DIVISION D—IMPROVEMENTS FOR FINANCIAL CRISIS MANAGEMENT

TITLE XII—ENHANCED RESOLUTION AUTHORITY

SEC. 1201. SHORT TITLE.
This Act may be cited as the “Resolution Authority for Large, Interconnected Financial Companies Act of 2009”.

SEC. 1202. DEFINITIONS.
For purposes of this title, the following definitions shall apply:

(1) APPROPRIATE FEDERAL REGULATORY AGENCY. —

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

(i) the Corporation; and

(ii) the Commission, if the bank holding 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) (other than an insured depository institution)).

(B) RULES OF CONSTRUCTION.—More than one agency may be an Appropriate Federal Regulatory Agency with respect to any given bank holding company. In such instances, the Commission shall be the Appropriate Federal Regulatory Agency for purposes of section 1203 if the largest subsidiary of the
bank holding company is a broker or dealer as measured by total assets as of the end of the previous calendar quarter.

(2) **BANK HOLDING COMPANY.**—The term “bank holding company” means any company that—

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

(B) is—

(i) a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(a));

(ii) any Tier 1 financial holding company designated by the Federal Reserve Board as defined in section 2(t) of the Bank Holding Company Act of 1956, as amended by this Act (12 U.S.C. 1841(r)); or

(iii) any subsidiary of companies described in clauses (i) through (ii) (other than an insured depository institution, any broker or dealer registered with the Commission under section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)), which is a member of the Securities Investor Protection Corporation, or an insurance company).

(3) **BRIDGE BANK HOLDING COMPANY.**—The term “bridge bank holding company” means a new bank holding company organized by the Appropriate Federal Regulatory Agency appointed by the Secretary in accordance with section 1209(h).

(4) **COMMISSION.**—The term “Commission” means the Securities and Exchange Commission.
(5) CORPORATION.—The term “Corporation” means the Federal Deposit Insurance Corporation.

(6) COVERED BANK HOLDING COMPANY.—The term “covered bank holding company” means a bank holding company for which a determination has been made pursuant to and in accordance with section 1203(b).

(7) COVERED SUBSIDIARY.—The term “covered subsidiary” means a subsidiary covered in paragraph (2)(B)(iii) of this section.

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

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

(10) FUND.—The term “Fund” means the Bank Holding Company Fund.

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

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

(13) STATE.—The term “State” means any State, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the United States Virgin Islands.

(14) CERTAIN OTHER TERMS.—The terms “affiliate,” “company,” “control,” “deposit,” “depository institution,” “foreign bank,” “insured depository
SEC. 1203. SYSTEMIC RISK DETERMINATION.

(a) WRITTEN RECOMMENDATION OF THE FEDERAL RESERVE BOARD AND THE
APPROPRIATE FEDERAL REGULATORY AGENCY.—

(1) VOTE REQUIRED.—At the request of the Secretary or the Chairman of the
Federal Reserve Board or, in cases where a bank holding company has a broker or dealer
as its largest subsidiary as measured by total assets as of the end of the previous calendar
quarter, the Commission, the Federal Reserve Board and the Appropriate Federal
Regulatory Agency shall, or on their own initiative, the Federal Reserve Board and the
Appropriate Federal Regulatory Agency may, consider whether to make the written
recommendation provided for in paragraph (2), which recommendation shall be made
upon a vote of not less than two-thirds of the members of the Federal Reserve Board then
serving and two-thirds of the members of the board or of the commission then serving of
the Appropriate Federal Regulatory Agency, as applicable.

(2) RECOMMENDATION REQUIRED.—Any written recommendations made by the
Federal Reserve Board and the Appropriate Federal Regulatory Agency under paragraph
(1) shall contain the following—

(A) a description of the effect that the default of the bank holding
company would have on economic conditions or financial stability in the United
States; and

(B) the nature and the extent of assistance or actions that should be
provided or taken regarding the bank holding company.
(b) **DETERMINATION BY THE SECRETARY.**—Notwithstanding any other provision of Federal law or the law of any State, if, upon the written recommendation of the Federal Reserve Board and the board of directors or commission of the Appropriate Federal Regulatory Agency as provided for in subsection (a)(1), the Secretary (in consultation with the President) determines that—

1. the bank holding company is in default or is in danger of default;
2. the failure of the bank holding company and its resolution under otherwise applicable Federal or State law would have serious adverse effects on financial stability or economic conditions in the United States; and
3. any action or assistance under section 1204 would avoid or mitigate such adverse effects, taking into consideration the effectiveness of action or assistance in mitigating potential adverse effects on the financial system or economic conditions, the cost to the general fund of the Treasury, and the potential to increase moral hazard on the part of creditors, counterparties, and shareholders in the bank holding company, the Secretary may take action under section 1204(b) and the Corporation may take one or more actions specified in section 1204.

(c) **DOCUMENTATION AND REVIEW.**—

1. **IN GENERAL.**—The Secretary shall—
   
   (A) document any determination under subsection (b); and,
   
   (B) retain the documentation for review under paragraph (2).

2. **GAO REVIEW.**—The Comptroller General of the United States shall review and report to the Congress on any determination under subsection (b), including:

   (A) the basis for the determination;
(B) the purpose for which any action was taken pursuant thereto; and

(C) the likely effect of the determination and such action on the incentives and conduct of bank holding companies and their creditors, counterparties, and shareholders.

(3) REPORT TO CONGRESS.—Within 30 days after a determination is made under subsection (b), the Secretary shall provide written notice of the determination to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives. The notice shall include a description of the basis for the determination.

(d) DEFAULT OR IN DANGER OF DEFAULT.—For purposes of subsection (b), a bank holding company shall be considered to be in default or in danger of default if any of the following conditions exist, as determined in accordance with that subsection:

(1) a case has been, or likely will promptly be, commenced with respect to the bank holding company under title 11, United States Code;

(2) the bank holding company is critically undercapitalized, as such term has been or may be defined by the Federal Reserve Board;

(3) the bank holding company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion without assistance under section 1204;

(4) the bank holding company’s assets are, or are likely to be, less than its obligations to creditors and others; or

(5) the bank holding 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.
SEC. 1204. RESOLUTION; ASSISTANCE.

(a) EMERGENCY ASSISTANCE.—Upon the Secretary making the determination provided for in section 1203(b), the Corporation may, with the approval of the Secretary, exercise any authority provided in this subsection including providing the assistance directly or indirectly and separately or in combination, including:

(1) making loans to, or purchasing any debt obligation of, the covered bank holding company or any covered subsidiary;

(2) purchasing assets of the covered bank holding company or any covered subsidiary directly or through an entity established by the Corporation for such purpose;

(3) assuming or guaranteeing the obligations of the covered bank holding company or any covered subsidiary to one or more third parties;

(4) acquiring any type of equity interest or security of the covered bank holding company or any covered subsidiary;

(5) taking a lien on any or all assets of the covered bank holding company or any covered subsidiary, including a first priority lien on all unencumbered assets of the company or any covered subsidiary to secure repayment of any financial assistance provided under this subsection; or

(6) selling or transferring all, or any part thereof, of such acquired assets, liabilities, obligations, equity interests or securities of the covered bank holding company or any covered subsidiary.

(b) APPOINTMENT OF CONSERVATOR OR RECEIVER.—Upon the Secretary making the determination provided for in section 1203(b), the Secretary may appoint one of the Appropriate Federal Regulatory Agencies as conservator or receiver for the covered bank holding company,
except that the Corporation shall be the Appropriate Federal Regulatory Agency appointed in the event that the predominant subsidiary of the covered bank holding company is not a broker or dealer as measured by total assets as of the end of previous calendar quarter.

(c) Emergency Assistance After Appointment of Conservator. —Upon the Secretary appointing a conservator or receiver under subsection (b), the Corporation may take any of the actions described in subsection (a) with respect to the covered bank holding company in conservatorship or receivership.

SEC. 1205. JUDICIAL REVIEW.

If a conservator or receiver is appointed, the covered bank holding 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 bank holding company is located, or in the United States District Court for the District of Columbia, for an order requiring that the conservator or receiver be removed, and the court shall, upon the merits, dismiss such action or direct the conservator or receiver to be removed. Review of such an action shall be limited to the appointment of a conservator or receiver under section 1204.

SEC. 1206. DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.

The members of the board of directors (or body performing similar functions) of a covered bank holding company shall not be liable to the covered bank holding company’s shareholders or creditors for acquiescing in or consenting in good faith to—

(1) the Secretary’s appointment of an Appropriate Federal Regulatory Agency as conservator or receiver for the covered bank holding company under section 1204; or

(2) an acquisition, combination, or transfer of assets or liabilities under section
SEC. 1207. TERMINATION AND EXCLUSION OF OTHER ACTIONS.

The Appropriate Federal Regulatory Agency’s acting as conservator or receiver for a covered bank holding company under this title shall immediately, and by operation of law, terminate any case commenced with respect to the covered bank holding company under title 11, United States Code, or any proceeding under any State insolvency law with respect to the covered bank holding company, and no such case or proceeding may be commenced with respect to the covered bank holding company at any time while the Appropriate Federal Regulatory Agency acts as conservator or receiver for the covered bank holding company.

SEC. 1208. RULEMAKING.

The Appropriate Federal Regulatory Agencies and the Secretary may jointly prescribe such rules or regulations as they consider necessary or appropriate to implement the provisions of this title.

SEC. 1209. POWERS AND DUTIES OF APPROPRIATE FEDERAL REGULATORY AGENCY.

(a) POWERS AND AUTHORITIES.—

(1) GENERAL POWERS.—

(A) SUCCESSOR TO COVERED BANK HOLDING COMPANY.—The Appropriate Federal Regulatory Agency shall, upon appointment as conservator or receiver for a covered bank holding company under section 1204, and by operation of law, succeed to—

(i) all rights, titles, powers, and privileges of the covered bank holding company, and of any stockholder, member, officer, or director of
such institution with respect to the covered bank holding company and the
assets of the covered bank holding company; and
(ii) title to the books, records, and assets of any previous receiver
or other legal custodian of such covered bank holding company.

(B) OPERATE THE COVERED BANK HOLDING COMPANY.—The Appropriate
Federal Regulatory Agency as conservator or receiver for a covered bank holding
company may—

(i) take over the assets of and operate the covered bank holding
comp any with all the powers of the members or shareholders, the
directors, and the officers of the covered bank holding company and
conduct all business of the covered bank holding company;
(ii) collect all obligations and money due the covered bank holding
company;
(iii) perform all functions of the covered bank holding company in
the name of the covered bank holding company;
(iv) preserve and conserve the assets and property of the covered
bank holding company; and
(v) provide by contract for assistance in fulfilling any function,
activity, action, or duty of the Appropriate Federal Regulatory Agency as
conservator or receiver.

(C) FUNCTIONS OF COVERED BANK HOLDING COMPANY’S OFFICERS,
DIRECTORS, AND SHAREHOLDERS.—The Appropriate Federal Regulatory Agency
may provide for the exercise of any function by any member or stockholder,
director, or officer of any covered bank holding company for which the
Appropriate Federal Regulatory Agency has been appointed as conservator or
receiver under this section.

(D) POWERS AS CONSERVATOR.—The Appropriate Federal Regulatory
Agency may, as conservator, and subject to all legally enforceable and perfected
security interests in the assets of the covered bank holding company, take such
action as may be—

(i) necessary to put the covered bank holding company in a sound
and solvent condition; and

(ii) appropriate to carry on the business of the covered bank
holding company and preserve and conserve the assets and property of the
covered bank holding company.

(E) ADDITIONAL POWERS AS RECEIVER.—The Appropriate Federal
Regulatory Agency may, as receiver, place the covered bank holding company in
liquidation and proceed to realize upon the assets of the covered bank holding
company in such manner as the Appropriate Federal Regulatory Agency deems
appropriate, including through the sale of assets, the transfer of assets to a bridge
bank holding company established under subsection (h), or the exercise of any
other rights or privileges granted to the receiver under this section.

(F) ORGANIZATION OF NEW COMPANIES.—The Appropriate Federal
Regulator Agency as receiver may organize a bridge bank holding company under
subsection (h).

(G) MERGER; TRANSFER OF ASSETS AND LIABILITIES.—
(i) IN GENERAL.—Subject to clause (ii), the Appropriate Federal Regulator Agency as conservator or receiver may—

(I) merge the covered bank holding company with another company; or

(II) transfer any asset or liability of the covered bank holding company (including assets and liabilities associated with any trust or custody business) without obtaining any approval, assignment, or consent with respect to such transfer.

(ii) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

(I) IN GENERAL.—If a transaction described in clause (i) requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval, a report on competitive factors is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with the Department of Justice or the Federal Trade Commission, the waiting period shall expire not later than the 30th day following such filing notwithstanding any other provision of Federal law or any attempt by any Federal agency to extend such
waiting period, and no further request for information by any Federal agency shall be permitted.

(II) EMERGENCY.—If the Secretary in consultation with the Chairman of the Federal Reserve Board has found that the Appropriate Federal Regulatory Agency must act immediately to prevent the probable failure of 1 or more of the covered bank holding companies involved, the approvals and filings referred to in subclause (I) shall not be required and the transactions may be consummated immediately by the Appropriate Federal Regulatory Agency.

(H) PAYMENT OF VALID OBLIGATIONS.—The Appropriate Federal Regulatory Agency, as conservator or receiver, shall, to the extent funds are available, pay all valid obligations of the covered bank holding company that are due and payable at the time of the appointment of the Appropriate Federal Regulatory Agency as conservator or receiver in accordance with the prescriptions and limitations of this title.

(I) SUBPOENA AUTHORITY.—

(i) IN GENERAL.—The Appropriate Federal Regulatory Agency may, for purposes of carrying out any power, authority, or duty with respect to a covered bank holding company (including determining any claim against the covered bank holding company and determining and realizing upon any asset of any person in the course of collecting money due the covered bank holding company), exercise any power established
under section 8(n) of the Federal Deposit Insurance Act as if the covered
bank holding company were an insured depository institution.

(ii) RULE OF CONSTRUCTION.—This section shall not be construed
as limiting any rights that the Appropriate Federal Regulatory Agency, in
any capacity, might otherwise have to exercise any powers described in
clause (i) under any other provision of law.

(J) INCIDENTAL POWERS.—The Appropriate Federal Regulatory Agency,
as conservator or receiver, may—

(i) exercise all powers and authorities specifically granted to
conservators or receivers under this section and such incidental powers as
shall be necessary to carry out such powers; and

(ii) take any action authorized by this section, which the
Appropriate Federal Regulatory Agency determines is in the best interests
of the covered bank holding company, its customers, its creditors, its
counterparties, or the stability of the financial system.

(K) UTILIZATION OF PRIVATE SECTOR.— In carrying out its responsibilities
in the management and disposition of assets from a covered bank holding
company, the Appropriate Federal Regulatory Agency, as conservator or receiver,
may utilize the services of private persons, including real estate and loan portfolio
asset management, property management, auction marketing, legal, and brokerage
services, if such services are available in the private sector and the Appropriate
Federal Regulatory Agency determines utilization of such services is practicable,
efficient, and cost effective.
(L) SHAREHOLDERS AND CREDITORS OF COVERED BANK HOLDING

COMPANY.—Notwithstanding any other provision of law, the Appropriate Federal
Regulatory Agency as conservator or receiver for a covered bank holding
company pursuant to this section and its succession, by operation of law, to the
rights, titles, powers, and privileges described in subparagraph (A) shall terminate
all rights and claims that the stockholders and creditors of the covered bank
holding company may have against the assets of the covered bank holding
company or the Appropriate Federal Regulatory Agency arising out of their status
as stockholders or creditors, except for their right to payment, resolution, or other
satisfaction of their claims, as permitted under this section.

(M) COORDINATION WITH FOREIGN FINANCIAL AUTHORITIES.—The
Appropriate Federal Regulatory Agency as conservator or receiver for a covered
bank holding company shall coordinate with the appropriate foreign financial
authorities regarding the resolution of subsidiaries of the covered bank holding
company that are established in a country other than the United States.

(2) AUTHORITY OF APPROPRIATE FEDERAL REGULATORY AGENCY TO DETERMINE

CLAIMS.—

(A) IN GENERAL.—The Appropriate Federal Regulatory Agency may, as
receiver, determine claims in accordance with the requirements of this subsection
and regulations prescribed under paragraph (3).

(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the
liquidation or winding up of the affairs of a covered bank holding company,
shall—
(i) promptly publish a notice to the covered bank holding company’s creditors to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

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

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

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

(ii) upon discovery of the name and address of a claimant not appearing on the covered bank holding company’s books, within 30 days after the discovery of such name and address.

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

(A) IN GENERAL.—Subject to subsection (b), the Appropriate Federal Regulatory Agency may prescribe rules and regulations regarding the allowance or disallowance of claims by the Appropriate Federal Regulatory Agency and providing for administrative determination of claims and review of such determination.

(B) EXISTING RULES.—Subject to subsection (b), the Appropriate Federal Regulatory Agency may elect to use the regulations adopted pursuant to the provisions of section 11 of the Federal Deposit Insurance Act with respect to the determination of claims for a covered bank holding company as if the covered
bank holding company were an insured depository institution.

(4) PROCEDURES FOR DETERMINATION OF CLAIMS.—

(A) DETERMINATION PERIOD.—

(i) IN GENERAL.—Before the end of the 180-day period beginning on the date any claim against a covered bank holding company is filed with the Appropriate Federal Regulatory Agency as receiver, the Appropriate Federal Regulatory Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Appropriate Federal Regulatory Agency.

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

(I) on the covered bank holding company’s books;

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

(III) in documents submitted in proof of the claim.

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

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

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

(B) ALLOWANCE OF PROVEN CLAIM.—The Appropriate Federal
Regulatory Agency shall allow any claim received on or before the date
specified in the notice published under paragraph (2)(B)(i) by the
Appropriate Federal Regulatory Agency from any claimant which is
proved to the satisfaction of the Appropriate Federal Regulatory Agency.

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

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

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

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

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

(D) AUTHORITY TO DISALLOW CLAIMS.—

(i) IN GENERAL.—The Appropriate Federal Regulatory Agency
may disallow any portion of any claim by a creditor or claim of security,
preference, or priority which is not proved to the satisfaction of the
Appropriate Federal Regulatory Agency.

(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against a covered bank holding company which is secured by any property or other asset of such covered bank holding company, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the covered bank holding company; and

(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the covered bank holding company.

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

(I) any extension of credit from any Federal Reserve bank, or the Secretary, to any covered bank holding company; or

(II) subject to clause (ii), any legally enforceable or perfected security interest in the assets of the covered bank holding company securing any such extension of credit.

(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the Appropriate Federal Regulatory Agency determination pursuant to subparagraph (D) to disallow a claim.
(F) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the Appropriate Federal Regulatory Agency shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (9), the filing of a claim with the Appropriate Federal Regulatory Agency shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Appropriate Federal Regulatory Agency as receiver for the covered bank holding company.

(5) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

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

(i) the end of the period described in paragraph (4)(A)(i) (or, if extended by agreement of the Appropriate Federal Regulatory Agency and the claimant, the period described in paragraph (4)(A)(ii) with respect to any claim against a covered bank holding company for which the Appropriate Federal Regulatory Agency is receiver; or

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

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

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

(6) EXPEDITED DETERMINATION OF CLAIMS.—

(A) ESTABLISHMENT REQUIRED.—The Appropriate Federal Regulatory Agency shall establish a procedure for expedited relief outside of the routine 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 bank holding company for which the Appropriate Federal Regulatory Agency 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 Appropriate Federal Regulatory Agency 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 Appropriate Federal Regulatory Agency
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 Appropriate Federal Regulatory Agency denies the

claim.

(D) STATUTE OF LIMITATIONS.—If an action described in subparagraph (C)
is not filed, or the motion to renew a previously filed suit is not made, before the
end of the 30-day period beginning on the date on which such action or motion
may be filed in accordance with subparagraph (B), the claim shall be deemed to
be disallowed as of the end of such period (other than any portion of such claim
which was allowed by the receiver), such disallowance shall be final, and the
claimant shall have no further rights or remedies with respect to such claim.

(E) LEGAL EFFECT OF FILING.—
(i) **STATUTE OF LIMITATION TOLLED.**—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) **NO PREJUDICE TO OTHER ACTIONS.**—Subject to paragraph (9), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the appointment of the Appropriate Federal Regulatory Agency as receiver for the covered bank holding company.

(7) **AGREEMENTS AGAINST INTEREST OF THE RECEIVER.**—No agreement that tends to diminish or defeat the interest of the Appropriate Federal Regulatory Agency as receiver in any asset acquired by the receiver under this section shall be valid against the receiver unless such agreement is in writing and executed by an authorized officer or representative of the covered bank holding company.

(8) **PAYMENT OF CLAIMS.**—

(A) **IN GENERAL.** —The Appropriate Federal Regulatory Agency as receiver may, in its discretion and to the extent funds are available, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

(i) allowed by the receiver;

(ii) approved by the Appropriate Federal Regulatory Agency pursuant to a final determination pursuant to paragraph (6); or

(ii) determined by the final judgment of any court of competent jurisdiction.
(B) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the receiver’s sole discretion and to the extent otherwise permitted by this section, pay dividends on proven claims at any time, and no liability shall attach to the Appropriate Federal Regulatory Agency (in the Appropriate Federal Regulatory Agency’s capacity as receiver), by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(C) RULEMAKING AUTHORITY OF APPROPRIATE FEDERAL REGULATORY AGENCY.—The Appropriate Federal Regulatory Agency may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for, or to make payments of post insolvency interest to creditors holding proven claims against the receivership estates of a covered bank holding company following satisfaction by the receiver of the principal amount of all creditor claims.

(9) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of the Appropriate Federal Regulatory Agency as conservator or receiver for a covered bank holding company, the Appropriate Federal Regulatory Agency may request a stay for a period not to exceed—

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

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

in any non-criminal judicial action or proceeding to which such covered bank holding company is or becomes a party.
(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by the Appropriate Federal Regulatory Agency pursuant to subparagraph (A) for a stay of any non-criminal judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(10) ADDITIONAL RIGHTS AND DUTIES.—

(A) PRIOR FINAL ADJUDICATION.—The Appropriate Federal Regulatory Agency shall abide by any final unappealable judgment of any court of competent jurisdiction which was rendered before the appointment of the Appropriate Federal Regulatory Agency as conservator or receiver.

(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Appropriate Federal Regulatory Agency as conservator or receiver shall—

(i) have all the rights and remedies available to the covered bank holding company (before the appointment of the conservator or receiver under section 1204) and the Appropriate Federal Regulatory Agency, including but not limited to removal to Federal court and all appellate rights; and

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

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

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

   (i) any claim or action for payment from, or any action seeking a
determination of rights with respect to, the assets of any covered bank
holding company for which the Appropriate Federal Regulatory Agency
has been appointed receiver, including any assets which the Appropriate
Federal Regulatory Agency may acquire from itself as such receiver; or

   (ii) any claim relating to any act or omission of such covered bank
holding company or the Appropriate Federal Regulatory Agency as
receiver.

(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or
authority as conservator or receiver in connection with any covered bank holding
company for which the Appropriate Federal Regulatory Agency is acting as
conservator or receiver under this section, the Appropriate Federal Regulatory
Agency shall, to the greatest extent practicable, conduct its operations in a manner
which—

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

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

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

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

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

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

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

(A) IN GENERAL.—Notwithstanding any provision of any contract, the
applicable statute of limitations with regard to any action brought by the
Appropriate Federal Regulatory Agency as conservator or receiver shall be—

(i) in the case of any contract claim, the longer of—

(I) the 6-year period beginning on the date the claim
accrues; or

(II) the period applicable under State law; and

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

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

(II) the period applicable under State law.

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

(i) the date of the appointment of the Appropriate Federal
Regulatory Agency as conservator or receiver under this title; or

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

(C) REVIVAL OF EXPIRED STATE CAUSES OF ACTION.—

(i) IN GENERAL.—In the case of any tort claim described in clause
(ii) for which the statute of limitation applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Appropriate Federal Regulatory Agency as conservator or receiver, the Appropriate Federal Regulatory Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(ii) CLAIMS DESCRIBED.—A tort claim referred to in clause (i) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the covered bank holding company.

(12) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Appropriate Federal Regulatory Agency, as conservator or receiver for any covered bank holding company, may avoid a transfer of any interest of an institution-affiliated party, or any person who the Appropriate Federal Regulatory Agency determines is a debtor of the covered bank holding company, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Appropriate Federal Regulatory Agency was appointed conservator or receiver if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the covered bank holding company or the Appropriate Federal Regulatory Agency.

(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the Appropriate Federal Regulatory Agency may recover, for
the benefit of the covered bank holding company, the property transferred or, if a
court so orders, the value of such property (at the time of such transfer) from—

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

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

(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The Appropriate Federal
Regulatory Agency may not recover under subparagraph (B)—

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

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

(D) RIGHTS UNDER THIS SUBSECTION.—The rights of the Appropriate
Federal Regulatory Agency as receiver of a covered bank holding company under
this subsection shall be superior to any rights of a trustee or any other party (other
than any party which is a Federal agency) under title 11, United States Code.

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

(i) any director, officer, employee, or controlling stockholder of, or
agent for, a covered bank holding company;

(ii) any shareholder, consultant, joint venture partner, and any
other person as determined by the Appropriate Federal Regulatory Agency
(by regulation or otherwise) who participates in the conduct of the affairs
of a covered bank holding company; and

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

(I) any violation of any law or regulation;

(II) any breach of fiduciary duty; or

(III) any unsafe or unsound practice,

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

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

(14) STANDARDS.—

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

(B) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to such party’s right to due process as Rule 65 (as modified with respect to such proceeding by subparagraph

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(A)), the relief sought by the Appropriate Federal Regulatory Agency pursuant to paragraph (14) may be requested under the laws of such State.

(15) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE APPROPRIATE FEDERAL REGULATORY AGENCY AS RECEIVER OR CONSERVATOR.—

Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against the Appropriate Federal Regulatory Agency as receiver or conservator for a covered bank holding company for the breach of an agreement executed or approved by the Appropriate Federal Regulatory Agency after the date of its appointment shall be paid as an administrative expense of the receiver or conservator. Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(16) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Appropriate Federal Regulatory Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Appropriate Federal Regulatory Agency, maintain a full accounting of each conservatorship, receivership, or other disposition of any covered bank holding company.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership to which the Appropriate Federal Regulatory Agency was appointed, the Appropriate Federal Regulatory Agency shall make an annual accounting or report, as appropriate, available to the Secretary and the Comptroller General of the United States.
(C) AVAILABILITY OF REPORTS.—Any report prepared pursuant to subparagraph (B) shall be made available by the Appropriate Federal Regulatory Agency upon request to any member of the public.

(D) RECORDKEEPING REQUIREMENT.—

(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period beginning on the date the Appropriate Federal Regulatory Agency is appointed as receiver of a covered bank holding company the Appropriate Federal Regulatory Agency may destroy any records of such covered bank holding company which the Appropriate Federal Regulatory Agency, in the Appropriate Federal Regulatory Agency’s discretion, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(ii) OLD RECORDS.—Notwithstanding clause (i), the Appropriate Federal Regulatory Agency may destroy records of a covered bank holding company which are at least 10 years old as of the date on which the Appropriate Federal Regulatory Agency is appointed as the receiver of such company in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).

(b) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

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

(A) Administrative expenses of the receiver.

(B) Any amounts owed to the United States.

(C) Any other general or senior liability of the covered bank holding company (which is not a liability described under subparagraph (D) or (E)).

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

(E) Any obligation to shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered bank holding company arising as a result of their status as shareholders, members, general partners, limited partners or other persons with interests in the equity of the covered bank holding company.

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

(A) the Appropriate Federal Regulatory Agency determines that such action is necessary to maximize the value of the assets of the covered bank holding company, to maximize the present value return from the sale or other disposition of the assets of the covered bank holding company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered bank holding company, or to contain or address serious adverse effects on financial stability or the U.S. economy; and
(B) all claimants that are similarly situated under paragraph (1) receive not less than the amount provided in subsection (d)(2).

(3) SECURED CLAIMS UNAFFECTED.—This subsection shall not affect secured claims, except to the extent that the security is insufficient to satisfy the claim and then only with regard to the difference between the claim and the amount realized from the security.

(4) DEFINITIONS.—As used in this subsection, the term “administrative expenses of the receiver” includes—

(A) the actual, necessary costs and expenses incurred by the receiver in preserving the assets of a covered bank holding company or liquidating or otherwise resolving the affairs of a covered bank holding company for which the Appropriate Federal Regulatory Agency has been appointed as receiver; and

(B) any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the covered bank holding company.

(c) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.

(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the Appropriate Federal Regulatory Agency as conservator or receiver for any covered bank holding company may disaffirm or repudiate any contract or lease—

(A) to which the covered bank holding company is a party;

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

(C) the disaffirmance or repudiation of which the conservator or receiver
determines, in the conservator’s or receiver’s discretion, will promote the orderly
administration of the covered bank holding company’s affairs.

(2) TIMING OF REPUDIATION.—The conservator or receiver appointed for any
covered bank holding company under section 1204 shall determine whether or not to
exercise the rights of repudiation under this subsection within a reasonable period
following such appointment.

(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

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

(i) limited to actual direct compensatory damages; and

(ii) determined as of—

(I) the date of the appointment of the conservator or
receiver; or

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

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

(i) punitive or exemplary damages;

(ii) damages for lost profits or opportunity; or
(iii) damages for pain and suffering.

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

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

(ii) paid in accordance with this subsection and subsection (d) except as otherwise specifically provided in this subsection.

(4) LEASES UNDER WHICH THE COVERED BANK HOLDING COMPANY IS THE LESSEE.—

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

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

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

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

(II) the disaffirmance or repudiation becomes effective,

unless the lessor is in default or breach of the terms of the lease;
(ii) have no claim for damages under any acceleration clause or
other penalty provision in the lease; and
(iii) have a claim for any unpaid rent, subject to all appropriate
offsets and defenses, due as of the date of the appointment which shall be
paid in accordance with this subsection and subsection (d).

(5) LEASES UNDER WHICH THE COVERED BANK HOLDING COMPANY IS THE
LESSOR.—

(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired
written lease of real property of the covered bank holding company under which
the covered bank holding company is the lessor and the lessee is not, as of the
date of such repudiation, in default, the lessee under such lease may either—
(i) treat the lease as terminated by such repudiation; or
(ii) remain in possession of the leasehold interest for the balance of
the term of the lease unless the lessee defaults under the terms of the lease
after the date of such repudiation.

(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any
lessee under a lease described in subparagraph (A) remains in possession of a
leasehold interest pursuant to clause (ii) of such subparagraph—
(i) the lessee—
(I) shall continue to pay the contractual rent pursuant to the
terms of the lease after the date of the repudiation of such lease;
(II) may offset against any rent payment which accrues
after the date of the repudiation of the lease, any damages which
accrue after such date due to the nonperformance of any obligation
of the covered bank holding company under the lease after such
date; and
(ii) the conservator or receiver shall not be liable to the lessee for
any damages arising after such date as a result of the repudiation other
than the amount of any offset allowed under clause (i)(II).

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

(A) IN GENERAL.—If the conservator or receiver repudiates any contract
(which meets the requirements of subsection (a)(7)) for the sale of real property
and the purchaser of such real property under such contract is in possession and is
not, as of the date of such repudiation, in default, such purchaser may either—
(i) treat the contract as terminated by such repudiation; or
(ii) remain in possession of such real property.

(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—
If any purchaser of real property under any contract described in subparagraph
(A) remains in possession of such property pursuant to clause (ii) of such
subparagraph—
(i) the purchaser—
(I) shall continue to make all payments due under the
contract after the date of the repudiation of the contract; and
(II) may offset against any such payments any damages
which accrue after such date due to the nonperformance (after such
date) of any obligation of the covered bank holding company under
the contract; and

(ii) the conservator or receiver shall—

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

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

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

(C) ASSIGNMENT AND SALE ALLOWED.—

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

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

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any
contract for services between any person and any covered bank holding company
for which the Appropriate Federal Regulatory Agency has been appointed
conservator or receiver, any claim of such person for services performed before
the appointment of the conservator or the receiver shall be—

(i) a claim to be paid in accordance with subsections (a), (b) and
(d); and
(ii) deemed to have arisen as of the date the conservator or receiver
was appointed.

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

(i) the other party shall be paid under the terms of the contract for
the services performed; and
(ii) the amount of such payment shall be treated as an
administrative expense of the conservatorship or receivership.

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

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

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

(i) any right such person has to cause the termination, liquidation,
or acceleration of any qualified financial contract with a covered bank
holding company which arises upon the appointment of the Appropriate
Federal Regulatory Agency as receiver for such covered bank holding
company at any time after such appointment;

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

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

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

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), section 5242 of
the Revised Statutes of the United States or any other provision of Federal
or State law relating to the avoidance of preferential or fraudulent
transfers, the Appropriate Federal Regulatory Agency, whether acting as
such or as conservator or receiver of a covered bank holding company,
may not avoid any transfer of money or other property in connection with
any qualified financial contract with a covered bank holding company.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not
apply to any transfer of money or other property in connection with any
qualified financial contract with a covered bank holding company if the
Appropriate Federal Regulatory Agency determines that the transferee had
actual intent to hinder, delay, or defraud such company, the creditors of
such company, or any conservator or receiver appointed for such
company.

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

(i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified
financial contract” means any securities contract, commodity contract,
forward contract, repurchase agreement, swap agreement, and any similar
agreement that the Appropriate Federal Regulatory Agency determines by
regulation, resolution, or order to be a qualified financial contract for
purposes of this paragraph.

(ii) SECURITIES CONTRACT.—The term “securities contract”—
(I) means a contract for the purchase, sale, or loan of a
security, a certificate of deposit, a mortgage loan, any interest in a
mortgage loan, a group or index of securities, certificates of
deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement,” as defined in clause (v));

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Appropriate Federal Regulatory Agency determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

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

(IV) means the guarantee (including by novation) by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit,
mortgage loan, interest, group or index, or option (whether or not
such settlement is in connection with any agreement or transaction
referred to in subclauses (I) through (XII) (other than subclause
(II));

(V) means any margin loan;

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

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

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

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

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

(XI) means a master agreement that provides for an
agreement or transaction referred to in subclause (I), (III), (IV),
(V), (VI), (VII), (VIII), (IX), or (X), together with all supplements
to any such master agreement, without regard to whether the
master agreement provides for an agreement or transaction that is
not a securities contract under this clause, except that the master
agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), (VIII), (IX), or (X); and

(XII) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

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

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

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

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

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade.
that is cleared by such clearing organization;

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

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

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this
(iv) FORWARD CONTRACT.—The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including a repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a “repurchase agreement”, as defined in clause (v)), consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward
contract under this clause only with respect to each agreement or
transaction under the master agreement that is referred to in
subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit
enhancement related to any agreement or transaction referred to in
subclause (I), (II), (III), or (IV), including any guarantee or
reimbursement obligation in connection with any agreement or
transaction referred to in any such subclause.

(v) REPURCHASE AGREEMENT.—The term “repurchase agreement”
(which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which
provides for the transfer of one or more certificates of deposit,
mortgage-related securities (as such term is defined in the
Securities Exchange Act of 1934), mortgage loans, interests in
mortgage-related securities or mortgage loans, eligible bankers’
acceptances, qualified foreign government securities (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 transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Appropriate Federal Regulatory Agency determines by regulation, resolution, or order to include any such participation within the meaning of such term;

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

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

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect
to each agreement or transaction under the master agreement that is
referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other
credit enhancement related to any agreement or transaction
referred to in subclause (I), (III), (IV), or (V), including any
guarantee or reimbursement obligation in connection with any
agreement or transaction referred to in any such subclause.

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

(I) any agreement, including the terms and conditions
incorporated by reference in any such agreement, which is an
interest rate swap, option, future, or forward agreement, including
a rate floor, rate cap, rate collar, cross-currency rate swap, and
basis swap; a spot, same day-tomorrow, tomorrow-next, forward,
or other foreign exchange, precious metals, or other commodity
agreement; a currency swap, option, future, or forward agreement;
an equity index or equity swap, option, future, or forward
agreement; a debt index or debt swap, option, future, or forward
agreement; a total return, credit spread or credit swap, option,
future, or forward agreement; a commodity index or commodity
swap, option, future, or forward agreement; weather swap, option,
future, or forward agreement; an emissions swap, option, future, or
forward agreement; or an inflation swap, option, future, or forward
agreement;
(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap or other derivatives markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, option or spot transaction on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

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

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

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap
agreement under this clause only with respect to each agreement or
transaction under the master agreement that is referred to in
subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit
enhancement related to any agreements or transactions referred to
in subclause (I), (II), (III), (IV), or (V), including any guarantee or
reimbursement obligation in connection with any agreement or
transaction referred to in any such subclause.

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

(I) The term “default” shall mean, with respect to a covered
bank holding 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
bank holding company with respect to which the Appropriate
Federal Regulatory Agency or appropriate State authority has
determined that—

(aa) in the opinion of the Appropriate Federal
Regulatory Agency or such authority—

(i) the covered bank holding 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 bank holding company will be able to pay such obligations without Federal assistance; or

(bb) in the opinion of the Appropriate Federal Regulatory Agency or such authority—

(i) the covered bank holding company has incurred or is likely to incur losses that will deplete all or substantially all of its capital; and

(ii) there is no reasonable prospect that the capital will be replenished without Federal assistance.

(viii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—

Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contact. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.
(ix) **TRANSFER.**—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the covered bank holding company’s equity of redemption.

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

(E) **CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.**—Notwithstanding any other provision of this section (other than paragraph (10) of this subsection and subsection (a)(7) of this section), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a covered bank holding company in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

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

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.
(F) CLARIFICATION.—No provision of law shall be construed as limiting
the right or power of the Appropriate Federal Regulatory Agency, or authorizing
any court or agency to limit or delay, in any manner, the right or power of the
Appropriate Federal Regulatory Agency to transfer any qualified financial
contract in accordance with paragraphs (9) and (10) of this subsection or to
disaffirm or repudiate any such contract in accordance with subsection (c)(1) of
this section.

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

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

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

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

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

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

(H) RECORDKEEPING.—The Appropriate Federal Regulatory Agency, in consultation with the Federal Reserve Board, may prescribe regulations requiring that the covered bank holding company maintain such records with respect to qualified financial contracts (including market valuations) as the Appropriate Federal Regulatory Agency determines to be necessary or appropriate in order to assist the conservator or receiver of the covered bank holding company in being able to exercise its rights and fulfill its obligations under this paragraph or paragraph (9) or (10).

(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

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

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

(I) all qualified financial contracts between any person or
any affiliate of such person and the covered bank holding company
in default;

(II) all claims of such person or any affiliate of such person
against such covered bank holding company under any such
contract (other than any claim which, under the terms of any such
contract, is subordinated to the claims of general unsecured
creditors of such company);

(III) all claims of such covered bank holding company
against such person or any affiliate of such person under any such
contract; and

(IV) all property securing or any other credit enhancement
for any contract described in subclause (I) or any claim described
in subclause (II) or (III) under any such contract; or

(ii) transfer none of the qualified financial contracts, claims,
property or other credit enhancement referred to in clause (i) (with respect
to such person and any affiliate of such person).

(B) TRANSFER TO FOREIGN BANK, FINANCIAL INSTITUTION, OR BRANCH OR
AGENCY THEREOF.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the covered bank holding company shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(D) DEFINITIONS.—For purposes of this paragraph, the term “financial institution” means a broker or dealer, a depository institution, a futures commission merchant, or any other institution determined by the Appropriate Federal Regulatory Agency by regulation to be a financial institution, and the term ‘clearing organization’ has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.
(10) **Notification of Transfer.**—

(A) **In General.**—If—

(i) the conservator or receiver for a covered bank holding company in default or in danger of default transfers any assets and liabilities of the covered bank holding company; and

(ii) the transfer includes any qualified financial contract,

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

(B) **Certain Rights Not Enforceable.**—

(i) **Receivership.**—A person who is a party to a qualified financial contract with a covered bank holding company may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection solely by reason of or incidental to the appointment under this section of a receiver for the covered bank holding company (or the insolvency or financial condition of the covered bank holding company for which the receiver has been appointed)—

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

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).
(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with a covered bank holding company may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 of Federal Deposit Insurance Corporation Improvement Act of 1991 solely by reason of or incidental to the appointment under this section of a conservator for the covered bank holding company (or the insolvency or financial condition of the covered bank holding company for which the conservator has been appointed).

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

(C) TREATMENT OF BRIDGE BANK HOLDING COMPANY.—For purposes of paragraph (9), a bridge bank holding company shall not be considered to be a covered bank holding company for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding.

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

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

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

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

(ii) the covered bank holding company in default; or

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

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

(A) legally enforceable or perfected security interest in any of the assets of any covered bank holding company except where such an interest is taken in contemplation of the company’s insolvency or with the intent to hinder, delay, or defraud the company or the creditors of such company; or

(B) legally enforceable interest in customer property.

(13) AUTHORITY TO ENFORCE CONTRACTS.—

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

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

(C) CONSENT REQUIREMENT.—

(i) IN GENERAL.—Except as otherwise provided by this section, no
person may exercise any right or power to terminate, accelerate, or declare
a default under any contract to which the covered bank holding company
is a party, or to obtain possession of or exercise control over any property
of the covered bank holding company or affect any contractual rights of
the covered bank holding company, without the consent of the conservator
or receiver, as appropriate, of the covered bank holding company during
the 45-day period beginning on the date of the appointment of the
conservator, or during the 90-day period beginning on the date of the
appointment of the receiver, as applicable.

(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph
shall apply to a director or officer liability insurance contract or a financial
institution bond, to the rights of parties to certain qualified financial
contracts pursuant to paragraph (8), or to the rights of parties to netting
contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance
Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall
be construed as permitting the conservator or receiver to fail to comply
with otherwise enforceable provisions of such contract.

(14) EXCEPTION FOR FEDERAL RESERVE BANKS, THE SECRETARY, AND THE
APPROPRIATE FEDERAL REGULATORY AGENCY SECURITY INTEREST.—No provision of this
subsection shall apply with respect to—

(A) any extension of credit from any Federal Reserve bank, the Secretary,
or the Appropriate Federal Regulatory Agency to any covered bank holding
company; or

(B) any security interest in the assets of the covered bank holding
company securing any such extension of credit.

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

(d) VALUATION OF CLAIMS IN DEFAULT.—

(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law
of any State, and regardless of the method which the Appropriate Federal Regulatory
Agency determines to utilize with respect to a covered bank holding company, including
transactions authorized under subsection (h), this subsection shall govern the rights of the
creditors of such covered bank holding company.
(2) MAXIMUM LIABILITY.—The maximum liability of the Appropriate Federal Regulatory Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the covered bank holding company for which such receiver is appointed shall equal the amount such claimant would have received if—

(A) a determination had not been made under section 1203(b) with respect to the covered bank holding company; and

(B) the covered bank holding company had been liquidated under title 11, United States Code, or any case related to title 11, United States Code (including but not limited to a case initiated by the Securities Investor Protection Corporation with respect to a bank holding company subject to the Securities Investor Protection Act of 1970), or any State insolvency law.

(3) ADDITIONAL PAYMENTS AUTHORIZED.—

(A) IN GENERAL.—The Appropriate Federal Regulatory Agency may, as receiver and with the approval of the Secretary, make additional payments or credit additional amounts to or with respect to or for the account of any claimant or category of claimants of a covered bank holding company if the Appropriate Federal Regulatory Agency determines that such payments or credits are necessary or appropriate to—

(i) minimize losses to the receiver from the resolution of the covered bank holding company under this section; or

(ii) prevent or mitigate serious adverse effects to financial stability or the United States economy.

(B) MANNER OF PAYMENT.—The Appropriate Federal Regulatory Agency
may make payments or credit amounts under subparagraph (A) directly to the
claimants or may make such payments or credit such amounts to a company other
than a covered bank holding company or a bridge bank holding company
established with respect thereto in order to induce such other company to accept
liability for such claims.

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

(f) LIABILITY OF DIRECTORS AND OFFICERS.—

(1) IN GENERAL.—A director or officer of a covered bank holding company may
be held personally liable for monetary damages in any civil action described in paragraph
(2) by, on behalf of, or at the request or direction of the Appropriate Federal Regulatory
Agency, which action is prosecuted wholly or partially for the benefit of the Appropriate
Federal Regulatory Agency —

(A) acting as conservator or receiver of such covered bank holding
company;

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

(C) acting based upon a suit, claim, or cause of action purchased from,
assigned by, or otherwise conveyed in whole or in part by a covered bank holding
company or its affiliate in connection with assistance provided under section
1204.
(2) ACTIONS COVERED.—Paragraph (1) shall apply with respect to actions for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(3) SAVINGS CLAUSE.—Nothing in this subsection shall impair or affect any right of the Appropriate Federal Regulatory Agency under other applicable law.

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

(h) BRIDGE BANK HOLDING COMPANIES.—

(1) ORGANIZATION.—

(A) PURPOSE.—The Appropriate Federal Regulatory Agency, as receiver of one or more covered bank holding companies or in anticipation of being appointed receiver of one or more bank holding companies, may organize one or more bridge bank holding companies in accordance with this subsection.

(B) AUTHORITIES.—Upon the creation of a bridge bank holding company under subparagraph (A) with respect to a covered bank holding company, such bridge bank holding company may—

(i) assume such liabilities (including liabilities associated with any trust or custody business) of such covered bank holding company as the Appropriate Federal Regulatory Agency may, in its discretion, determine
(ii) purchase such assets (including assets associated with any trust or custody business) of such covered bank holding company as the Appropriate Federal Regulatory Agency may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Appropriate Federal Regulatory Agency may, in its discretion, prescribe in accordance with this section.

(2) CHARTER AND ESTABLISHMENT.—

(A) ESTABLISHMENT.—If the Appropriate Federal Regulatory Agency is appointed as receiver for a bank holding company, the Appropriate Federal Regulatory Agency may grant a Federal charter to and approve articles of association for one or more bridge bank holding company or companies with respect to such bank holding company which shall, by operation of law and immediately upon issuance of its charter and approval of its articles of association, be established and operate in accordance with, and subject to, such charter, articles, and this section.

(B) MANAGEMENT.—Upon its establishment, a bridge bank holding company shall be under the management of a board of directors appointed by the Appropriate Federal Regulatory Agency.

(C) ARTICLES OF ASSOCIATION.—The articles of association and organization certificate of a bridge bank holding company shall have such terms as the Appropriate Federal Regulatory Agency may provide, and shall be
executed by such representatives as the Appropriate Federal Regulatory Agency
may designate.

(D) TERMS OF CHARTER; RIGHTS AND PRIVILEGES.— Subject to and in
accordance with the provisions of this subsection, the Appropriate Federal
Regulatory Agency shall—

(i) establish the terms of the charter of a bridge bank holding
company and the rights, powers, authorities and privileges of a bridge
bank holding company granted by the charter or as an incident thereto; and

(ii) provide for, and establish the terms and conditions governing,
the management (including, but not limited to, the bylaws and the number
of directors of the board of directors) and operations of the bridge bank
holding company.

(E) TRANSFER OF RIGHTS AND PRIVILEGES OF COVERED BANK HOLDING
COMPANY.—

(i) IN GENERAL.—Notwithstanding any other provision of Federal
law or the law of any State, the Appropriate Federal Regulatory Agency
may provide for a bridge bank holding company to succeed to and assume
any rights, powers, authorities or privileges of the covered bank holding
company with respect to which the bridge bank holding company was
established and, upon such determination by the Appropriate Federal
Regulatory Agency, the bridge bank holding company shall immediately
and by operation of law succeed to and assume such rights, powers,
authorities and privileges.
(ii) EFFECTIVE WITHOUT APPROVAL.—Any succession to or
assumption by a bridge bank holding company of rights, powers,
authorities or privileges of a covered bank holding company under clause
(i) or otherwise shall be effective without any further approval under
Federal or State law, assignment, or consent with respect thereto.

(F) CORPORATE GOVERNANCE AND ELECTION AND DESIGNATION OF BODY
OF LAW.—To the extent permitted by the Appropriate Federal Regulatory Agency
and consistent with this section and any rules, regulations or directives issued by
the Appropriate Federal Regulatory Agency under this section, a bridge bank
holding company may elect to follow the corporate governance practices and
procedures as are applicable to a corporation incorporated under the general
corporation law of the State of Delaware, or the State of incorporation or
organization of the covered bank holding company with respect to which the
bridge bank holding company was established, as such law may be amended from
time to time.

(G) CAPITAL.—

(i) CAPITAL NOT REQUIRED.—Notwithstanding any other provision
of Federal or State law, a bridge bank holding company may, if permitted
by the Appropriate Federal Regulatory Agency, operate without any
capital or surplus, or with such capital or surplus as the Appropriate
Federal Regulatory Agency may in its discretion determine to be
appropriate.

(ii) NO CONTRIBUTION BY APPROPRIATE FEDERAL REGULATORY
AGENCY REQUIRED.—The Appropriate Federal Regulatory Agency is not
required to pay capital into a bridge bank holding company or to issue any
capital stock on behalf of a bridge bank holding company established
under this subsection.

(iii) AUTHORITY.—If the Appropriate Federal Regulatory Agency
determines that such action is advisable, the Appropriate Federal
Regulatory Agency may cause capital stock or other securities of a bridge
bank holding company established with respect to a covered bank holding
company to be issued and offered for sale in such amounts and on such
terms and conditions as the Appropriate Federal Regulatory Agency may,
in its discretion, determine.

(3) INTERESTS IN AND ASSETS AND OBLIGATIONS OF COVERED BANK HOLDING
COMPANY.—Notwithstanding paragraphs (1) or (2) or any other provision of law—

(A) a bridge bank holding company shall assume, acquire, or succeed to
the assets or liabilities of a covered bank holding company (including the assets or
liabilities associated with any trust or custody business) only to the extent that
such assets or liabilities are transferred by the Appropriate Federal Regulatory
Agency to the bridge bank holding company in accordance with, and subject to
the restrictions set forth in, paragraph (1)(B); and

(B) a bridge bank holding company shall not assume, acquire, or succeed
to any obligation that a covered bank holding company for which a receiver has
been appointed may have to any shareholder, member, general partner, limited
partner, or other person with an interest in the equity of the covered bank holding
company that arises as a result of the status of that person having an equity claim
in the covered bank holding company.

(4) BRIDGE BANK HOLDING COMPANY TREATED AS BEING IN DEFAULT FOR CERTAIN
PURPOSES.—A bridge bank holding company shall be treated as a covered bank holding
company in default at such times and for such purposes as the Appropriate Federal
Regulatory Agency may, in its discretion, determine.

(5) TRANSFER OF ASSETS AND LIABILITIES.—

(A) TRANSFER OF ASSETS AND LIABILITIES.—The Appropriate Federal
Regulatory Agency, as receiver, may transfer any assets and liabilities of a
covered bank holding company (including any assets or liabilities associated with
any trust or custody business) to one or more bridge bank holding companies in
accordance with and subject to the restrictions of paragraph (1).

(B) SUBSEQUENT TRANSFERS.—At any time after the establishment of a
bridge bank holding company with respect to a covered bank holding company,
the Appropriate Federal Regulatory Agency, as receiver, may transfer any assets
and liabilities of such covered bank holding company as the Appropriate Federal
Regulatory Agency may, in its discretion, determine to be appropriate in
accordance with and subject to the restrictions of paragraph (1).

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

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

(E) EQUITABLE TREATMENT OF SIMILARLY SITUATED CREDITORS.—The Appropriate Federal Regulatory Agency shall treat all creditors of a covered bank holding company that are similarly situated under subsection (b)(1) in a similar manner in exercising the authority of the Appropriate Federal Regulatory Agency under this subsection to transfer any assets or liabilities of the covered bank holding company to one or more bridge bank holding companies established with respect to such covered bank holding company, except that the Appropriate Federal Regulatory Agency may take actions (including making payments) that do not comply with this subparagraph, if—

(i) the Appropriate Federal Regulatory Agency determines that such actions are necessary to maximize the value of the assets of the covered bank holding company, to maximize the present value return from the sale or other disposition of the assets of the covered bank holding company, to minimize the amount of any loss realized upon the sale or other disposition of the assets of the covered bank holding company, or to contain or address serious adverse effects to financial stability or the U.S. economy; and

(ii) all creditors that are similarly situated under subsection (b)(1) receive not less than the amount provided in subsection (d)(2).

(F) LIMITATION ON TRANSFER OF LIABILITIES.—Notwithstanding any other
provision of law, the aggregate amount of liabilities of a covered bank holding company that are transferred to, or assumed by, a bridge bank holding company from a covered bank holding company may not exceed the aggregate amount of the assets of the covered bank holding company that are transferred to, or purchased by, the bridge bank holding company from the covered bank holding company.

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

(7) **AGREEMENTS AGAINST INTEREST OF THE BRIDGE BANK HOLDING COMPANY.**—No agreement that tends to diminish or defeat the interest of the bridge bank holding company in any asset of a covered bank holding company acquired by the bridge bank holding company shall be valid against the bridge bank holding company unless such agreement is in writing and executed by an authorized officer or representative of the covered bank holding company.

(8) **NO FEDERAL STATUS.**—

(A) **AGENCY STATUS.**—A bridge bank holding company is not an agency, establishment, or instrumentality of the United States.

(B) **EMPLOYEE STATUS.**—Representatives for purposes of paragraph (1)(B), directors, officers, employees, or agents of a bridge bank holding company are not, solely by virtue of service in any such capacity, officers or employees of
the United States. Any employee of the Appropriate Federal Regulatory Agency or of any Federal instrumentality who serves at the request of the Appropriate Federal Regulatory Agency as a representative for purposes of paragraph (1)(B), director, officer, employee, or agent of a bridge bank holding company shall not—

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

(ii) receive any salary or benefits for service in any such capacity with respect to a bridge bank holding company in addition to such salary or benefits as are obtained through employment with the Appropriate Federal Regulatory Agency or such Federal instrumentality.

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

(10) FEDERAL AGENCY APPROVAL; ANTITRUST REVIEW.—

(A) IN GENERAL.—If a transaction involving the merger or sale of a bridge bank holding company requires approval by a Federal agency, the transaction may not be consummated before the 5th calendar day after the date of approval by the Federal agency responsible for such approval with respect thereto. If, in connection with any such approval a report on competitive factors from the
Attorney General is required, the Federal agency responsible for such approval shall promptly notify the Attorney General of the proposed transaction and the Attorney General shall provide the required report within 10 days of the request. If a filing is required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 with the Department of Justice or the Federal Trade Commission, the waiting period shall expire not later than the 30th day following such filing notwithstanding any other provision of Federal law or any attempt by any Federal agency to extend such waiting period, and no further request for information by any Federal agency shall be permitted.

(B) EMERGENCY.—If the Secretary, in consultation with the Chairman of the Federal Reserve Board, has found that the Appropriate Federal Regulatory Agency must act immediately to prevent the probable failure of the covered bank holding company involved, the approvals and filings referred to in subparagraph (A) shall not be required and the transaction may be consummated immediately by the Appropriate Federal Regulatory Agency.

(11) DURATION OF BRIDGE BANK HOLDING COMPANY.—Subject to paragraphs (13) and (14), the status of a bridge bank holding company as such shall terminate at the end of the 2-year period following the date it was granted a charter. The Appropriate Federal Regulatory Agency may, in its discretion, extend the status of the bridge bank holding company as such for 3 additional 1-year periods.

(12) TERMINATION OF BRIDGE BANK HOLDING COMPANY STATUS.—The status of any bridge bank holding company as such shall terminate upon the earliest of—

(A) the merger or consolidation of the bridge bank holding company with
a company that is not a bridge bank holding company;

(B) at the election of the Appropriate Federal Regulatory Agency, the sale of a majority of the capital stock of the bridge bank holding company to a company other than the Appropriate Federal Regulatory Agency and other than another bridge bank holding company;

(C) the sale of 80 percent, or more, of the capital stock of the bridge bank holding company to a person other than the Appropriate Federal Regulatory Agency and other than another bridge bank holding company;

(D) at the election of the Appropriate Federal Regulatory Agency, either the assumption of all or substantially all of the liabilities of the bridge bank holding company by a company that is not a bridge bank holding company, or the acquisition of all or substantially all of the assets of the bridge bank holding company by a company that is not a bridge bank holding company, or other entity as permitted under applicable law; and

(E) the expiration of the period provided in paragraph (11), or the earlier dissolution of the bridge bank holding company as provided in paragraph (14).

(13) EFFECT OF TERMINATION EVENTS.—

(A) MERGER OR CONSOLIDATION.—A merger or consolidation as provided in paragraph (12)(A) shall be conducted in accordance with, and shall have the effect provided in, the provisions of applicable law. For the purpose of effecting such a merger or consolidation, the bridge bank holding company shall be treated as a corporation organized under the laws of the State of Delaware (unless the law of another State has been selected by the bridge bank holding company in
accordance with paragraph (2)(F)), and the Appropriate Federal Regulatory
Agency shall be treated as the sole shareholder thereof, notwithstanding any other
 provision of State or Federal law.

(B) CHARTER CONVERSION.—Following the sale of a majority of the
capital stock of the bridge bank holding company as provided in paragraph
(12)(B), the Appropriate Federal Regulatory Agency may amend the charter of
the bridge bank holding company to reflect the termination of the status of the
bridge bank holding company as such, whereupon the company shall have all of
the rights, powers, and privileges under its constituent documents and applicable
State or Federal law. In connection therewith, the Appropriate Federal
Regulatory Agency may take such steps as may be necessary or convenient to
reincorporate the bridge bank holding company under the laws of a State and,
notwithstanding any provisions of State or Federal law, such state-chartered
corporation shall be deemed to succeed by operation of law to such rights, titles,
powers and interests of the bridge bank holding company as the Appropriate
Federal Regulatory Agency may provide, with the same effect as if the bridge
bank holding company had merged with the State-chartered corporation under
provisions of the corporate laws of such State.

(C) SALE OF STOCK.—Following the sale of 80 percent or more of the
capital stock of a bridge bank holding company as provided in paragraph (12)(C),
the company shall have all of the rights, powers, and privileges under its
constituent documents and applicable State or Federal law. In connection
therewith, the Appropriate Federal Regulatory Agency may take such steps as
may be necessary or convenient to reincorporate the bridge bank holding
company under the laws of a State and, notwithstanding any provisions of State or
Federal law, the state-chartered corporation shall be deemed to succeed by
operation of law to such rights, titles, powers and interests of the bridge bank
holding company as the Appropriate Federal Regulatory Agency may provide,
with the same effect as if the bridge bank holding company had merged with the
State-chartered corporation under provisions of the corporate laws of such State.

(D) ASSUMPTION OF LIABILITIES AND SALE OF ASSETS.—Following the
assumption of all or substantially all of the liabilities of the bridge bank holding
company, or the sale of all or substantially all of the assets of the bridge bank
holding company, as provided in paragraph (12)(D), at the election of the
Appropriate Federal Regulatory Agency the bridge bank holding company may
retain its status as such for the period provided in paragraph (11) or may be
dissolved at the election of the Appropriate Federal Regulatory Agency.

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

(14) DISSOLUTION OF BRIDGE BANK HOLDING COMPANY.—

(A) IN GENERAL.—Notwithstanding any other provision of State or
Federal law, if a bridge bank holding company’s status as such has not previously
been terminated by the occurrence of an event specified in subparagraph (A), (B),
(C), or (D) of paragraph (12)—
(i) the Appropriate Federal Regulatory Agency may, in its
discretion, dissolve the bridge bank holding company in accordance with
this paragraph at any time; and

(ii) the Appropriate Federal Regulatory Agency shall promptly
commence dissolution proceedings in accordance with this paragraph
upon the expiration of the 2-year period following the date the bridge bank
holding company was chartered, or any extension thereof, as provided in
paragraph (11).

(B) PROCEDURES.—The Appropriate Federal Regulatory Agency shall
remain the receiver of a bridge bank holding company for the purpose of
dissolving the bridge bank holding company. The Appropriate Federal
Regulatory Agency as such receiver shall wind up the affairs of the bridge bank
holding company in conformity with the provisions of law relating to the
liquidation of covered bank holding companies. With respect to any such bridge
bank holding company, the Appropriate Federal Regulatory Agency as receiver
shall have all the rights, powers, and privileges and shall perform the duties
related to the exercise of such rights, powers, or privileges granted by law to a
receiver of a covered bank holding company and, notwithstanding any other
provision of law, in the exercise of such rights, powers, and privileges the
Appropriate Federal Regulatory Agency shall not be subject to the direction or
supervision of any State agency or other Federal agency.

(15) AUTHORITY TO OBTAIN CREDIT.—

(A) IN GENERAL.—A bridge bank holding company may obtain unsecured
credit and issue unsecured debt.

(B) INABILITY TO OBTAIN CREDIT.—If a bridge bank holding company is unable to obtain unsecured credit or issue unsecured debt, the Appropriate Federal Regulatory Agency may authorize the obtaining of credit or the issuance of debt by the bridge bank holding company—

(i) with priority over any or all of the obligations of the bridge bank holding company;

(ii) secured by a lien on property of the bridge bank holding company that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property of the bridge bank holding company that is subject to a lien.

(C) LIMITATIONS.—

(i) IN GENERAL.—The Appropriate Federal Regulatory Agency, after notice and a hearing, may authorize the obtaining of credit or the issuance of debt by a bridge bank holding company that is secured by a senior or equal lien on property of the bridge bank holding company that is subject to a lien only if—

(I) the bridge bank holding company is unable to otherwise obtain such credit or issue such debt; and

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

(D) BURDEN OF PROOF.—In any hearing under this subsection, the
Appropriate Federal Regulatory Agency has the burden of proof on the issue of adequate protection.

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

(i) SHARING RECORDS.—Whenever the Appropriate Federal Regulatory Agency has been appointed as conservator or receiver for a covered bank holding company, the Federal Reserve Board and the company’s primary federal regulatory agency, if any, shall each make all records relating to the company available to the conservator or receiver which may be used by the conservator or receiver in any manner the conservator or receiver determines to be appropriate.

(j) EXPEDITED PROCEDURES FOR CERTAIN CLAIMS.—

(1) TIME FOR FILING NOTICE OF APPEAL.—The notice of appeal of any order, whether interlocutory or final, entered in any case brought by the Appropriate Federal Regulatory Agency against a covered bank holding company’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered bank holding company shall be filed not later than 30 days after the date of entry of the order. The hearing of the appeal shall be held not later than 120 days after the date of the notice of appeal. The appeal shall be decided not later than 180 days after the date of the notice of appeal.

(2) SCHEDULING.—A court of the United States shall expedite the consideration of
any case brought by the Appropriate Federal Regulatory Agency against a covered bank holding company’s director, officer, employee, agent, attorney, accountant, or appraiser or any other person employed by or providing services to a covered bank holding company. As far as practicable, the court shall give such case priority on its docket.

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

(k) FOREIGN INVESTIGATIONS.—The Appropriate Federal Regulatory Agency, as conservator or receiver of any covered bank holding company and for purposes of carrying out any power, authority, or duty with respect to a covered bank holding company—

(1) may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority in accordance with section 8(v) of the Federal Deposit Insurance Act as if the covered bank holding company were an insured depository institution, the Appropriate Federal Regulatory Agency were the appropriate Federal banking agency for the company and any foreign financial authority were the foreign banking authority; and

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

(l) PROHIBITION ON ENTERING SECRECY AGREEMENTS AND PROTECTIVE ORDERS.—The Appropriate Federal Regulatory Agency may not enter into any agreement or approve any protective order which prohibits the Appropriate Federal Regulatory Agency from disclosing the terms of any settlement of an administrative or other action for damages or restitution brought by
the Appropriate Federal Regulatory Agency in its capacity as conservator or receiver for a covered bank holding company.

(m) LIQUIDATION OF CERTAIN COVERED BANK HOLDING COMPANIES OR BRIDGE BANK HOLDING COMPANIES.—Notwithstanding any other provision of law (other than a conflicting provision of this section), the Appropriate Federal Regulatory Agency, in connection with the liquidation of any covered bank holding company or bridge bank holding company with respect to which the Appropriate Federal Regulatory Agency has been appointed as receiver, shall—

(1) in the case of any covered bank holding company or bridge bank holding company that is or has a subsidiary that is a stockbroker (as that term is defined in section 101 of title 11 of the United States Code) but is not a member of the Securities Investor Protection Corporation, apply the provisions of subchapter III of chapter 7 of title 11 of the United States Code in respect of the distribution to any “customer” of all “customer name securities” and “customer property” (as such terms are defined in section 741 of such title 11) as if such covered bank holding company or bridge bank holding company were a debtor for purposes of such subchapter; or

(2) in the case of any covered bank holding company or bridge bank holding company that is a commodity broker (as that term is defined in section 101 of title 11 of the United States Code), apply the provisions of subchapter IV of chapter 7 of title 11 of the United States Code in respect of the distribution to any “customer” of all “customer property” (as such terms are defined in section 761 of such title 11) as if such covered bank holding company or bridge bank holding company were a debtor for purposes of such subchapter.

(n) BANK HOLDING COMPANY FUND.—
(1) ESTABLISHMENT.—There is established in the Treasury a separate fund called the Bank Holding Company Fund, which shall be available without further appropriation for the cost of actions authorized by this title upon a determination made under section 1203(b) to—

(A) the Appropriate Federal Regulatory Agency as conservator or receiver under section 1204; and

(B) the Corporation,

to carry out the authorities contained in this title, including the payment of administrative expenses and, for purposes of subparagraph (B), the Corporation’s payment of principal and interest on obligations issued under paragraph (3) and the exercise of authorities under section 1204.

(2) PROCEEDS.—Amounts received by the Appropriate Federal Regulatory Agency and the Corporation (including amounts borrowed under paragraph (3) and assessments received under subsection (o), but excluding amounts received by any covered bank holding company when the Appropriate Federal Regulatory Agency is acting in its capacity as conservator or receiver for such company, and excluding amounts credited to the appropriate financing account as a means of financing credit activity, as applicable) shall be deposited into the Fund, subject to apportionment.

(3) CAPITALIZATION OF FUND.—

(A) CORPORATION AUTHORIZED TO ISSUE OBLIGATIONS.—In order to capitalize the Fund upon the Secretary making the determination provided for in section 1203(b), the Corporation is authorized to issue obligations to the Secretary.
(B) Secretary Authorized to Purchase Obligations.—The Secretary may, in the Secretary’s discretion and under such terms and conditions that the Secretary may require, purchase or agree to purchase any obligations issued under subparagraph (A), and for such purpose the Secretary is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include such purchases.

(C) Interest Rate.—Each purchase of obligations by the Secretary under this paragraph shall be upon such terms and conditions as to yield a return at a rate not less than a rate determined by the Secretary, taking into consideration the current average yield on outstanding marketable obligations of the United States of comparable maturity.

(D) Secretary Authorized to Sell Obligations.—The Secretary may sell, upon such terms and conditions and at such price or prices as the Secretary shall determine, any of the obligations acquired under this paragraph.

(E) Public Debt Transactions.—All purchases and sales by the Secretary of such obligations under this paragraph shall be treated as public debt transactions of the United States, and the proceeds from the sale of any obligations acquired by the Secretary under this paragraph shall be covered into the Treasury as miscellaneous receipts.

(4) Investment.—The Corporation may request the Secretary to invest such portion of the Fund as is not, in the Corporation’s judgment, required to meet the current
needs of the Fund. Such investments shall be made by the Secretary in public debt securities, with maturities suitable to the needs of the Fund as determined by the Corporation, and bearing interest at a rate determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

(o) RISK-BASED ASSESSMENTS.—

(1) RECOVERY OF EXPENDED FUNDS FROM BANK HOLDING COMPANIES.—The Corporation shall take steps to recover the amount of funds expended out of the Fund under subsection (n) and which have not otherwise been recouped. Such steps shall include one or more risk-based assessments on bank holding companies based on their total liabilities in such amount and manner, and subject to such terms and conditions as the Corporation determines, by regulation, are necessary to pay in full the obligations issued by Corporation to the Secretary, within 60 months from the date of the Secretary’s determination under section 1203(b).

(2) ASSESSMENT THRESHOLD.—The Corporation shall assess each bank holding company whose non-Corporation assessed liabilities on a consolidated basis are greater than $10 billion as of the end of the previous calendar quarter.

(3) BASELINE FOR ASSESSMENTS.—The Corporation shall determine the amount of each risk-based assessment on a bank holding company by using as a baseline the difference between:

(A) the total balance-sheet liabilities of the bank holding company as of the end of the previous calendar quarter; and

(B) the sum of:
(i) $10,000,000,000; and

(ii) the amount of any liabilities of the bank holding company or any subsidiary of the bank holding company, as of the end of the previous calendar quarter, that form the basis of assessments imposed by the Corporation under section 7 of the Federal Deposit Insurance Act (12 U.S.C. § 1817).

(4) RISK-BASED ASSESSMENT CONSIDERATIONS.—In imposing assessments under paragraph (1), the Corporation may differentiate among bank holding companies by taking into consideration the following—

(A) different categories and concentrations of assets;

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

(C) leverage;

(D) size, complexity, risk profile, and interconnectedness to the financial system;

(E) the threat each poses to the stability of the financial system; and

(F) any other considerations that the Corporation deems appropriate.

(5) ASSESSMENT DEDUCTION.—A bank holding company may deduct from its assessment an amount equal to the amount that it or any subsidiary paid to any State insurance guarantee fund association due to conservation, rehabilitation, or liquidation of a covered bank holding company or any subsidiary of the covered bank holding company.

(6) COLLECTION OF INFORMATION.—The Corporation may impose on bank
holding companies described in paragraph (2) such collection of information

requirements that the Corporation deems necessary to carry out this subsection after a
determination under section 1203(b).

(7) RULEMAKING—The Corporation shall, in consultation with the Federal Reserve Board, prescribe regulations to carry out this subsection.

(p) NO FEDERAL STATUS.—

(1) AGENCY STATUS.—A covered bank holding company (or any covered subsidiary thereof) that receives assistance, is placed into conservatorship or receivership, or both, under section 1204 is not a department, agency, or instrumentality of the United States for purposes of statutes that confer powers on or impose obligations on government entities.

(2) EMPLOYEE STATUS.—Interim directors, directors, officers, employees, or agents of a covered bank holding company that is placed into conservatorship or receivership are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Appropriate Federal Regulatory Agency, acting as conservator or receiver, or of any Federal agency who serves at the request of the conservator or receiver as an interim director, director, officer, employee, or agent of a covered bank holding company that is placed into conservatorship or receivership shall not—

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

   (B) receive any salary or benefits for service in any such capacity with
respect to a covered bank holding company that is placed into conservatorship or
receivership in addition to such salary or benefits as are obtained through
employment with the Appropriate Federal Regulatory Agency or other Federal
agency.

SEC. 1210. CLARIFICATION OF PROHIBITION REGARDING CONCEALMENT OF
ASSETS FROM CONSERVATOR, RECEIVER, OR LIQUIDATING
AGENT.

(a) IN GENERAL.—Section 1032 of title 18, United States Code, is amended in paragraph
(1) by deleting “or” before “the National Credit Union Administration Board,” and by inserting
immediately thereafter “or the Appropriate Federal Regulatory Agency, as defined in section
1202 of the Resolution Authority for Large, Interconnected Financial Companies Act of 2009
(__U.S.C. § ___(1)(A)),”.

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

SEC. 1211. MISCELLANEOUS PROVISIONS.

(a) BANKRUPTCY CODE AMENDMENTS.—Section 109(b)(2) of title 11 of the United States
Code is amended by adding “covered bank holding company” as that term is defined in section
1202(6) of the Resolution Authority for Large, Interconnected Financial Companies Act of
2009,” after a “domestic insurance company”.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT.—Section 403(a) of
the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403(a)) is
amended by inserting “section 1209(c) of the Resolution Authority for Large, Interconnected
Financial Companies Act of 2009, section 1367 of the Federal Housing Enterprises Financial

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