required under subsection (b) or provide a written explanation or plan to the appropriate Federal banking agency making such recommendation responding to the concerns raised by the appropriate Federal banking agency for the lead insured depository institution, the appropriate Federal banking agency for the lead insured depository institution may, subject to the Consumer Financial Protection Act of 2010, examine the activities that are permissible for a depository institution subsidiary conducted by such nondepository institution subsidiary (other than a functionally regulated subsidiary or a subsidiary of a depository institution) of the depository institution holding company as if the nondepository institution subsidiary were an insured depository institution for which the appropriate Federal banking agency of the lead insured depository institution was the appropriate Federal banking agency, to determine whether the activities—

(A) pose a material threat to the safety and soundness of any insured depository institution subsidiary of the depository institution holding company;

(B) are conducted in accordance with applicable Federal law; and

(C) are subject to appropriate systems for monitoring and controlling the financial, operating, and other material risks of the activities that may pose a material threat to the safety and soundness of the insured depository institution subsidiaries of the holding company.

(3) AGENCY COORDINATION WITH THE BOARD.—An appropriate Federal banking agency that conducts an examination pursuant to paragraph (2) shall coordinate examination of the activities of nondepository institution subsidiaries described in subsection (b) with the Board in a manner that—

(A) avoids duplication;

(B) shares information relevant to the supervision of the depository institution holding company;

(C) achieves the objectives of subsection (b); and

(D) ensures that the depository institution holding company and the subsidiaries of the depository institution

holding company are not subject to conflicting supervisory demands by such agency and the Board.

(4) FEE PERMITTED FOR EXAMINATION COSTS.—An appropriate Federal banking agency that conducts an examination or enforcement action pursuant to this section may collect an assessment, fee, or such other charge from the subsidiary as the appropriate Federal banking agency determines necessary or appropriate to carry out the responsibilities of the appropriate Federal banking agency in connection with such examination.

(e) REFERRALS FOR ENFORCEMENT BY APPROPRIATE FEDERAL BANKING AGENCY.—

(1) RECOMMENDATION OF ENFORCEMENT ACTION.—The appropriate Federal banking agency for the lead insured depository institution, based upon its examination of a nondepository institution subsidiary conducted pursuant to subsection (d), or other relevant information, may submit to the Board, in writing, a recommendation that the Board take enforcement action against such nondepository institution subsidiary, together with an explanation of the concerns giving rise to the recommendation, if the appropriate Federal banking agency determines (by a vote of its members, if applicable) that the activities of the nondepository institution subsidiary pose a material threat to the safety and soundness of any insured depository institution subsidiary of the depository institution holding company.

(2) BACK-UP AUTHORITY OF THE APPROPRIATE FEDERAL BANKING AGENCY.—If, within the 60-day period beginning on the date on which the Board receives a recommendation under paragraph (1), the Board does not take enforcement action against the nondepository institution subsidiary or provide a plan for supervisory or enforcement action that is acceptable to the appropriate Federal banking agency that made the recommendation pursuant to paragraph (1), such agency may take the recommended enforcement action against the nondepository institution subsidiary, in the same manner as if the nondepository institution subsidiary were an insured depository institution for which the agency was the appropriate Federal banking agency.

(f) COORDINATION AMONG APPROPRIATE FEDERAL BANKING AGENCIES.—Each Federal banking agency, prior to or when exercising authority under subsection (d) or (e) shall—

(1) provide reasonable notice to, and consult with, the appropriate Federal banking agency or State bank supervisor (or other State regulatory agency) of the nondepository institution subsidiary of a depository institution holding company that is described in subsection (d) before commencing any examination of the subsidiary;

(2) to the fullest extent possible—

(A) rely on the examinations, inspections, and reports of the appropriate Federal banking agency or the State bank supervisor (or other State regulatory agency) of the subsidiary;

(B) avoid duplication of examination activities, reporting requirements, and requests for information; and

(C) ensure that the depository institution holding company and the subsidiaries of the depository institution holding company are not subject to conflicting supervisory demands by the appropriate Federal banking agencies.

(g) RULE OF CONSTRUCTION.—No provision of this section shall be construed as limiting any authority of the Board, the Corporation, or the Comptroller of the Currency under any other provision of law.

SEC. 27. [12 U.S.C. 1831d] (a) In order to prevent discrimination against State-chartered insured depository institutions, including insured savings banks, or insured branches of foreign banks with respect to interest rates, if the applicable rate prescribed in this subsection exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this subsection, such State bank or such insured branch of a foreign bank may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where such State bank or such insured branch of a foreign bank is located or at the rate allowed by the laws of the State, territory, or district where the bank is located, whichever may be greater.

(b) If the rate prescribed in subsection (a) exceeds the rate such State bank or such insured branch of a foreign bank would be permitted to charge in the absence of this section, and such State fixed rate is thereby preempted by the rate described in subsection (a), the taking, receiving, reserving, or charging a greater rate of interest than is allowed by subsection (a), when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of the interest paid from such State bank or such insured branch of a foreign bank taking, receiving, reserving, or charging such interest.

SEC. 28. [12 U.S.C. 1831e] ACTIVITIES OF SAVINGS ASSOCIATIONS.

(a) IN GENERAL.—On and after January 1, 1990, a savings association chartered under State law may not engage as principal in any type of activity, or in any activity in an amount, that is not permissible for a Federal savings association unless—

(1) the Corporation has determined that the activity would pose no significant risk to the Deposit Insurance Fund; and

(2) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

(b) DIFFERENCES OF MAGNITUDE BETWEEN STATE AND FEDERAL POWERS.—Notwithstanding subsection (a)(1), if an activity (other than an activity described in section 5(c)(2)(B) of the Home Owners' Loan Act) is permissible for a Federal savings association, a savings association chartered under State law may engage as principal in that activity in an amount greater than the amount permissible for a Federal savings association if—

(1) the Corporation has not determined that engaging in that amount of the activity poses any significant risk to the Deposit Insurance Fund; and

(2) the savings association chartered under State law is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

(c) EQUITY INVESTMENTS BY STATE SAVINGS ASSOCIATIONS.—

(1) IN GENERAL.—Notwithstanding subsections (a) and (b), a savings association chartered under State law may not directly acquire or retain any equity investment of a type or in an amount that is not permissible for a Federal savings association.

(2) EXCEPTION FOR SERVICE CORPORATIONS.—Paragraph (1) does [1] not prohibit a savings association from acquiring or retaining shares of one or more service corporations if—

(A) the Corporation has determined that no significant risk to the Deposit Insurance Fund is posed by—

(i) the amount that the association proposes to acquire or retain; or

(ii) the activities in which the service corporation engages; and

(B) the savings association is and continues to be in compliance with the fully phased-in capital standards prescribed under section 5(t) of the Home Owners' Loan Act.

(3) TRANSITION RULE.—

(A) IN GENERAL.—The Corporation shall require any savings association to divest any equity investment the retention of which is not permissible under paragraph (1) or (2) as quickly as can be prudently done, and in any event not later than July 1, 1994.

(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT.—With respect to any equity investment held by any savings association on May 1, 1989, the savings association shall be deemed not to be in violation of the prohibition in paragraph (1) or (2) on retaining such investment so long as the savings association complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such investments.

(d) [1] CORPORATE DEBT SECURITIES NOT OF INVESTMENT GRADE.—

(1) IN GENERAL.—No savings association may, directly or through a subsidiary, acquire or retain any corporate debt security not of investment grade.

[1] So in law. Probably should be "shall not be construed as prohibiting".

[1] For version of law of subsection (d) (as amended by 939(a)(2) of Public Law 111–203) see note set out in italic typeface that appears after paragraph (4).

(2) EXCEPTION FOR SECURITIES HELD BY QUALIFIED AFFILIATE.—Paragraph (1) shall not apply with respect to any corporate debt security not of investment grade which is acquired and retained by any qualified affiliate of a savings association.

(3) TRANSITION RULE.—

(A) IN GENERAL.—The Corporation shall require any savings association or any subsidiary of any savings association to divest any corporate debt security not of investment grade the retention of which is not permissible under paragraph (1) as quickly as can be prudently done, and in any event not later than July 1, 1994.

(B) TREATMENT OF NONCOMPLIANCE DURING DIVESTMENT.—With respect to any corporate debt security not of investment grade held by any savings association or subsidiary on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the savings association or subsidiary shall be deemed not to be in violation of the prohibition in paragraph (1) on retaining such investment so long as the association or subsidiary complies with any applicable requirement established by the Corporation pursuant to subparagraph (A) for divesting such securities.

(4) DEFINITIONS.—For purposes of this section—

(A) INVESTMENT GRADE.—Any corporate debt security is not of "investment grade" unless that security, when acquired by the savings association or subsidiary, was rated in one of the 4 highest rating categories by at least one nationally recognized statistical rating organization.

(B) QUALIFIED AFFILIATE.—The term "qualified affiliate" means—

(i) in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and

(ii) in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital.

(C) CERTAIN SECURITIES NOT INCLUDED.—The term "corporate debt security not of investment grade" does not include any obligation issued or guaranteed by a corporation that may be held by a Federal savings association without limitation as to percentage of assets under subparagraph (D), (E), or (F) of section 5(c)(1) of the Home Owners' Loan Act.

[**Note:** Effective on July 21, 2012, section 939(a)(2) of Public Law 111–203 provides for amendments to subsection (d) of section 28. Upon such date, subsection (d) reads as follows:]

(d) CORPORATE DEBT SECURITIES.—

(1) IN GENERAL.—No savings association may, directly or through a subsidiary, acquire or retain any corporate debt security that does not meet standards of credit-worthiness as established by the Corporation.

(2) EXCEPTION FOR SECURITIES HELD BY QUALIFIED AFFILIATE.—Paragraph (1) shall not apply with respect to any corporate debt security which is acquired and retained by any qualified affiliate of a savings association.

(3) DEFINITIONS.—For purposes of this section—

(A) QUALIFIED AFFILIATE.—The term "qualified affiliate" means—

(i) in the case of a stock savings association, an affiliate other than a subsidiary or an insured depository institution; and

(ii) in the case of a mutual savings association, a subsidiary other than an insured depository institution, so long as all of the savings association's investments in and extensions of credit to the subsidiary are deducted from the savings association's capital.

(B) CERTAIN SECURITIES NOT INCLUDED.—The term "corporate debt security that does not meet standards of credit-worthiness as established by the Corporation" does not include any obligation issued or guaranteed by a corporation that may be held by a Federal savings association without limitation as to percentage of assets under subparagraph (D), (E), or (F) of section 5(c)(1) of the Home Owners' Loan Act.

(e)[1] TRANSFER OF CORPORATE DEBT SECURITY NOT OF INVESTMENT GRADE IN EXCHANGE FOR A QUALIFIED NOTE.—

(1) ACQUISITION OF NOTE.—Notwithstanding subsections (a), (b), and (c) of section 5 of the Home Owners' Loan Act and any other provision of Federal or State law governing extensions of credit by savings associations, any insured savings association, and any subsidiary of any insured savings association, that, on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, holds any corporate debt security not of investment grade may acquire a qualified note in exchange for the transfer of such security to—

(A) any holding company which controls 80 percent or more of the shares of such insured savings association; or

(B) any company other than an insured savings association, or any subsidiary of any insured savings association, 80 percent or more of the shares of which are controlled by such holding company,

if the conditions of paragraph (2) are met.

[1] For versions of law of subsection (e) (subsection heading and paragraphs (1)–(3)) (as amended by sections 363(9) and 939(a)(3) of Public Law 111–203) see notes set out below in italic typeface.

(2) CONDITIONS FOR EXCHANGE OF SECURITY FOR QUALIFIED NOTE.—The conditions of this paragraph are met if—

(A) the insured savings association was in compliance with applicable capital requirements on December 31, 1988, and the insured savings association after such date—

(i) remains in compliance with applicable capital requirements; or

(ii) adopts and complies with a capital plan acceptable to the Comptroller of the Currency or the Corporation, as appropriate;

(B) the company to which the corporate debt security not of investment grade is transferred is not a bank holding company, an insured savings association, or a direct or indirect subsidiary of such holding company or insured savings association;

(C) before the end of the 90-day period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the insured savings association notifies the Comptroller of the Currency or the Corporation, as appropriate, of such association's intention to transfer the corporate debt security not of investment grade to the savings and loan holding company or the subsidiary of such holding company;

(D) the transfer of the corporate debt security not of investment grade is completed—

(i) before the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, in the case of an insured savings association that, as of such date, is controlled by a savings and loan holding company; or

(ii) before the end of the 2-year period beginning on such date, in the case of a savings association that is not, as of such date, a subsidiary of a savings and loan holding company;

(E) the insured savings association receives in exchange for the corporate debt security not of investment grade the fair market value of such security;

(F) the Comptroller of the Currency or the Corporation, as appropriate has—

(i) approved the transaction; and

(ii) determined that the transfer represents a complete and effective divestiture of the corporate debt security not of investment grade and is in compliance with the provisions of this subsection; and

(G) any gain on the sale of the corporate debt security not of investment grade is recognized, and included for applicable regulatory capital requirements, by the insured savings association only at such time and to the extent that the insured savings association receives payment of principal on the note in cash in excess of the fair market value of the transferred corporate debt security not of in-

vestment grade as carried on the accounts of the insured savings association immediately prior to the transfer.

(3) QUALIFIED NOTE DEFINED.—The term "qualified note" means any note that—

(A) is at all times fully secured by the corporate debt security not of investment grade transferred in exchange for the note, or by other collateral of at least equivalent value that is acceptable to the Comptroller of the Currency or the Corporation, as appropriate;

(B) contains provisions acceptable to the Comptroller of the Currency or the Corporation, as appropriate, that would—

(i) prevent any action to encumber or impair the value of the collateral referred to in subparagraph (A); and

(ii) allow the sale of the corporate debt security not of investment grade if the proceeds of the sale are reinvested in assets of equivalent value;

(C) is on market terms, including interest rate, which must in all cases be above the insured savings association's borrowing rate for similar term funds;

(D) is fully repayable over a period of time not to exceed 5 years from the date of transfer;

(E) is repaid with annual principal payments at least as large as would be necessary to repay the note within 5 years if it were on a level payment amortization schedule and the interest rate for the first year of repayment were fixed throughout the amortization period;

(F) is fully guaranteed by each holding company of the insured savings association that acquires such note; and

(G) is repaid in full in cash in accordance with its terms and this subsection.

[**Note:** Effective on July 21, 2012, section 939(a)(3) of Public Law 111–203 provides for amendments to the heading of subsection (e) and paragraphs (1)–(3) of section 28. Upon such date, subsection (e) heading and paragraphs (1)–(3) (as amended by sections 363(9) and 939(a)(3)) reads as follows:]

(e) TRANSFER OF CORPORATE DEBT SECURITY IN EXCHANGE FOR A QUALIFIED NOTE.—

(1) ACQUISITION OF NOTE.—Notwithstanding subsections (a), (b), and (c) of section 5 of the Home Owners' Loan Act and any other provision of Federal or State law governing extensions of credit by savings associations, any insured savings association, and any subsidiary of any insured savings association, that, on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, holds any corporate debt security that does not meet standards of creditworthiness as established by the Corporation may acquire a qualified note in exchange for the transfer of such security to—

(A) any holding company which controls 80 percent or more of the shares of such insured savings association; or

(B) any company other than an insured savings association, or any subsidiary of any insured savings association, 80 percent or more of the shares of which are controlled by such holding company,

if the conditions of paragraph (2) are met.

(2) CONDITIONS FOR EXCHANGE OF SECURITY FOR QUALIFIED NOTE.—The conditions of this paragraph are met if—

(A) the insured savings association was in compliance with applicable capital requirements on December 31, 1988, and the insured savings association after such date—

(i) remains in compliance with applicable capital requirements; or

(ii) adopts and complies with a capital plan acceptable to the Comptroller of the Currency or the Corporation, as appropriate;

(B) the company to which the corporate debt security that does not meet standards of credit-worthiness established by the Corporation is transferred is not a bank holding company, an insured savings association, or a direct or indirect subsidiary of such holding company or insured savings association;

(C) before the end of the 90-day period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the insured savings association notifies the Comptroller of the Currency or the Corporation, as appropriate, of such association's intention to transfer the corporate debt security that does not meet standards of credit-worthiness established by the Corporation to the savings and loan holding company or the subsidiary of such holding company;

(D) the transfer of the corporate debt security that does not meet standards of credit-worthiness established by the Corporation is completed—

(i) before the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, in the case of an insured savings association that, as of such date, is controlled by a savings and loan holding company; or

(ii) before the end of the 2-year period beginning on such date, in the case of a savings association that is not, as of such date, a subsidiary of a savings and loan holding company;

(E) the insured savings association receives in exchange for the corporate debt security that does not meet standards of credit-worthiness established by the Corporation the fair market value of such security;

(F) the Comptroller of the Currency or the Corporation, as appropriate has—

(i) approved the transaction; and

(ii) determined that the transfer represents a complete and effective divestiture of the corporate debt security that does not meet standards of credit-worthi-

ness established by the Corporation and is in compliance with the provisions of this subsection; and

(G) any gain on the sale of the corporate debt security that does not meet standards of credit-worthiness established by the Corporation is recognized, and included for applicable regulatory capital requirements, by the insured savings association only at such time and to the extent that the insured savings association receives payment of principal on the note in cash in excess of the fair market value of the transferred corporate debt security that does not meet standards of credit-worthiness established by the Corporation as carried on the accounts of the insured savings association immediately prior to the transfer.

(3) QUALIFIED NOTE DEFINED.—The term "qualified note" means any note that—

(A) is at all times fully secured by the corporate debt security that does not meet standards of credit-worthiness established by the Corporation transferred in exchange for the note, or by other collateral of at least equivalent value that is acceptable to the Comptroller of the Currency or the Corporation, as appropriate;

(B) contains provisions acceptable to the Comptroller of the Currency or the Corporation, as appropriate, that would—

(i) prevent any action to encumber or impair the value of the collateral referred to in subparagraph (A); and

(ii) allow the sale of the corporate debt security that does not meet standards of credit-worthiness established by the Corporation if the proceeds of the sale are reinvested in assets of equivalent value;

(C) is on market terms, including interest rate, which must in all cases be above the insured savings association's borrowing rate for similar term funds;

(D) is fully repayable over a period of time not to exceed 5 years from the date of transfer;

(E) is repaid with annual principal payments at least as large as would be necessary to repay the note within 5 years if it were on a level payment amortization schedule and the interest rate for the first year of repayment were fixed throughout the amortization period;

(F) is fully guaranteed by each holding company of the insured savings association that acquires such note; and

(G) is repaid in full in cash in accordance with its terms and this subsection.

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(4) FAILURE TO REPAY ON SCHEDULE.—The exemption provided by this subsection from subsections (a), (b), and (c) of section 11 of the Home Owners' Loan Act and any other applicable provision of Federal or State law shall terminate immediately if the insured savings association or any affiliate of

such association fails to comply with the terms of the qualified note or this subsection.

(f) DETERMINATIONS.—The Corporation shall make determinations under this section by regulation or order.

(g) ACTIVITY DEFINED.—For purposes of subsections (a) and (b)—

(1) IN GENERAL.—The term "activity" includes acquiring or retaining any investment.

(2) DIVESTITURE OF CERTAIN ASSETS.— Notwithstanding paragraph (1), subsections (a) and (b) shall not be construed to require a savings association to divest itself of any assets acquired before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(h) OTHER AUTHORITY NOT AFFECTED.—This section may not be construed as limiting—

(1) any other authority of the Corporation; or

(2) any authority of the Comptroller of the Currency, of the Corporation, or of a State to impose more stringent restrictions.

SEC. 29. [12 U.S.C. 1831f] BROKERED DEPOSITS.

(a) IN GENERAL.—An insured depository institution that is not well capitalized may not accept funds obtained, directly or indirectly, by or through any deposit broker for deposit into 1 or more deposit accounts.

(b) RENEWALS AND ROLLOVERS TREATED AS ACCEPTANCE OF FUNDS.—Any renewal of an account in any troubled institution and any rollover of any amount on deposit in any such account shall be treated as an acceptance of funds by such troubled institution for purposes of subsection (a).

(c) WAIVER AUTHORITY.—The Corporation may, on a case-by-case basis and upon application by an insured depository institution which is adequately capitalized (but not well capitalized), waive the applicability of subsection (a) upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice with respect to such institution.

(d) LIMITED EXCEPTION FOR CERTAIN CONSERVATORSHIPS.—In the case of any insured depository institution for which the Corporation has been appointed as conservator, subsection (a) shall not apply to the acceptance of deposits (described in such subsection) by such institution if the Corporation determines that the acceptance of such deposits—

(1) is not an unsafe or unsound practice;

(2) is necessary to enable the institution to meet the demands of its depositors or pay its obligations in the ordinary course of business; and

(3) is consistent with the conservator's fiduciary duty to minimize the institution's losses.

Effective 90 days after the date on which the institution was placed in conservatorship, the institution may not accept such deposits.

(e) RESTRICTION ON INTEREST RATE PAID.—Any insured depository institution which, under subsection (c) or (d), accepts funds obtained, directly or indirectly, by or through a deposit broker, may

not pay a rate of interest on such funds which, at the time that such funds are accepted, significantly exceeds—

(1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or

(2) the national rate paid on deposits of comparable maturity, as established by the Corporation, for deposits accepted outside the institution's normal market area.

(f) ADDITIONAL RESTRICTIONS.—The Corporation may impose, by regulation or order, such additional restrictions on the acceptance of brokered deposits by any institution as the Corporation may determine to be appropriate.

(g) DEFINITIONS RELATING TO DEPOSIT BROKER.—

(1) DEPOSIT BROKER.—The term "deposit broker" means—

(A) any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

(B) an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

(2) EXCLUSIONS.—The term "deposit broker" does not include—

(A) an insured depository institution, with respect to funds placed with that depository institution;

(B) an employee of an insured depository institution, with respect to funds placed with the employing depository institution;

(C) a trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(D) the trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) a person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that that person is performing managerial functions with respect to the plan;

(F) the trustee of a testamentary account;

(G) the trustee of an irrevocable trust (other than one described in paragraph (1)(B)), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(H) a trustee or custodian of a pension or profitsharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986; or

(I) an agent or nominee whose primary purpose is not the placement of funds with depository institutions.

(3) INCLUSION OF DEPOSITORY INSTITUTIONS ENGAGING IN CERTAIN ACTIVITIES.—Notwithstanding paragraph (2), the term "deposit broker" includes any insured depository institution

that is not well capitalized (as defined in section 38), and any employee of such institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area.

(4) EMPLOYEE.—For purposes of this subsection, the term "employee" means any employee—

(A) who is employed exclusively by the insured depository institution;

(B) whose compensation is primarily in the form of a salary;

(C) who does not share such employee's compensation with a deposit broker; and

(D) whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

(h) DEPOSIT SOLICITATION RESTRICTED.—An insured depository institution that is undercapitalized, as defined in section 38, shall not solicit deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits—

(1) in such institution's normal market areas; or

(2) in the market area in which such deposits would otherwise be accepted.

[Section 29A—Repealed by section 1203 of the American Homeownership and Economic Opportunity Act of 2000.]

SEC. 30. [12 U.S.C. 1831g] CONTRACTS BETWEEN DEPOSITORY INSTITUTIONS AND PERSONS PROVIDING GOODS, PRODUCTS, OR SERVICES.

(a) IN GENERAL.—An insured depository institution may not enter into a written or oral contract with any person to provide goods, products, or services to or for the benefit of such depository institution if the performance of such contract would adversely affect the safety or soundness of the institution.

(b) RULEMAKING.—The Corporation shall prescribe such regulations and issue such orders, including definitions consistent with this section, as may be necessary to administer and carry out the purposes of, and prevent evasions of, this section.

(c) ENFORCEMENT.—Any action taken by any appropriate Federal banking agency under section 8 to enforce compliance on the part of any insured depository institution with the requirements of this section may include a requirement that such institution properly reflect the transaction on its books and records.

(d) NO PRIVATE RIGHT OF ACTION.—This section may not be construed as creating any private right of action.

(e) STUDY.—

(1) IN GENERAL.—The Attorney General and the Comptroller General of the United States shall jointly conduct a study on the extent to which—

(A) insured depository institutions are entering into contracts with vendors under which the vendors agree to purchase stock or assets from insured depository institu-

tions or to invest capital in or make deposits in such institutions; and

(B) if such practices occur, the extent to which such practices are having an anticompetitive effect and should be prohibited.

(2) REPORT TO CONGRESS.—Before the end of the 1-year period beginning on the date of the enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Attorney General and the Comptroller General shall submit a report to the Congress on the results of the study conducted pursuant to paragraph (1).

[Section 31—Repealed by section 8(a)(33) of the Federal Deposit Insurance Reform Conforming Amendments Act of 2005.]

SEC. 32. [12 U.S.C. 1831i] AGENCY DISAPPROVAL OF DIRECTORS AND SENIOR EXECUTIVE OFFICERS OF INSURED DEPOSITORY INSTITUTIONS OR DEPOSITORY INSTITUTION HOLDING COMPANIES.

(a) PRIOR NOTICE REQUIRED.—An insured depository institution or depository institution holding company shall notify the appropriate Federal banking agency of the proposed addition of any individual to the board of directors or the employment of any individual as a senior executive officer of such institution or holding company at least 30 days (or such other period, as determined by the appropriate Federal banking agency) before such addition or employment becomes effective, if—

(1) the insured depository institution or depository institution holding company is not in compliance with the minimum capital requirement applicable to such institution or is otherwise in a troubled condition, as determined by such agency on the basis of such institution's or holding company's most recent report of condition or report of examination or inspection; or

(2) the agency determines, in connection with the review by the agency of the plan required under section 38 or otherwise, that such prior notice is appropriate.

(b) DISAPPROVAL BY AGENCY.—An insured depository institution or depository institution holding company may not add any individual to the board of directors or employ any individual as a senior executive officer if the appropriate Federal banking agency issues a notice of disapproval of such addition or employment before the end of the notice period, not to exceed 90 days, beginning on the date the agency receives notice of the proposed action pursuant to subsection (a).

(c) EXCEPTION IN EXTRAORDINARY CIRCUMSTANCES.—

(1) IN GENERAL.—Each appropriate Federal banking agency may prescribe by regulation conditions under which the prior notice requirement of subsection (a) may be waived in the event of extraordinary circumstances.

(2) NO EFFECT ON DISAPPROVAL AUTHORITY OF AGENCY.—Such waivers shall not affect the authority of each agency to issue notices of disapproval of such additions or employment of such individuals within 30 days after each such waiver.

(d) ADDITIONAL INFORMATION.—Any notice submitted to an appropriate Federal banking agency with respect to an individual by

any insured depository institution or depository institution holding company pursuant to subsection (a) shall include—

(1) the information described in section 7(j)(6)(A) about the individual; and

(2) such other information as the agency may prescribe by regulation.

(e) STANDARD FOR DISAPPROVAL.—The appropriate Federal banking agency shall issue a notice of disapproval with respect to a notice submitted pursuant to subsection (a) if the competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interests of the depositors of the depository institution or in the best interests of the public to permit the individual to be employed by, or associated with, the depository institution or depository institution holding company.

(f) DEFINITION REGULATIONS.—Each appropriate Federal banking agency shall prescribe by regulation a definition for the terms "troubled condition" and "senior executive officer" for purposes of subsection (a).

SEC. 33. [12 U.S.C. 1831j] DEPOSITORY INSTITUTION EMPLOYEE PROTECTION REMEDY.

(a) IN GENERAL.—

(1) EMPLOYEES OF DEPOSITORY INSTITUTIONS.—No insured depository institution may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any Federal banking agency or to the Attorney General regarding—

(A) a possible violation of any law or regulation; or

(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

by the depository institution or any director, officer, or employee of the institution.

(2) EMPLOYEES OF BANKING AGENCIES.—No Federal banking agency, Federal home loan bank, Federal reserve bank, or any person who is performing, directly or indirectly, any function or service on behalf of the Corporation may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to any such agency or bank or to the Attorney General regarding any possible violation of any law or regulation, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety by—

(A) any depository institution or any such bank or agency;

(B) any director, officer, or employee of any depository institution or any such bank;

(C) any officer or employee of the agency which employs such employee; or

(D) the person, or any officer or employee of the person, who employs such employee.

(b) ENFORCEMENT.—Any employee or former employee who believes he has been discharged or discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the close of the 2-year period beginning on the date of such discharge or discrimination. The complainant shall also file a copy of the complaint initiating such action with the appropriate Federal banking agency.

(c) REMEDIES.—If the district court determines that a violation of subsection (a) has occurred, it may order the depository institution, Federal home loan bank, Federal Reserve bank, or Federal banking agency which committed the violation—

(1) to reinstate the employee to his former position;

(2) to pay compensatory damages; or

(3) take other appropriate actions to remedy any past discrimination.

(d) LIMITATION.—The protections of this section shall not apply to any employee who—

(1) deliberately causes or participates in the alleged violation of law or regulation; or

(2) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

(e) FEDERAL BANKING AGENCY DEFINED.—For purposes of subsections (a) and (c), the term "Federal banking agency" means the Corporation, the Board of Governors of the Federal Reserve System, the Federal Housing Finance Board, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision [1].

(f) BURDENS OF PROOF.—The legal burdens of proof that prevail under subchapter III of chapter 12 of title 5, United States Code, shall govern adjudication of protected activities under this section.

SEC. 34. [12 U.S.C. 1831k] REWARD FOR INFORMATION LEADING TO RECOVERIES OR CIVIL PENALTIES.

(a) IN GENERAL.—An appropriate Federal banking agency, with the concurrence of the Attorney General, may pay a reward to a person who provides original information which leads to—

(1) recovery of a criminal fine, restitution, or civil penalty—

(A) under—

(i) the Federal Deposit Insurance Act;

(ii) the Federal Credit Union Act;

(iii) section 5213, 5239(b), or 5240 of the Revised Statutes;

(iv) the Federal Reserve Act;

(v) the Bank Holding Company Act Amendments of 1970;

[1] Effective on July 21, 2011, section 363(10) of Public Law 111–203 amends section 33(e) by striking "Federal Housing Finance Board, the Comptroller of the Currency, and the Director of the Office of Thrift Supervision" and inserting "Federal Housing Finance Agency and the Comptroller of the Currency".

Section 311 of such Public Law provides for a delayed effective date of one year after the date of enactment of this law subject to a transfer of duties. See section 311(b) of such Public Law for a possible extension of the transfer date.

(vi) the Bank Holding Company Act of 1956;

(vii) the Home Owners' Loan Act; or

(viii) section 3663 of title 18, United States Code,

pursuant to a conviction for an offense referred to in subparagraph (B) of this paragraph,

(B) pursuant to a conviction for an offense under section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of title 18, United States Code, affecting a depository institution insured by the Federal Deposit Insurance Corporation, or for a conspiracy to commit such an offense; or

(C) under section 951 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; or

(2) a forfeiture under section 981 or 982 of title 18, United States Code, that arises in connection with a depository institution insured by the Federal Deposit Insurance Corporation.

(b) PERCENTAGE LIMITATION.—An appropriate Federal banking agency may not pay a reward under subsection (a) of more than 25 percent of the amount of the fine, penalty, restitution, or forfeiture or $100,000, whichever is less.

(c) OFFICIALS AND PERSONS INELIGIBLE.—An appropriate Federal banking agency may not pay a reward under subsection (a) to—

(1) an officer or employee of the United States or of a State or local government who provides information described in subsection (a), obtained in the performance of official duties; or

(2) a person who—

(A) deliberately causes or participates in the alleged violation of law or regulation, or

(B) knowingly or recklessly provides substantially false information to such an agency or the Attorney General.

(d) NONREVIEWABILITY.—Any agency decision under this section is final and not reviewable by any court.

SEC. 35. [12 U.S.C. 1831l] COORDINATION OF RISK ANALYSIS BETWEEN SEC AND FEDERAL BANKING AGENCIES.

Any appropriate Federal banking agency shall notify the Securities and Exchange Commission of any concerns of the agency regarding significant financial or operational risks to any registered broker or dealer, or any registered municipal securities dealer, government securities broker, or government securities dealer for which the Commission is the appropriate regulatory agency (as defined in section 3 of the Securities Exchange Act of 1934), resulting from the activities of any insured depository institution, any depository institution holding company, or any affiliate of any such institution or company if such broker, dealer, municipal securities dealer, government securities broker, or government securities dealer is an affiliate of any such institution, company, or affiliate.

SEC. 36. [12 U.S.C. 1831m] EARLY IDENTIFICATION OF NEEDED IMPROVEMENTS IN FINANCIAL MANAGEMENT.

(a) ANNUAL REPORT ON FINANCIAL CONDITION AND MANAGEMENT.—

(1) REPORT REQUIRED.—Each insured depository institution shall submit an annual report to the Corporation, the ap-

propriate Federal banking agency, and any appropriate State bank supervisor (including any State bank supervisor of a host State).

(2) CONTENTS OF REPORT.—Any annual report required under paragraph (1) shall contain—

(A) the information required to be provided by—

(i) the institution's management under subsection (b); and

(ii) an independent public accountant under subsections (c) and (d); and

(B) such other information as the Corporation and the appropriate Federal banking agency may determine to be necessary to assess the financial condition and management of the institution.

(3) PUBLIC AVAILABILITY.—Any annual report required under paragraph (1) shall be available for public inspection. Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.

(b) MANAGEMENT RESPONSIBILITY FOR FINANCIAL STATEMENTS AND INTERNAL CONTROLS.—Each insured depository institution shall prepare—

(1) annual financial statements in accordance with generally accepted accounting principles and such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe; and

(2) a report signed by the chief executive officer and the chief accounting or financial officer of the institution which contains—

(A) a statement of the management's responsibilities for—

(i) preparing financial statements;

(ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(iii) complying with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency; and

(B) an assessment, as of the end of the institution's most recent fiscal year, of—

(i) the effectiveness of such internal control structure and procedures; and

(ii) the institution's compliance with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency.

(c) INTERNAL CONTROL EVALUATION AND REPORTING REQUIREMENTS FOR INDEPENDENT PUBLIC ACCOUNTANTS.—

(1) IN GENERAL.—With respect to any internal control report required by subsection (b)(2) of any institution, the institution's independent public accountant shall attest to, and re-

port separately on, the assertions of the institution's management contained in such report.

(2) ATTESTATION REQUIREMENTS.—Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

(d) ANNUAL INDEPENDENT AUDITS OF FINANCIAL STATEMENTS.—

(1) AUDITS REQUIRED.—The Corporation, in consultation with the appropriate Federal banking agencies, shall prescribe regulations requiring that each insured depository institution shall have an annual independent audit made of the institution's financial statements by an independent public accountant in accordance with generally accepted auditing standards and section 37.

(2) SCOPE OF AUDIT.—In connection with any audit under this subsection, the independent public accountant shall determine and report whether the financial statements of the institution—

(A) are presented fairly in accordance with generally accepted accounting principles; and

(B) comply with such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe.

(3) REQUIREMENTS FOR INSURED SUBSIDIARIES OF HOLDING COMPANIES.—The requirements for an independent audit under this subsection may be satisfied for insured depository institutions that are subsidiaries of a holding company by an independent audit of the holding company.

(e) [Repealed]

(f) FORM AND CONTENT OF REPORTS AND AUDITING STANDARDS.—

(1) IN GENERAL.—The scope of each report by an independent public accountant pursuant to this section, and the procedures followed in preparing such report, shall meet or exceed the scope and procedures required by generally accepted auditing standards and other applicable standards recognized by the Corporation.

(2) CONSULTATION.—The Corporation shall consult with the other appropriate Federal banking agencies in implementing this subsection.

(g) IMPROVED ACCOUNTABILITY.—

(1) INDEPENDENT AUDIT COMMITTEE.—

(A) ESTABLISHMENT.—Each insured depository institution (to which this section applies) shall have an independent audit committee entirely made up of outside directors who are independent of management of the institution, except as provided in subparagraph (D), and who satisfy any specific requirements the Corporation may establish.

(B) DUTIES.—An independent audit committee's duties shall include reviewing with management and the independent public accountant the basis for the reports issued under subsections (b)(2), (c), and (d).

(C) CRITERIA APPLICABLE TO COMMITTEES OF LARGE INSURED DEPOSITORY INSTITUTIONS.—In the case of each insured depository institution which the Corporation determines to be a large institution, the audit committee required by subparagraph (A) shall—

(i) include members with banking or related financial management expertise;

(ii) have access to the committee's own outside counsel; and

(iii) not include any large customers of the institution.

(D) EXEMPTION AUTHORITY.—

(i) IN GENERAL.—An appropriate Federal banking agency may, by order or regulation, permit the independent audit committee of an insured depository institution to be made up of less than all, but no fewer than a majority of, outside directors, if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the internal audit committee of the institution.

(ii) FACTORS TO BE CONSIDERED.—In determining whether an insured depository institution has encountered hardships referred to in clause (i), the appropriate Federal banking agency shall consider factors such as the size of the institution, and whether the institution has made a good faith effort to elect or name additional competent outside directors to the board of directors of the institution who may serve on the internal audit committee.

(2) REVIEW OF QUARTERLY REPORTS OF LARGE INSURED DEPOSITORY INSTITUTIONS.—

(A) IN GENERAL.—In the case of any insured depository institution which the Corporation has determined to be a large institution, the Corporation may require the independent public accountant retained by such institution to perform reviews of the institution's quarterly financial reports in accordance with procedures agreed upon by the Corporation.

(B) REPORT TO AUDIT COMMITTEE.—The independent public accountant referred to in subparagraph (A) shall provide the audit committee of the insured depository institution with reports on the reviews under such subparagraph and the audit committee shall provide such reports to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor.

(C) LIMITATION ON NOTICE.—Reports provided under subparagraph (B) shall be only for the information and use of the insured depository institution, the Corporation, any appropriate Federal banking agency, and any State bank supervisor that received the report.

(D) NOTICE TO INSTITUTION.—The Corporation shall promptly notify an insured depository institution, in writing, of a determination pursuant to subparagraph (A) to

require a review of such institution's quarterly financial reports.

(3) QUALIFICATIONS OF INDEPENDENT PUBLIC ACCOUNTANTS.—

(A) IN GENERAL.—All audit services required by this section shall be performed only by an independent public accountant who—

(i) has agreed to provide related working papers, policies, and procedures to the Corporation, any appropriate Federal banking agency, and any State bank supervisor, if requested; and

(ii) has received a peer review that meets guidelines acceptable to the Corporation.

(B) REPORTS ON PEER REVIEWS.—Reports on peer reviews shall be filed with the Corporation and made available for public inspection.

(4) ENFORCEMENT ACTIONS.—

(A) IN GENERAL.—In addition to any authority contained in section 8, the Corporation or an appropriate Federal banking agency may remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services required by this section.

(B) JOINT RULEMAKING.—The appropriate Federal banking agencies shall jointly issue rules of practice to implement this paragraph.

(5) NOTICE BY ACCOUNTANT OF TERMINATION OF SERVICES.—Any independent public accountant performing an audit under this section who subsequently ceases to be the accountant for the institution shall promptly notify the Corporation and each appropriate Federal banking agency pursuant to such rules as the Corporation and each appropriate Federal banking agency shall prescribe.

(h) EXCHANGE OF REPORTS AND INFORMATION.—

(1) REPORT TO THE INDEPENDENT AUDITOR.—

(A) IN GENERAL.—Each insured depository institution which has engaged the services of an independent auditor to audit such institution shall transmit to the auditor a copy of the most recent report of condition made by the institution (pursuant to this Act or any other provision of law) and a copy of the most recent report of examination received by the institution.

(B) ADDITIONAL INFORMATION.—In addition to the copies of the reports required to be provided under subparagraph (A), each insured depository institution shall provide the auditor with—

(i) a copy of any supervisory memorandum of understanding with such institution and any written agreement between such institution and any appropriate Federal banking agency or any appropriate State bank supervisor which is in effect during the period covered by the audit; and

(ii) a report of—

(I) any action initiated or taken by the appropriate Federal banking agency or the Corporation

during such period under subsection (a), (b), (c), (e), (g), (i), (s), or (t) of section 8;

(II) any action taken by any appropriate State bank supervisor under State law which is similar to any action referred to in subclause (I); or

(III) any assessment of any civil money penalty under any other provision of law with respect to the institution or any institution-affiliated party.

(2) REPORTS TO BANKING AGENCIES.—

(A) INDEPENDENT AUDITOR REPORTS.—Each insured depository institution shall provide to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor, a copy of each audit report and any qualification to such report, any management letter, and any other report within 15 days of receipt of any such report, qualification, or letter from the institution's independent auditors.

(B) NOTICE OF CHANGE OF AUDITOR.—Each insured depository institution shall provide written notification to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor of the resignation or dismissal of the institution's independent auditor or the engagement of a new independent auditor by the institution, including a statement of the reasons for such change within 15 calendar days of the occurrence of the event.

(i) REQUIREMENTS FOR INSURED SUBSIDIARIES OF HOLDING COMPANIES.—

(1) IN GENERAL.—Except with respect to any audit requirements established under or pursuant to subsection (d), the requirements of this section may be satisfied for insured depository institutions that are subsidiaries of a holding company, if—

(A) services and functions comparable to those required under this section are provided at the holding company level; and

(B) the institution—

(i) has total assets, as of the beginning of such fiscal year, of less than $5,000,000,000; or

(ii) has—

(I) total assets, as of the beginning of such fiscal year, of $5,000,000,000, or more; and

(II) a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency.

(2) LARGE INSTITUTIONS.—For purposes of this subsection, in the case of an insured depository institution described in paragraph (1)(B)(ii) that the Corporation determines to be a large institution, the audit committee of the holding company

of such an institution shall not include any large customers of the institution.

(3) APPLICABILITY BASED ON RISK TO FUND.—The appropriate Federal banking agency may require an institution with total assets in excess of $9,000,000,000 to comply with this section, notwithstanding the exemption provided by this subsection, if it determines that such exemption would create a significant risk to the Deposit Insurance Fund if applied to that institution.

(j) EXEMPTION FOR SMALL DEPOSITORY INSTITUTIONS.—This section shall not apply with respect to any fiscal year of any insured depository institution the total assets of which, as of the beginning of such fiscal year, are less than the greater of—

(1) $150,000,000; or

(2) such amount (in excess of $150,000,000) as the Corporation may prescribe by regulation.

SEC. 37. [12 U.S.C. 1831n] ACCOUNTING OBJECTIVES, STANDARDS, AND REQUIREMENTS.

(a) IN GENERAL.—

(1) OBJECTIVES.—Accounting principles applicable to reports or statements required to be filed with Federal banking agencies by insured depository institutions should—

(A) result in financial statements and reports of condition that accurately reflect the capital of such institutions;

(B) facilitate effective supervision of the institutions; and

(C) facilitate prompt corrective action to resolve the institutions at the least cost to the Deposit Insurance Fund.

(2) STANDARDS.—

(A) UNIFORM ACCOUNTING PRINCIPLES CONSISTENT WITH GAAP.—Subject to the requirements of this Act and any other provision of Federal law, the accounting principles applicable to reports or statements required to be filed with Federal banking agencies by all insured depository institutions shall be uniform and consistent with generally accepted accounting principles.

(B) STRINGENCY.—If the appropriate Federal banking agency or the Corporation determines that the application of any generally accepted accounting principle to any insured depository institution is inconsistent with the objectives described in paragraph (1), the agency or the Corporation may, with respect to reports or statements required to be filed with such agency or Corporation, prescribe an accounting principle which is applicable to such institutions which is no less stringent than generally accepted accounting principles.

(3) REVIEW AND IMPLEMENTATION OF ACCOUNTING PRINCIPLES REQUIRED.—Before the end of the 1-year period beginning on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991, each appropriate Federal banking agency shall take the following actions:

(A) REVIEW OF ACCOUNTING PRINCIPLES.—Review—

(i) all accounting principles used by depository institutions with respect to reports or statements required to be filed with a Federal banking agency;

(ii) all requirements established by the agency with respect to such accounting procedures; and

(iii) the procedures and format for reports to the agency, including reports of condition.

(B) MODIFICATION OF NONCOMPLYING MEASURES.—Modify or eliminate any accounting principle or reporting requirement of such Federal agency which the agency determines fails to comply with the objectives and standards established under paragraphs (1) and (2).

(C) INCLUSION OF "OFF BALANCE SHEET" ITEMS.—Develop and prescribe regulations which require that all assets and liabilities, including contingent assets and liabilities, of insured depository institutions be reported in, or otherwise taken into account in the preparation of any balance sheet, financial statement, report of condition, or other report of such institution, required to be filed with a Federal banking agency.

(b) UNIFORM ACCOUNTING OF CAPITAL STANDARDS.—

(1) IN GENERAL.—Each appropriate Federal banking agency shall maintain uniform accounting standards to be used for determining compliance with statutory or regulatory requirements of depository institutions.

(2) TRANSITION PROVISION.—Any standards in effect on the date of the enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991 under section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 shall continue in effect after such date of enactment until amended by the appropriate Federal banking agency under paragraph (1).

(c) REPORTS TO BANKING COMMITTEES.—

(1) ANNUAL REPORTS REQUIRED.—The Federal banking agencies shall jointly submit an annual report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing a description of any difference between any accounting or capital standard used by any such agency and any accounting or capital standard used by any other agency.

(2) EXPLANATION OF REASONS FOR DISCREPANCY.—Each report submitted under paragraph (1) shall contain an explanation of the reasons for any discrepancy between any accounting or capital standard used by any such agency and any accounting or capital standard used by any other agency.

(3) PUBLICATION.—Each report under this subsection shall be published in the Federal Register.

SEC. 38. [12 U.S.C. 1831o] PROMPT CORRECTIVE ACTION.

(a) RESOLVING PROBLEMS TO PROTECT DEPOSIT INSURANCE FUND.—

(1) PURPOSE.—The purpose of this section is to resolve the problems of insured depository institutions at the least possible long-term loss to the Deposit Insurance Fund.

(2) PROMPT CORRECTIVE ACTION REQUIRED.—Each appropriate Federal banking agency and the Corporation (acting in the Corporation's capacity as the insurer of depository institutions under this Act) shall carry out the purpose of this section by taking prompt corrective action to resolve the problems of insured depository institutions.

(b) DEFINITIONS.—For purposes of this section:

(1) CAPITAL CATEGORIES.—

(A) WELL CAPITALIZED.—An insured depository institution is "well capitalized" if it significantly exceeds the required minimum level for each relevant capital measure.

(B) ADEQUATELY CAPITALIZED.—An insured depository institution is "adequately capitalized" if it meets the required minimum level for each relevant capital measure.

(C) UNDERCAPITALIZED.—An insured depository institution is "undercapitalized" if it fails to meet the required minimum level for any relevant capital measure.

(D) SIGNIFICANTLY UNDERCAPITALIZED.—An insured depository institution is "significantly undercapitalized" if it is significantly below the required minimum level for any relevant capital measure.

(E) CRITICALLY UNDERCAPITALIZED.—An insured depository institution is "critically undercapitalized" if it fails to meet any level specified under subsection (c)(3)(A).

(2) OTHER DEFINITIONS.—

(A) AVERAGE.—

(i) IN GENERAL.—The "average" of an accounting item (such as total assets or tangible equity) during a given period means the sum of that item at the close of business on each business day during that period divided by the total number of business days in that period.

(ii) AGENCY MAY PERMIT WEEKLY AVERAGING FOR CERTAIN INSTITUTIONS.—In the case of insured depository institutions that have total assets of less than $300,000,000 and normally file reports of condition reflecting weekly (rather than daily) averages of accounting items, the appropriate Federal banking agency may provide that the "average" of an accounting item during a given period means the sum of that item at the close of business on the relevant business day each week during that period divided by the total number of weeks in that period.

(B) CAPITAL DISTRIBUTION.—The term "capital distribution" means—

(i) a distribution of cash or other property by any insured depository institution or company to its owners made on account of that ownership, but not including—

(I) any dividend consisting only of shares of the institution or company or rights to purchase such shares; or

(II) any amount paid on the deposits of a mutual or cooperative institution that the appropriate Federal banking agency determines is not a distribution for purposes of this section;

(ii) a payment by an insured depository institution or company to repurchase, redeem, retire, or otherwise acquire any of its shares or other ownership interests, including any extension of credit to finance an affiliated company's acquisition of those shares or interests; or

(iii) a transaction that the appropriate Federal banking agency or the Corporation determines, by order or regulation, to be in substance a distribution of capital to the owners of the insured depository institution or company.

(C) CAPITAL RESTORATION PLAN.—The term "capital restoration plan" means a plan submitted under subsection (e)(2).

(D) COMPANY.—The term "company" has the same meaning as in section 2 of the Bank Holding Company Act of 1956.

(E) COMPENSATION.—The term "compensation" includes any payment of money or provision of any other thing of value in consideration of employment.

(F) RELEVANT CAPITAL MEASURE.—The term "relevant capital measure" means the measures described in subsection (c).

(G) REQUIRED MINIMUM LEVEL.—The term "required minimum level" means, with respect to each relevant capital measure, the minimum acceptable capital level specified by the appropriate Federal banking agency by regulation.

(H) SENIOR EXECUTIVE OFFICER.—The term "senior executive officer" has the same meaning as the term "executive officer" in section 22(h) of the Federal Reserve Act.

(I) SUBORDINATED DEBT.—The term "subordinated debt" means debt subordinated to the claims of general creditors.

(c) CAPITAL STANDARDS.—

(1) RELEVANT CAPITAL MEASURES.—

(A) IN GENERAL.—Except as provided in subparagraph (B)(ii), the capital standards prescribed by each appropriate Federal banking agency shall include—

(i) a leverage limit; and

(ii) a risk-based capital requirement.

(B) OTHER CAPITAL MEASURES.—An appropriate Federal banking agency may, by regulation—

(i) establish any additional relevant capital measures to carry out the purpose of this section; or

(ii) rescind any relevant capital measure required under subparagraph (A) upon determining (with the

concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of this section.

(2) CAPITAL CATEGORIES GENERALLY.—Each appropriate Federal banking agency shall, by regulation, specify for each relevant capital measure the levels at which an insured depository institution is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.

(3) CRITICAL CAPITAL.—

(A) AGENCY TO SPECIFY LEVEL.—

(i) LEVERAGE LIMIT.—Each appropriate Federal banking agency shall, by regulation, in consultation with the Corporation, specify the ratio of tangible equity to total assets at which an insured depository institution is critically undercapitalized.

(ii) OTHER RELEVANT CAPITAL MEASURES.—The agency may, by regulation, specify for 1 or more other relevant capital measures, the level at which an insured depository institution is critically undercapitalized.

(B) LEVERAGE LIMIT RANGE.—The level specified under subparagraph (A)(i) shall require tangible equity in an amount—

(i) not less than 2 percent of total assets; and

(ii) except as provided in clause (i), not more than 65 percent of the required minimum level of capital under the leverage limit.

(C) FDIC'S CONCURRENCE REQUIRED.—The appropriate Federal banking agency shall not, without the concurrence of the Corporation, specify a level under subparagraph (A)(i) lower than that specified by the Corporation for State nonmember insured banks.

(d) PROVISIONS APPLICABLE TO ALL INSTITUTIONS.—

(1) CAPITAL DISTRIBUTIONS RESTRICTED.—

(A) IN GENERAL.—An insured depository institution shall make no capital distribution if, after making the distribution, the institution would be undercapitalized.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the appropriate Federal banking agency may permit, after consultation with the Corporation, an insured depository institution to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

(i) is made in connection with the issuance of additional shares or obligations of the institution in at least an equivalent amount; and

(ii) will reduce the institution's financial obligations or otherwise improve the institution's financial condition.

(2) MANAGEMENT FEES RESTRICTED.—An insured depository institution shall pay no management fee to any person having control of that institution if, after making the payment, the institution would be undercapitalized.

(e) PROVISIONS APPLICABLE TO UNDERCAPITALIZED INSTITUTIONS.—

(1) MONITORING REQUIRED.—Each appropriate Federal banking agency shall—

(A) closely monitor the condition of any undercapitalized insured depository institution;

(B) closely monitor compliance with capital restoration plans, restrictions, and requirements imposed under this section; and

(C) periodically review the plan, restrictions, and requirements applicable to any undercapitalized insured depository institution to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.

(2) CAPITAL RESTORATION PLAN REQUIRED.—

(A) IN GENERAL.—Any undercapitalized insured depository institution shall submit an acceptable capital restoration plan to the appropriate Federal banking agency within the time allowed by the agency under subparagraph (D).

(B) CONTENTS OF PLAN.—The capital restoration plan shall—

(i) specify—

(I) the steps the insured depository institution will take to become adequately capitalized;

(II) the levels of capital to be attained during each year in which the plan will be in effect;

(III) how the institution will comply with the restrictions or requirements then in effect under this section; and

(IV) the types and levels of activities in which the institution will engage; and

(ii) contain such other information as the appropriate Federal banking agency may require.

(C) CRITERIA FOR ACCEPTING PLAN.—The appropriate Federal banking agency shall not accept a capital restoration plan unless the agency determines that—

(i) the plan—

(I) complies with subparagraph (B);

(II) is based on realistic assumptions, and is likely to succeed in restoring the institution's capital; and

(III) would not appreciably increase the risk (including credit risk, interest-rate risk, and other types of risk) to which the institution is exposed; and

(ii) if the insured depository institution is undercapitalized, each company having control of the institution has—

(I) guaranteed that the institution will comply with the plan until the institution has been adequately capitalized on average during each of 4 consecutive calendar quarters; and

(II) provided appropriate assurances of performance.

(D) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The appropriate Federal banking agency shall by regulation establish deadlines that—

(i) provide insured depository institutions with reasonable time to submit capital restoration plans, and generally require an institution to submit a plan not later than 45 days after the institution becomes undercapitalized;

(ii) require the agency to act on capital restoration plans expeditiously, and generally not later than 60 days after the plan is submitted; and

(iii) require the agency to submit a copy of any plan approved by the agency to the Corporation before the end of the 45-day period beginning on the date such approval is granted.

(E) GUARANTEE LIABILITY LIMITED.—

(i) IN GENERAL.—The aggregate liability under subparagraph (C)(ii) of all companies having control of an insured depository institution shall be the lesser of—

(I) an amount equal to 5 percent of the institution's total assets at the time the institution became undercapitalized; or

(II) the amount which is necessary (or would have been necessary) to bring the institution into compliance with all capital standards applicable with respect to such institution as of the time the institution fails to comply with a plan under this subsection.

(ii) CERTAIN AFFILIATES NOT AFFECTED.—This paragraph may not be construed as—

(I) requiring any company not having control of an undercapitalized insured depository institution to guarantee, or otherwise be liable on, a capital restoration plan;

(II) requiring any person other than an insured depository institution to submit a capital restoration plan; or

(III) affecting compliance by brokers, dealers, government securities brokers, and government securities dealers with the financial responsibility requirements of the Securities Exchange Act of 1934 and regulations and orders thereunder.

(3) ASSET GROWTH RESTRICTED.—An undercapitalized insured depository institution shall not permit its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

(A) the appropriate Federal banking agency has accepted the institution's capital restoration plan;

(B) any increase in total assets is consistent with the plan; and

(C) the institution's ratio of tangible equity to assets increases during the calendar quarter at a rate sufficient

to enable the institution to become adequately capitalized within a reasonable time.

(4) PRIOR APPROVAL REQUIRED FOR ACQUISITIONS, BRANCHING, AND NEW LINES OF BUSINESS.—An undercapitalized insured depository institution shall not, directly or indirectly, acquire any interest in any company or insured depository institution, establish or acquire any additional branch office, or engage in any new line of business unless—

(A) the appropriate Federal banking agency has accepted the insured depository institution's capital restoration plan, the institution is implementing the plan, and the agency determines that the proposed action is consistent with and will further the achievement of the plan; or

(B) the Board of Directors determines that the proposed action will further the purpose of this section.

(5) DISCRETIONARY SAFEGUARDS.—The appropriate Federal banking agency may, with respect to any undercapitalized insured depository institution, take actions described in any subparagraph of subsection (f)(2) if the agency determines that those actions are necessary to carry out the purpose of this section.

(f) PROVISIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED INSTITUTIONS AND UNDERCAPITALIZED INSTITUTIONS THAT FAIL TO SUBMIT AND IMPLEMENT CAPITAL RESTORATION PLANS.—

(1) IN GENERAL.—This subsection shall apply with respect to any insured depository institution that—

(A) is significantly undercapitalized; or

(B) is undercapitalized and—

(i) fails to submit an acceptable capital restoration plan within the time allowed by the appropriate Federal banking agency under subsection (e)(2)(D); or

(ii) fails in any material respect to implement a plan accepted by the agency.

(2) SPECIFIC ACTIONS AUTHORIZED.—The appropriate Federal banking agency shall carry out this section by taking 1 or more of the following actions:

(A) REQUIRING RECAPITALIZATION.—Doing 1 or more of the following:

(i) Requiring the institution to sell enough shares or obligations of the institution so that the institution will be adequately capitalized after the sale.

(ii) Further requiring that instruments sold under clause (i) be voting shares.

(iii) Requiring the institution to be acquired by a depository institution holding company, or to combine with another insured depository institution, if 1 or more grounds exist for appointing a conservator or receiver for the institution.

(B) RESTRICTING TRANSACTIONS WITH AFFILIATES.—

(i) Requiring the institution to comply with section 23A of the Federal Reserve Act as if subsection (d)(1) of that section (exempting transactions with certain affiliated institutions) did not apply.

(ii) Further restricting the institution's transactions with affiliates.

(C) RESTRICTING INTEREST RATES PAID.—

(i) IN GENERAL.—Restricting the interest rates that the institution pays on deposits to the prevailing rates of interest on deposits of comparable amounts and maturities in the region where the institution is located, as determined by the agency.

(ii) RETROACTIVE RESTRICTIONS PROHIBITED.—This subparagraph does not authorize the agency to restrict interest rates paid on time deposits made before (and not renewed or renegotiated after) the agency acted under this subparagraph.

(D) RESTRICTING ASSET GROWTH.—Restricting the institution's asset growth more stringently than subsection (e)(3), or requiring the institution to reduce its total assets.

(E) RESTRICTING ACTIVITIES.—Requiring the institution or any of its subsidiaries to alter, reduce, or terminate any activity that the agency determines poses excessive risk to the institution.

(F) IMPROVING MANAGEMENT.—Doing 1 or more of the following:

(i) NEW ELECTION OF DIRECTORS.—Ordering a new election for the institution's board of directors.

(ii) DISMISSING DIRECTORS OR SENIOR EXECUTIVE OFFICERS.—Requiring the institution to dismiss from office any director or senior executive officer who had held office for more than 180 days immediately before the institution became undercapitalized. Dismissal under this clause shall not be construed to be a removal under section 8.

(iii) EMPLOYING QUALIFIED SENIOR EXECUTIVE OFFICERS.—Requiring the institution to employ qualified senior executive officers (who, if the agency so specifies, shall be subject to approval by the agency).

(G) PROHIBITING DEPOSITS FROM CORRESPONDENT BANKS.—Prohibiting the acceptance by the institution of deposits from correspondent depository institutions, including renewals and rollovers of prior deposits.

(H) REQUIRING PRIOR APPROVAL FOR CAPITAL DISTRIBUTIONS BY BANK HOLDING COMPANY.—Prohibiting any bank holding company having control of the insured depository institution from making any capital distribution without the prior approval of the Board of Governors of the Federal Reserve System.

(I) REQUIRING DIVESTITURE.—Doing one or more of the following:

(i) DIVESTITURE BY THE INSTITUTION.—Requiring the institution to divest itself of or liquidate any subsidiary if the agency determines that the subsidiary is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

(ii) DIVESTITURE BY PARENT COMPANY OF NONDEPOSITORY AFFILIATE.—Requiring any company having control of the institution to divest itself of or liquidate any affiliate other than an insured depository institution if the appropriate Federal banking agency for that company determines that the affiliate is in danger of becoming insolvent and poses a significant risk to the institution, or is likely to cause a significant dissipation of the institution's assets or earnings.

(iii) DIVESTITURE OF INSTITUTION.—Requiring any company having control of the institution to divest itself of the institution if the appropriate Federal banking agency for that company determines that divestiture would improve the institution's financial condition and future prospects.

(J) REQUIRING OTHER ACTION.—Requiring the institution to take any other action that the agency determines will better carry out the purpose of this section than any of the actions described in this paragraph.

(3) PRESUMPTION IN FAVOR OF CERTAIN ACTIONS.—In complying with paragraph (2), the agency shall take the following actions, unless the agency determines that the actions would not further the purpose of this section:

(A) The action described in clause (i) or (iii) of paragraph (2)(A) (relating to requiring the sale of shares or obligations, or requiring the institution to be acquired by or combine with another institution).

(B) The action described in paragraph (2)(B)(i) (relating to restricting transactions with affiliates).

(C) The action described in paragraph (2)(C) (relating to restricting interest rates).

(4) SENIOR EXECUTIVE OFFICERS' COMPENSATION RESTRICTED.—

(A) IN GENERAL.—The insured depository institution shall not do any of the following without the prior written approval of the appropriate Federal banking agency:

(i) Pay any bonus to any senior executive officer.

(ii) Provide compensation to any senior executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit-sharing) during the 12 calendar months preceding the calendar month in which the institution became undercapitalized.

(B) FAILING TO SUBMIT PLAN.—The appropriate Federal banking agency shall not grant any approval under subparagraph (A) with respect to an institution that has failed to submit an acceptable capital restoration plan.

(5) DISCRETION TO IMPOSE CERTAIN ADDITIONAL RESTRICTIONS.—The agency may impose 1 or more of the restrictions prescribed by regulation under subsection (i) if the agency determines that those restrictions are necessary to carry out the purpose of this section.

(6) CONSULTATION WITH OTHER REGULATORS.—Before the agency or Corporation makes a determination under paragraph

(2)(I) with respect to an affiliate that is a broker, dealer, government securities broker, government securities dealer, investment company, or investment adviser, the agency or Corporation shall consult with the Securities and Exchange Commission and, in the case of any other affiliate which is subject to any financial responsibility or capital requirement, any other appropriate regulator of such affiliate with respect to the proposed determination of the agency or the Corporation and actions pursuant to such determination.

(g) MORE STRINGENT TREATMENT BASED ON OTHER SUPERVISORY CRITERIA.—

(1) IN GENERAL.—If the appropriate Federal banking agency determines (after notice and an opportunity for hearing) that an insured depository institution is in an unsafe or unsound condition or, pursuant to section 8(b)(8), deems the institution to be engaging in an unsafe or unsound practice, the agency may—

(A) if the institution is well capitalized, reclassify the institution as adequately capitalized;

(B) if the institution is adequately capitalized (but not well capitalized), require the institution to comply with 1 or more provisions of subsections (d) and (e), as if the institution were undercapitalized; or

(C) if the institution is undercapitalized, take any 1 or more actions authorized under subsection (f)(2) as if the institution were significantly undercapitalized.

(2) CONTENTS OF PLAN.—Any plan required under paragraph (1) shall specify the steps that the insured depository institution will take to correct the unsafe or unsound condition or practice. Capital restoration plans shall not be required under paragraph (1)(B).

(h) PROVISIONS APPLICABLE TO CRITICALLY UNDERCAPITALIZED INSTITUTIONS.—

(1) ACTIVITIES RESTRICTED.—Any critically undercapitalized insured depository institution shall comply with restrictions prescribed by the Corporation under subsection (i).

(2) PAYMENTS ON SUBORDINATED DEBT PROHIBITED.—

(A) IN GENERAL.—A critically undercapitalized insured depository institution shall not, beginning 60 days after becoming critically undercapitalized, make any payment of principal or interest on the institution's subordinated debt.

(B) EXCEPTIONS.—The Corporation may make exceptions to subparagraph (A) if—

(i) the appropriate Federal banking agency has taken action with respect to the insured depository institution under paragraph (3)(A)(ii); and

(ii) the Corporation determines that the exception would further the purpose of this section.

(C) LIMITED EXEMPTION FOR CERTAIN SUBORDINATED DEBT.—Until July 15, 1996, subparagraph (A) shall not apply with respect to any subordinated debt outstanding on July 15, 1991, and not extended or otherwise renegotiated after July 15, 1991.

(D) ACCRUAL OF INTEREST.—Subparagraph (A) does not prevent unpaid interest from accruing on subordinated debt under the terms of that debt, to the extent otherwise permitted by law.

(3) CONSERVATORSHIP, RECEIVERSHIP, OR OTHER ACTION REQUIRED.—

(A) IN GENERAL.—The appropriate Federal banking agency shall, not later than 90 days after an insured depository institution becomes critically undercapitalized—

(i) appoint a receiver (or, with the concurrence of the Corporation, a conservator) for the institution; or

(ii) take such other action as the agency determines, with the concurrence of the Corporation, would better achieve the purpose of this section, after documenting why the action would better achieve that purpose.

(B) PERIODIC REDETERMINATIONS REQUIRED.—Any determination by an appropriate Federal banking agency under subparagraph (A)(ii) to take any action with respect to an insured depository institution in lieu of appointing a conservator or receiver shall cease to be effective not later than the end of the 90-day period beginning on the date that the determination is made and a conservator or receiver shall be appointed for that institution under subparagraph (A)(i) unless the agency makes a new determination under subparagraph (A)(ii) at the end of the effective period of the prior determination.

(C) APPOINTMENT OF RECEIVER REQUIRED IF OTHER ACTION FAILS TO RESTORE CAPITAL.—

(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), the appropriate Federal banking agency shall appoint a receiver for the insured depository institution if the institution is critically undercapitalized on average during the calendar quarter beginning 270 days after the date on which the institution became critically undercapitalized.

(ii) EXCEPTION.—Notwithstanding clause (i), the appropriate Federal banking agency may continue to take such other action as the agency determines to be appropriate in lieu of such appointment if—

(I) the agency determines, with the concurrence of the Corporation, that (aa) the insured depository institution has positive net worth, (bb) the insured depository institution has been in substantial compliance with an approved capital restoration plan which requires consistent improvement in the institution's capital since the date of the approval of the plan, (cc) the insured depository institution is profitable or has an upward trend in earnings the agency projects as sustainable, and (dd) the insured depository institution is reducing the ratio of nonperforming loans to total loans; and

(II) the head of the appropriate Federal banking agency and the Chairperson of the Board of Directors both certify that the institution is viable and not expected to fail.

(i) RESTRICTING ACTIVITIES OF CRITICALLY UNDERCAPITALIZED INSTITUTIONS.—To carry out the purpose of this section, the Corporation shall, by regulation or order—

(1) restrict the activities of any critically undercapitalized insured depository institution; and

(2) at a minimum, prohibit any such institution from doing any of the following without the Corporation's prior written approval:

(A) Entering into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, sale of assets, or other similar action with respect to which the depository institution is required to provide notice to the appropriate Federal banking agency.

(B) Extending credit for any highly leveraged transaction.

(C) Amending the institution's charter or bylaws, except to the extent necessary to carry out any other requirement of any law, regulation, or order.

(D) Making any material change in accounting methods.

(E) Engaging in any covered transaction (as defined in section 23A(b) of the Federal Reserve Act).

(F) Paying excessive compensation or bonuses.

(G) Paying interest on new or renewed liabilities at a rate that would increase the institution's weighted average cost of funds to a level significantly exceeding the prevailing rates of interest on insured deposits in the institution's normal market areas.

(j) CERTAIN GOVERNMENT-CONTROLLED INSTITUTIONS EXEMPTED.—Subsections (e) through (i) (other than paragraph (3) of subsection (e)) shall not apply—

(1) to an insured depository institution for which the Corporation or the Resolution Trust Corporation is conservator; or

(2) to a bridge depository institution, none of the voting securities of which are owned by a person or agency other than the Corporation or the Resolution Trust Corporation.

(k) REVIEWS REQUIRED WHEN DEPOSIT INSURANCE FUND INCURS LOSSES.—

(1) IN GENERAL.—If the Deposit Insurance Fund incurs a material loss with respect to an insured depository institution on or after July 1, 1993, the inspector general of the appropriate Federal banking agency shall—

(A) make a written report to that agency reviewing the agency's supervision of the institution (including the agency's implementation of this section), which shall—

(i) ascertain why the institution's problems resulted in a material loss to the Deposit Insurance Fund; and

(ii) make recommendations for preventing any such loss in the future; and

(B) provide a copy of the report to—

(i) the Comptroller General of the United States;

(ii) the Corporation (if the agency is not the Corporation);

(iii) in the case of a State depository institution, the appropriate State banking supervisor; and

(iv) upon request by any Member of Congress, to that Member.

(2) MATERIAL LOSS INCURRED.—For purposes of this subsection:

(A) LOSS INCURRED.—The Deposit Insurance Fund incurs a loss with respect to an insured depository institution—

(i) if the Corporation provides any assistance under section 13(c) with respect to that institution; and—

(I) it is not substantially certain that the assistance will be fully repaid not later than 24 months after the date on which the Corporation initiated the assistance; or

(II) the institution ceases to repay the assistance in accordance with its terms; or

(ii) if the Corporation is appointed receiver of the institution, and it is or becomes apparent that the present value of the outlays of the Deposit Insurance Fund with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

(B) MATERIAL LOSS DEFINED.—The term "material loss" means any estimated loss in excess of—

(i) $200,000,000, if the loss occurs during the period beginning on January 1, 2010, and ending on December 31, 2011;

(ii) $150,000,000, if the loss occurs during the period beginning on January 1, 2012, and ending on December 31, 2013; and

(iii) $50,000,000, if the loss occurs on or after January 1, 2014, provided that if the inspector general of a Federal banking agency certifies to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that the number of projected failures of depository institutions that would require material loss reviews for the following 12 months will be greater than 30 and would hinder the effectiveness of its oversight functions, then the definition of "material loss" shall be $75,000,000 for a duration of 1 year from the date of the certification.

(3) DEADLINE FOR REPORT.—The inspector general of the appropriate Federal banking agency shall comply with paragraph (1) expeditiously, and in any event (except with respect to paragraph (1)(B)(iv)) as follows:

(A) If the institution is described in paragraph (2)(A)(i), during the 6-month period beginning on the earlier of—

(i) the date on which the institution ceases to repay assistance under section 13(c) in accordance with its terms, or

(ii) the date on which it becomes apparent that the assistance will not be fully repaid during the 24-month period described in paragraph (2)(A)(i).

(B) If the institution is described in paragraph (2)(A)(ii), during the 6-month period beginning on the date on which it becomes apparent that the present value of the outlays of the Deposit Insurance Fund with respect to that institution will exceed the present value of receivership dividends or other payments on the claims held by the Corporation.

(4) PUBLIC DISCLOSURE REQUIRED.—

(A) IN GENERAL.—The appropriate Federal banking agency shall disclose any report on losses required under this subsection, upon request under section 552 of title 5, United States Code, without excising—

(i) any portion under section 552(b)(5) of that title; or

(ii) any information about the insured depository institution under paragraph (4) (other than trade secrets) or paragraph (8) of section 552(b) of that title.

(B) EXCEPTION.—Subparagraph (A) does not require the agency to disclose the name of any customer of the insured depository institution (other than an institution-affiliated party), or information from which such a person's identity could reasonably be ascertained.

(5) LOSSES THAT ARE NOT MATERIAL.—

(A) SEMIANNUAL REPORT.—For the 6-month period ending on March 31, 2010, and each 6-month period thereafter, the Inspector General of each Federal banking agency shall—

(i) identify losses that the Inspector General estimates have been incurred by the Deposit Insurance Fund during that 6-month period, with respect to the insured depository institutions supervised by the Federal banking agency;

(ii) for each loss incurred by the Deposit Insurance Fund that is not a material loss, determine—

(I) the grounds identified by the Federal banking agency or State bank supervisor for appointing the Corporation as receiver under section 11(c)(5); and

(II) whether any unusual circumstances exist that might warrant an in-depth review of the loss; and

(iii) prepare and submit a written report to the appropriate Federal banking agency and to Congress on the results of any determination by the Inspector General, including—

(I) an identification of any loss that warrants an in-depth review, together with the reasons why such review is warranted, or, if the Inspector General determines that no review is warranted, an explanation of such determination; and

(II) for each loss identified under subclause (I) that warrants an in-depth review, the date by which such review, and a report on such review prepared in a manner consistent with reports under paragraph (1)(A), will be completed and submitted to the Federal banking agency and Congress.

(B) DEADLINE FOR SEMIANNUAL REPORT.—The Inspector General of each Federal banking agency shall—

(i) submit each report required under paragraph (A) expeditiously, and not later than 90 days after the end of the 6-month period covered by the report; and

(ii) provide a copy of the report required under paragraph (A) to any Member of Congress, upon request.

(6) GAO REVIEW.—The Comptroller General of the United States shall, under such conditions as the Comptroller General determines to be appropriate, review reports made under paragraph (1) and recommend improvements in the supervision of insured depository institutions (including the implementation of this section).

(l) IMPLEMENTATION.—

(1) REGULATIONS AND OTHER ACTIONS.—Each appropriate Federal banking agency shall prescribe such regulations (in consultation with the other Federal banking agencies), issue such orders, and take such other actions as are necessary to carry out this section.

(2) WRITTEN DETERMINATION AND CONCURRENCE REQUIRED.—Any determination or concurrence by an appropriate Federal banking agency or the Corporation required under this section shall be written.

(m) OTHER AUTHORITY NOT AFFECTED.—This section does not limit any authority of an appropriate Federal banking agency, the Corporation, or a State to take action in addition to (but not in derogation of) that required under this section.

(n) ADMINISTRATIVE REVIEW OF DISMISSAL ORDERS.—

(1) TIMELY PETITION REQUIRED.—A director or senior executive officer dismissed pursuant to an order under subsection (f)(2)(F)(ii) may obtain review of that order by filing a written petition for reinstatement with the appropriate Federal banking agency not later than 10 days after receiving notice of the dismissal.

(2) PROCEDURE.—

(A) HEARING REQUIRED.—The agency shall give the petitioner an opportunity to—

(i) submit written materials in support of the petition; and

(ii) appear, personally or through counsel, before 1 or more members of the agency or designated employees of the agency.

(B) DEADLINE FOR HEARING.—The agency shall—

(i) schedule the hearing referred to in subparagraph (A)(ii) promptly after the petition is filed; and

(ii) hold the hearing not later than 30 days after the petition is filed, unless the petitioner requests that the hearing be held at a later time.

(C) DEADLINE FOR DECISION.—Not later than 60 days after the date of the hearing, the agency shall—

(i) by order, grant or deny the petition;

(ii) if the order is adverse to the petitioner, set forth the basis for the order; and

(iii) notify the petitioner of the order.

(3) STANDARD FOR REVIEW OF DISMISSAL ORDERS.—The petitioner shall bear the burden of proving that the petitioner's continued employment would materially strengthen the insured depository institution's ability—

(A) to become adequately capitalized, to the extent that the order is based on the institution's capital level or failure to submit or implement a capital restoration plan; and

(B) to correct the unsafe or unsound condition or unsafe or unsound practice, to the extent that the order is based on subsection (g)(1).

(o) TRANSITION RULES FOR SAVINGS ASSOCIATIONS.—Subsections (e)(2)[1], (f), and (h) shall not apply before July 1, 1994, to any insured savings association if—

(1) before the date of enactment of the Federal Deposit Insurance Corporation Improvement Act of 1991—

(A) the savings association had submitted a plan meeting the requirements of section 5(t)(6)(A)(ii) of the Home Owners' Loan Act; and

(B) the Director of the Office of Thrift Supervision had accepted the plan;

(2) the plan remains in effect; and

(3) the savings association remains in compliance with the plan or is operating under a written agreement with the appropriate Federal banking agency.

SEC. 38A. [12 U.S.C. 1831o–1] SOURCE OF STRENGTH.

(a) HOLDING COMPANIES.—The appropriate Federal banking agency for a bank holding company or savings and loan holding company shall require the bank holding company or savings and loan holding company to serve as a source of financial strength for any subsidiary of the bank holding company or savings and loan holding company that is a depository institution.

(b) OTHER COMPANIES.—If an insured depository institution is not the subsidiary of a bank holding company or savings and loan holding company, the appropriate Federal banking agency for the

[1] The format for the heading provided for in the amendment in section 8(a)(39(A) of Public Law 109–173 (119 Stat. 3616) is boldface type instead of lightface cap and small caps as follows: "ASSOCIATIONS.—". Amendment executed to reflect the probable intent of Congress.

insured depository institution shall require any company that directly or indirectly controls the insured depository institution to serve as a source of financial strength for such institution.

(c) REPORTS.—The appropriate Federal banking agency for an insured depository institution described in subsection (b) may, from time to time, require the company, or a company that directly or indirectly controls the insured depository institution, to submit a report, under oath, for the purposes of—

(1) assessing the ability of such company to comply with the requirement under subsection (b); and

(2) enforcing the compliance of such company with the requirement under subsection (b).

(d) RULES.—Not later than 1 year after the transfer date, as defined in section 311 of the Enhancing Financial Institution Safety and Soundness Act of 2010, the appropriate Federal banking agencies shall jointly issue final rules to carry out this section.

(e) DEFINITION.—In this section, the term "source of financial strength" means the ability of a company that directly or indirectly owns or controls an insured depository institution to provide financial assistance to such insured depository institution in the event of the financial distress of the insured depository institution.

SEC. 39. [12 U.S.C. 1831p–1] STANDARDS FOR SAFETY AND SOUNDNESS.

(a) OPERATIONAL AND MANAGERIAL STANDARDS.—Each appropriate Federal banking agency shall, for all insured depository institutions, prescribe—

(1) standards relating to—

(A) internal controls, information systems, and internal audit systems, in accordance with section 36;

(B) loan documentation;

(C) credit underwriting;

(D) interest rate exposure;

(E) asset growth; and

(F) compensation, fees, and benefits, in accordance with subsection (c); and

(2) such other operational and managerial standards as the agency determines to be appropriate.

(b) ASSET QUALITY, EARNINGS, AND STOCK VALUATION STANDARDS.—Each appropriate Federal banking agency shall prescribe standards, by regulation or guideline, for all insured depository institutions relating to asset quality, earnings, and stock valuation that the agency determines to be appropriate.

(c) COMPENSATION STANDARDS.—Each appropriate Federal banking agency shall, for all insured depository institutions, prescribe—

(1) standards prohibiting as an unsafe and unsound practice any employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement that—

(A) would provide any executive officer, employee, director, or principal shareholder of the institution with excessive compensation, fees or benefits; or

(B) could lead to material financial loss to the institution;

(2) standards specifying when compensation, fees, or benefits referred to in paragraph (1) are excessive, which shall require the agency to determine whether the amounts are unreasonable or disproportionate to the services actually performed by the individual by considering—

(A) the combined value of all cash and noncash benefits provided to the individual;

(B) the compensation history of the individual and other individuals with comparable expertise at the institution;

(C) the financial condition of the institution;

(D) comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(E) for postemployment benefits, the projected total cost and benefit to the institution;

(F) any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the institution; and

(G) other factors that the agency determines to be relevant; and

(3) such other standards relating to compensation, fees, and benefits as the agency determines to be appropriate.

(d) STANDARDS TO BE PRESCRIBED.—

(1) IN GENERAL.—Standards under subsections (a), (b), and (c) shall be prescribed by regulation or guideline. Such regulations or guidelines may not prescribe standards that set a specific level or range of compensation for directors, officers, or employees of insured depository institutions.

(2) APPLICABILITY OF OTHER LAWS.—Paragraph (1) shall not affect the authority of any appropriate Federal banking agency to restrict the level of compensation, including golden parachute payments (as defined in section 18(k)(4)), paid to any director, officer, or employee of an insured depository institution under any other provision of law.

(3) SENIOR EXECUTIVE OFFICERS AT UNDERCAPITALIZED INSTITUTIONS.—Paragraph (1) shall not affect the authority of any appropriate Federal banking agency to restrict compensation paid to any senior executive officer of an undercapitalized insured depository institution pursuant to section 38.

(4) SAFETY AND SOUNDNESS OR ENFORCEMENT ACTIONS.—Paragraph (1) shall not be construed as affecting the authority of any appropriate Federal banking agency under any provision of this Act other than this section, or under any other provision of law, to prescribe a specific level or range of compensation for any director, officer, or employee of an insured depository institution—

(A) to preserve the safety and soundness of the institution; or

(B) in connection with any action under section 8 or any order issued by the agency, any agreement between

the agency and the institution, or any condition imposed by the agency in connection with the agency's approval of an application or other request by the institution, which is enforceable under section 8.

(e) FAILURE TO MEET STANDARDS.—

(1) PLAN REQUIRED.—

(A) IN GENERAL.—If the appropriate Federal banking agency determines that an insured depository institution fails to meet any standard prescribed under subsection (a) or (b)—

(i) if such standard is prescribed by regulation of the agency, the agency shall require the institution to submit an acceptable plan to the agency within the time allowed by the agency under subparagraph (C); and

(ii) if such standard is prescribed by guideline, the agency may require the institution to submit a plan described in clause (i).

(B) CONTENTS OF PLAN.—Any plan required under subparagraph (A) shall specify the steps that the institution will take to correct the deficiency. If the institution is undercapitalized, the plan may be part of a capital restoration plan.

(C) DEADLINES FOR SUBMISSION AND REVIEW OF PLANS.—The appropriate Federal banking agency shall by regulation establish deadlines that—

(i) provide institutions with reasonable time to submit plans required under subparagraph (A), and generally require the institution to submit a plan not later than 30 days after the agency determines that the institution fails to meet any standard prescribed under subsection (a), (b), or (c); and

(ii) require the agency to act on plans expeditiously, and generally not later than 30 days after the plan is submitted.

(2) ORDER REQUIRED IF INSTITUTION OR COMPANY [1] FAILS TO SUBMIT OR IMPLEMENT PLAN.—If an insured depository institution fails to submit an acceptable plan within the time allowed under paragraph (1)(C), or fails in any material respect to implement a plan accepted by the appropriate Federal banking agency, the agency, by order—

(A) shall require the institution to correct the deficiency; and

(B) may do 1 or more of the following until the deficiency has been corrected:

(i) Prohibit the institution from permitting its average total assets during any calendar quarter to exceed its average total assets during the preceding calendar quarter, or restrict the rate at which the average total assets of the institution may increase from one calendar quarter to another.

[1] Section 318(c)(2) of P.L. 103–325 amended subsection (e) by striking "or company" each place such term appears. A conforming amendment to the heading of paragraph (2) probably should have been made to strike "OR COMPANY".

(ii) Require the institution to increase its ratio of tangible equity to assets.

(iii) Take the action described in section 38(f)(2)(C).

(iv) Require the institution to take any other action that the agency determines will better carry out the purpose of section 38 than any of the actions described in this subparagraph.

(3) RESTRICTIONS MANDATORY FOR CERTAIN INSTITUTIONS.—In complying with paragraph (2), the appropriate Federal banking agency shall take 1 or more of the actions described in clauses (i) through (iii) of paragraph (2)(B) if—

(A) the agency determines that the insured depository institution fails to meet any standard prescribed under subsection (a)(1) or (b)(1);

(B) the institution has not corrected the deficiency; and

(C) either—

(i) during the 24-month period before the date on which the institution first failed to meet the standard—

(I) the institution commenced operations; or

(II) 1 or more persons acquired control of the institution; or

(ii) during the 18-month period before the date on which the institution first failed to meet the standard, the institution underwent extraordinary growth, as defined by the agency.

(f) DEFINITIONS.—For purposes of this section, the terms "average" and "capital restoration plan" have the same meanings as in section 38.

(g) OTHER AUTHORITY NOT AFFECTED.—The authority granted by this section is in addition to any other authority of the Federal banking agencies.

SEC. 40. [12 U.S.C. 1831q] FDIC AFFORDABLE HOUSING PROGRAM.

(a) PURPOSE.—The purpose of this section is to provide homeownership and rental housing opportunities for very low-income, low-income, and moderate-income families.

(b) FUNDING AND LIMITATIONS OF PROGRAM.—

(1) DURATION OF PROGRAM.—The provisions of this section shall be effective, subject to the provisions of paragraph (2), only during the 3-year period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A).

(2) ANNUAL FISCAL LIMITATIONS.—

(A) IN GENERAL.—In each fiscal year during the 3-year period referred to in paragraph (1), the provisions of this section shall apply only—

(i) to such extent or in such amounts as are provided in appropriations Acts for any losses resulting during the fiscal year from the sale of properties under this section, except that such amounts for losses may not exceed $30,000,000 in any fiscal year; and

(ii) to the extent that amounts are provided in appropriations Acts pursuant to subparagraph (C) for any other costs relating to the program under this section.

(B) DEFINITION OF LOSSES.—For purposes of this paragraph, the amount of losses resulting from the sale of properties under this section during any fiscal year shall be the amount equal to the sum of any affordable housing discounts reasonably anticipated to accrue during the fiscal year.

(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, for each fiscal year during the 3-year period referred to in paragraph (1), such sums as may be necessary for any costs of the program under this section other than losses resulting from the sale of properties under this section.

(D) OTHER DEFINITIONS.—For purposes of this paragraph:

(i) AFFORDABLE HOUSING DISCOUNT.—The term "affordable housing discount" means, with respect to any eligible residential or eligible condominium property transferred under this section by the Corporation, the difference (if any) between the realizable disposition value of the property and the actual sale price of the property under this section.

(ii) REALIZABLE DISPOSITION VALUE.—The term "realizable disposition value" means the estimated sale price that the Corporation reasonably would be able to obtain upon the sale of a property by the Corporation under the provisions of this Act, not including this section, and any other applicable laws. Not later than the expiration of the 120-day period beginning upon the commencement of the first fiscal year for which amounts are provided pursuant to paragraph (2)(A), the Corporation shall establish, and publish in the Federal Register, procedures for determining the realizable disposition value of a property transferred under this section, which shall take into consideration such factors as the Corporation considers appropriate, including the actual sale prices of properties disposed of by the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act, the prices of other properties sold under similar programs, and the appraised value of the property transferred under this section. Until such procedures are established, the Corporation may consider the realizable disposition value of any eligible residential or condominium property to be equal to the appraised value of the property.

(3) EXISTING CONTRACTS.—The provisions of this section shall not apply to any eligible residential property or any eligible condominium property that is subject to an agreement entered into by the Corporation before the commencement of the first fiscal year for which amounts are provided pursuant to

paragraph (2)(A) that provides for any other disposition of the property.

(c) RULES GOVERNING DISPOSITION OF ELIGIBLE SINGLE FAMILY PROPERTIES.—

(1) NOTICE TO CLEARINGHOUSES.—Within a reasonable period of time after acquiring title to an eligible single family property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, condition, and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to other public agencies, other nonprofit organizations, and qualifying households. The Corporation shall allow public agencies, nonprofit organizations, and qualifying households reasonable access to eligible single family property for purposes of inspection.

(2) OFFERS TO SELL TO NONPROFIT ORGANIZATIONS, PUBLIC AGENCIES, AND QUALIFYING HOUSEHOLDS.—During the 180-day period beginning on the date on which the Corporation makes an eligible single family property available for sale, the Corporation shall offer to sell the property to—

(A) qualifying households (including qualifying households with members who are veterans); or

(B) public agencies or nonprofit organizations that agree to (i) make the property available for occupancy by and maintain it as affordable for low-income families (including low-income families with members who are veterans) for the remaining useful life of such property, or (ii) make the property available for purchase by any such family who, except as provided in paragraph (4), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months.

The restrictions described in clause (i) of subparagraph (B) shall be contained in the deed or other recorded instrument. If, upon the expiration of such 180-day period, no qualifying household, public agency, or nonprofit organization has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any purchaser. The Corporation shall actively market eligible single family properties for sale to low-income families and to low-income families with members who are veterans.

(3) RECAPTURE OF PROFITS FROM RESALE.—Except as provided in paragraph (4), if any eligible single family property sold (A) to a qualifying household, or (B) to a low-income family pursuant to paragraph (2)(B)(ii), subsection (j)(3)(A), or subsection (k)(2), is resold by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or low-income family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (i) the original sale price for the acquisition of the property by the qualifying household or low-income family, (ii) the costs of any improve-

ments to the property made after the date of the acquisition, and (iii) any closing costs in connection with the acquisition.

(4) EXCEPTIONS TO RECAPTURE REQUIREMENT.—

(A) RELOCATION.—The Corporation may in its discretion waive the applicability (i) to any qualifying household of the requirement under paragraph (3) and the requirements relating to residency of a qualifying household under subparagraphs (B) and (C) of subsection (p)(12), and (ii) to any low-income family of the requirement under paragraph (3) and the residency requirements under paragraph (2)(B)(ii). The Corporation may grant any such waiver only for good cause shown, including any necessary relocation of the qualifying household or low-income family.

(B) OTHER RECAPTURE PROVISIONS.—The requirement under paragraph (3) shall not apply to any eligible single family property for which, upon resale by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or family, a portion of the sale proceeds or any subsidy provided in connection with the acquisition of the property by the household or family is required to be recaptured or repaid under any other Federal, State, or local law (including section 143(m) of the Internal Revenue Code of 1986) or regulation or under any sale agreement.

(5) EXCEPTION TO AVOID DISPLACEMENT OF EXISTING RESIDENTS.—Notwithstanding the first sentence of paragraph (2), during the 180-day period following the date on which the Corporation makes an eligible single family property available for sale, the Corporation may sell the property to the household residing in the property, but only if (A) such household was residing in the property at the time notice regarding the property was provided to clearinghouses under paragraph (1), (B) such sale is necessary to avoid the displacement of, and unnecessary hardship to, the resident household, (C) the resident household intends to occupy the property as a principal residence for at least 12 months, and (D) the resident household certifies in writing that the household intends to occupy the property for at least 12 months.

(d) RULES GOVERNING DISPOSITION OF ELIGIBLE MULTIFAMILY HOUSING PROPERTIES.—

(1) NOTICE TO CLEARINGHOUSES.—Within a reasonable period of time after acquiring title to an eligible multifamily housing property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property, including but not limited to location, number of units (identified by number of bedrooms), and information relating to the estimated fair market value of the property. Each clearinghouse shall make such information available, upon request, to qualifying multifamily purchasers. The Corporation shall allow qualifying multifamily purchasers reasonable access to eligible multifamily housing properties for purposes of inspection.

(2) EXPRESSION OF SERIOUS INTEREST.—Qualifying multifamily purchasers may give written notice of serious interest in

a property during a period ending 90 days after the time the Corporation provides notice under paragraph (1). The notice of serious interest shall be in such form and include such information as the Corporation may prescribe.

(3) NOTICE OF READINESS FOR SALE.—Upon the expiration of the period referred to in paragraph (2) for a property, the Corporation shall provide written notice to any qualifying multifamily purchaser that has expressed serious interest in the property. Such notice shall specify the minimum terms and conditions for sale of the property.

(4) OFFERS BY QUALIFYING MULTIFAMILY PURCHASERS.—A qualifying multifamily purchaser receiving notice in accordance with paragraph (3) shall have 45 days (from the date notice is received) to make a bona fide offer to purchase the property. The Corporation shall accept an offer that complies with the terms and conditions established by the Corporation. If, before the expiration of such 45-day period, any offer to purchase a property initially accepted by the Corporation is subsequently rejected or fails (for any reason), the Corporation shall accept another offer to purchase the property made during such period that complies with the terms and conditions established by the Corporation (if such another offer is made). The preceding sentence may not be construed to require a qualifying multifamily purchaser whose offer is accepted during the 45-day period to purchase the property before the expiration of the period.

(5) EXTENSION OF RESTRICTED OFFER PERIODS.—The Corporation may provide notice to clearinghouses regarding, and offer for sale under the provisions of paragraphs (1) through (4), any eligible multifamily housing property—

(A) in which no qualifying multifamily purchaser has expressed serious interest during the period referred to in paragraph (2), or

(B) for which no qualifying multifamily purchaser has made a bona fide offer before the expiration of the period referred to in paragraph (4),

except that the Corporation may, in the discretion of the Corporation, alter the duration of the periods referred to in paragraphs (2) and (4) in offering any property for sale under this paragraph.

(6) SALE OF MULTIFAMILY PROPERTIES TO OTHER PURCHASERS.—

(A) TIMING.—If, upon the expiration of the period referred to in paragraph (2), no qualifying multifamily purchaser has expressed serious interest in a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

(B) LIMITATION ON COMBINATION SALES.—The Corporation may not sell in combination with other properties any property for which a qualifying multifamily purchaser has expressed serious interest in purchasing individually.

(C) EXPIRATION OF OFFER PERIOD.—If, upon the expiration of the period referred to in paragraph (4), no qualifying multifamily purchaser has made an offer to purchase

a property, the Corporation may offer to sell the property, individually or in combination with other properties, to any purchaser.

(7) LOW-INCOME OCCUPANCY REQUIREMENTS.—

(A) SINGLE PROPERTY PURCHASES.—With respect to any purchase of a single eligible multifamily housing property by a qualifying multifamily purchaser under paragraph (4) or (5)—

(i) not less than 35 percent of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for low-income and very low-income families during the remaining useful life of the property in which the units are located; provided that

(ii) not less than 20 percent of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of the property in which the units are located.

(B) AGGREGATION REQUIREMENTS FOR MULTIPROPERTY PURCHASES.—With respect to any purchase under paragraph (4) or (5) by a qualifying multifamily purchaser involving more than one eligible multifamily housing property as a part of the same negotiation, with respect to which the purchaser intends to aggregate the low-income occupancy required under this paragraph over the total number of units so purchased—

(i) not less than 40 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for low-income and very low-income families during the remaining useful life of the building or structure in which the units are located; provided that

(ii) not less than 20 percent of the aggregate number of all dwelling units purchased shall be made available for occupancy by and maintained as affordable for very low-income families during the remaining useful life of the building or structure in which the units are located; and further provided that

(iii) not less than 10 percent of the dwelling units in each separate property purchased shall be made available for occupancy by and maintained as affordable for low-income families during the remaining useful life of the property in which the units are located.

The requirements of this paragraph shall be contained in the deed or other recorded instrument.

(8) EXEMPTIONS.—

(A) CONTINUED OCCUPANCY OF CURRENT RESIDENTS.—No purchaser of an eligible multifamily property may terminate the occupancy of any person residing in the property on the date of purchase for purposes of meeting the low-income occupancy requirement applicable to the property under paragraph (7). The purchaser shall be considered to be in compliance with this subsection if each newly

vacant dwelling unit is reserved for low-income occupancy until the low-income occupancy requirement is met.

(B) FINANCIAL INFEASIBILITY.—The Secretary or the State housing finance agency for the State in which an eligible multifamily housing property is located may temporarily reduce the low-income occupancy requirements under paragraph (7) applicable to the property, if the Secretary or such agency determines that an owner's compliance with such requirements is no longer financially feasible. The owner of the property shall make a good-faith effort to return low-income occupancy to the level required under paragraph (7), and the Secretary or the State housing finance agency, as appropriate, shall review the reduction annually to determine whether financial infeasibility continues to exist.

(e) RENT LIMITATIONS.—

(1) IN GENERAL.—With respect to properties under paragraph (2), rents charged to tenants for units made available for occupancy by very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants for units made available for occupancy by low-income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(2) APPLICABILITY.—The rent limitations under this subsection shall apply to any eligible single family property sold pursuant to subsection (c)(2)(B)(i) and to any eligible multifamily housing property sold pursuant to subsection (d).

(f) PREFERENCES FOR SALES.—

(1) IN GENERAL.—In selling any eligible multifamily housing property or combinations of eligible residential properties, the Corporation shall give preference, among substantially similar offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low-income and low-income families and would retain such affordability for the longest term.

(2) MULTIPROPERTY PURCHASES.—The Corporation shall give preference, among substantially similar offers made under paragraph (4) or (5) of subsection (d) to purchase more than one eligible multifamily housing property as a part of the same negotiation, to offers made by purchasers who agree to maintain low-income occupancy in each separate property purchased in compliance with the levels required for properties under subsection (d)(7)(A).

(3) DEFINITION OF SUBSTANTIALLY SIMILAR OFFERS.—For purposes of this subsection, a given offer to purchase eligible multifamily housing property or combinations of such properties shall be considered to be substantially similar to another offer if the purchase price under such given offer is not less than 85 percent of the purchase price under the other offer.

(g) FINANCING SALES.—

(1) ASSISTANCE BY CORPORATION.—

(A) SALE PRICE.—The Corporation shall establish a market value for each eligible multifamily housing property. The Corporation shall sell eligible multifamily housing property at the net realizable market value, except that the Corporation may agree to sell eligible multifamily housing property at a price below the net realizable market value to the extent necessary to facilitate an expedited sale of such property and enable a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to such property under subsection (d)(7). The Corporation may sell eligible single family property or eligible condominium property to qualifying households, nonprofit organizations, and public agencies without regard to any minimum sale price.

(B) PURCHASE LOAN.—The Corporation may provide a loan at market interest rates to any purchaser of eligible residential property for all or a portion of the purchase price, which loan shall be secured by a first or second mortgage on the property. The Corporation may provide the loan at below market interest rates to the extent necessary to facilitate an expedited sale of eligible residential property and permit (i) a low-income family to purchase an eligible single family property under subsection (c), or (ii) a public agency or nonprofit organization to comply with the low-income occupancy requirements applicable to the purchase of an eligible residential property under subsection (c) or (d). The Corporation shall provide loans under this subparagraph in a form permitting sale or transfer of the loan to a subsequent holder. In providing financing for combinations of eligible multifamily housing properties under this section, the Corporation may hold a participating share, including a subordinate participation. The Corporation shall periodically provide, to a wide range of minority- and women-owned businesses engaged in providing affordable housing and to nonprofit organizations, more than 50 percent of the control of which is held by 1 or more minority individuals, that are engaged in providing affordable housing, information that is sufficient to inform such businesses and organizations of the availability and terms of financing under this subparagraph; such information may be provided directly, by notices published in periodicals and other publications that regularly provide information to such businesses or organizations, and through persons and organizations that regularly provide information or services to such businesses or organizations. For purposes of this subparagraph, the terms "women-owned business" and "minority-owned business" have the meanings given such terms in section 21A(r) of the Federal Home Loan Bank Act, and the term "minority" has the meaning given such term in section 1204(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) ASSISTANCE BY HUD.—The Secretary shall take such action as may be necessary to expedite the processing of applications for assistance under section 202 of the Housing Act of 1959, the United States Housing Act of 1937, title IV of the Stewart B. McKinney Homeless Assistance Act, and the National Housing Act, to enable any organization or individual to purchase eligible residential property.

(3) ASSISTANCE BY FMHA.—The Secretary of Agriculture shall take such action as may be necessary to expedite the processing of applications for assistance under title V of the Housing Act of 1949 to enable any organization or individual to purchase eligible residential property.

(4) EXCEPTION TO DISPOSITION RULES.—Notwithstanding the requirements under paragraphs (1), (2), (3), (4), (6), and (8) of subsection (d), the Corporation may provide for the disposition of eligible multifamily housing properties as necessary to facilitate purchase of such properties for use in connection with section 202 of the Housing Act of 1959.

(5) BULK ACQUISITIONS UNDER HOME INVESTMENT PARTNERSHIPS ACT.—

(A) PURCHASE PRICE.—In providing for bulk acquisition of eligible single family properties by participating jurisdictions for inclusion in affordable housing activities under title II of the Cranston-Gonzalez National Affordable Housing Act, the Corporation shall agree to an amount to be paid for acquisition of such properties. The acquisition price shall include discounts for bulk purchase and for holding of the property such that the acquisition price for each property shall not exceed the fair market value of the property, as valued individually.

(B) EXEMPTIONS.—To the extent necessary to facilitate sale of properties under this paragraph, the requirements of subsections (c) and (f) and of paragraph (1) of this subsection shall not apply to such transactions and properties involved in such transactions.

(C) INVENTORIES.—To facilitate acquisitions by such participating jurisdictions, the Corporation shall provide the participating jurisdictions with inventories of eligible single family properties not less than 4 times each year.

(h) COORDINATION WITH OTHER PROGRAMS.—

(1) USE OF SECONDARY MARKET AGENCIES.—In the disposition of eligible residential properties, the Corporation (in consultation with the Secretary) shall explore opportunities to work with secondary market entities to provide housing for low- and moderate-income families.

(2) CREDIT ENHANCEMENT.—

(A) IN GENERAL.—With respect to such properties, the Secretary may, consistent with statutory authorities, work through the Federal Housing Administration, the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other secondary market entities to develop risk-sharing structures, mortgage insurance, and other credit enhancements to assist in the provision of

property ownership, rental, and cooperative housing opportunities for low- and moderate-income families.

(B) CERTAIN TAX-EXEMPT BONDS.—The Corporation may provide credit enhancements with respect to tax-exempt bonds issued on behalf of nonprofit organizations pursuant to section 103, and subpart A of part IV of subchapter A of chapter 1, of the Internal Revenue Code of 1986, with respect to the disposition of eligible residential properties for the purposes described in subparagraph (A).

(3) NATIONAL AFFORDABLE HOUSING ACT.—The Corporation shall coordinate the disposition of eligible residential property under this section with appropriate programs and provisions of, and amendments made by, the Cranston-Gonzalez National Affordable Housing Act, including titles II and IV of such Act.

(i) EXEMPTION FOR CERTAIN TRANSACTIONS WITH INSURED DEPOSITORY INSTITUTIONS.—The provisions of this section shall not apply with respect to any eligible residential property after the date the Corporation enters into a contract to sell such property to an insured depository institution (as defined in section 3), including any sale in connection with a transfer of all or substantially all of the assets of a closed insured depository institution (including such property) to another insured depository institution.

(j) TRANSFER OF CERTAIN ELIGIBLE RESIDENTIAL PROPERTIES TO STATE HOUSING AGENCIES FOR DISPOSITION.—Notwithstanding subsections (c), (d), (f), and (g), the Corporation may transfer eligible residential properties to the State housing finance agency or any other State housing agency for the State in which the property is located, or to any local housing agency in whose jurisdiction the property is located. Transfers of eligible residential properties under this subsection may be conducted by direct sale, consignment sale, or any other method the Corporation considers appropriate and shall be subject to the following requirements:

(1) INDIVIDUAL OR BULK TRANSFER.—The Corporation may transfer such properties individually or in bulk, as agreed to by the Corporation and the State housing finance agency or State or local housing agency.

(2) ACQUISITION PRICE.—The acquisition price paid by the State housing finance agency or State or local housing agency to the Corporation for properties transferred under this subsection shall be an amount agreed to by the Corporation and the transferee agency.

(3) LOW-INCOME USE.—Any State housing finance agency or State or local housing agency acquiring properties under this subsection shall offer to sell or transfer the properties only as follows:

(A) ELIGIBLE SINGLE FAMILY PROPERTIES.—For eligible single family properties—

(i) to purchasers described under subparagraphs (A) and (B) of subsection (c)(2);

(ii) if the purchaser is a purchaser described under subsection (c)(2)(B)(i), subject to the rent limitations under subsection (e)(1);

(iii) subject to the requirement in the second sentence of subsection (c)(2); and

(iv) subject to recapture by the Corporation of excess proceeds from resale of the properties under paragraphs (3) and (4) of subsection (c).

(B) ELIGIBLE MULTIFAMILY HOUSING PROPERTIES.—For eligible multifamily housing properties—

(i) to qualifying multifamily purchasers;

(ii) subject to the low-income occupancy requirements under subsection (d)(7);

(iii) subject to the provisions of subsection (d)(8);

(iv) subject to a preference, among financially acceptable offers, to the offer that would reserve the highest percentage of dwelling units for occupancy or purchase by very low- and low-income families and would retain such affordability for the longest term; and

(v) subject to the rent limitations under subsection (e)(1).

(4) AFFORDABILITY.—The State housing finance agency or State or local housing agency shall endeavor to make the properties transferred under this subsection more affordable to low-income families based upon the extent to which the acquisition price of a property under paragraph (2) is less than the market value of the property.

(k) EXCEPTION FOR SALES TO NONPROFIT ORGANIZATIONS AND PUBLIC AGENCIES.—

(1) SUSPENSION OF OFFER PERIODS.—With respect to any eligible residential property, the Corporation may (in the discretion of the Corporation) suspend any of the requirements of paragraphs (1) and (2) of subsection (c) and paragraphs (1) through (4) of subsection (d), as applicable, but only to the extent that for the duration of the suspension the Corporation negotiates the sale of the property to a nonprofit organization or public agency. If the property is not sold pursuant to such negotiations, the requirements of any provisions suspended shall apply upon the termination of the suspension. Any time period referred to in such subsections shall toll for the duration of any suspension under this paragraph.

(2) USE RESTRICTIONS.—

(A) ELIGIBLE SINGLE FAMILY PROPERTY.—Any eligible single family property sold under this subsection shall be (i) made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or made available for purchase by such families, (ii) subject to the rent limitations under subsection (e)(1), (iii) subject to the requirements relating to residency of a qualifying household under subsection (p)(12) and to residency of a low-income family under subsection (c)(2)(B), and (iv) subject to recapture by the Corporation of excess proceeds from resale of the property under paragraphs (3) and (4) of subsection (c).

(B) ELIGIBLE MULTIFAMILY HOUSING PROPERTY.—Any eligible multifamily housing property sold under this subsection shall comply with the low-income occupancy re-

quirements under subsection (d)(7) and shall be subject to the rent limitations under subsection (e)(1).

(l) RULES GOVERNING DISPOSITION OF ELIGIBLE CONDOMINIUM PROPERTY.—

(1) NOTICE TO CLEARINGHOUSES.—Within a reasonable period of time after acquiring title to an eligible condominium property, the Corporation shall provide written notice to clearinghouses. Such notice shall contain basic information about the property. Each clearinghouse shall make such information available, upon request, to purchasers described in subparagraphs (A) through (D) of paragraph (2). The Corporation shall allow such purchasers reasonable access to an eligible condominium property for purposes of inspection.

(2) OFFERS TO SELL.—For the 180-day period following the date on which the Corporation makes an eligible condominium property available for sale, the Corporation may offer to sell the property, at the discretion of the Corporation, to 1 or more of the following purchasers:

(A) Qualifying households.

(B) Nonprofit organizations.

(C) Public agencies.

(D) For-profit entities.

(3) LOW-INCOME OCCUPANCY REQUIREMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any nonprofit organization, public agency, or for-profit entity that purchases an eligible condominium property shall (i) make the property available for occupancy by and maintain it as affordable for low-income families for the remaining useful life of the property, or (ii) make the property available for purchase by any such family who, except as provided in paragraph (5), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described in clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

(B) MULTIPLE-UNIT PURCHASES.—If any nonprofit organization, public agency, or for-profit entity purchases more than 1 eligible condominium property as a part of the same negotiation or purchase, the Corporation may (in the discretion of the Corporation) waive the requirement under subparagraph (A) and provide instead that not less than 35 percent of all eligible condominium properties purchased shall be (i) made available for occupancy by and maintained as affordable for low-income families for the remaining useful life of the property, or (ii) made available for purchase by any such family who, except as provided in paragraph (5), agrees to occupy the property as a principal residence for at least 12 months and certifies in writing that the family intends to occupy the property for at least 12 months. The restriction described in clause (i) of the preceding sentence shall be contained in the deed or other recorded instrument.

(C) SALE TO OTHER PURCHASERS.—If, upon the expiration of the 180-day period referred to in paragraph (2), no purchaser described in subparagraphs (A) through (D) of paragraph (2) has made a bona fide offer to purchase the property, the Corporation may offer to sell the property to any other purchaser.

(4) RECAPTURE OF PROFITS FROM RESALE.—Except as provided in paragraph (5), if any eligible condominium property sold (A) to a qualifying household, or (B) to a low-income family pursuant to paragraph (3)(A)(ii) or (3)(B)(ii), is resold by the qualifying household or low-income family during the 1-year period beginning upon initial acquisition by the household or family, the Corporation shall recapture 75 percent of the amount of any proceeds from the resale that exceed the sum of (i) the original sale price for the acquisition of the property by the qualifying household or low-income family, (ii) the costs of any improvements to the property made after the date of the acquisition, and (iii) any closing costs in connection with the acquisition.

(5) EXCEPTION TO RECAPTURE REQUIREMENT.—The Corporation (or its successor) may in its discretion waive the applicability to any qualifying household or low-income family of the requirement under paragraph (4) and the requirements relating to residency of a qualifying household or low-income family (under subsection (p)(12) and paragraph (3) of this subsection, respectively). The Corporation may grant any such a waiver only for good cause shown, including any necessary relocation of the qualifying household or low-income family.

(6) LIMITATIONS ON MULTIPLE UNIT PURCHASES.—The Corporation may not sell or offer to sell as part of the same negotiation or purchase any eligible condominium properties that are not located in the same condominium project (as such term is defined in section 604 of the Housing and Community Development Act of 1980). The preceding sentence may not be construed to require all eligible condominium properties offered or sold as part of the same negotiation or purchase to be located in the same structure.

(7) RENT LIMITATIONS.—Rents charged to tenants of eligible condominium properties made available for occupancy by very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the median income for the area, as determined by the Secretary, with adjustment for family size. Rents charged to tenants of eligible condominium properties made available for occupancy by low-income families other than very low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(m) LIABILITY PROVISIONS.—

(1) IN GENERAL.—The provisions of this section, or any failure by the Corporation to comply with such provisions, may not be used by any person to attack or defeat any title to property after it is conveyed by the Corporation.

(2) LOW-INCOME OCCUPANCY.—The low-income occupancy requirements under subsections (c), (d), (j)(3), (k)(2), and (l)(3) shall be judicially enforceable against purchasers of property under this section and their successors in interest by affected very low- and low-income families, State housing finance agencies, and any agency, corporation, or authority of the United States. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

(3) CLEARINGHOUSES.—A clearinghouse shall not be subject to suit for its failure to comply with the requirements of this section.

(4) CORPORATION.—The Corporation shall not be liable to any depositor, creditor, or shareholder of any insured depository institution for which the Corporation has been appointed receiver or conservator, or of any subsidiary corporation of a depository institution under receivership or conservatorship, or any claimant against such institution or subsidiary, because the disposition of assets of the institution or the subsidiary under this section affects the amount of return from the assets.

(n) UNIFIED AFFORDABLE HOUSING PROGRAMS.— [1]

(1) IN GENERAL.—Not later than 4 months after the date of enactment of the Resolution Trust Corporation Completion Act, the Corporation shall enter into an agreement, as described in paragraph (3), with the Resolution Trust Corporation that sets out a plan for the orderly unification of the Corporation's activities, authorities, and responsibilities under this section with the authorities, activities, and responsibilities of the Resolution Trust Corporation pursuant to section 21A(c) of the Federal Home Loan Bank Act in a manner that best achieves an effective and comprehensive affordable housing program management structure. The agreement shall be entered into after consultation with the Affordable Housing Advisory Board under section 14(b) of the Resolution Trust Corporation Completion Act.

(2) AUTHORITY AND IMPLEMENTATION.—The Corporation shall have the authority to carry out the provisions of the agreement entered into pursuant to paragraph (1) and shall implement such agreement as soon as practicable but in no event later than 8 months after the date of enactment of the Resolution Trust Corporation Completion Act.

(3) TERMS OF AGREEMENT.—The agreement required under paragraph (1) shall provide a plan for—

(A) a program unifying all activities and responsibilities of the Corporation and the Resolution Trust Corporation, and the design of the unified program shall take into consideration the substantial experience of the Resolution Trust Corporation regarding—

(i) seller financing;

(ii) technical assistance;

[1] The Resolution Trust Corporation has been abolished (see section 21A(m) of the Federal Home Loan Bank Act).

(iii) marketing skills and relationships with public and nonprofit entities; and

(iv) staff resources;

(B) the elimination of duplicative and unnecessary administrative costs and resources;

(C) the management structure of the unified program;

(D) a timetable for the unification; and

(E) a methodology to determine the extent to which the provisions of this section shall be effective, in accordance with the limitations under subsection (b)(2).

(4) TRANSFER TO FDIC.—Beginning not later than October 1, 1995, the Corporation shall carry out any remaining authority and responsibilities of the Resolution Trust Corporation, as set forth in section 21A(c) of the Federal Home Loan Bank Act.

(o) REPORT.—To the extent applicable, in the annual report submitted by the Secretary to the Congress under section 8 of the Department of Housing and Urban Development Act, the Secretary shall include a detailed description of any activities under this section, including recommendations for any additional authority the Secretary considers necessary to implement the provisions of this section.

(p) DEFINITIONS.—For purposes of this section:

(1) ADJUSTED INCOME AND INCOME.—The terms "adjusted income" and "income" shall have the meaning given such terms in section 3(b) of the United States Housing Act of 1937.

(2) CLEARINGHOUSE.—The term "clearinghouse" means—

(A) the State housing finance agency for the State in which an eligible residential property or eligible condominium property is located;

(B) the Office of Community Investment (or other comparable division) within the Federal Housing Finance Board; and

(C) any national nonprofit organizations (including any nonprofit entity established by the corporation established under title IX of the Housing and Community Development Act of 1968) that the Corporation determines has the capacity to act as a clearinghouse for information.

(3) CORPORATION.—The term "Corporation" means the Federal Deposit Insurance Corporation acting in its corporate capacity or its capacity as receiver.

(4) ELIGIBLE CONDOMINIUM PROPERTY.—The term "eligible condominium property" means a condominium unit, as such term is defined in section 604 of the Housing and Community Development Act of 1980—

(A) to which such Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the amount provided in section 203(b)(2)(A) of the National Housing Act except that such amount shall not exceed $101,250 in the case of a 1-family residence, $114,000 in

the case of a 2-family residence, $138,000 in the case of a 3-family residence, and $160,000 in the case of a 4-family residence.

(5) ELIGIBLE MULTIFAMILY HOUSING PROPERTY.—The term "eligible multifamily housing property" means a property consisting of more than 4 dwelling units—

(A) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the applicable dollar amount specified in section 221(d)(3)(ii) of the National Housing Act for elevator-type structures, as such dollar amount is increased under such section for geographical areas or on a project-by-project basis (except that any such increase on a project-by-project basis shall be made pursuant to a determination by the Corporation that such increase is necessary).

(6) ELIGIBLE RESIDENTIAL PROPERTY.—The term "eligible residential property" includes eligible single family properties and eligible multifamily housing properties.

(7) ELIGIBLE SINGLE FAMILY PROPERTY.—The term "eligible single family property" means a 1- to 4-family residence (including a manufactured home)—

(A) to which the Corporation acquires title in its corporate capacity, its capacity as conservator, or its capacity as receiver (including in its capacity as the sole owner of a subsidiary corporation of a depository institution under conservatorship or receivership, which subsidiary has as its principal business the ownership of real property); and

(B) that has an appraised value that does not exceed the amount provided in section 203(b)(2)(A) of the National Housing Act except that such amount shall not exceed $101,250 in the case of a 1-family residence, $114,000 in the case of a 2-family residence, $138,000 in the case of a 3-family residence, and $160,000 in the case of a 4-family residence.

(8) LOW-INCOME FAMILIES.—The term "low-income families" means families and individuals whose incomes do not exceed 80 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(9) NET REALIZABLE MARKET VALUE.—The term "net realizable market value" means a price below the market value that takes into account (A) any reductions in holding costs resulting from the expedited sale of a property, including foregone real estate taxes, insurance, maintenance costs, security costs, and loss of use of funds, and (B) the avoidance, if applicable, of fees paid to real estate brokers, auctioneers, or other individuals or organizations involved in the sale of property owned by the Corporation.

(10) NONPROFIT ORGANIZATION.—The term "nonprofit organization" means a private organization (including a limited equity cooperative)—

(A) no part of the earnings of which inures to the benefit of any member, shareholder, founder, contributor, or individual; and

(B) that is approved by the Corporation as to financial responsibility.

(11) PUBLIC AGENCY.—The term "public agency" means any Federal, State, local, or other governmental entity, and includes any public housing agency.

(12) QUALIFYING HOUSEHOLD.—The term "qualifying household" means a household—

(A) who intends to occupy eligible single family property as a principal residence;

(B) who agrees to occupy the property as a principal residence for at least 12 months;

(C) who certifies in writing that the household intends to occupy the property as a principal residence for at least 12 months; and

(D) whose income does not exceed 115 percent of the median income for the area, as determined by the Secretary, with adjustment for family size.

(13) QUALIFYING MULTIFAMILY PURCHASER.—The term "qualifying multifamily purchaser" means—

(A) a public agency;

(B) a nonprofit organization; or

(C) a for-profit entity, which makes a commitment (for itself or any related entity) to comply with the low-income occupancy requirements under subsection (d)(7) for any eligible multifamily housing property for which an offer to purchase is made during or after the periods specified under subsection (d).

(14) Secretary.—The term "Secretary" means the Secretary of Housing and Urban Development.

(15) STATE HOUSING FINANCE AGENCY.—The term "State housing finance agency" means the public agency, authority, corporation, or other instrumentality of a State that has the authority to provide residential mortgage loan financing throughout the State.

(16) VERY LOW-INCOME FAMILIES.—The term "very low-income families" means families and individuals whose incomes do not exceed 50 percent of the median income of the area involved, as determined by the Secretary, with adjustment for family size.

(q) NOTICE TO CLEARINGHOUSES REGARDING INELIGIBLE PROPERTIES.—

(1) IN GENERAL.—Within a reasonable period of time after acquiring title to an ineligible residential property, the Corporation shall, to the extent practicable, provide written notice to clearinghouses.

(2) CONTENT.—For ineligible single family properties, such notice shall contain the same information about such properties that the notice required under subsection (c)(1) contains

with respect to eligible single family properties. For ineligible multifamily housing properties, such notice shall contain the same information about such properties that the notice required under subsection (d)(1) contains with respect to eligible multifamily housing properties. For ineligible condominium properties, such notice shall contain the same information about such properties that the notice required under subsection (l)(1) contains with respect to eligible condominium properties.

(3) AVAILABILITY.—The clearinghouses shall make such information available, upon request, to other public agencies, other nonprofit organizations, qualifying households, qualifying multifamily purchasers, and other purchasers, as appropriate.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) INELIGIBLE CONDOMINIUM PROPERTY.—The term "ineligible condominium property" means any eligible condominium property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

(B) INELIGIBLE MULTIFAMILY HOUSING PROPERTY.—The term "ineligible multifamily housing property" means any eligible multifamily housing property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

(C) INELIGIBLE SINGLE FAMILY PROPERTY.—The term "ineligible single family property" means any eligible single family property to which the provisions of this section do not apply as a result of the limitations under subsection (b)(2)(A).

(D) INELIGIBLE RESIDENTIAL PROPERTY.—The term "ineligible residential property" includes ineligible single family properties, ineligible multifamily housing properties, and ineligible condominium properties.

SEC. 41. [12 U.S.C. 1831r] PAYMENTS ON FOREIGN DEPOSITS PROHIBITED.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Corporation, the Board of Governors of the Federal Reserve System, the Resolution Trust Corporation, any other agency, department, and instrumentality of the United States, and any corporation owned or controlled by the United States may not, directly or indirectly, make any payment or provide any assistance, guarantee, or transfer under this Act or any other provision of law in connection with any insured depository institution which would have the direct or indirect effect of satisfying, in whole or in part, any claim against the institution for obligations of the institution which would constitute deposits as defined in section 3(l) but for subparagraphs (A) and (B) of section 3(l)(5).

(b) EXCEPTION.—Subsection (a) shall not apply to any payment, assistance, guarantee, or transfer made or provided by the Corporation if the Board of Directors determines in writing that such action is not inconsistent with any requirement of section 13(c).

(c) DISCOUNT WINDOW LENDING.—No provision of this section shall be construed as prohibiting any Federal Reserve bank from

making advances or otherwise extending credit pursuant to the Federal Reserve Act to any insured depository institution to the extent that such advance or extension of credit is consistent with the conditions and limitations imposed under section 10B of such Act.

SEC. 42. [12 U.S.C. 1831r–1] NOTICE OF BRANCH CLOSURE.

(a) NOTICE TO APPROPRIATE FEDERAL BANKING AGENCY.—

(1) IN GENERAL.—An insured depository institution which proposes to close any branch shall submit a notice of the proposed closing to the appropriate Federal banking agency not later than the first day of the 90-day period ending on the date proposed for the closing.

(2) CONTENTS OF NOTICE.—A notice under paragraph (1) shall include—

(A) a detailed statement of the reasons for the decision to close the branch; and

(B) statistical or other information in support of such reasons.

(b) NOTICE TO CUSTOMERS.—

(1) IN GENERAL.—An insured depository institution which proposes to close a branch shall provide notice of the proposed closing to its customers.

(2) CONTENTS OF NOTICE.—Notice under paragraph (1) shall consist of—

(A) posting of a notice in a conspicuous manner on the premises of the branch proposed to be closed during not less than the 30-day period ending on the date proposed for that closing; and

(B) inclusion of a notice in—

(i) at least one of any regular account statements mailed to customers of the branch proposed to be closed, or

(ii) in a separate mailing,

by not later than the beginning of the 90-day period ending on the date proposed for that closing.

(c) ADOPTION OF POLICIES.—Each insured depository institution shall adopt policies for closings of branches of the institution.

(d) BRANCH CLOSURES IN INTERSTATE BANKING OR BRANCHING OPERATIONS.—

(1) NOTICE REQUIREMENTS.—In the case of an interstate bank which proposes to close any branch in a low- or moderate-income area, the notice required under subsection (b)(2) shall contain the mailing address of the appropriate Federal banking agency and a statement that comments on the proposed closing of such branch may be mailed to such agency.

(2) ACTION REQUIRED BY APPROPRIATE FEDERAL BANKING AGENCY.—If, in the case of a branch referred to in paragraph (1)—

(A) a person from the area in which such branch is located—

(i) submits a written request relating to the closing of such branch to the appropriate Federal banking agency; and

(ii) includes a statement of specific reasons for the request, including a discussion of the adverse effect of such closing on the availability of banking services in the area affected by the closing of the branch; and

(B) the agency concludes that the request is not frivolous,

the agency shall consult with community leaders in the affected area and convene a meeting of representatives of the agency and other interested depository institution regulatory agencies with community leaders in the affected area and such other individuals, organizations, and depository institutions (as defined in section 19(b)(1)(A) of the Federal Reserve Act) as the agency may determine, in the discretion of the agency, to be appropriate, to explore the feasibility of obtaining adequate alternative facilities and services for the affected area, including the establishment of a new branch by another depository institution, the chartering of a new depository institution, or the establishment of a community development credit union, following the closing of the branch.

(3) NO EFFECT ON CLOSING.—No action by the appropriate Federal banking agency under paragraph (2) shall affect the authority of an interstate bank to close a branch (including the timing of such closing) if the requirements of subsections (a) and (b) have been met by such bank with respect to the branch being closed.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) INTERSTATE BANK DEFINED.—The term "interstate bank" means a bank which maintains branches in more than 1 State.

(B) LOW- OR MODERATE-INCOME AREA.—The term "low- or moderate-income area" means a census tract for which the median family income is—

(i) less than 80 percent of the median family income for the metropolitan statistical area (as designated by the Director of the Office of Management and Budget) in which the census tract is located; or

(ii) in the case of a census tract which is not located in a metropolitan statistical area, less than 80 percent of the median family income for the State in which the census tract is located, as determined without taking into account family income in metropolitan statistical areas in such State.

(e) SCOPE OF APPLICATION.—This section shall not apply with respect to—

(1) an automated teller machine;

(2) the relocation of a branch or consolidation of one or more branches into another branch, if the relocation or consolidation—

(A) occurs within the immediate neighborhood; and

(B) does not substantially affect the nature of the business or customers served; or

(3) a branch that is closed in connection with—

(A) an emergency acquisition under—

(i) section 11(n); or

(ii) subsection (f) or (k) of section 13; or

(B) any assistance provided by the Corporation under section 13(c).

SEC. 43. [12 U.S.C. 1831t] DEPOSITORY INSTITUTIONS LACKING FEDERAL DEPOSIT INSURANCE.

(a) ANNUAL INDEPENDENT AUDIT OF PRIVATE DEPOSIT INSURERS.—

(1) AUDIT REQUIRED.—Any private deposit insurer shall obtain an annual audit from an independent auditor using generally accepted auditing standards. The audit shall include a determination of whether the private deposit insurer follows generally accepted accounting principles and has set aside sufficient reserves for losses.

(2) PROVIDING COPIES OF AUDIT REPORT.—

(A) PRIVATE DEPOSIT INSURER.—The private deposit insurer shall provide a copy of the audit report—

(i) to each depository institution the deposits of which are insured by the private deposit insurer, not later than 14 days after the audit is completed; and

(ii) to the appropriate supervisory agency of each State in which such an institution receives deposits, not later than 7 days after the audit is completed.

(B) DEPOSITORY INSTITUTION.—Any depository institution the deposits of which are insured by the private deposit insurer shall provide a copy of the audit report, upon request, to any current or prospective customer of the institution.

(3) ENFORCEMENT BY APPROPRIATE STATE SUPERVISOR.—Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.

(b) DISCLOSURE REQUIRED.—Any depository institution lacking Federal deposit insurance shall, within the United States, do the following:

(1) PERIODIC STATEMENTS; ACCOUNT RECORDS.—Include conspicuously in all periodic statements of account, on each signature card, and on each passbook, certificate of deposit, or share certificate.[1] a notice that the institution is not federally insured, and that if the institution fails, the Federal Government does not guarantee that depositors will get back their money.

(2) ADVERTISING; PREMISES.—

(A) IN GENERAL.—Include clearly and conspicuously in all advertising, except as provided in subparagraph (B); and at each station or window where deposits are normally received, its principal place of business and all its

[1] Period so in law. Section 505(b) of Public Law 109–351 (120 Stat. 1975) amends section 43(b)(1) by striking "or similar instrument evidencing a deposit" and inserting "or share certificate.".

branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

(B) EXCEPTIONS.—The following need not include a notice that the institution is not federally insured:

(i) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

(ii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.

(3) ACKNOWLEDGMENT OF DISCLOSURE.—

(A) NEW DEPOSITORS OBTAINED OTHER THAN THROUGH A CONVERSION OR MERGER.—With respect to any depositor who was not a depositor at the depository institution before the effective date of the Financial Services Regulatory Relief Act of 2006, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

(i) the institution is not federally insured; and

(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

(B) NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after the effective date of the Financial Services Regulatory Relief Act of 2006, receive any deposit for the account of such depositor only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

(C) CURRENT DEPOSITORS.—Receive any deposit after the effective date of the Financial Services Regulatory Relief Act of 2006 for the account of any depositor who was a depositor on that date only if—

(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

(ii) the institution has complied with the provisions of subparagraph (E) which are applicable as of the date of the deposit.

(D) ALTERNATIVE PROVISION OF NOTICE TO NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—

(i) IN GENERAL.—Transmit to each depositor who has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(E) ALTERNATIVE PROVISION OF NOTICE TO CURRENT DEPOSITORS.—

(i) IN GENERAL.—Transmit to each depositor who was a depositor before the effective date of the Financial Services Regulatory Relief Act of 2006, and has not signed a written acknowledgement described in subparagraph (A)—

(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

(ii) MANNER AND TIMING OF NOTICE.—

(I) FIRST NOTICE.—Make the transmission described in clause (i) via mail not later than three months after the effective date of the Financial Services Regulatory Relief Act of 2006.

(II) SECOND NOTICE.—Make a second transmission described in clause (i) via mail not less than 30 days and not more than three months after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.

(c) MANNER AND CONTENT OF DISCLOSURE.—To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Bureau, by regulation or order, shall prescribe the manner and content of disclosure required under this section, which shall be presented in such format and in such type size and manner as to be simple and easy to understand.

(d) EXCEPTIONS FOR INSTITUTIONS NOT RECEIVING RETAIL DEPOSITS.—The Bureau may, by regulation or order, make exceptions to subsection (b) for any depository institution that, within the United States, does not receive initial deposits of less than an amount equal to the standard maximum deposit insurance amount from individuals who are citizens or residents of the United States, other than money received in connection with any draft or similar instrument issued to transmit money.

(e) DEFINITIONS.—For purposes of this section:

(1) APPROPRIATE SUPERVISOR.—The "appropriate supervisor" of a depository institution means the agency primarily responsible for supervising the institution.

(2) DEPOSITORY INSTITUTION.—The term "depository institution" includes—

(A) any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; and

(B) any entity that, as determined by the Bureau—

(i) is engaged in the business of receiving deposits; and

(ii) could reasonably be mistaken for a depository institution by the entity's current or prospective customers.

(3) LACKING FEDERAL DEPOSIT INSURANCE.—A depository institution lacks Federal deposit insurance if the institution is not either—

(A) an insured depository institution; or

(B) an insured credit union, as defined in section 101 of the Federal Credit Union Act.

(4) PRIVATE DEPOSIT INSURER.—The term "private deposit insurer" means any entity insuring the deposits of any depository institution lacking Federal deposit insurance.

(5) BUREAU.—The term "Bureau" means the Bureau of Consumer Financial Protection.

(f) ENFORCEMENT.—

(1) LIMITED ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c), and (e), and any regulation prescribed or order issued under such subsection, shall be enforced under the Consumer Financial Protection Act of 2010, by the Bureau, subject to subtitle B of the Consumer Financial Protection Act of 2010, and under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) by the Federal Trade Commission.

(2) BROAD STATE ENFORCEMENT AUTHORITY.—

(A) IN GENERAL.—Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

(B) STATE POWERS.—For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Bureau or Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisory agency may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau or Federal Trade Commission for any violation of this section that is alleged in that complaint.

SEC. 44. [12 U.S.C. 1831u] INTERSTATE BANK MERGERS.

(a) APPROVAL OF INTERSTATE MERGER TRANSACTIONS AUTHORIZED.—

(1) IN GENERAL.—Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

(2) STATE ELECTION TO PROHIBIT INTERSTATE MERGER TRANSACTIONS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), a merger transaction may not be approved pursuant to paragraph (1) if the transaction involves a bank the home State of which has enacted a law after the date of enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 and before June 1, 1997, that—

(i) applies equally to all out-of-State banks; and

(ii) expressly prohibits merger transactions involving out-of-State banks.

(B) NO EFFECT ON PRIOR APPROVALS OF MERGER TRANSACTIONS.—A law enacted by a State pursuant to subparagraph (A) shall have no effect on merger transactions that were approved before the effective date of such law.

(3) STATE ELECTION TO PERMIT EARLY INTERSTATE MERGER TRANSACTIONS.—

(A) IN GENERAL.—A merger transaction may be approved pursuant to paragraph (1) before June 1, 1997, if the home State of each bank involved in the transaction has in effect, as of the date of the approval of such transaction, a law that—

(i) applies equally to all out-of-State banks; and

(ii) expressly permits interstate merger transactions with all out-of-State banks.

(B) CERTAIN CONDITIONS ALLOWED.—A host State may impose conditions on a branch within such State of a bank resulting from an interstate merger transaction if—

(i) the conditions do not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or any subsidiary of such bank or company (other than on the basis of a nationwide reciprocal treatment requirement);

(ii) the imposition of the conditions is not preempted by Federal law; and

(iii) the conditions do not apply or require performance after May 31, 1997.

(4) INTERSTATE MERGER TRANSACTIONS INVOLVING ACQUISITIONS OF BRANCHES.—

(A) IN GENERAL.—An interstate merger transaction may involve the acquisition of a branch of an insured bank without the acquisition of the bank only if the law of the State in which the branch is located permits out-of-State banks to acquire a branch of a bank in such State without acquiring the bank.

(B) TREATMENT OF BRANCH FOR PURPOSES OF THIS SECTION.—In the case of an interstate merger transaction which involves the acquisition of a branch of an insured bank without the acquisition of the bank, the branch shall be treated, for purposes of this section, as an insured bank the home State of which is the State in which the branch is located.

(5) PRESERVATION OF STATE AGE LAWS.—

(A) IN GENERAL.—The responsible agency may not approve an application pursuant to paragraph (1) that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in a host State that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State.

(B) SPECIAL RULE FOR STATE AGE LAWS SPECIFYING A PERIOD OF MORE THAN 5 YEARS.—Notwithstanding subparagraph (A), the responsible agency may approve a merger transaction pursuant to paragraph (1) involving the acquisition of a bank that has been in existence at least 5 years without regard to any longer minimum period of time specified in a statutory law of the host State.

(6) SHELL BANKS.—For purposes of this subsection, a bank that has been chartered solely for the purpose of, and does not open for business prior to, acquiring control of, or acquiring all or substantially all of the assets of, an existing bank or branch shall be deemed to have been in existence for the same period of time as the bank or branch to be acquired.

(b) PROVISIONS RELATING TO APPLICATION AND APPROVAL PROCESS.—

(1) COMPLIANCE WITH STATE FILING REQUIREMENTS.—

(A) IN GENERAL.—Any bank which files an application for an interstate merger transaction shall—

(i) comply with the filing requirements of any host State of the bank which will result from such transaction to the extent that the requirement—

(I) does not have the effect of discriminating against out-of-State banks or out-of-State bank holding companies or subsidiaries of such banks or bank holding companies; and

(II) is similar in effect to any requirement imposed by the host State on a nonbanking corporation incorporated in another State that engages in business in the host State; and

(ii) submit a copy of the application to the State bank supervisor of the host State.

(B) PENALTY FOR FAILURE TO COMPLY.—The responsible agency may not approve an application for an interstate merger transaction if the applicant materially fails to comply with subparagraph (A).

(2) CONCENTRATION LIMITS.—

(A) NATIONWIDE CONCENTRATION LIMITS.—The responsible agency may not approve an application for an interstate merger transaction if the resulting bank (including

all insured depository institutions which are affiliates of the resulting bank), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States.

(B) STATEWIDE CONCENTRATION LIMITS OTHER THAN WITH RESPECT TO INITIAL ENTRIES.—The responsible agency may not approve an application for an interstate merger transaction if—

(i) any bank involved in the transaction (including all insured depository institutions which are affiliates of any such bank) has a branch in any State in which any other bank involved in the transaction has a branch; and

(ii) the resulting bank (including all insured depository institutions which would be affiliates of the resulting bank), upon consummation of the transaction, would control 30 percent or more of the total amount of deposits of insured depository institutions in any such State.

(C) EFFECTIVENESS OF STATE DEPOSIT CAPS.—No provision of this subsection shall be construed as affecting the authority of any State to limit, by statute, regulation, or order, the percentage of the total amount of deposits of insured depository institutions in the State which may be held or controlled by any bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to the extent the application of such limitation does not discriminate against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(D) EXCEPTIONS TO SUBPARAGRAPH (B).—The responsible agency may approve an application for an interstate merger transaction pursuant to subsection (a) without regard to the applicability of subparagraph (B) with respect to any State if—

(i) there is a limitation described in subparagraph (C) in a State statute, regulation, or order which has the effect of permitting a bank or bank holding company (including all insured depository institutions which are affiliates of the bank or bank holding company) to control a greater percentage of total deposits of all insured depository institutions in the State than the percentage permitted under subparagraph (B); or

(ii) the transaction is approved by the appropriate State bank supervisor of such State and the standard on which such approval is based does not have the effect of discriminating against out-of-State banks, out-of-State bank holding companies, or subsidiaries of such banks or holding companies.

(E) EXCEPTION FOR CERTAIN BANKS.—This paragraph shall not apply with respect to any interstate merger transaction involving only affiliated banks.

(3) COMMUNITY REINVESTMENT COMPLIANCE.—In determining whether to approve an application for an interstate merger transaction in which the resulting bank would have a branch or bank affiliate immediately following the transaction in any State in which the bank submitting the application (as the acquiring bank) had no branch or bank affiliate immediately before the transaction, the responsible agency shall—

(A) comply with the responsibilities of the agency regarding such application under section 804 of the Community Reinvestment Act of 1977;

(B) take into account the most recent written evaluation under section 804 of the Community Reinvestment Act of 1977 of any bank which would be an affiliate of the resulting bank; and

(C) take into account the record of compliance of any applicant bank with applicable State community reinvestment laws.

(4) ADEQUACY OF CAPITAL AND MANAGEMENT SKILLS.—The responsible agency may approve an application for an interstate merger transaction pursuant to subsection (a) only if—

(A) each bank involved in the transaction is adequately capitalized as of the date the application is filed; and

(B) the responsible agency determines that the resulting bank will be well capitalized and well managed upon the consummation of the transaction.

(5) SURRENDER OF CHARTER AFTER MERGER TRANSACTION.—The charters of all banks involved in an interstate merger transaction, other than the charter of the resulting bank, shall be surrendered, upon request, to the Federal banking agency or State bank supervisor which issued the charter.

(c) APPLICABILITY OF CERTAIN LAWS TO INTERSTATE BANKING OPERATIONS.—

(1) STATE TAXATION AUTHORITY NOT AFFECTED.—

(A) IN GENERAL.—No provision of this section shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

(B) IMPOSITION OF SHARES TAX BY HOST STATES.—In the case of a branch of an out-of-State bank which results from an interstate merger transaction, a proportionate amount of the value of the shares of the out-of-State bank may be subject to any bank shares tax levied or imposed by the host State, or any political subdivision of such host State that imposes such tax based upon a method adopted by the host State, which may include allocation and apportionment.

(2) APPLICABILITY OF ANTITRUST LAWS.—No provision of this section shall be construed as affecting—

(A) the applicability of the antitrust laws; or

(B) the applicability, if any, of any State law which is similar to the antitrust laws.

(3) RESERVATION OF CERTAIN RIGHTS TO STATES.—No provision of this section shall be construed as limiting in any way the right of a State to—

(A) determine the authority of State banks chartered by that State to establish and maintain branches; or

(B) supervise, regulate, and examine State banks chartered by that State.

(4) STATE-IMPOSED NOTICE REQUIREMENTS.—A host State may impose any notification or reporting requirement on a branch of an out-of-State bank if the requirement—

(A) does not discriminate against out-of-State banks or bank holding companies; and

(B) is not preempted by any Federal law regarding the same subject.

(d) OPERATIONS OF THE RESULTING BANK.—

(1) CONTINUED OPERATIONS.—A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

(2) ADDITIONAL BRANCHES.—Following the consummation of any interstate merger transaction, the resulting bank may establish, acquire, or operate additional branches at any location where any bank involved in the transaction could have established, acquired, or operated a branch under applicable Federal or State law if such bank had not been a party to the merger transaction.

(3) CERTAIN CONDITIONS AND COMMITMENTS CONTINUED.—If, as a condition for the acquisition of a bank by an out-of-State bank holding company before the date of the enactment of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994—

(A) the home State of the acquired bank imposed conditions on such acquisition by such out-of-State bank holding company; or

(B) the bank holding company made commitments to such State in connection with the acquisition,

the State may enforce such conditions and commitments with respect to such bank holding company or any affiliated successor company which controls a bank or branch in such State as a result of an interstate merger transaction to the same extent as the State could enforce such conditions or commitments against the bank holding company before the consummation of the merger transaction.

(e) EXCEPTION FOR BANKS IN DEFAULT OR IN DANGER OF DEFAULT.—If an application under subsection (a)(1) for approval of a merger transaction which involves 1 or more banks in default or in danger of default or with respect to which the Corporation provides assistance under section 13(c), the responsible agency may approve such application without regard to subsection (b), or paragraph (2), (4), or (5) of subsection (a).

(f) APPLICABLE RATE AND OTHER CHARGE LIMITATIONS.—

(1) IN GENERAL.—In the case of any State that has a constitutional provision that sets a maximum lawful annual percentage rate of interest on any contract at not more than 5 percent above the discount rate for 90-day commercial paper in effect at the Federal reserve bank for the Federal reserve district in which such State is located, except as provided in paragraph (2), upon the establishment in such State of a branch of any out-of-State insured depository institution in such State under this section, the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved (or in the case of a governmental entity located in such State, paid) from time to time in any loan or discount made or upon any note, bill of exchange, financing transaction, or other evidence of debt by—

(A) any insured depository institution whose home State is such State shall be equal to not more than the greater of—

(i) the maximum interest rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction under the constitution or any statute or other law of the home State of the out-of-State insured depository institution establishing any such branch, without reference to this section, as such maximum interest rate or amount of interest may change from time to time; or

(ii) the maximum rate or amount of interest, discount points, finance charges, or other similar charges that may be charged, taken, received, or reserved in a similar transaction by a State insured depository institution chartered under the laws of such State or a national bank or Federal savings association whose main office is located in such State without reference to this section; and

(B) any governmental entity located in such State or any person that is not a depository institution described in subparagraph (A) doing business in such State, shall be equal to not more than the greater of the State's maximum lawful annual percentage rate or 17 percent—

(i) to facilitate the uniform implementation of federally mandated or federally established programs and financings related thereto, including—

(I) uniform accessibility of student loans, including the issuance of qualified student loan bonds as set forth in section 144(b) of the Internal Revenue Code of 1986;

(II) the uniform accessibility of mortgage loans, including the issuance of qualified mortgage bonds and qualified veterans' mortgage bonds as set forth in section 143 of such Code;

(III) the uniform accessibility of safe and affordable housing programs administered or sub-

ject to review by the Department of Housing and Urban Development, including—

(aa) the issuance of exempt facility bonds for qualified residential rental property as set forth in section 142(d) of such Code; and

(bb) the issuance of low income housing tax credits as set forth in section 42 of such Code,; and [1]

(IV) the uniform accessibility of bonds and obligations issued under the American Recovery and Reinvestment Act of 2009;

(ii) to facilitate interstate commerce through the issuance of bonds and obligations under any provision of State law, including bonds and obligations for the purpose of economic development, education, and improvements to infrastructure; and

(iii) to facilitate interstate commerce generally, including consumer loans, in the case of any person or governmental entity (other than a depository institution subject to subparagraph (A) and paragraph (2)).

(2) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—No provision of this subsection shall be construed as superseding or affecting—

(i) the authority of any insured depository institution to take, receive, reserve, and charge interest on any loan made in any State other than the State referred to in paragraph (1); or

(ii) the applicability of section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, section 5197 of the Revised Statutes of the United States, or section 27 of this Act.

(B) APPLICABILITY.—This subsection shall be construed to apply to any loan or discount made, or note, bill of exchange, financing transaction, or other evidence of debt, originated by an insured depository institution, a governmental entity located in such State, or a person that is not a depository institution described in subparagraph (A) doing business in such State.

(g) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) ADEQUATELY CAPITALIZED.—The term "adequately capitalized" has the same meaning as in section 38.

(2) ANTITRUST LAWS.—The term "antitrust laws"—

(A) has the same meaning as in subsection (a) of the first section of the Clayton Act; and

(B) includes section 5 of the Federal Trade Commission Act to the extent such section 5 relates to unfair methods of competition.

(3) BRANCH.—The term "branch" means any domestic branch.

(4) HOME STATE.—The term "home State"—

(A) means—

[1] So in law. See amendment made by section 563(a)(2)(C)(i)(II) of Public Law 111–83.

(i) with respect to a national bank, the State in which the main office of the bank is located; and

(ii) with respect to a State bank, the State by which the bank is chartered; and

(B) with respect to a bank holding company, has the same meaning as in section 2(o)(4) of the Bank Holding Company Act of 1956.

(5) HOST STATE.—The term "host State" means, with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch.

(6) INTERSTATE MERGER TRANSACTION.—The term "interstate merger transaction" means any merger transaction approved pursuant to subsection (a)(1).

(7) MERGER TRANSACTION.—The term "merger transaction" has the meaning determined under section 18(c)(3).

(8) OUT-OF-STATE BANK.—The term "out-of-State bank" means, with respect to any State, a bank whose home State is another State.

(9) OUT-OF-STATE BANK HOLDING COMPANY.—The term "out-of-State bank holding company" means, with respect to any State, a bank holding company whose home State is another State.

(10) RESPONSIBLE AGENCY.—The term "responsible agency" means the agency determined in accordance with section 18(c)(2) with respect to a merger transaction.

(11) RESULTING BANK.—The term "resulting bank" means a bank that has resulted from an interstate merger transaction under this section.

SEC. 45. [12 U.S.C. 1831v] AUTHORITY OF STATE INSURANCE REGULATOR AND SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—Notwithstanding any other provision of law, the provisions of—

(1) section 5(c) of the Bank Holding Company Act of 1956 that limit the authority of the Board of Governors of the Federal Reserve System to require reports from, to make examinations of, or to impose capital requirements on holding companies and their functionally regulated subsidiaries or that require deference to other regulators;

(2) section 5(g) of the Bank Holding Company Act of 1956 that limit the authority of the Board to require a functionally regulated subsidiary of a holding company to provide capital or other funds or assets to a depository institution subsidiary of the holding company and to take certain actions including requiring divestiture of the depository institution; and

(3) section 10A of the Bank Holding Company Act of 1956 that limit whatever authority the Board might otherwise have to take direct or indirect action with respect to holding companies and their functionally regulated subsidiaries;

shall also limit whatever authority that a Federal banking agency might otherwise have under any statute or regulation to require reports, make examinations, impose capital requirements, or take any other direct or indirect action with respect to any functionally regulated affiliate of a depository institution, subject to the same

standards and requirements as are applicable to the Board under those provisions.

(b) CERTAIN EXEMPTION AUTHORIZED.—No provision of this section shall be construed as preventing the Corporation, if the Corporation finds it necessary to determine the condition of a depository institution for insurance purposes, from examining an affiliate of any depository institution, pursuant to section 10(b)(4), as may be necessary to disclose fully the relationship between the depository institution and the affiliate, and the effect of such relationship on the depository institution.

(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) FUNCTIONALLY REGULATED SUBSIDIARY.—The term "functionally regulated subsidiary" has the meaning given the term in section 5(c)(5) of the Bank Holding Company Act of 1956.

(2) FUNCTIONALLY REGULATED AFFILIATE.—The term "functionally regulated affiliate" means, with respect to any depository institution, any affiliate of such depository institution that is—

(A) not a depository institution holding company; and

(B) a company described in any clause of section 5(c)(5)(B) of the Bank Holding Company Act of 1956.

SEC. 46. [12 U.S.C. 1831w] SAFETY AND SOUNDNESS FIREWALLS APPLICABLE TO FINANCIAL SUBSIDIARIES OF BANKS.

(a) IN GENERAL.—An insured State bank may control or hold an interest in a subsidiary that engages in activities as principal that would only be permissible for a national bank to conduct through a financial subsidiary if—

(1) the State bank and each insured depository institution affiliate of the State bank are well capitalized (after the capital deduction required by paragraph (2));

(2) the State bank complies with the capital deduction and financial statement disclosure requirements in section 5136A(c) of the Revised Statutes of the United States;

(3) the State bank complies with the financial and operational safeguards required by section 5136A(d) of the Revised Statutes of the United States; and

(4) the State bank complies with the amendments to sections 23A and 23B of the Federal Reserve Act made by section 121(b) of the Gramm-Leach-Bliley Act.

(b) PRESERVATION OF EXISTING SUBSIDIARIES.—Notwithstanding subsection (a), an insured State bank may retain control of a subsidiary, or retain an interest in a subsidiary, that the State bank lawfully controlled or acquired before the date of the enactment of the Gramm-Leach-Bliley Act, and conduct through such subsidiary any activities lawfully conducted in such subsidiary as of such date.

(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) SUBSIDIARY.—The term "subsidiary" means any company that is a subsidiary (as defined in section 3(w)(4)) of 1 or more insured banks.

(2) FINANCIAL SUBSIDIARY.—The term "financial subsidiary" has the meaning given the term in section 5136A(g) of the Revised Statutes of the United States.

(d) PRESERVATION OF AUTHORITY.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—No provision of this section shall be construed as superseding the authority of the Federal Deposit Insurance Corporation to review subsidiary activities under section 24.

(2) FEDERAL RESERVE ACT.—No provision of this section shall be construed as affecting the applicability of the 20th undesignated paragraph of section 9 of the Federal Reserve Act.

SEC. 47. [12 U.S.C. 1831x] INSURANCE CUSTOMER PROTECTIONS.

(a) REGULATIONS REQUIRED.—

(1) IN GENERAL.—The Federal banking agencies shall prescribe and publish in final form, before the end of the 1-year period beginning on the date of the enactment of the Gramm-Leach-Bliley Act, customer protection regulations (which the agencies jointly determine to be appropriate) that—

(A) apply to retail sales practices, solicitations, advertising, or offers of any insurance product by any depository institution or any person that is engaged in such activities at an office of the institution or on behalf of the institution; and

(B) are consistent with the requirements of this Act and provide such additional protections for customers to whom such sales, solicitations, advertising, or offers are directed.

(2) APPLICABILITY TO SUBSIDIARIES.—The regulations prescribed pursuant to paragraph (1) shall extend such protections to any subsidiary of a depository institution, as deemed appropriate by the regulators referred to in paragraph (3), where such extension is determined to be necessary to ensure the consumer protections provided by this section.

(3) CONSULTATION AND JOINT REGULATIONS.—The Federal banking agencies shall consult with each other and prescribe joint regulations pursuant to paragraph (1), after consultation with the State insurance regulators, as appropriate.

(b) SALES PRACTICES.—The regulations prescribed pursuant to subsection (a) shall include antitying and anticoercion rules applicable to the sale of insurance products that prohibit a depository institution from engaging in any practice that would lead a customer to believe an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon—

(1) the purchase of an insurance product from the institution or any of its affiliates; or

(2) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(c) DISCLOSURES AND ADVERTISING.—The regulations prescribed pursuant to subsection (a) shall include the following provisions relating to disclosures and advertising in connection with the initial purchase of an insurance product:

(1) DISCLOSURES.—

(A) IN GENERAL.—Requirements that the following disclosures be made orally and in writing before the completion of the initial sale and, in the case of clause (iii), at the time of application for an extension of credit:

(i) UNINSURED STATUS.—As appropriate, the product is not insured by the Federal Deposit Insurance Corporation, the United States Government, or the depository institution.

(ii) INVESTMENT RISK.—In the case of a variable annuity or other insurance product which involves an investment risk, that there is an investment risk associated with the product, including possible loss of value.

(iii) COERCION.—The approval of an extension of credit may not be conditioned on—

(I) the purchase of an insurance product from the institution in which the application for credit is pending or of any affiliate of the institution; or

(II) an agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product from an unaffiliated entity.

(B) MAKING DISCLOSURE READILY UNDERSTANDABLE.—Regulations prescribed under subparagraph (A) shall encourage the use of disclosure that is conspicuous, simple, direct, and readily understandable, such as the following:

(i) "NOT FDIC—INSURED".

(ii) "NOT GUARANTEED BY THE BANK".

(iii) "MAY GO DOWN IN VALUE".

(iv) "NOT INSURED BY ANY GOVERNMENT AGENCY".

(C) LIMITATION.—Nothing in this paragraph requires the inclusion of the foregoing disclosures in advertisements of a general nature describing or listing the services or products offered by an institution.

(D) MEANINGFUL DISCLOSURES.—Disclosures shall not be considered to be meaningfully provided under this paragraph if the institution or its representative states that disclosures required by this subsection were available to the customer in printed material available for distribution, where such printed material is not provided and such information is not orally disclosed to the customer.

(E) ADJUSTMENTS FOR ALTERNATIVE METHODS OF PURCHASE.—In prescribing the requirements under subparagraphs (A) and (F), necessary adjustments shall be made for purchase in person, by telephone, or by electronic media to provide for the most appropriate and complete form of disclosure and acknowledgments.

(F) CONSUMER ACKNOWLEDGMENT.—A requirement that a depository institution shall require any person selling an insurance product at any office of, or on behalf of, the institution to obtain, at the time a consumer receives the disclosures required under this paragraph or at the

time of the initial purchase by the consumer of such product, an acknowledgment by such consumer of the receipt of the disclosure required under this subsection with respect to such product.

(2) PROHIBITION ON MISREPRESENTATIONS.—A prohibition on any practice, or any advertising, at any office of, or on behalf of, the depository institution, or any subsidiary, as appropriate, that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to—

(A) the uninsured nature of any insurance product sold, or offered for sale, by the institution or any subsidiary of the institution;

(B) in the case of a variable annuity or insurance product that involves an investment risk, the investment risk associated with any such product; or

(C) in the case of an institution or subsidiary at which insurance products are sold or offered for sale, the fact that—

(i) the approval of an extension of credit to a customer by the institution or subsidiary may not be conditioned on the purchase of an insurance product by such customer from the institution or subsidiary; and

(ii) the customer is free to purchase the insurance product from another source.

(d) SEPARATION OF BANKING AND NONBANKING ACTIVITIES.—

(1) REGULATIONS REQUIRED.—The regulations prescribed pursuant to subsection (a) shall include such provisions as the Federal banking agencies consider appropriate to ensure that the routine acceptance of deposits is kept, to the extent practicable, physically segregated from insurance product activity.

(2) REQUIREMENTS.—Regulations prescribed pursuant to paragraph (1) shall include the following requirements:

(A) SEPARATE SETTING.—A clear delineation of the setting in which, and the circumstances under which, transactions involving insurance products should be conducted in a location physically segregated from an area where retail deposits are routinely accepted.

(B) REFERRALS.—Standards that permit any person accepting deposits from the public in an area where such transactions are routinely conducted in a depository institution to refer a customer who seeks to purchase any insurance product to a qualified person who sells such product, only if the person making the referral receives no more than a one-time nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

(C) QUALIFICATION AND LICENSING REQUIREMENTS.—Standards prohibiting any depository institution from permitting any person to sell or offer for sale any insurance product in any part of any office of the institution, or on behalf of the institution, unless such person is appropriately qualified and licensed.

(e) DOMESTIC VIOLENCE DISCRIMINATION PROHIBITION.—

(1) IN GENERAL.—In the case of an applicant for, or an insured under, any insurance product described in paragraph (2), the status of the applicant or insured as a victim of domestic violence, or as a provider of services to victims of domestic violence, shall not be considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of insurance policies, or payment of insurance claims, except as required or expressly permitted under State law.

(2) SCOPE OF APPLICATION.—The prohibition contained in paragraph (1) shall apply to any life or health insurance product which is sold or offered for sale, as principal, agent, or broker, by any depository institution or any person who is engaged in such activities at an office of the institution or on behalf of the institution.

(3) DOMESTIC VIOLENCE DEFINED.—For purposes of this subsection, the term "domestic violence" means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(A) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault.

(B) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm.

(C) Subjecting another person to false imprisonment.

(D) Attempting to cause or cause damage to property so as to intimidate or attempt to control the behavior of another person.

(f) CONSUMER GRIEVANCE PROCESS.—The Federal banking agencies shall jointly establish a consumer complaint mechanism, for receiving and expeditiously addressing consumer complaints alleging a violation of regulations issued under the section, which shall—

(1) establish a group within each regulatory agency to receive such complaints;

(2) develop procedures for investigating such complaints;

(3) develop procedures for informing consumers of rights they may have in connection with such complaints; and

(4) develop procedures for addressing concerns raised by such complaints, as appropriate, including procedures for the recovery of losses to the extent appropriate.

(g) EFFECT ON OTHER AUTHORITY.—

(1) IN GENERAL.—No provision of this section shall be construed as granting, limiting, or otherwise affecting—

(A) any authority of the Securities and Exchange Commission, any self-regulatory organization, the Municipal Securities Rulemaking Board, or the Secretary of the Treasury under any Federal securities law; or

(B) except as provided in paragraph (2), any authority of any State insurance commission (or any agency or office performing like functions), or of any State securities com-

mission (or any agency or office performing like functions), or other State authority under any State law.

(2) COORDINATION WITH STATE LAW.—

(A) IN GENERAL.—Except as provided in subparagraph (B), insurance customer protection regulations prescribed by a Federal banking agency under this section shall not apply to retail sales, solicitations, advertising, or offers of any insurance product by any depository institution or to any person who is engaged in such activities at an office of such institution or on behalf of the institution, in a State where the State has in effect statutes, regulations, orders, or interpretations, that are inconsistent with or contrary to the regulations prescribed by the Federal banking agencies.

(B) PREEMPTION.—

(i) IN GENERAL.—If, with respect to any provision of the regulations prescribed under this section, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Board of Directors of the Corporation determine jointly that the protection afforded by such provision for customers is greater than the protection provided by a comparable provision of the statutes, regulations, orders, or interpretations referred to in subparagraph (A) of any State, the appropriate State regulatory authority shall be notified of such determination in writing.

(ii) CONSIDERATIONS.—Before making a final determination under clause (i), the Federal agencies referred to in clause (i) shall give appropriate consideration to comments submitted by the appropriate State regulatory authorities relating to the level of protection afforded to consumers under State law.

(iii) FEDERAL PREEMPTION AND ABILITY OF STATES TO OVERRIDE FEDERAL PREEMPTION.—If the Federal agencies referred to in clause (i) jointly determine that any provision of the regulations prescribed under this section affords greater protections than a comparable State law, rule, regulation, order, or interpretation, those agencies shall send a written preemption notice to the appropriate State regulatory authority to notify the State that the Federal provision will preempt the State provision and will become applicable unless, not later than 3 years after the date of such notice, the State adopts legislation to override such preemption.

(h) NON-DISCRIMINATION AGAINST NON-AFFILIATED AGENTS.—The Federal banking agencies shall ensure that the regulations prescribed pursuant to subsection (a) shall not have the effect of discriminating, either intentionally or unintentionally, against any person engaged in insurance sales or solicitations that is not affiliated with a depository institution.

SEC. 48. [12 U.S.C. 1831y] CRA SUNSHINE REQUIREMENTS.

(a) PUBLIC DISCLOSURE OF AGREEMENTS.—Any agreement (as defined in subsection (e)) entered into after the date of the enact-

ment of the Gramm-Leach-Bliley Act by an insured depository institution or affiliate with a nongovernmental entity or person made pursuant to or in connection with the Community Reinvestment Act of 1977 involving funds or other resources of such insured depository institution or affiliate—

(1) shall be in its entirety fully disclosed, and the full text thereof made available to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution and to the public by each party to the agreement; and

(2) shall obligate each party to comply with this section.

(b) ANNUAL REPORT OF ACTIVITY BY INSURED DEPOSITORY INSTITUTION.—Each insured depository institution or affiliate that is a party to an agreement described in subsection (a) shall report to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution, not less frequently than once each year, such information as the Federal banking agency may by rule require relating to the following actions taken by the party pursuant to the agreement during the preceding 12-month period:

(1) Payments, fees, or loans made to any party to the agreement or received from any party to the agreement and the terms and conditions of the same.

(2) Aggregate data on loans, investments, and services provided by each party in its community or communities pursuant to the agreement.

(3) Such other pertinent matters as determined by regulation by the appropriate Federal banking agency with supervisory responsibility over the insured depository institution.

(c) ANNUAL REPORT OF ACTIVITY BY NONGOVERNMENTAL ENTITIES.—

(1) IN GENERAL.—Each nongovernmental entity or person that is not an affiliate of an insured depository institution and that is a party to an agreement described in subsection (a) shall report to the appropriate Federal banking agency with supervisory responsibility over the insured depository institution that is a party to such agreement, not less frequently than once each year, an accounting of the use of funds received pursuant to each such agreement during the preceding 12-month period.

(2) SUBMISSION TO INSURED DEPOSITORY INSTITUTION.—A nongovernmental entity or person referred to in paragraph (1) may comply with the reporting requirement in such paragraph by transmitting the report to the insured depository institution that is a party to the agreement, and such insured depository institution shall promptly transmit such report to the appropriate Federal banking agency with supervisory authority over the insured depository institution.

(3) INFORMATION TO BE INCLUDED.—The accounting referred to in paragraph (1) shall include a detailed, itemized list of the uses to which such funds have been made, including compensation, administrative expenses, travel, entertainment, consulting and professional fees paid, and such other categories, as determined by regulation by the appropriate Fed-

eral banking agency with supervisory responsibility over the insured depository institution.

(d) APPLICABILITY.—Subsections (b) and (c) shall not apply with respect to any agreement entered into before the end of the 6-month period beginning on the date of the enactment of the Gramm-Leach-Bliley Act.

(e) DEFINITIONS.—

(1) AGREEMENT.—For purposes of this section, the term "agreement"—

(A) means—

(i) any written contract, written arrangement, or other written understanding that provides for cash payments, grants, or other consideration with a value in excess of $10,000, or for loans the aggregate amount of principal of which exceeds $50,000, annually (or the sum of all such agreements during a 12-month period with an aggregate value of cash payments, grants, or other consideration in excess of $10,000, or with an aggregate amount of loan principal in excess of $50,000); or

(ii) a group of substantively related contracts with an aggregate value of cash payments, grants, or other consideration in excess of $10,000, or with an aggregate amount of loan principal in excess of $50,000, annually;

made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977, at least 1 party to which is an insured depository institution or affiliate thereof, whether organized on a profit or not-for-profit basis; and

(B) does not include—

(i) any individual mortgage loan;

(ii) any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities, if the funds are loaned at rates not substantially below market rates and if the purpose of the loan or extension of credit does not include any relending of the borrowed funds to other parties; or

(iii) any agreement entered into by an insured depository institution or affiliate with a nongovernmental entity or person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the Community Reinvestment Act of 1977.

(2) FULFILLMENT OF CRA.—For purposes of subparagraph (A), the term "fulfillment" means a list of factors that the appropriate Federal banking agency determines have a material impact on the agency's decision—

(A) to approve or disapprove an application for a deposit facility (as defined in section 803 of the Community Reinvestment Act of 1977); or

(B) to assign a rating to an insured depository institution under section 807 of the Community Reinvestment Act of 1977.

(f) VIOLATIONS.—

(1) VIOLATIONS BY PERSONS OTHER THAN INSURED DEPOSITORY INSTITUTIONS OR THEIR AFFILIATES.—

(A) MATERIAL FAILURE TO COMPLY.—If the party to an agreement described in subsection (a) that is not an insured depository institution or affiliate willfully fails to comply with this section in a material way, as determined by the appropriate Federal banking agency, the agreement shall be unenforceable after the offending party has been given notice and a reasonable period of time to perform or comply.

(B) DIVERSION OF FUNDS OR RESOURCES.—If funds or resources received under an agreement described in subsection (a) have been diverted contrary to the purposes of the agreement for personal financial gain, the appropriate Federal banking agency with supervisory responsibility over the insured depository institution may impose either or both of the following penalties:

(i) Disgorgement by the offending individual of funds received under the agreement.

(ii) Prohibition of the offending individual from being a party to any agreement described in subsection (a) for a period of not to exceed 10 years.

(2) DESIGNATION OF SUCCESSOR NONGOVERNMENTAL PARTY.—If an agreement described in subsection (a) is found to be unenforceable under this subsection, the appropriate Federal banking agency may assist the insured depository institution in identifying a successor nongovernmental party to assume the responsibilities of the agreement.

(3) INADVERTENT OR DE MINIMIS REPORTING ERRORS.—An error in a report filed under subsection (c) that is inadvertent or de minimis shall not subject the filing party to any penalty.

(g) RULE OF CONSTRUCTION.—No provision of this section shall be construed as authorizing any appropriate Federal banking agency to enforce the provisions of any agreement described in subsection (a).

(h) REGULATIONS.—

(1) IN GENERAL.—Each appropriate Federal banking agency shall prescribe regulations, in accordance with paragraph (4), requiring procedures reasonably designed to ensure and monitor compliance with the requirements of this section.

(2) PROTECTION OF PARTIES.—In carrying out paragraph (1), each appropriate Federal banking agency shall—

(A) ensure that the regulations prescribed by the agency do not impose an undue burden on the parties and that proprietary and confidential information is protected; and

(B) establish procedures to allow any nongovernmental entity or person who is a party to a large number of agreements described in subsection (a) to make a single or consolidated filing of a report under subsection (c) to an insured depository institution or an appropriate Federal banking agency.

(3) PARTIES NOT SUBJECT TO REPORTING REQUIREMENTS.—The Board of Governors of the Federal Reserve System may prescribe regulations—

(A) to prevent evasions of subsection (e)(1)(B)(iii); and

(B) to provide further exemptions under such subsection, consistent with the purposes of this section.

(4) COORDINATION, CONSISTENCY, AND COMPARABILITY.—In carrying out paragraph (1), each appropriate Federal banking agency shall consult and coordinate with the other such agencies for the purposes of assuring, to the extent possible, that the regulations prescribed by each such agency are consistent and comparable with the regulations prescribed by the other such agencies.

SEC. 49. [12 U.S.C. 1831z] BI-ANNUAL FDIC SURVEY AND REPORT ON ENCOURAGING USE OF DEPOSITORY INSTITUTIONS BY THE UNBANKED.

(a) SURVEY REQUIRED.—

(1) IN GENERAL.—The Corporation shall conduct a bi-annual survey on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the "unbanked") into the conventional finance system.

(2) FACTORS AND QUESTIONS TO CONSIDER.—In conducting the survey, the Corporation shall take the following factors and questions into account:

(A) To what extent do insured depository institutions promote financial education and financial literacy outreach?

(B) Which financial education efforts appear to be the most effective in bringing "unbanked" individuals and families into the conventional finance system?

(C) What efforts are insured institutions making at converting "unbanked" money order, wire transfer, and international remittance customers into conventional account holders?

(D) What cultural, language and identification issues as well as transaction costs appear to most prevent "unbanked" individuals from establishing conventional accounts?

(E) What is a fair estimate of the size and worth of the "unbanked" market in the United States?

(b) REPORTS.—The Chairperson of the Board of Directors shall submit a bi-annual report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the Corporation's findings and conclusions with respect to the survey conducted pursuant to subsection (a), together with such recommendations for legislative or administrative action as the Chairperson may determine to be appropriate.

SEC. 50. [12 U.S.C. 1831aa] ENFORCEMENT OF AGREEMENTS.

(a) IN GENERAL.—Notwithstanding clause (i) or (ii) of section 8(b)(6)(A) or section 38(e)(2)(E)(i), the appropriate Federal banking agency for a depository institution may enforce, under section 8, the terms of—

(1) any condition imposed in writing by the agency on the depository institution or an institution-affiliated party in connection with any action on any application, notice, or other request concerning the depository institution; or

(2) any written agreement entered into between the agency and the depository institution or an institution-affiliated party.

(b) RECEIVERSHIPS AND CONSERVATORSHIPS.—After the appointment of the Corporation as the receiver or conservator for a depository institution, the Corporation may enforce any condition or agreement described in paragraph (1) or (2) of subsection (a) imposed on or entered into with such institution or institution-affiliated party through an action brought in an appropriate United States district court.