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SEC. 1. SHORT TITLE.

This Act may be cited as the “Resolution Authority for Systemically Significant Financial Companies Act of 2009.”

SEC. 2. GENERAL.

Chapter [] of title [], United States Code, is amended by adding at the end the following.

[]. **RESOLUTION AUTHORITY.**

“(a) DEFINITIONS.—As used in this title--

“(1) INCORPORATED DEFINITIONS.—For purposes of this Act, the following terms have the meanings ascribed to them in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813): “affiliate,” “bank holding company,” “company,” “control,” “depository institution,” “depository institution holding company,” “foreign bank,” “insured depository institution,” “savings and loan holding company,” and “subsidiary.”

“(2) APPROPRIATE FEDERAL REGULATORY AGENCY.—

“(A) Appropriate Federal Regulatory Agency.—The term “Appropriate Federal Regulatory Agency” means—

“(i) the Corporation, if the financial company is an affiliate of an insured depository institution or an insurance company;

“(ii) the Commission, if the financial company, or an affiliate thereof, is a broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)), as amended, (other than an insured depository institution); and

“(iii) the CFTC, if the financial company, or an affiliate thereof, is a futures commission merchant or a commodity pool operator registered with the CFTC under the Commodity Exchange Act.

1 “(B) Rules of Construction.—More than one agency may be an
2 Appropriate Federal Regulatory Agency with respect to any given
3 financial company. In such instances where the Corporation is one of the
4 Appropriate Federal Regulatory Agencies, the Corporation shall be the
5 Appropriate Federal Regulatory Agency for purposes of subsection (b). In
6 such instances where the Corporation is not one of the Appropriate
7 Federal Regulatory Agencies, the Appropriate Federal Regulatory Agency
8 shall be, for purposes of subsection (b), determined based on which broker
9 or dealer, futures commission merchant, or commodity pool operator has
10 the largest assets as of the end of previous calendar quarter for which
11 unaudited financial statements are available.

12 “(3) BRIDGE FINANCIAL COMPANY.—The term “bridge financial
13 company” means a new financial company organized by the Corporation
14 in accordance with subsection (o).

15 “(4) CFTC.—The term “CFTC” means the Commodity Futures Trading
16 Commission.

17 “(5) COMMISSION.—The term “Commission” means the Securities
18 and Exchange Commission.

19 “(6) CORPORATION.—The term “Corporation” means the Federal
20 Deposit Insurance Corporation.

21 “(7) COVERED FINANCIAL COMPANY. —The term “covered
22 financial company” means a financial company for which a determination
23 has been made pursuant to and in accordance with subsection (b)(2).

24 “(8) CUSTOMER PROPERTY.—The term “customer property” has
25 the meaning ascribed to it in the Securities Investor Protection Act of 1970.

26 “(9) FEDERAL RESERVE BOARD.—The term “Federal Reserve
27 Board” means the Board of Governors of the Federal Reserve System.

28 “(10) FINANCIAL COMPANY.—The term “financial company” means
29 any company that—

30 “(A) Is incorporated or organized under Federal law or the laws of
31 any State; and

32 “(B) Is—

33 “(i) A bank holding company;

1 “(ii) A financial holding company as defined in section 2(p)
2 of the Bank Holding Company Act of 1956, as amended
3 (12 U.S.C. 1841(p)).

4 “(iii) A savings and loan holding company;

5 “(iv) A holding company of an insurance company;

6 “(v) A holding company of a broker or dealer registered
7 with the Commission under section 15(b) of the Securities
8 Exchange Act of 1934 (15 U.S.C. 78o(b)), as amended;

9 “(vi) A holding company of a futures commission merchant
10 or commodity pool operator; or

11 “(vii) Any subsidiary of companies described in clauses (i)
12 through (v) (other than an insured depository institution,
13 any subsidiary thereof, any broker or dealer registered with
14 the Commission under section 15(b) of the Securities
15 Exchange Act of 1934 (15 U.S.C. 78o(b)), as amended,
16 which is a member of the SIPC, or an insurance company).

17 “(11) INSURANCE COMPANY.—The term “insurance company”
18 means a domestic insurance company, as that term is defined for purposes
19 of Title 11 of the United States Code.

20 “(12) SECRETARY.—The term “Secretary” shall mean the Secretary of
21 the Treasury or his designee.

22 “(13) SIPC.—The term “SIPC” means the Securities Investor Protection
23 Corporation.

24 “(14) STATE.—The term “State” means a State of the United States, the
25 District of Columbia, or any commonwealth, territory, or other possession
26 of the United States, including the Commonwealth of Puerto Rico, the
27 Commonwealth of the Northern Mariana Islands, American Samoa, Guam,
28 and the Virgin Islands.

29 “(b) SYSTEMIC RISK DETERMINATION .

30 “(1) WRITTEN RECOMMENDATION OF THE FEDERAL RESERVE
31 BOARD AND THE APPROPRIATE FEDERAL REGULATORY
32 AGENCY.

33 “(A) VOTE REQUIRED.—At the request of the Secretary or the
34 Chairman of the Federal Reserve Board or on their own initiative,
35 the Federal Reserve Board and the Appropriate Federal Regulatory

1 Agency shall consider whether to make the written
2 recommendation provided for in subparagraph (B), which
3 recommendation shall be made upon a vote of not less than two-
4 thirds of the members of the Federal Reserve Board then serving
5 and two-thirds of the members of the board or of the commission
6 then serving of the Appropriate Federal Regulatory Agency, as
7 applicable.

8 “(B) RECOMMENDATION REQUIRED.—Any written
9 recommendations made by the Federal Reserve Board and the
10 Appropriate Federal Regulatory Agency under subparagraph (A)
11 shall contain the following—

12 “(i) a description of the effect that the default of the
13 financial company would have on economic conditions or
14 financial stability in the United States; and

15 “(ii) the nature and the extent of assistance or actions that
16 should be provided or taken by the Corporation regarding
17 the financial company.

18 “(2) DETERMINATION BY THE SECRETARY.—Notwithstanding any
19 other provision of Federal law or the law of any State, if, upon the written
20 recommendation of the Federal Reserve Board and the board of directors
21 or commission of the Appropriate Federal Regulatory Agency as provided
22 for in paragraph (1)(A), the Secretary (in consultation with the President)
23 determines that—

Comment [b1]: Can Congress write a federal statute trumping a State Constitution?

24 “(A) the financial company is in default or is in danger of default;

25 “(B) the failure of the financial company and its resolution under
26 otherwise applicable Federal or State law would have serious
27 adverse effects on financial stability or economic conditions in the
28 United States; and

29 “(C) any actions or assistance under this section would avoid or
30 mitigate such adverse effects

31 the Corporation may, with the approval of the Secretary, exercise one or
32 more actions specified in subsection (c) taking into consideration the cost
33 to the general fund of the Treasury and the potential to increase moral
34 hazard on the part of creditors and shareholders in such financial
35 companies.

36 “(3) DOCUMENTATION AND REVIEW.

37 “(A) In General.—The Secretary shall—

1 “(i) document any determination under paragraph (2);
2 and,
3 “(ii) retain the documentation for review under
4 subparagraph (B).
5 “(B) GAO Review.—The Comptroller General of the United
6 States shall review and report to the Congress on any
7 determination under paragraph (2), including—
8 “(i) the basis for the determination;
9 “(ii) the purpose for which any action was taken
10 pursuant thereto; and
11 “(iii) the likely effect of the determination and such
12 action on the incentives and conduct of financial companies
13 and their creditors.
14 “(C) REPORT TO CONGRESS.—Within 30 days after a
15 determination is made under paragraph (2), the Secretary shall
16 provide written notice of any determination to the Committee on
17 Banking, Housing, and Urban Affairs of the Senate and the
18 Committee on Financial Services of the House of Representatives.
19 The notice shall include a description of the basis for any
20 determination.
21 “(4) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of
22 paragraph (2), a financial company shall be considered to be in default or
23 in danger of default if any of the following conditions exist, as determined
24 in accordance with paragraph (2):
25 “(A) A case has been, or likely will promptly be, commenced
26 with respect to the financial company under Title 11, United States
27 Code;
28 “(B) The financial company is critically undercapitalized, as
29 such term has been or may be defined by the company’s
30 Appropriate Federal Regulatory Agency;
31 “(C) The financial company has incurred, or is likely to incur,
32 losses that will deplete all or substantially all of its capital, and
33 there is no reasonable prospect for the company to avoid such
34 depletion without assistance by the Corporation under this section;
35 “(D) The financial company’s assets are, or are likely to be, less
36 than its obligations to creditors and others; or
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“(E) The financial company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

“(c) RESOLUTION; ASSISTANCE.— Upon the Secretary making the determination provided for in subsection (b), the Corporation may, with the approval of the Secretary, exercise any authority provided in this subsection under such terms and conditions that the Corporation deems appropriate including providing the assistance or taking the actions directly or indirectly and separately or in combination, including:

“(1) Making loans to, or purchasing any debt obligation of, the covered financial company or any subsidiary;

“(2) Purchasing assets of the covered financial company or any subsidiary directly or through an entity established by the Corporation for such purpose;

“(3) Assuming or guaranteeing the obligations of the covered financial company or any subsidiary to one or more third parties;

“(4) Acquiring any type of equity interest or security of the covered financial company or any subsidiary;

“(5) Taking a lien on any or all assets of the covered financial company or any subsidiary, including a first priority lien on all unencumbered assets of the company or any subsidiary to secure repayment of any financial assistance provided by the Corporation pursuant to this subsection;

“(6) Selling or transferring all, or any part thereof, of such acquired assets, liabilities, obligations, equity interests or securities of the covered financial company or any subsidiary upon such terms and conditions that the Corporation deems appropriate; and,

“(7) Appoint itself as conservator or receiver for the covered financial company.

“(d) JUDICIAL REVIEW.—If a conservator or receiver is appointed, including the appointment of the Corporation by the Corporation’s board of directors, for a covered financial company under subsection (c)(7), the covered financial company 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 covered financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the conservator or receiver

1 be removed, and the court shall, upon the merits, dismiss such action or direct the
2 conservator or receiver to be removed. Review of such an action shall be limited
3 to the appointment of a conservator or receiver under subsection (c)(7).

4 “(e) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT
5 OF AGENCY.—The members of the board of directors (or body performing
6 similar functions) of a covered financial company shall not be liable to the
7 covered financial company’s shareholders or creditors for acquiescing in—

8 “(1) the Corporation’s acting as conservator or receiver for the covered
9 financial company under this section; or

10 “(2) an acquisition, combination, or transfer of assets or liabilities under
11 this section.

12 “(f) TERMINATION AND EXCLUSION OF OTHER ACTIONS.—The
13 Corporation’s acting as conservator or receiver for a covered financial company
14 under this section shall immediately, and by operation of law, terminate any case
15 commenced with respect to the covered financial company under Title 11, United
16 States Code, or any proceeding under any State insolvency law with respect to the
17 covered financial company, and no such case or proceeding may be commenced
18 with respect to the covered financial company at any time while the Corporation
19 acts as conservator or receiver for the covered financial company.

20 “(g) RULEMAKING.—The Corporation and the Secretary may jointly
21 promulgate such rules or regulations as they consider necessary or appropriate to
22 implement the provisions of this section.

23 “(h) POWERS AND DUTIES OF CORPORATION.—

24 “(1) GENERAL POWERS.—

25 “(A) SUCCESSOR TO COVERED FINANCIAL
26 COMPANY.—The Corporation shall, upon appointment as
27 conservator or receiver for a covered financial company under this
28 section, and by operation of law, succeed to—

29 “(i) all rights, titles, powers, and privileges of the
30 covered financial company, and of any stockholder,
31 member, accountholder, depositor, officer, or director of
32 such institution with respect to the covered financial
33 company and the assets of the covered financial company;
34 and

35 “(ii) title to the books, records, and assets of any
36 previous receiver or other legal custodian of such covered
37 financial company.

1 “(B) OPERATE THE COVERED FINANCIAL COMPANY.—
2 The Corporation as conservator or receiver for a covered financial
3 company may—

4 “(i) take over the assets of and operate the covered
5 financial company with all the powers of the members or
6 shareholders, the directors, and the officers of the covered
7 financial company and conduct all business of the covered
8 financial company;

9 “(ii) collect all obligations and money due the covered
10 financial company;

11 “(iii) perform all functions of the covered financial
12 company in the name of the covered financial company;

13 “(iv) preserve and conserve the assets and property of the
14 covered financial company;

15 “(v) provide by contract for assistance in fulfilling any
16 function, activity, action, or duty of the Corporation as
17 conservator or receiver, and:

18 “(vi) take, with the approval of the Secretary, any of the
19 actions described in paragraphs (1) through (4) of
20 subsection (c) with respect to the covered financial
21 company in conservatorship or receivership.

22 “(C) FUNCTIONS OF COVERED FINANCIAL COMPANY’S
23 OFFICERS, DIRECTORS, AND SHAREHOLDERS.—The
24 Corporation may provide for the exercise of any function by any
25 member or stockholder, director, or officer of any covered
26 financial company for which the Corporation has been appointed
27 as conservator or receiver under this section.

28 “(D) POWERS AS CONSERVATOR.—The Corporation may,
29 as conservator, and subject to all legally enforceable and perfected
30 security interests in the assets of the covered financial company
31 take such action as may be—

32 “(i) necessary to put the covered financial company in a
33 sound and solvent condition; and

34 “(ii) appropriate to carry on the business of the covered
35 financial company and preserve and conserve the assets and
36 property of the covered financial company.

1 “(E) ADDITIONAL POWERS AS RECEIVER.—The
2 Corporation may, as receiver, place the covered financial company
3 in liquidation and proceed to realize upon the assets of the covered
4 financial company in such manner as the Corporation deems
5 appropriate, including through the sale of assets, the transfer of
6 assets to a bridge financial company established under subsection
7 (o), or the exercise of any other rights or privileges granted to the
8 receiver under this section.

9 “(F) ORGANIZATION OF NEW COMPANIES.—The
10 Corporation as receiver may organize a bridge financial company
11 under subsection (o).

12 “(G) MERGER; TRANSFER OF ASSETS AND
13 LIABILITIES.—

14 “(i) IN GENERAL.—Subject to clause (ii), the
15 Corporation as conservator or receiver may—

16 “(I) merge the covered financial company with
17 another company; or

18 “(II) transfer any asset or liability of the covered
19 financial company (including assets and liabilities
20 associated with any trust or custody business)
21 without obtaining any approval, assignment, or
22 consent with respect to such transfer.

23 “(ii) FEDERAL AGENCY APPROVAL; ANTITRUST
24 REVIEW.—

25 “(I) IN GENERAL.—If a transaction described
26 in clause (i) requires approval by a Federal agency,
27 the transaction may not be consummated before the
28 5th calendar day after the date of approval by the
29 Federal agency responsible for such approval with
30 respect thereto. If, in connection with any such
31 approval, a report on competitive factors is required,
32 the Federal agency responsible for such approval
33 shall promptly notify the Attorney General of the
34 proposed transaction and the Attorney General shall
35 provide the required report within 10 days of the
36 request. If a filing is required under the Hart-Scott-
37 Rodino Antitrust Improvements Act of 1976 with
38 the Department of Justice or the Federal Trade
39 Commission, the waiting period shall expire not
40 later than the 30th day following such filing

1 notwithstanding any other provision of Federal law
2 or any attempt by any Federal agency to extend
3 such waiting period, and no further request for
4 information by any Federal agency shall be
5 permitted.

6 “(II) EMERGENCY.— If the Secretary of the
7 Treasury in consultation with the Chairman of the
8 Federal Reserve Board has found that the
9 Corporation must act immediately to prevent the
10 probable failure of 1 or more of the covered
11 financial companies involved, the approvals and
12 filings referred to in subclause (I) shall not be
13 required and the transaction may be consummated
14 immediately by the Corporation.

15 “(H) PAYMENT OF VALID OBLIGATIONS.—The
16 Corporation, as conservator or receiver, shall, to the extent funds
17 are available, pay all valid obligations of the covered financial
18 company that are due and payable at the time of the appointment of
19 the Corporation as conservator or receiver in accordance with the
20 prescriptions and limitations of this section.

21 “(I) SUBPOENA AUTHORITY.—

22 “(i) IN GENERAL.—The Corporation may, for
23 purposes of carrying out any power, authority, or duty with
24 respect to a covered financial company (including
25 determining any claim against the covered financial
26 company and determining and realizing upon any asset of
27 any person in the course of collecting money due the
28 covered financial company), exercise any power
29 established under section 8(n) of the Federal Deposit
30 Insurance Act as if the covered financial company were an
31 insured depository institution.

32 “(ii) RULE OF CONSTRUCTION.—This subsection
33 shall not be construed as limiting any rights that the
34 Corporation, in any capacity, might otherwise have to
35 exercise any powers described in clause (i) under any other
36 provision of law.

37 “(J) INCIDENTAL POWERS.—The Corporation, as
38 conservator or receiver, may—

39 “(i) exercise all powers and authorities specifically
40 granted to conservators or receivers under this section and

1 such incidental powers as shall be necessary to carry out
2 such powers; and

3 “(ii) take any action authorized by this section, which the
4 Corporation determines is in the best interests of the
5 covered financial company, its customers, its creditors, its
6 counterparties, or the stability of the financial system.

7 “(K) UTILIZATION OF PRIVATE SECTOR.— In carrying out
8 its responsibilities in the management and disposition of assets
9 from a covered financial company, the Corporation, as conservator
10 or receiver, may utilize the services of private persons, including
11 real estate and loan portfolio asset management, property
12 management, auction marketing, legal, and brokerage services, if
13 such services are available in the private sector and the
14 Corporation determines utilization of such services is practicable,
15 efficient, and cost effective.

16 “(L) SHAREHOLDERS AND CREDITORS OF COVERED
17 FINANCIAL COMPANY.—Notwithstanding any other provision
18 of law, the Corporation as conservator or receiver for a covered
19 financial company pursuant to this section and its succession, by
20 operation of law, to the rights, titles, powers, and privileges
21 described in subsection (h)(1)(A) shall terminate all rights and
22 claims that the stockholders and creditors of the covered financial
23 company may have against the assets of the covered financial
24 company or the Corporation arising out of their status as
25 stockholders or creditors, except for their right to payment,
26 resolution, or other satisfaction of their claims, as permitted under
27 this section.

28 “(2) AUTHORITY OF CORPORATION TO DETERMINE
29 CLAIMS.—

30 “(A) IN GENERAL.—The Corporation may, as receiver,
31 determine claims in accordance with the requirements of this
32 subsection and regulations prescribed under paragraph (3).

33 “(B) NOTICE REQUIREMENTS.—The receiver, in any case
34 involving the liquidation or winding up of the affairs of a covered
35 financial company, shall—

36 “(i) promptly publish a notice to the covered financial
37 company’s creditors to present their claims, together with
38 proof, to the receiver by a date specified in the notice which
39 shall be not less than 90 days after the publication of such
40 notice; and

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

3 “(C) MAILING REQUIRED.—The receiver shall mail a notice
4 similar to the notice published under subparagraph (B)(i) at the
5 time of such publication to any creditor shown on the covered
6 financial company’s books—

7 “(i) at the creditor’s last address appearing in such
8 books; or

9 “(ii) upon discovery of the name and address of a
10 claimant not appearing on the covered financial company’s
11 books, within 30 days after the discovery of such name and
12 address.

13 “(3) RULEMAKING AUTHORITY RELATING TO
14 DETERMINATION OF CLAIMS.—

15 “(A) IN GENERAL.— Subject to subsection (h), the
16 Corporation may prescribe rules and regulations regarding the
17 allowance or disallowance of claims by the Corporation and
18 providing for administrative determination of claims and review of
19 such determination.

20 “(B) EXISTING RULES.— Subject to subsection (h), the
21 Corporation may elect to use the regulations adopted pursuant to
22 the provisions of section 11 of the Federal Deposit Insurance Act
23 with respect to the determination of claims for a covered financial
24 company as if the covered financial company were an insured
25 depository institution.

26 “(4) PROCEDURES FOR DETERMINATION OF CLAIMS.—

27 “(A) DETERMINATION PERIOD.—

28 “(i) IN GENERAL.—Before the end of the 180-day
29 period beginning on the date any claim against a covered
30 financial company is filed with the Corporation as receiver,
31 the Corporation shall determine whether to allow or
32 disallow the claim and shall notify the claimant of any
33 determination with respect to such claim.

34 “(ii) EXTENSION OF TIME.— The period described in
35 clause (i) may be extended by a written agreement between
36 the claimant and the Corporation.

1 “(iii) MAILING OF NOTICE SUFFICIENT.—The
2 requirements of clause (i) shall be deemed to be satisfied if
3 the notice of any determination with respect to any claim is
4 mailed to the last address of the claimant which appears—

5 “(I) on the covered financial company’s books;

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

7 “(III) in documents submitted in proof of the
8 claim.

9 “(iv) CONTENTS OF NOTICE OF
10 DISALLOWANCE.—If any claim filed under clause (i) is
11 disallowed, the notice to the claimant shall contain—

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

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

17 “(B) ALLOWANCE OF PROVEN CLAIM.—The Corporation
18 shall allow any claim received on or before the date specified in
19 the notice published under paragraph (2)(B)(i) by the Corporation
20 from any claimant which is proved to the satisfaction of the
21 Corporation.

22 “(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF
23 FILING PERIOD.—

24 “(i) IN GENERAL.—Except as provided in clause (ii),
25 claims filed after the date specified in the notice published
26 under paragraph (2)(B)(i) shall be disallowed and such
27 disallowance shall be final.

28 “(ii) CERTAIN EXCEPTIONS.—Clause (i) shall not
29 apply with respect to any claim filed by any claimant after
30 the date specified in the notice published under paragraph
31 (2)(B)(i) and such claim may be considered by the receiver
32 if—

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

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

3 “(D) AUTHORITY TO DISALLOW CLAIMS.—

4 “(i) IN GENERAL.—The Corporation may disallow
5 any portion of any claim by a creditor or claim of security,
6 preference, or priority which is not proved to the
7 satisfaction of the Corporation.

8 “(ii) PAYMENTS TO LESS THAN FULLY SECURED
9 CREDITORS.—In the case of a claim of a creditor against
10 a covered financial company which is secured by any
11 property or other asset of such covered financial company,
12 the receiver—

13 “(I) may treat the portion of such claim which
14 exceeds an amount equal to the fair market value of
15 such property or other asset as an unsecured claim
16 against the covered financial company; and

17 “(II) may not make any payment with respect to
18 such unsecured portion of the claim other than in
19 connection with the disposition of all claims of
20 unsecured creditors of the covered financial
21 company.

22 “(iii) EXCEPTIONS.—No provision of this paragraph
23 shall apply with respect to—

24 “(I) any extension of credit from any Federal
25 Reserve bank, or the Secretary, to any covered
26 financial company; or,

27 “(II) subject to clause (ii), any legally enforceable
28 or perfected security interest in the assets of the
29 covered financial company securing any such
30 extension of credit.

31 “(E) NO JUDICIAL REVIEW OF DETERMINATION
32 PURSUANT TO SUBPARAGRAPH (D).—No court may review
33 the Corporation’s determination pursuant to subparagraph (D) to
34 disallow a claim.

35 “(F) LEGAL EFFECT OF FILING.—

1 “(i) STATUTE OF LIMITATION TOLLED.—For
2 purposes of any applicable statute of limitations, the filing
3 of a claim with the Corporation shall constitute a
4 commencement of an action.

5 “(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject
6 to paragraph (9), the filing of a claim with the Corporation
7 shall not prejudice any right of the claimant to continue any
8 action which was filed before the appointment of the
9 Corporation as receiver for the covered financial company.

10 “(5) PROVISION FOR JUDICIAL DETERMINATION OF
11 CLAIMS.—

12 “(A) IN GENERAL.—Before the end of the 60-day period
13 beginning on the earlier of—

14 “(i) the end of the period described in paragraph
15 (4)(A)(i) (or, if extended by agreement of the Corporation
16 and the claimant, the period described in paragraph
17 (4)(A)(ii)) with respect to any claim against a covered
18 financial company for which the Corporation is receiver; or

19 “(ii) the date of any notice of disallowance of such claim
20 pursuant to paragraph (4)(A)(i),

21 the claimant may file suit on a claim (or continue an action
22 commenced before the appointment of the receiver) in the district
23 or territorial court of the United States for the district within which
24 the covered financial company’s principal place of business is
25 located or the United States District Court for the District of
26 Columbia (and such court shall have jurisdiction to hear such
27 claim).

28 “(B) STATUTE OF LIMITATIONS.—If any claimant fails to
29 file suit on such claim (or continue an action commenced before
30 the appointment of the receiver) before the end of the 60-day
31 period described in subparagraph (A), the claim shall be deemed to
32 be disallowed (other than any portion of such claim which was
33 allowed by the receiver) as of the end of such period, such
34 disallowance shall be final, and the claimant shall have no further
35 rights or remedies with respect to such claim.

36 “(6) EXPEDITED DETERMINATION OF CLAIMS.—

37 “(A) ESTABLISHMENT REQUIRED.—The Corporation shall
38 establish a procedure for expedited relief outside of the routine

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claims process established under paragraph (4) for claimants who—

“(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any covered financial company for which the Corporation has been appointed as 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 (4); 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 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 such a suit filed before the appointment of the Corporation as 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

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

4 “(E) LEGAL EFFECT OF FILING.—

5 “(i) STATUTE OF LIMITATION TOLLED.—For
6 purposes of any applicable statute of limitations, the filing
7 of a claim with the receiver shall constitute a
8 commencement of an action.

9 “(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject
10 to paragraph (9), the filing of a claim with the receiver shall
11 not prejudice any right of the claimant to continue any
12 action which was filed before the appointment of the
13 Corporation as receiver for the covered financial company.

14 “(7) AGREEMENTS AGAINST INTEREST OF THE RECEIVER.—
15 No agreement that tends to diminish or defeat the interest of the
16 Corporation as receiver in any asset acquired by the receiver under this
17 section shall be valid against the receiver unless such agreement is in
18 writing and executed by an authorized officer or representative of the
19 covered financial company.

20 “(8) PAYMENT OF CLAIMS.—

21 “(A) IN GENERAL.--The Corporation as receiver may, in its
22 discretion and to the extent funds are available, pay creditor claims,
23 in such manner and amounts as are authorized under this section,
24 which are—

25 “(i) allowed by the receiver;

26 “(ii) approved by the Corporation pursuant to a final
27 determination pursuant to paragraph (6); or

28 “(iii) determined by the final judgment of any court of
29 competent jurisdiction.

30 “(B) PAYMENT OF DIVIDENDS ON CLAIMS.--The receiver
31 may, in the receiver's sole discretion and to the extent otherwise
32 permitted by this section, pay dividends on proven claims at any
33 time, and no liability shall attach to the Corporation (in the
34 Corporation's corporate capacity or as receiver), by reason of any
35 such payment, for failure to pay dividends to a claimant whose
36 claim is not proved at the time of any such payment.

1 “(C) RULEMAKING AUTHORITY OF CORPORATION.--The
2 Corporation may prescribe such rules, including definitions of
3 terms, as it deems appropriate to establish a single uniform interest
4 rate for, or to make payments of post insolvency interest to
5 creditors holding proven claims against the receivership estates of
6 a covered financial company following satisfaction by the receiver
7 of the principal amount of all creditor claims.

8 “(9) SUSPENSION OF LEGAL ACTIONS.—

9 “(A) IN GENERAL.—After the appointment of the Corporation
10 as conservator or receiver for a covered financial company, the
11 Corporation may request a stay for a period not to exceed—

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

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

14 in any non-criminal judicial action or proceeding to which such
15 covered financial company is or becomes a party.

16 “(B) GRANT OF STAY BY ALL COURTS REQUIRED.—
17 Upon receipt of a request by the Corporation pursuant to
18 subparagraph (A) for a stay of any non-criminal judicial action or
19 proceeding in any court with jurisdiction of such action or
20 proceeding, the court shall grant such stay as to all parties.

21 “(10) ADDITIONAL RIGHTS AND DUTIES.—

22 “(A) PRIOR FINAL ADJUDICATION.—The Corporation
23 shall abide by any final unappealable judgment of any court of
24 competent jurisdiction which was rendered before the appointment
25 of the Corporation as conservator or receiver.

26 “(B) RIGHTS AND REMEDIES OF CONSERVATOR OR
27 RECEIVER.—In the event of any appealable judgment, the
28 Corporation as conservator or receiver shall—

29 “(i) have all the rights and remedies available to the
30 covered financial company (before the appointment of the
31 conservator or receiver under this section) and the
32 Corporation, including but not limited to removal to
33 Federal court and all appellate rights; and

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

1 “(C) NO ATTACHMENT OR EXECUTION.—No attachment
2 or execution may issue by any court upon assets in the possession
3 of the receiver.

4 “(D) LIMITATION ON JUDICIAL REVIEW.—Except as
5 otherwise provided in this subsection, no court shall have
6 jurisdiction over—

7 “(i) any claim or action for payment from, or any action
8 seeking a determination of rights with respect to, the assets
9 of any covered financial company for which the
10 Corporation has been appointed receiver, including any
11 assets which the Corporation may acquire from itself as
12 such receiver; or

13 “(ii) any claim relating to any act or omission of such
14 covered financial company or the Corporation as receiver.

15 “(E) DISPOSITION OF ASSETS.—In exercising any right,
16 power, privilege, or authority as conservator or receiver in
17 connection with any covered financial company for which the
18 Corporation is acting as conservator or receiver under this section,
19 the Corporation shall, to the greatest extent practicable, conduct its
20 operations in a manner which—

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

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

25 “(iii) minimizes the cost to the general fund of the
26 Treasury;

27 “(iv) mitigates the potential for serious adverse effects to
28 the financial system and the U.S. economy;

29 “(v) ensures timely and adequate competition and fair
30 and consistent treatment of offerors; and

31 “(vi) prohibits discrimination on the basis of race, sex, or
32 ethnic groups in the solicitation and consideration of offers.

33 “(11) STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY
34 RECEIVER.—

1 “(A) IN GENERAL.—Notwithstanding any provision of any
2 contract, the applicable statute of limitations with regard to any
3 action brought by the Corporation as conservator or receiver shall
4 be—

5 “(i) in the case of any contract claim, the longer of
6 “(I) the 6-year period beginning on the date the
7 claim accrues; or

8 “(II) the period applicable under State law; and

9 “(ii) in the case of any tort claim, the longer of—

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

12 “(II) the period applicable under State law.

13 “(B) DETERMINATION OF THE DATE ON WHICH A
14 CLAIM ACCRUES.—For purposes of subparagraph (A), the date
15 on which the statute of limitations begins to run on any claim
16 described in such subparagraph shall be the later of—

17 “(i) the date of the appointment of the Corporation as
18 conservator or receiver under this Act; or

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

20 “(C) REVIVAL OF EXPIRED STATE CAUSES OF
21 ACTION.—

22 “(i) IN GENERAL.—In the case of any tort claim
23 described in clause (ii) for which the statute of limitation
24 applicable under State law with respect to such claim has
25 expired not more than 5 years before the appointment of the
26 Corporation as conservator or receiver, the Corporation
27 may bring an action as conservator or receiver on such
28 claim without regard to the expiration of the statute of
29 limitation applicable under State law.

30 “(ii) CLAIMS DESCRIBED.—A tort claim referred to
31 in clause (i) is a claim arising from fraud, intentional
32 misconduct resulting in unjust enrichment, or intentional
33 misconduct resulting in substantial loss to the covered
34 financial company.

1 “(12) FRAUDULENT TRANSFERS.—

2 “(A) IN GENERAL.—The Corporation, as conservator or
3 receiver for any covered financial company, may avoid a transfer
4 of any interest of an institution-affiliated party, or any person who
5 the Corporation determines is a debtor of the covered financial
6 company, in property, or any obligation incurred by such party or
7 person, that was made within 5 years of the date on which the
8 Corporation was appointed conservator or receiver if such party or
9 person voluntarily or involuntarily made such transfer or incurred
10 such liability with the intent to hinder, delay, or defraud the
11 covered financial company or the Corporation.

12 “(B) RIGHT OF RECOVERY.—To the extent a transfer is
13 avoided under subparagraph (A), the Corporation may recover, for
14 the benefit of the covered financial company, the property
15 transferred or, if a court so orders, the value of such property (at
16 the time of such transfer) from—

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

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

22 “(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The
23 Corporation may not recover under subparagraph (B)—

24 “(i) any transfer that takes for value, including
25 satisfaction or securing of a present or antecedent debt, in
26 good faith, or

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

29 “(D) RIGHTS UNDER THIS PARAGRAPH.—The rights of the
30 Corporation as receiver of a covered financial company under this
31 paragraph shall be superior to any rights of a trustee or any other
32 party (other than any party which is a Federal agency) under title
33 11, United States Code.

34 “(E) DEFINITION.—For purposes of this paragraph, the term
35 institution-affiliated party” means—

36 “(i) any director, officer, employee, or controlling
37 stockholder of, or agent for, a covered financial company;

1 “(ii) any shareholder, consultant, joint venture partner,
2 and any other person as determined by the Corporation (by
3 regulation or otherwise) who participates in the conduct of
4 the affairs of a covered financial company; and

5 “(iii) any independent contractor (including any attorney,
6 appraiser, or accountant) who knowingly or recklessly
7 participates in—

8 “(I) any violation of any law or regulation;

9 “(II) any breach of fiduciary duty; or

10 “(III) any unsafe or unsound practice,

11 which caused or is likely to cause more than a minimal financial
12 loss to, or a significant adverse effect on, the covered financial
13 company.

14 “(13) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE
15 RELIEF.—Subject to paragraph (14), any court of competent jurisdiction
16 may, at the request of the Corporation, issue an order in accordance with
17 Rule 65 of the Federal Rules of Civil Procedure, including an order
18 placing the assets of any person designated by the Corporation under the
19 control of the court and appointing a trustee to hold such assets.

20 “(14) STANDARDS.—

21 “(A) SHOWING.—Rule 65 of the Federal Rules of Civil
22 Procedure shall apply with respect to any proceeding under
23 paragraph (13) without regard to the requirement of such rule that
24 the applicant show that the injury, loss, or damage is irreparable
25 and immediate.

26 “(B) STATE PROCEEDING.—If, in the case of any proceeding
27 in a State court, the court determines that rules of civil procedure
28 available under the laws of such State provide substantially similar
29 protections to such party’s right to due process as Rule 65 (as
30 modified with respect to such proceeding by subparagraph (A)),
31 the relief sought by the Corporation to paragraph (14) may be
32 requested under the laws of such State.

33 “(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF
34 CONTRACTS EXECUTED BY THE CORPORATION AS RECEIVER
35 OR CONSERVATOR.—Notwithstanding any other provision of this
36 subsection, any final and unappealable judgment for monetary damages
37 entered against the Corporation as receiver or conservator for a covered

1 financial company for the breach of an agreement executed or approved
2 by the Corporation after the date of its appointment shall be paid as an
3 administrative expense of the receiver or conservator. Nothing in this
4 paragraph shall be construed to limit the power of a receiver or
5 conservator to exercise any rights under contract or law, including to
6 terminate, breach, cancel, or otherwise discontinue such agreement.

7 “(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

8 “(A) IN GENERAL.—The Corporation as conservator or
9 receiver shall, consistent with the accounting and reporting
10 practices and procedures established by the Corporation, maintain
11 a full accounting of each conservatorship, receivership or other
12 disposition of any covered financial company.

13 “(B) ANNUAL ACCOUNTING OR REPORT.—With respect
14 to each conservatorship or receivership to which the Corporation
15 was appointed, the Corporation shall make an annual accounting or
16 report, as appropriate, available to the Secretary and the
17 Comptroller General of the United States.

18 “(C) AVAILABILITY OF REPORTS.—Any report prepared
19 pursuant to subparagraph (B) shall be made available by the
20 Corporation upon request to any member of the public.

21 “(D) RECORDKEEPING REQUIREMENT.—

22 “(i) IN GENERAL.—Except as provided in clause (ii),
23 after the end of the 6-year period beginning on the date the
24 Corporation is appointed as receiver of a covered financial
25 company the Corporation may destroy any records of such
26 covered financial company which the Corporation, in the
27 Corporation’s discretion, determines to be unnecessary
28 unless directed not to do so by a court of competent
29 jurisdiction or governmental agency, or prohibited by law.

30 “(ii) OLD RECORDS.—Notwithstanding clause (i), the
31 Corporation may destroy records of a covered financial
32 company which are at least 10 years old as of the date on
33 which the Corporation is appointed as the receiver of such
34 company in accordance with clause (i) at any time after
35 such appointment is final, without regard to the 6-year
36 period of limitation contained in clause (i).

37 “(i) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

1 “(1) IN GENERAL.—Unsecured claims against a covered financial
2 company, or the receiver for such covered financial company under this
3 section, that are proven to the satisfaction of the receiver shall have
4 priority in the following order:

5 “(A) Administrative expenses of the receiver.

6 “(B) Any amounts owed to the United States.

7 “(C) Any other general or senior liability of the covered
8 financial company (which is not a liability described under
9 subparagraph (D) or (E)).

10 “(D) Any obligation subordinated to general creditors (which is
11 not an obligation described under subparagraph (E)).

12 “(E) Any obligation to shareholders, members, general partners,
13 limited partners or other persons with interests in the equity of the
14 covered financial company arising as a result of their status as
15 shareholders, members, general partners, limited partners or other
16 persons with interests in the equity of the covered financial
17 company.

18 “(2) CREDITORS SIMILARLY SITUATED.—All claimants of a
19 covered financial company that are similarly situated under paragraph (1)
20 shall be treated in a similar manner, except that the receiver may take any
21 action (including making payments) that does not comply with this
22 subsection, if—

23 “(A) the Corporation determines that such action is necessary to
24 maximize the value of the assets of the covered financial company,
25 to maximize the present value return from the sale or other
26 disposition of the assets of the covered financial company, to
27 minimize the amount of any loss realized upon the sale or other
28 disposition of the assets of the covered financial company, or to
29 contain or address serious adverse effects on financial stability or
30 the U.S. economy; and

31 “(B) all claimants that are similarly situated under paragraph (1)
32 receive not less than the amount provided in subsection (k)(2).

33 “(3) DEFINITIONS.—As used in this subsection, the term
34 ‘administrative expenses of the receiver’ includes—

35 “(A) the actual, necessary costs and expenses incurred by the
36 receiver in preserving the assets of a covered financial company or
37 liquidating or otherwise resolving the affairs of a covered financial

1 company for which the Corporation has been appointed as receiver;
2 and

3 “(B) any obligations that the receiver determines are necessary
4 and appropriate to facilitate the smooth and orderly liquidation or
5 other resolution of the covered financial company.

6 “(j) PROVISIONS RELATING TO CONTRACTS ENTERED INTO
7 BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.

8 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to
9 any other rights a conservator or receiver may have, the Corporation as
10 conservator or receiver for any covered financial company may disaffirm
11 or repudiate any contract or lease—

12 “(A) to which the covered financial company is a party;

13 “(B) the performance of which the conservator or receiver, in the
14 conservator’s or receiver’s discretion, determines to be
15 burdensome; and

16 “(C) the disaffirmance or repudiation of which the conservator
17 or receiver determines, in the conservator’s or receiver’s discretion,
18 will promote the orderly administration of the covered financial
19 company’s affairs.

20 “(2) TIMING OF REPUDIATION.—The conservator or receiver
21 appointed for any covered financial company in accordance with
22 subsection (c) shall determine whether or not to exercise the rights of
23 repudiation under this subsection within a reasonable period following
24 such appointment.

25 “(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

26 “(A) IN GENERAL.—Except as otherwise provided in
27 subparagraph (C) and paragraphs (4), (5), and (6), the liability of
28 the conservator or receiver for the disaffirmance or repudiation of
29 any contract pursuant to paragraph (1) shall be—

30 “(i) limited to actual direct compensatory damages; and

31 “(ii) determined as of—

32 “(I) the date of the appointment of the
33 conservator or receiver; or

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

5 “(B) NO LIABILITY FOR OTHER DAMAGES.—For
6 purposes of subparagraph (A), the term “actual direct
7 compensatory damages” does not include—

8 “(i) punitive or exemplary damages;

9 “(ii) damages for lost profits or opportunity; or

10 “(iii) damages for pain and suffering.

11 “(C) MEASURE OF DAMAGES FOR REPUDIATION OF
12 QUALIFIED FINANCIAL CONTRACTS.—In the case of any
13 qualified financial contract or agreement to which paragraph (8)
14 applies, compensatory damages shall be—

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

18 “(ii) paid in accordance with this subsection and
19 subsection (k) except as otherwise specifically provided in
20 this subsection.

21 “(4) LEASES UNDER WHICH THE COVERED FINANCIAL
22 COMPANY IS THE LESSEE.—

23 “(A) IN GENERAL.—If the conservator or receiver disaffirms
24 or repudiates a lease under which the covered financial company
25 was the lessee, the conservator or receiver shall not be liable for
26 any damages (other than damages determined pursuant to
27 subparagraph (B)) for the disaffirmance or repudiation of such
28 lease.

29 “(B) PAYMENTS OF RENT.—Notwithstanding subparagraph
30 (A), the lessor under a lease to which such subparagraph applies
31 shall—

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

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

1 “(II) the disaffirmance or repudiation becomes
2 effective, unless the lessor is in default or breach of
3 the terms of the lease;

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

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

10 “(5) LEASES UNDER WHICH THE COVERED FINANCIAL
11 COMPANY IS THE LESSOR.—

12 “(A) IN GENERAL.—If the conservator or receiver repudiates
13 an unexpired written lease of real property of the covered financial
14 company under which the covered financial company is the lessor
15 and the lessee is not, as of the date of such repudiation, in default,
16 the lessee under such lease may either—

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

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

22 “(B) PROVISIONS APPLICABLE TO LESSEE REMAINING
23 IN POSSESSION.—If any lessee under a lease described in
24 subparagraph (A) remains in possession of a leasehold interest
25 pursuant to clause (ii) of such subparagraph—

26 “(i) the lessee—

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

30 “(II) may offset against any rent payment which
31 accrues after the date of the repudiation of the lease,
32 any damages which accrue after such date due to
33 the nonperformance of any obligation of the
34 covered financial company under the lease after
35 such date; and

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

5 “(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—

6 “(A) IN GENERAL.--If the conservator or receiver repudiates
7 any contract (which meets the requirements of subsection (h)(7) of
8 this section) for the sale of real property and the purchaser of such
9 real property under such contract is in possession and is not, as of
10 the date of such repudiation, in default, such purchaser may
11 either—

12 “(i) treat the contract as terminated by such repudiation;
13 or

14 “(ii) remain in possession of such real property.

15 “(B) PROVISIONS APPLICABLE TO PURCHASER
16 REMAINING IN POSSESSION.--If any purchaser of real
17 property under any contract described in subparagraph (A) remains
18 in possession of such property pursuant to clause (ii) of such
19 subparagraph—

20 “(i) the purchaser—

21 “(I) shall continue to make all payments due
22 under the contract after the date of the repudiation
23 of the contract; and

24 “(II) may offset against any such payments any
25 damages which accrue after such date due to the
26 nonperformance (after such date) of any obligation
27 of the covered financial company under the contract;
28 and

29 “(ii) the conservator or receiver shall—

30 “(I) not be liable to the purchaser for any
31 damages arising after such date as a result of the
32 repudiation other than the amount of any offset
33 allowed under clause (i)(II);

34 “(II) deliver title to the purchaser in accordance
35 with the provisions of the contract; and

1 “(III) have no obligation under the contract other
2 than the performance required under subclause (II).

3 “(C) ASSIGNMENT AND SALE ALLOWED.—

4 “(i) IN GENERAL.—No provision of this paragraph
5 shall be construed as limiting the right of the conservator or
6 receiver to assign the contract described in subparagraph (A)
7 and sell the property subject to the contract and the
8 provisions of this paragraph.

9 “(ii) NO LIABILITY AFTER ASSIGNMENT AND
10 SALE.—If an assignment and sale described in clause (i) is
11 consummated, the conservator or receiver shall have no
12 further liability under the contract described in
13 subparagraph (A) or with respect to the real property which
14 was the subject of such contract.

15 “(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

16 “(A) SERVICES PERFORMED BEFORE APPOINTMENT.—
17 In the case of any contract for services between any person and any
18 covered financial company for which the Corporation has been
19 appointed conservator or receiver, any claim of such person for
20 services performed before the appointment of the conservator or
21 the receiver shall be—

22 “(i) a claim to be paid in accordance with subsections
23 (h), (i) and (k); and

24 “(ii) deemed to have arisen as of the date the conservator
25 or receiver was appointed.

26 “(B) SERVICES PERFORMED AFTER APPOINTMENT
27 AND PRIOR TO REPUDIATION.—If, in the case of any contract
28 for services described in subparagraph (A), the conservator or
29 receiver accepts performance by the other person before the
30 conservator or receiver makes any determination to exercise the
31 right of repudiation of such contract under this section—

32 “(i) the other party shall be paid under the terms of the
33 contract for the services performed; and

34 “(ii) the amount of such payment shall be treated as an
35 administrative expense of the conservatorship or
36 receivership.

1 “(C) ACCEPTANCE OF PERFORMANCE NO BAR TO
2 SUBSEQUENT REPUDIATION.—The acceptance by any
3 conservator or receiver of services referred to in subparagraph (B)
4 in connection with a contract described in such subparagraph shall
5 not affect the right of the conservator or receiver to repudiate such
6 contract under this section at any time after such performance.

7 “(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

8 “(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to
9 paragraphs (9) and (10) of this subsection and notwithstanding any
10 other provision of this section (other than subsection (h)(8) of this
11 section), any other Federal law, or the law of any State, no person
12 shall be stayed or prohibited from exercising—

13 “(i) any right such person has to cause the termination,
14 liquidation, or acceleration of any qualified financial
15 contract with a covered financial company which arises
16 upon the appointment of the Corporation as receiver for
17 such covered financial company at any time after such
18 appointment;

19 “(ii) any right under any security agreement or
20 arrangement or other credit enhancement related to one or
21 more qualified financial contracts described in clause (i).

22 “(iii) any right to offset or net out any termination value,
23 payment amount, or other transfer obligation arising under
24 or in connection with 1 or more contracts and agreements
25 described in clause (i), including any master agreement for
26 such contracts or agreements.

27 “(B) APPLICABILITY OF OTHER PROVISIONS.—
28 Subsection (h)(10) shall apply in the case of any judicial action or
29 proceeding brought against any receiver referred to in
30 subparagraph (A), or the covered financial company for which
31 such receiver was appointed, by any party to a contract or
32 agreement described in subparagraph (A)(i) with such company.

33 “(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

34 “(i) IN GENERAL.—Notwithstanding paragraph (11),
35 section 5242 of the Revised Statutes of the United States or
36 any other provision of Federal or State law relating to the
37 avoidance of preferential or fraudulent transfers, the
38 Corporation, whether acting as such or as conservator or
39 receiver of a covered financial company, may not avoid any

1 transfer of money or other property in connection with any
2 qualified financial contract with a covered financial
3 company.

4 “(ii) EXCEPTION FOR CERTAIN TRANSFERS.
5 Clause (i) shall not apply to any transfer of money or other
6 property in connection with any qualified financial contract
7 with a covered financial company if the Corporation
8 determines that the transferee had actual intent to hinder,
9 delay, or defraud such company, the creditors of such
10 company, or any conservator or receiver appointed for such
11 company.

12 “(D) CERTAIN CONTACTS AND AGREEMENTS
13 DEFINED.—For purposes of this subsection, the following
14 definitions shall apply:

15 “(i) QUALIFIED FINANCIAL CONTRACT.—The
16 term “qualified financial contract” means any securities
17 contract, commodity contract, forward contract, repurchase
18 agreement, swap agreement, and any similar agreement that
19 the Corporation determines by regulation, resolution, or
20 order to be a qualified financial contract for purposes of
21 this paragraph.

22 “(ii) SECURITIES CONTRACT.—The term “securities
23 contract”—

24 “(I) means a contract for the purchase, sale, or
25 loan of a security, a certificate of deposit, a
26 mortgage loan, any interest in a mortgage loan, a
27 group or index of securities, certificates of deposit,
28 or mortgage loans or interests therein (including any
29 interest therein or based on the value thereof) or any
30 option on any of the foregoing, including any option
31 to purchase or sell any such security, certificate of
32 deposit, mortgage loan, interest, group or index, or
33 option, and including any repurchase or reverse
34 repurchase transaction on any such security,
35 certificate of deposit, mortgage loan, interest, group
36 or index, or option (whether or not such repurchase
37 or reverse repurchase transaction is a “repurchase
38 agreement,” as defined in clause (v));

39 “(II) does not include any purchase, sale, or
40 repurchase obligation under a participation in a
41 commercial mortgage loan unless the Corporation

1 determines by regulation, resolution, or order to
2 include any such agreement within the meaning of
3 such term;

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

6 “(IV) means the guarantee (including by novation)
7 by or to any securities clearing agency of any
8 settlement of cash, securities, certificates of deposit,
9 mortgage loans or interests therein, group or index
10 of securities, certificates of deposit or mortgage
11 loans or interests therein (including any interest
12 therein or based on the value thereof) or option on
13 any of the foregoing, including any option to
14 purchase or sell any such security, certificate of
15 deposit, mortgage loan, interest, group or index, or
16 option (whether or not such settlement is in
17 connection with any agreement or transaction
18 referred to in subclauses (I) through (XII) (other
19 than subclause (II));

20 “(V) means any margin loan;

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

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

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

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

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

34 “(XI) means a master agreement that provides for
35 an agreement or transaction referred to in subclause
36 (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X),
37 together with all supplements to any such master
38 agreement, without regard to whether the master

1 agreement provides for an agreement or transaction
2 that is not a securities contract under this clause,
3 except that the master agreement shall be
4 considered to be a securities contract under this
5 clause only with respect to each agreement or
6 transaction under the master agreement that is
7 referred to in subclause (I), (III), (IV), (V), (VI),
8 (VII), (VIII), (IX), or (X); and

9 “(XII) means any security agreement or
10 arrangement or other credit enhancement related to
11 any agreement or transaction referred to in this
12 clause, including any guarantee or reimbursement
13 obligation in connection with any agreement or
14 transaction referred to in this clause.

15 “(iii) COMMODITY CONTRACT.—The term
16 “commodity contract” means—

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

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

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

25 “(IV) with respect to a clearing organization, a
26 contract for the purchase or sale of a commodity for
27 future delivery on, or subject to the rules of, a
28 contract market or board of trade that is cleared by
29 such clearing organization, or commodity option
30 traded on, or subject to the rules of, a contract
31 market or board of trade that is cleared by such
32 clearing organization;

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

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

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“(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);

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“(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 (which for these purpose shall mean 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 Federal Reserve Board) 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

1 transferee to transfer to the transferor thereof
2 certificates of deposit, eligible bankers' acceptances,
3 securities, mortgage loans, or interests as described
4 above, at a date certain not later than 1 year after
5 such transfers or on demand, against the transfer of
6 funds, or any other similar agreement;

7 “(II) does not include any repurchase obligation
8 under a participation in a commercial mortgage loan
9 unless the Corporation determines by regulation,
10 resolution, or order to include any such participation
11 within the meaning of such term;

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

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

17 “(V) means a master agreement that provides for
18 an agreement or transaction referred to in subclause
19 (I), (III), or (IV), together with all supplements to
20 any such master agreement, without regard to
21 whether the master agreement provides for an
22 agreement or transaction that is not a repurchase
23 agreement under this clause, except that the master
24 agreement shall be considered to be a repurchase
25 agreement under this subclause only with respect to
26 each agreement or transaction under the master
27 agreement that is referred to in subclause (I), (III),
28 or (IV); and

29 “(VI) means any security agreement or
30 arrangement or other credit enhancement related to
31 any agreement or transaction referred to in
32 subclause (I), (III), (IV), or (V), including any
33 guarantee or reimbursement obligation in
34 connection with any agreement or transaction
35 referred to in any such subclause.

36 “(vi) SWAP AGREEMENT.—The term “swap
37 agreement” means—

38 “(I) any agreement, including the terms and
39 conditions incorporated by reference in any such
40 agreement, which is an interest rate swap, option,

1 future, or forward agreement, including a rate floor,
2 rate cap, rate collar, cross-currency rate swap, and
3 basis swap; a spot, same day-tomorrow, tomorrow-
4 next, forward, or other foreign exchange, precious
5 metals, or other commodity agreement; a currency
6 swap, option, future, or forward agreement; an
7 equity index or equity swap, option, future, or
8 forward agreement; a debt index or debt swap,
9 option, future, or forward agreement; a total return,
10 credit spread or credit swap, option, future, or
11 forward agreement; a commodity index or
12 commodity swap, option, future, or forward
13 agreement; weather swap, option, future, or forward
14 agreement; an emissions swap, option, future, or
15 forward agreement; or an inflation swap, option,
16 future, or forward agreement;

17 “(II) any agreement or transaction that is similar
18 to any other agreement or transaction referred to in
19 this clause and that is of a type that has been, is
20 presently, or in the future becomes, the subject of
21 recurrent dealings in the swap or other derivatives
22 markets (including terms and conditions
23 incorporated by reference in such agreement) and
24 that is a forward, swap, future, option or spot
25 transaction on one or more rates, currencies,
26 commodities, equity securities or other equity
27 instruments, debt securities or other debt
28 instruments, quantitative measures associated with
29 an occurrence, extent of an occurrence, or
30 contingency associated with a financial, commercial,
31 or economic consequence, or economic or financial
32 indices or measures of economic or financial risk or
33 value;

34 “(III) any combination of agreements or
35 transactions referred to in this clause;

36 “(IV) any option to enter into any agreement or
37 transaction referred to in this clause;

38 “(V) a master agreement that provides for an
39 agreement or transaction referred to in subclause (I),
40 (II), (III), or (IV), together with all supplements to
41 any such master agreement, without regard to
42 whether the master agreement contains an

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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.

“(vii) DEFINITIONS RELATING TO DEFAULT.—
When used in this paragraph and paragraph (10)—

“(I) The term "default" shall mean, with respect to a covered financial company, any adjudication or other official determination by any court of competent jurisdiction, or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed; and

“(II) The term "in danger of default" shall mean a covered financial company with respect to which the Corporation or appropriate State authority has determined that—

“(aa) in the opinion of the Corporation or such authority—

“(i) the covered financial company is not likely to be able to pay its obligations in the normal course of business; and

“(ii) there is no reasonable prospect that the covered financial company will be able to pay such obligations without Federal assistance; or

“(bb) in the opinion of the Corporation or

1 such authority—
2

3 “(i) the covered financial company
4 has incurred or is likely to incur
5 losses that will deplete all or
6 substantially all of its capital; and
7

8 “(ii) there is no reasonable prospect
9 that the capital will be replenished
10 without Federal assistance.
11

12 “(viii) TREATMENT OF MASTER AGREEMENT AS
13 ONE AGREEMENT.—Any master agreement for any
14 contract or agreement described in any preceding clause of
15 this subparagraph (or any master agreement for such master
16 agreement or agreements), together with all supplements to
17 such master agreement, shall be treated as a single
18 agreement and a single qualified financial contract. If a
19 master agreement contains provisions relating to
20 agreements or transactions that are not themselves qualified
21 financial contracts, the master agreement shall be deemed
22 to be a qualified financial contract only with respect to
23 those transactions that are themselves qualified financial
24 contracts.
25

26 “(ix) TRANSFER.—The term “transfer” means every
27 mode, direct or indirect, absolute or conditional, voluntary
28 or involuntary, of disposing of or parting with property or
29 with an interest in property, including retention of title as a
30 security interest and foreclosure of the covered financial
31 company’s equity of redemption.

32 “(x) PERSON.—The term “person” includes any
33 governmental entity in addition to any entity included in
34 the definition of such term in section 1, title 1, United
35 States Code.

36 “(E) CERTAIN PROTECTIONS IN EVENT OF
37 APPOINTMENT OF CONSERVATOR.—Notwithstanding any
38 other provision of this section (other than paragraph (10) of this
39 subsection and subsection (h)(7)) of this section, any other Federal
40 law, or the law of any State, no person shall be stayed or prohibited
41 from exercising—

42 “(i) any right such person has to cause the termination,
43 liquidation, or acceleration of any qualified financial

1 contract with a covered financial company in a
2 conservatorship based upon a default under such financial
3 contract which is enforceable under applicable
4 noninsolvency law;

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

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

12 “(F) CLARIFICATION.—No provision of law shall be
13 construed as limiting the right or power of the Corporation, or
14 authorizing any court or agency to limit or delay, in any manner,
15 the right or power of the Corporation to transfer any qualified
16 financial contract in accordance with paragraphs (9) and (10) of
17 this subsection or to disaffirm or repudiate any such contract in
18 accordance with subsection (j)(1) of this section.

19 “(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

20 “(i) IN GENERAL.—Notwithstanding the provisions of
21 subparagraphs (A) and (E) and sections 403 and 404 of the
22 Federal Deposit Insurance Corporation Improvement Act of
23 1991, no walkaway clause shall be enforceable in a
24 qualified financial contract of a covered financial company
25 in default.

26 “(ii) LIMITED SUSPENSION OF CERTAIN
27 OBLIGATIONS.—In the case of a qualified financial
28 contract referred to in clause (i), any payment or delivery
29 obligations otherwise due from a party pursuant to the
30 qualified financial contract shall be suspended from the
31 time the receiver is appointed until the earlier of—

32 “(I) the time such party receives notice that such
33 contract has been transferred pursuant to paragraph
34 (10)(A); or

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

1 “(iii) WALKAWAY CLAUSE DEFINED.—For
2 purposes of this subparagraph, the term ‘walkaway clause’
3 means any provision in a qualified financial contract that
4 suspends, conditions, or extinguishes a payment obligation
5 of a party, in whole or in part, or does not create a payment
6 obligation of a party that would otherwise exist, solely
7 because of such party’s status as a nondefaulting party in
8 connection with the insolvency of a covered financial
9 company that is a party to the contract or the appointment
10 of or the exercise of rights or powers by a conservator or
11 receiver of such covered financial company, and not as a
12 result of a party’s exercise of any right to offset, setoff, or
13 net obligations that exist under the contract, any other
14 contract between those parties, or applicable law.

15 “(H) RECORDKEEPING.—The Corporation, in consultation
16 with the appropriate Federal supervisor for a covered financial
17 company (if any), may prescribe regulations requiring that the
18 covered financial company maintain such records with respect to
19 qualified financial contracts (including market valuations) as the
20 Corporation determines to be necessary or appropriate in order to
21 assist the conservator or receiver of the covered financial company
22 in being able to exercise its rights and fulfill its obligations under
23 this paragraph or paragraphs (9) or (10).

24 “(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

25 “(A) IN GENERAL.—In making any transfer of assets or
26 liabilities of a covered financial company in default which includes
27 any qualified financial contract, the conservator or receiver for
28 such covered financial company shall either—

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

34 “(I) all qualified financial contracts between any
35 person or any affiliate of such person and the
36 covered financial company in default ;

37 “(II) all claims of such person or any affiliate of
38 such person against such covered financial company
39 under any such contract (other than any claim which,
40 under the terms of any such contract, is

1 institution, and the term 'clearing organization' has the same
2 meaning as in section 402 of the Federal Deposit Insurance
3 Corporation Improvement Act of 1991.

4 “(10) NOTIFICATION OF TRANSFER.—

5 “(A) IN GENERAL.—If—

6 “(i) the conservator or receiver for a covered financial
7 company in default or in danger of default transfers any
8 assets and liabilities of the covered financial company; and

9 “(ii) the transfer includes any qualified financial contract,

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

15 “(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

16 “(i) RECEIVERSHIP.—A person who is a party to a
17 qualified financial contract with a covered financial
18 company may not exercise any right that such person has to
19 terminate, liquidate, or net such contract under paragraph
20 (8)(A) of this subsection solely by reason of or incidental to
21 the appointment under this section of a receiver for the
22 covered financial company (or the insolvency or financial
23 condition of the covered financial company for which the
24 receiver has been appointed)—

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

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

31 “(ii) CONSERVATORSHIP.—A person who is a party to a
32 qualified financial contract with a covered financial
33 company may not exercise any right such person has to
34 terminate, liquidate, or net such contract under paragraph
35 (8)(E) of this subsection or section 403 of Federal Deposit
36 Insurance Corporation Improvement Act of 1991 solely by
37 reason of or incidental to the appointment under this

1 section of a conservator for the covered financial company
2 (or the insolvency or financial condition of the covered
3 financial company for which the conservator has been
4 appointed).

5 “(iii) NOTICE.—For purposes of this paragraph, the
6 receiver or conservator for a covered financial company
7 shall be deemed to have notified a person who is a party to
8 a qualified financial contract with such covered financial
9 company if the receiver or conservator has taken steps
10 reasonably calculated to provide notice to such person by
11 the time specified in subparagraph (A).

12 “(C) TREATMENT OF BRIDGE FINANCIAL COMPANY.—
13 For purposes of paragraph (9), a bridge financial company shall
14 not be considered to be a covered financial company for which a
15 conservator, receiver, trustee in bankruptcy, or other legal
16 custodian has been appointed or which is otherwise the subject of a
17 bankruptcy or insolvency proceeding.

18 “(D) BUSINESS DAY DEFINED.—For purposes of this
19 paragraph, the term “business day” means any day other than any
20 Saturday, Sunday, or any day on which either the New York Stock
21 Exchange or the Federal Reserve Bank of New York is closed.

22 “(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED
23 FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or
24 repudiation of a conservator or receiver with respect to any qualified
25 financial contract to which a covered financial company is a party, the
26 conservator or receiver for such covered financial company shall either—

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

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

30 “(ii) the covered financial company in default; or

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

34 “(12) CERTAIN SECURITY AND CUSTOMER INTERESTS NOT
35 AVOIDABLE.—No provision of this subsection shall be construed as
36 permitting the avoidance of any—

1 “(A) legally enforceable or perfected security interest in any of
2 the assets of any covered financial company except where such an
3 interest is taken in contemplation of the company’s insolvency or
4 with the intent to hinder, delay, or defraud the company or the
5 creditors of such company; or

6 “(B) legally enforceable interest in customer property.

7 “(13) AUTHORITY TO ENFORCE CONTRACTS.—

8 “(A) IN GENERAL.—The conservator or receiver may enforce
9 any contract, other than a director’s or officer’s liability insurance
10 contract or a financial institution bond, entered into by the covered
11 financial company notwithstanding any provision of the contract
12 providing for termination, default, acceleration, or exercise of
13 rights upon, or solely by reason of, insolvency or the appointment
14 of or the exercise of rights or powers by a conservator or receiver.

15 “(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of
16 this paragraph may be construed as impairing or affecting any right
17 of the conservator or receiver to enforce or recover under a
18 director’s or officer’s liability insurance contract or financial
19 institution bond under other applicable law.

20 “(C) CONSENT REQUIREMENT.—

21 “(i) IN GENERAL.—Except as otherwise provided by
22 this section, no person may exercise any right or power to
23 terminate, accelerate, or declare a default under any
24 contract to which the covered financial company is a party,
25 or to obtain possession of or exercise control over any
26 property of the covered financial company or affect any
27 contractual rights of the covered financial company,
28 without the consent of the conservator or receiver, as
29 appropriate, of the covered financial company during the
30 45-day period beginning on the date of the appointment of
31 the conservator, or during the 90-day period beginning on
32 the date of the appointment of the receiver, as applicable.

33 “(ii) CERTAIN EXCEPTIONS.—No provision of this
34 subparagraph shall apply to a director or officer liability
35 insurance contract or a financial institution bond, to the
36 rights of parties to certain qualified financial contracts
37 pursuant to paragraph (8), or to the rights of parties to
38 netting contracts pursuant to subtitle A of title IV of the
39 Federal Deposit Insurance Corporation Improvement Act of
40 1991 (12 U.S.C. 4401 et seq.), or shall be construed as

1 permitting the conservator or receiver to fail to comply
2 with otherwise enforceable provisions of such contract.

3 “(14) EXCEPTION FOR FEDERAL RESERVE BANKS, THE
4 SECRETARY, AND THE CORPORATION SECURITY INTEREST.—
5 No provision of this subsection shall apply with respect to—

6 “(A) any extension of credit from any Federal Reserve bank, the
7 Secretary, or the Corporation to any covered financial company; or,

8 “(B) any security interest in the assets of the covered financial
9 company securing any such extension of credit; or

10 “(15) SAVINGS CLAUSE.--The meanings of terms used in this
11 subsection are applicable for purposes of this subsection only, and shall
12 not be construed or applied so as to challenge or affect the characterization,
13 definition, or treatment of any similar terms under any other statute,
14 regulation, or rule, including, but not limited, to the Gramm-Leach-Bliley
15 Act, the Legal Certainty for Bank Products Act of 2000, the securities
16 laws (as that term is defined in section 3(a)(47) of the Securities Exchange
17 Act of 1934), and the Commodity Exchange Act.

18 “(k) VALUATION OF CLAIMS IN DEFAULT.—

19 “(1) IN GENERAL.—Notwithstanding any other provision of Federal
20 law or the law of any State, and regardless of the method which the
21 Corporation determines to utilize with respect to a covered financial
22 company, including transactions authorized under subsection (o), this
23 subsection shall govern the rights of the creditors of such covered
24 financial company.

25 “(2) MAXIMUM LIABILITY.—The maximum liability of the
26 Corporation, acting as receiver or in any other capacity, to any person
27 having a claim against the receiver or the covered financial company for
28 which such receiver is appointed shall equal the amount such claimant
29 would have received if—

30 “(A) a determination had not been made under subsection (b)(2)
31 of this section with respect to the covered financial company; and

32 “(B) the covered financial company had been liquidated under
33 Title 11, United States Code, or any case related to Title 11, United
34 States Code (including but not limited to a case initiated by SIPC
35 with respect to a financial company subject to the Securities
36 Investor Protection Act of 1970), or any State insolvency law.

37 “(3) ADDITIONAL PAYMENTS AUTHORIZED.—

1 “(A) IN GENERAL.—The Corporation may, as receiver and
2 with the approval of the Secretary of the Treasury, make additional
3 payments or credit additional amounts to or with respect to or for
4 the account of any claimant or category of claimants of a covered
5 financial company if the Corporation determines that such
6 payments or credits are necessary or appropriate to—

7 “(i) minimize losses to the receiver from the resolution
8 of the covered financial company under this section; or

9 “(ii) prevent or mitigate serious adverse effects to
10 financial stability or the U.S. economy.

11 “(B) MANNER OF PAYMENT.—The Corporation may make
12 payments or credit amounts under subparagraph (A) directly to the
13 claimants or may make such payments or credit such amounts to a
14 company other than a covered financial company or a bridge
15 financial company established with respect thereto in order to
16 induce such other company to accept liability for such claims.

17 “(l) LIMITATION ON COURT ACTION.—Except as provided in this
18 section or at the request of the conservator or receiver appointed for a covered
19 financial company under this section, no court may take any action to restrain or
20 affect the exercise of powers or functions of the conservator or receiver hereunder.

21 “(m) LIABILITY OF DIRECTORS AND OFFICERS.—

22 “(1) IN GENERAL.--A director or officer of a covered financial company
23 may be held personally liable for monetary damages in any civil action
24 described in paragraph (2) by, on behalf of, or at the request or direction of
25 the Corporation, which action is prosecuted wholly or partially for the
26 benefit of the Corporation—

27 “(A) acting as conservator or receiver of such covered financial
28 company;

29 “(B) acting based upon a suit, claim, or cause of action
30 purchased from, assigned by, or otherwise conveyed by such
31 receiver or conservator; or

32 “(C) acting based upon a suit, claim, or cause of action
33 purchased from, assigned by, or otherwise conveyed in whole or in
34 part by a covered financial company or its affiliate in connection
35 with assistance provided under subsection (c).

36 “(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to
37 actions for gross negligence, including any similar conduct or conduct that

1 demonstrates a greater disregard of a duty of care (than gross negligence)
2 including intentional tortious conduct, as such terms are defined and
3 determined under applicable State law.

4 “(3) SAVINGS CLAUSE.--Nothing in this paragraph shall impair or
5 affect any right of the Corporation under other applicable law.

6 “(n) DAMAGES.—In any proceeding related to any claim against a covered
7 financial company’s director, officer, employee, agent, attorney, accountant,
8 appraiser, or any other party employed by or providing services to a covered
9 financial company, recoverable damages determined to result from the
10 improvident or otherwise improper use or investment of any covered financial
11 company’s assets shall include principal losses and appropriate interest.

12 “(o) BRIDGE FINANCIAL COMPANIES.—

13 “(1) ORGANIZATION.—

14 “(A) PURPOSE.—The Corporation, as receiver of one or more
15 covered financial companies or in anticipation of being appointed
16 receiver of one or more financial companies, may organize one or
17 more bridge financial companies in accordance with this
18 subsection.

19 “(B) AUTHORITIES.—Upon the creation of a bridge financial
20 company under subparagraph (A) with respect to a covered
21 financial company, such bridge financial company may—

22 “(i) assume such liabilities (including liabilities
23 associated with any trust or custody business) of such
24 covered financial company as the Corporation may, in its
25 discretion, determine to be appropriate;

26 “(ii) purchase such assets (including assets associated
27 with any trust or custody business) of such covered
28 financial company as the Corporation may, in its discretion,
29 determine to be appropriate; and

30 “(iii) perform any other temporary function which the
31 Corporation may, in its discretion, prescribe in accordance
32 with this section.

33 “(2) CHARTER AND ESTABLISHMENT.—

34 “(A) CHARTER.—If the Corporation is or expects to be
35 appointed as receiver for a financial company, the Corporation
36 may grant a Federal charter under this subsection to one or more

1 bridge financial company or companies with respect to such
2 financial company which shall, by operation of law and
3 immediately upon issuance of its charter, be established and
4 operate in accordance with, and subject to, such charter and this
5 section.

6 “(B) MANAGEMENT.—Upon its establishment, a bridge
7 financial company shall be under the management of a board of
8 directors appointed by the Corporation.

9 “(C) ARTICLES OF ASSOCIATION.—The articles of
10 association and organization certificate of a bridge financial
11 company shall have such terms as the Corporation may provide,
12 shall be approved by the Corporation, and shall be executed by
13 such representatives as the Corporation may designate.

14 “(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.—
15 Subject to and in accordance with the provisions of this subsection,
16 the Corporation shall—

17 “(i) establish the terms of the charter of a bridge financial
18 company and the rights, powers, authorities and privileges
19 of a bridge financial company granted by the charter or as
20 an incident thereto; and

21 “(ii) provide for, and establish the terms and conditions
22 governing, the management (including, but not limited to,
23 the bylaws and the number of directors of the board of
24 directors) and operations of the bridge financial company.

25 “(E) TRANSFER OF RIGHTS AND PRIVILEGES OF
26 COVERED FINANCIAL COMPANY.—

27 “(i) IN GENERAL.--Notwithstanding any other
28 provision of Federal law or the law of any State, the
29 Corporation may provide for a bridge financial company to
30 succeed to and assume any rights, powers, authorities or
31 privileges of the covered financial entity with respect to
32 which the bridge financial company was established and,
33 upon such determination by the Corporation, the bridge
34 financial company shall immediately and by operation of
35 law succeed to and assume such rights, powers, authorities
36 and privileges.

37 “(ii) EFFECTIVE WITHOUT APPROVAL.—Any
38 succession to or assumption by a bridge financial company
39 of rights, powers, authorities or privileges of a covered

1 financial company under clause (i) or otherwise shall be
2 effective without any further approval under Federal or
3 State law, assignment, or consent with respect thereto.

4 “(F) CORPORATE GOVERNANCE AND ELECTION AND
5 DESIGNATION OF BODY OF LAW.—To the extent permitted
6 by the Corporation and consistent with this section and any rules,
7 regulations or directives issued by the Corporation under this
8 section, a bridge financial company may elect to follow the
9 corporate governance practices and procedures as are applicable to
10 a corporation incorporated under the general corporation law of the
11 State of Delaware, or the state of incorporation or organization of
12 the covered financial company with respect to which the bridge
13 financial company was established, as such law may be amended
14 from time to time.

15 “(G) CAPITAL.—

16 “(i) CAPITAL NOT REQUIRED.—Notwithstanding
17 any other provision of Federal or State law, a bridge
18 financial company may, if permitted by the Corporation,
19 operate without any capital or surplus, or with such capital
20 or surplus as the Corporation may in its discretion
21 determine to be appropriate.

22 “(ii) NO CONTRIBUTION BY CORPORATION
23 REQUIRED.—The Corporation is not required to pay
24 capital into a bridge financial company or to issue any
25 capital stock on behalf of a bridge financial company
26 established under this subsection.

27 “(iii) AUTHORITY.—If the Corporation determines that
28 such action is advisable, the Corporation may cause capital
29 stock or other securities of a bridge financial company
30 established with respect to a covered financial company to
31 be issued and offered for sale in such amounts and on such
32 terms and conditions as the Corporation may, in its
33 discretion, determine.

34 “(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF
35 COVERED FINANCIAL COMPANY.—Notwithstanding paragraphs (1)
36 or (2) or any other provision of law—

37 “(A) a bridge financial company shall assume, acquire, or
38 succeed to the assets or liabilities of a covered financial company
39 (including the assets or liabilities associated with any trust or
40 custody business) only to the extent that such assets or liabilities

1 are transferred by the Corporation to the bridge financial company
2 in accordance with, and subject to the restrictions set forth in,
3 paragraph (1)(B); and

4 “(B) a bridge financial company shall not assume, acquire, or
5 succeed to any obligation that a covered financial company for
6 which a receiver has been appointed may have to any shareholder
7 of the covered financial company that arises as a result of the status
8 of that person as a shareholder of the covered financial company.

9 “(4) BRIDGE FINANCIAL COMPANY TREATED AS BEING IN
10 DEFAULT FOR CERTAIN PURPOSES.—A bridge financial company
11 shall be treated as a covered financial company in default at such times
12 and for such purposes as the Corporation may, in its discretion, determine.

13 “(5) TRANSFER OF ASSETS AND LIABILITIES.—

14 “(A) TRANSFER OF ASSETS AND LIABILITIES.—The
15 Corporation, as receiver, may transfer any assets and liabilities of a
16 covered financial company (including any assets or liabilities
17 associated with any trust or custody business) to one or more
18 bridge financial companies in accordance with and subject to the
19 restrictions of paragraph (1).

20 “(B) SUBSEQUENT TRANSFERS.—At any time after the
21 establishment of a bridge financial company with respect to a
22 covered financial company, the Corporation, as receiver, may
23 transfer any assets and liabilities of such covered financial
24 company, as the Corporation may, in its discretion, determine to be
25 appropriate in accordance with and subject to the restrictions of
26 paragraph (1).

27 “(C) TREATMENT OF TRUST OR CUSTODY BUSINESS.—
28 For purposes of this paragraph, the trust or custody business,
29 including fiduciary appointments, held by any covered financial
30 company is included among its assets and liabilities.

31 “(D) EFFECTIVE WITHOUT APPROVAL.—The transfer of
32 any assets or liabilities, including those associated with any trust or
33 custody business of a covered financial company to a bridge
34 financial company shall be effective without any further approval
35 under Federal or State law, assignment, or consent with respect
36 thereto.

37 “(E) EQUITABLE TREATMENT OF SIMILARLY
38 SITUATED CREDITORS.—The Corporation shall treat all
39 creditors of a covered financial company that are similarly situated

1 under subsection (i)(1) in a similar manner in exercising the
2 authority of the Corporation under this subsection to transfer any
3 assets or liabilities of the covered financial company to one or
4 more bridge financial companies established with respect to such
5 covered financial company, except that the Corporation may take
6 actions (including making payments) that do not comply with this
7 subparagraph, if—

8 “(i) The Corporation determines that such actions are
9 necessary to maximize the value of the assets of the
10 covered financial company, to maximize the present value
11 return from the sale or other disposition of the assets of the
12 covered financial company, to minimize the amount of any
13 loss realized upon the sale or other disposition of the assets
14 of the covered financial company, or to contain or address
15 serious adverse effects to financial stability or the U.S.
16 economy; and

17 “(ii) all creditors that are similarly situated under
18 subsection (i)(1) receive not less than the amount provided
19 in subsection (k)(2).

20 “(F) LIMITATION ON TRANSFER OF LIABILITIES.—
21 Notwithstanding any other provision of law, the aggregate amount
22 of liabilities of a covered financial company that are transferred to,
23 or assumed by, a bridge financial company from a covered
24 financial company may not exceed the aggregate amount of the
25 assets of the covered financial company that are transferred to, or
26 purchased by, the bridge financial company from the covered
27 financial company.

28 “(6) STAY OF JUDICIAL ACTION.—Any judicial action to which a
29 bridge financial institution becomes a party by virtue of its acquisition of
30 any assets or assumption of any liabilities of a covered financial company
31 shall be stayed from further proceedings for a period of up to 45 days (or
32 such longer period as may be agreed to upon the consent of all parties) at
33 the request of the bridge financial company.

34 “(7) AGREEMENTS AGAINST INTEREST OF THE BRIDGE
35 FINANCIAL COMPANY.—No agreement that tends to diminish or
36 defeat the interest of the bridge financial company in any asset of a
37 covered financial company acquired by the bridge financial company shall
38 be valid against the bridge financial company unless such agreement is in
39 writing and executed by an authorized officer or representative of the
40 covered financial company.

41 “(8) NO FEDERAL STATUS.—

1 “(A) AGENCY STATUS.—A bridge financial company is not
2 an agency, establishment, or instrumentality of the United States.

3 “(B) EMPLOYEE STATUS.—Representatives for purposes of
4 paragraph (1)(B), directors, officers, employees, or agents of a
5 bridge financial company are not, solely by virtue of service in any
6 such capacity, officers or employees of the United States. Any
7 employee of the Corporation or of any Federal instrumentality who
8 serves at the request of the Corporation as a representative for
9 purposes of paragraph (1)(B), director, officer, employee, or agent
10 of a bridge financial company shall not—

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

15 “(ii) receive any salary or benefits for service in any
16 such capacity with respect to a bridge financial company in
17 addition to such salary or benefits as are obtained through
18 employment with the Corporation or such Federal
19 instrumentality.

20 “(9) EXEMPT TAX STATUS.—Notwithstanding any other provision
21 of Federal or State law, a bridge financial company, its franchise, property,
22 and income shall be exempt from all taxation now or hereafter imposed by
23 the United States, by any territory, dependency, or possession thereof, or
24 by any State, county, municipality, or local taxing authority.

25 “(10) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

26 (A) IN GENERAL.—If a transaction involving the merger or
27 sale of a bridge financial company requires approval by a Federal
28 agency, the transaction may not be consummated before the 5th
29 calendar day after the date of approval by the Federal agency
30 responsible for such approval with respect thereto. If, in
31 connection with any such approval a report on competitive factors
32 from the Attorney General is required, the Federal agency
33 responsible for such approval shall promptly notify the Attorney
34 General of the proposed transaction and the Attorney General shall
35 provide the required report within 10 days of the request. If a filing
36 is required under the Hart-Scott-Rodino Antitrust Improvements
37 Act of 1976 with the Department of Justice or the Federal Trade
38 Commission, the waiting period shall expire not later than the 30th
39 day following such filing notwithstanding any other provision of
40 Federal law or any attempt by any Federal agency to extend such

1 waiting period, and no further request for information by any
2 Federal agency shall be permitted.

3 “(B) EMERGENCY.—If the Secretary in consultation with the
4 Chairman of the Federal Reserve Board has found that the
5 Corporation must act immediately to prevent the probable failure
6 of 1 or more of the covered financial companies involved, the
7 approvals and filings referred to in subparagraph (A) shall not be
8 required and the transaction may be consummated immediately by
9 the Corporation.

10 “(11) DURATION OF BRIDGE FINANCIAL COMPANY.—Subject to
11 paragraphs (13) and (14), the status of a bridge financial company as such
12 shall terminate at the end of the 2-year period following the date it was
13 granted a charter. The Corporation may, in its discretion, extend the status
14 of the bridge financial company as such for 3 additional 1-year periods.

15 “(12) TERMINATION OF BRIDGE FINANCIAL COMPANY
16 STATUS.—The status of any bridge financial company as such shall
17 terminate upon the earliest of—

18 “(A) the merger or consolidation of the bridge financial
19 company with a company that is not a bridge financial company;

20 “(B) at the election of the Corporation, the sale of a majority of
21 the capital stock of the bridge financial company to a company
22 other than the Corporation and other than another bridge financial
23 company;

24 “(C) the sale of 80 percent, or more, of the capital stock of the
25 bridge financial company to a person other than the Corporation
26 and other than another bridge financial company;

27 “(D) at the election of the Corporation, either the assumption of
28 all or substantially all of the liabilities of the bridge financial
29 company by a company that is not a bridge financial company, or
30 the acquisition of all or substantially all of the assets of the bridge
31 financial company by a company that is not a bridge financial
32 company, or other entity as permitted under applicable law; and

33 “(E) the expiration of the period provided in paragraph (11), or
34 the earlier dissolution of the bridge financial company as provided
35 in paragraph (14).

36 “(13) EFFECT OF TERMINATION EVENTS.—

1 “(A) MERGER OR CONSOLIDATION.—A merger or
2 consolidation as provided in paragraph (12)(A) shall be conducted
3 in accordance with, and shall have the effect provided in, the
4 provisions of applicable law. For the purpose of effecting such a
5 merger or consolidation, the bridge financial company shall be
6 treated as a corporation organized under the laws of the State of
7 Delaware (unless the law of another State has been selected by the
8 bridge financial company in accordance with paragraph (2)(F)),
9 and the Corporation shall be treated as the sole shareholder thereof,
10 notwithstanding any other provision of State or Federal law.

11 “(B) CHARTER CONVERSION.—Following the sale of a
12 majority of the capital stock of the bridge financial company as
13 provided in paragraph (12)(B), the Corporation may amend the
14 charter of the bridge financial company to reflect the termination
15 of the status of the bridge financial company as such, whereupon
16 the company shall have all of the rights, powers, and privileges
17 under its constituent documents and applicable State or Federal
18 law. In connection therewith, the Corporation may take such steps
19 as may be necessary or convenient to reincorporate the bridge
20 financial company under the laws of a State and, notwithstanding
21 any provisions of State or Federal law, such state-chartered
22 corporation shall be deemed to succeed by operation of law to such
23 rights, titles, powers and interests of the bridge financial company
24 as the Corporation may provide, with the same effect as if the
25 bridge financial company had merged with the State-chartered
26 corporation under provisions of the corporate laws of such State.

27 “(C) SALE OF STOCK.—Following the sale of 80 percent or
28 more of the capital stock of a bridge financial company as
29 provided in paragraph (12)(C), the company shall have all of the
30 rights, powers, and privileges under its constituent documents and
31 applicable State or Federal law. In connection therewith, the
32 Corporation may take such steps as may be necessary or
33 convenient to reincorporate the bridge financial company under the
34 laws of a State and, notwithstanding any provisions of State or
35 Federal law, the state-chartered corporation shall be deemed to
36 succeed by operation of law to such rights, titles, powers and
37 interests of the bridge financial company as the Corporation may
38 provide, with the same effect as if the bridge financial company
39 had merged with the State-chartered corporation under provisions
40 of the corporate laws of such State.

41 “(D) ASSUMPTION OF LIABILITIES AND SALE OF
42 ASSETS.—Following the assumption of all or substantially all of
43 the liabilities of the bridge financial company, or the sale of all or

1 substantially all of the assets of the bridge financial company, as
2 provided in paragraph (12)(D), at the election of the Corporation
3 the bridge financial company may retain its status as such for the
4 period provided in paragraph (11) or may be dissolved at the
5 election of the Corporation.

6 “(E) AMENDMENTS TO CHARTER.—Following the
7 consummation of a transaction described in subparagraph (A), (B),
8 (C), or (D) of paragraph (12), the charter of the resulting company
9 shall be amended to reflect the termination of bridge financial
10 company status, if appropriate.

11 “(14) DISSOLUTION OF BRIDGE FINANCIAL COMPANY.—

12 “(A) IN GENERAL.—Notwithstanding any other provision of
13 State or Federal law, if a bridge financial company’s status as such
14 has not previously been terminated by the occurrence of an event
15 specified in subparagraph (A), (B), (C), or (D) of paragraph (12)—

16 “(i) the Corporation may, in its discretion, dissolve the
17 bridge financial company in accordance with this paragraph
18 at any time; and

19 “(ii) the Corporation shall promptly commence
20 dissolution proceedings in accordance with this paragraph
21 upon the expiration of the 2-year period following the date
22 the bridge financial company was chartered, or any
23 extension thereof, as provided in paragraph (11).

24 “(B) PROCEDURES.—The Corporation shall remain the
25 receiver of a bridge financial company for the purpose of
26 dissolving the bridge financial company. The Corporation as such
27 receiver shall wind up the affairs of the bridge financial company
28 in conformity with the provisions of law relating to the liquidation
29 of covered financial companies. With respect to any such bridge
30 financial company, the Corporation as receiver shall have all the
31 rights, powers, and privileges and shall perform the duties related
32 to the exercise of such rights, powers, or privileges granted by law
33 to a receiver of a covered financial company and, notwithstanding
34 any other provision of law, in the exercise of such rights, powers,
35 and privileges the Corporation shall not be subject to the direction
36 or supervision of any State agency or other Federal agency.

37 “(15) AUTHORITY TO OBTAIN CREDIT.—

38 “(A) IN GENERAL.—A bridge financial company may obtain
39 unsecured credit and issue unsecured debt.

1 “(B) INABILITY TO OBTAIN CREDIT.—If a bridge financial
2 company is unable to obtain unsecured credit or issue unsecured
3 debt, the Corporation may authorize the obtaining of credit or the
4 issuance of debt by the bridge financial company—

5 “(i) with priority over any or all of the obligations of the
6 bridge financial company;

7 “(ii) secured by a lien on property of the bridge financial
8 company that is not otherwise subject to a lien; or

9 “(iii) secured by a junior lien on property of the bridge
10 financial company that is subject to a lien.

11 “(C) LIMITATIONS.—

12 “(i) IN GENERAL.—The Corporation, after notice and
13 a hearing, may authorize the obtaining of credit or the
14 issuance of debt by a bridge financial company that is
15 secured by a senior or equal lien on property of the bridge
16 financial company that is subject to a lien only if—

17 “(I) the bridge financial company is unable to
18 otherwise obtain such credit or issue such debt; and

19 “(II) there is adequate protection of the interest of
20 the holder of the lien on the property with respect to
21 which such senior or equal lien is proposed to be
22 granted.

23 “(D) BURDEN OF PROOF.—In any hearing under this
24 subsection, the Corporation has the burden of proof on the issue of
25 adequate protection.

26 “(16) EFFECT ON DEBTS AND LIENS.—The reversal or modification
27 on appeal of an authorization under this subsection to obtain credit or issue
28 debt, or of a grant under this section of a priority or a lien, does not affect
29 the validity of any debt so issued, or any priority or lien so granted, to an
30 entity that extended such credit in good faith, whether or not such entity
31 knew of the pendency of the appeal, unless such authorization and the
32 issuance of such debt, or the granting of such priority or lien, were stayed
33 pending appeal.

34 “(p) SUPERVISORY RECORDS.—Whenever the Corporation has been
35 appointed as receiver for a covered financial company, the Appropriate Federal
36 Regulatory Agency for the company (if any) shall make available all supervisory

1 records to the receiver which may be used by the receiver in any manner the
2 receiver determines to be appropriate.

3 “(q) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

4 “(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of
5 appeal of any order, whether interlocutory or final, entered in any case
6 brought by the Corporation against a covered financial company’s director,
7 officer, employee, agent, attorney, accountant, or appraiser or any other
8 person employed by or providing services to a covered financial company
9 shall be filed not later than 30 days after the date of entry of the order.
10 The hearing of the appeal shall be held not later than 120 days after the
11 date of the notice of appeal. The appeal shall be decided not later than 180
12 days after the date of the notice of appeal.

13 “(2) SCHEDULING.—A court of the United States shall expedite the
14 consideration of any case brought by the Corporation against a covered
15 financial company’s director, officer, employee, agent, attorney,
16 accountant, or appraiser or any other person employed by or providing
17 services to a covered financial company. As far as practicable, the court
18 shall give such case priority on its docket.

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

24 “(r) FOREIGN INVESTIGATIONS.—The Corporation, as conservator or
25 receiver of any covered financial company and for purposes of carrying out any
26 power, authority, or duty with respect to a covered financial company—

27 “(1) may request the assistance of any foreign financial authority and
28 provide assistance to any foreign financial authority in accordance with
29 section 8(v) of the Federal Deposit Insurance Act as if the covered
30 financial company were an insured depository institution, the Corporation
31 were the appropriate Federal banking agency for the company and any
32 foreign financial authority were the foreign banking authority; and

33 “(2) may maintain an office to coordinate foreign investigations or
34 investigations on behalf of foreign financial authorities.

35 “(s) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND
36 PROTECTIVE ORDERS.—The Corporation may not enter into any agreement or
37 approve any protective order which prohibits the Corporation from disclosing the
38 terms of any settlement of an administrative or other action for damages or

1 restitution brought by the Corporation in its capacity as conservator or receiver for
2 a covered financial company.

3 “(t) LIQUIDATION OF CERTAIN COVERED FINANCIAL COMPANIES
4 OR BRIDGE FINANCIAL COMPANIES.—Notwithstanding any other provision
5 of law (other than a conflicting provision of this section), the Corporation, in
6 connection with the liquidation of any covered financial company or bridge
7 financial company with respect to which the Corporation has been appointed as
8 receiver, shall—

9 “(1)in the case of any covered financial company or bridge financial
10 company that is a stockbroker (as that term is defined in section 101 of
11 title 11 of the United States Code) but is not a member of the Securities
12 Investor Protection Agency, apply the provisions of subchapter III of
13 chapter 7 of title 11 of the United States Code in respect of the distribution
14 to any ‘customer’ of all ‘customer name securities’ and ‘customer
15 property’ (as such terms are defined in section 741 of such title 11) as if
16 such covered financial company or bridge financial company were a
17 debtor for purposes of such subchapter; or

18 “(2) in the case of any covered financial company or bridge financial
19 company that is a commodity broker (as that term is defined in section 101
20 of title 11 of the United States Code), apply the provisions of subchapter
21 IV of chapter 7 of title 11 of the United States Code in respect of the
22 distribution to any ‘customer’ of all ‘customer property’ (as such terms are
23 defined in section 761 of such title 11) as if such covered financial
24 company or bridge financial company were a debtor for purposes of such
25 subchapter.

26 “(u) FUNDING.—

27 “(1) APPROPRIATION AND APPORTIONMENT.— For the purposes
28 of carrying out the authorities granted in this section, there are hereby
29 appropriated to the Corporation, subject to subsection (c), such sums as
30 are necessary, without fiscal year limitation. Notwithstanding any other
31 provision of law, including section 7(d) of the Federal Deposit Insurance
32 Act, such amounts shall be subject to apportionment under section 1517 of
33 title 31, United States Code, and restrictions that generally apply to the use
34 of appropriated funds in title 31, United States Code, and other laws.

35 “(2) PROCEEDS TREATED AS MISCELLANEOUS RECEIPTS.—
36 Amounts received by the Corporation in carrying out this section
37 (including proceeds from payments of principal and interest from loans
38 made pursuant to subsection (c) and special assessments received under
39 subsection (v), but excluding amounts received by any covered financial
40 company when the Corporation is acting in its capacity as conservator or

1 receiver for such company) shall be deposited into the Treasury as
2 miscellaneous receipts.

3 “(v) RECOVERY OF EXPENDED FUNDS; SPECIAL ASSESSMENTS ON
4 FINANCIAL COMPANIES. —

5
6 “(1) Recovery of expended funds.--The Corporation shall take
7 steps to recover the amount of funds expended by the Corporation under
8 this section that the Corporation has not otherwise recouped. Such steps
9 shall include 1 or more emergency special assessments on financial
10 companies taking into consideration the following—

11
12 “(A) The net present value of the appropriated funds expended;

13
14 “(B) The amount and frequency of assessments to recover the full
15 amount of appropriated funds expended within 60 months from the
16 date of the determination in subsection (b); and

17
18 “(C) Such other considerations that the Corporation and the
19 Secretary deem appropriate.

20
21 “(2) Rulemaking.—The Corporation and the Secretary shall issue joint
22 regulations to carry out this subsection.

23
24 “(w) NO FEDERAL STATUS.—

25 “(1) Agency Status.—A covered financial company (or any subsidiary
26 thereof) that receives assistance, is placed into conservatorship or
27 receivership, or both, under subsection (c) is not a department, agency, or
28 instrumentality of the United States for purposes of statutes that confer
29 powers on or impose obligations on government entities.

30
31 “(2) Employee status.—Interim directors, directors, officers, employees,
32 or agents of a covered financial company that is placed into
33 conservatorship or receivership are not, solely by virtue of service in any
34 such capacity, officers or employees of the United States. Any employee
35 of the Corporation or of any Federal agency who serves at the request of
36 the Corporation as an interim director, director, officer, employee, or agent
37 of a covered financial company that is placed into conservatorship or
38 receivership shall not—

39
40 “(A) solely by virtue of service in any such capacity lose any
41 existing status as an officer or employee of the United States for
42 purposes of Title 5, United States Code, or any other provision of
43 law, or;

44

1 “(B) receive any salary or benefits for service in any such capacity
2 with respect to a covered financial company that is placed into
3 conservatorship or receivership in addition to such salary or
4 benefits as are obtained through employment with the Corporation
5 or other Federal agency.
6

7 **SEC. 3. CLARIFICATION OF PROHIBITION REGARDING**
8 **CONCEALMENT OF ASSETS FROM CONSERVATOR, RECEIVER, OR**
9 **LIQUIDATING AGENT.**

10 (a) **IN GENERAL.**— Section 1032 of title 18, United States Code, is amended in
11 paragraph (1) by deleting “or” before “the National Credit Union Administration
12 Board,” and by inserting immediately thereafter “or the Appropriate Federal
13 Regulatory Agency, as defined in section 2 of the Resolution Authority for
14 Systematically Significant Financial Institution Holding Companies Act of 2009
15 (____U.S.C. § ____ (a)(2)(A)),”.

16 (b) **CONFORMING CHANGE.**—The title of section 1032 of title 18, United
17 States Code, is amended by deleting “of financial institution”.

18 **SEC.4. MISCELLANEOUS PROVISIONS**

19 (a) **BANKRUPTCY CODE AMENDMENTS.**—Section 109(b)(2) of title 11 of
20 the United States Code is amended by adding “covered financial company as that
21 term is defined in section 2 of the Resolution Authority for Systemically
22 Significant Financial Companies Act of 2009,” after a “domestic insurance
23 company”.

24 (b) **FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT**
25 **ACT.**—Section 403(a) of the Federal Deposit Insurance Corporation
26 Improvement Act of 1991 (12 U.S.C. 4403(a)) is amended by inserting “section
27 2(j) of the Resolution Authority for Systemically Significant Financial Companies
28 Act of 2009 , section 1367 of the Federal Housing Enterprises Financial Safety
29 and Soundness Act of 1992 (12 U.S.C. 4617(d)), “after “section 1821(e) of this
30 title”.