

103^D CONGRESS
1ST SESSION

H. R. 3570

To amend the Federal Deposit Insurance Act to provide for a system of insuring the deposits of depository institutions through a self-regulating system of cross-guarantees, to protect taxpayers against deposit insurance losses, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 1993

Mr. PETRI (for himself, Mr. COX, Mr. ARMEY, Mr. LEVY, and Mr. ROHRABACHER) introduced the following bill; which was referred jointly to the Committees on Banking, Finance and Urban Affairs, the Judiciary, and Ways and Means

A BILL

To amend the Federal Deposit Insurance Act to provide for a system of insuring the deposits of depository institutions through a self-regulating system of cross-guarantees, to protect taxpayers against deposit insurance losses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Deposit Insurance Reform, Regulatory Modernization,
6 and Taxpayer Protection Act of 1993”.

1 (b) TABLE OF CONTENTS.—

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.

TITLE I—100 PERCENT CROSS-GUARANTEES

Subtitle A—Definitions

- Sec. 101. Definitions.
- Sec. 102. Rules of construction.

Subtitle B—Cross-Guarantee Process

- Sec. 111. Depository institutions prohibited from operating without a cross-guarantee contract.
- Sec. 112. Parties to cross-guarantee and stop-loss contracts.
- Sec. 113. Requirements common to cross-guarantee and stop-loss contracts.
- Sec. 114. Requirements applicable only to cross-guarantee contracts.
- Sec. 115. Requirements applicable only to stop-loss contracts.
- Sec. 116. Eligibility and requirements for direct guarantors.
- Sec. 117. Provisions relating to cross-guarantee and stop-loss syndicates.
- Sec. 118. Assumption of control of a guaranteed company by a cross-guarantee syndicate.
- Sec. 119. Enforcement of contracts.

Subtitle C—Powers and Duties of the CGRC

CHAPTER 1—CROSS-GUARANTEE PROCESS

- Sec. 121. The Cross-Guarantee Regulation Corporation.
- Sec. 122. Regulation of the cross-guarantee process.
- Sec. 123. Approval process for cross-guarantee and stop-loss contracts.
- Sec. 124. Central electronic repository.
- Sec. 125. Restrictions on closed loops.
- Sec. 126. Treasury oversight of the Cross-Guarantee Regulation Corporation.

CHAPTER 2—PROTECTION OF INSURED DEPOSITS

- Sec. 128. Backup insurance on deposits at guaranteed depository institutions.

Subtitle D—Miscellaneous Provisions

- Sec. 131. Institutions offering uninsured deposits.
- Sec. 132. Preemption of state depositor preference laws.
- Sec. 133. Federal Reserve lending.
- Sec. 134. Advertising by guaranteed financial groups.
- Sec. 135. Guaranteed depository institutions remain federally insured depositories for purposes of state law.

Subtitle E—Transition to 100 Percent Cross-Guarantee Process

- Sec. 141. Effective date of system based on minimum number of guaranteed depository institutions and amount of total assets.
- Sec. 142. Mandatory phase-in of cross-guarantees after effective date of system.
- Sec. 143. Appointment of conservator or receiver for institutions which fail to comply with transition requirements.
- Sec. 144. Exit fees.

- Sec. 145. Severance pay and related benefits for former Federal and State banking agency employees.
- Sec. 146. Abolition of Federal Financial Institutions Examination Council.
- Sec. 147. Abolition of the Federal Deposit Insurance Corporation.

TITLE II—AMENDMENTS TO OTHER BANKING LAWS

- Sec. 201. Amendments relating to national banks.
- Sec. 202. Amendments relating to member banks.
- Sec. 203. Amendments relating to savings associations.
- Sec. 204. Amendments relating to savings and loan holding companies.
- Sec. 205. Amendments relating to the Federal Deposit Insurance Corporation.
- Sec. 206. Amendments to other banking laws.

TITLE III—AMENDMENTS TO TITLE 11, UNITED STATES CODE

Subtitle A—Amendments to chapter 1 of Title 11

- Sec. 301. Definitions.
- Sec. 302. Applicability of chapters.
- Sec. 303. Public access to papers.
- Sec. 304. Who may be a debtor.

Subtitle B—Amendments to chapter 3 of Title 11

- Sec. 311. Party in interest.
- Sec. 312. Qualification of trustee.
- Sec. 313. Notice.
- Sec. 314. Automatic stay.
- Sec. 315. Executory contracts and unexpired leases.

Subtitle C—Amendments to chapter 5 of Title 11

- Sec. 321. Claims of direct guarantors.
- Sec. 322. Debtor's duties.
- Sec. 323. Exceptions to discharge.
- Sec. 324. Limitation on avoiding powers.
- Sec. 325. Preferences.
- Sec. 326. Fraudulent transfers and obligations.
- Sec. 327. Post-petition transactions.
- Sec. 328. Contractual right to liquidate a securities contract.
- Sec. 329. Contractual right to liquidate a commodities contract or forward contract.
- Sec. 330. Contractual right to liquidate a repurchase agreement.
- Sec. 331. Contractual right to terminate a swap agreement.

Subtitle D—Amendments to chapter 11 of Title 11

CHAPTER 1—AMENDMENTS TO EXISTING LAW

- Sec. 341. Creditors' and equity security holders' committees.
- Sec. 342. Who may file a plan.
- Sec. 343. Impairment of claims or interest.
- Sec. 344. Acceptance of plan.
- Sec. 345. Confirmation hearing.
- Sec. 346. Confirmation of plan.
- Sec. 347. Effect of confirmation.

CHAPTER 2—ENACTMENT OF SUBCHAPTER V

- Sec. 351. Guaranteed company reorganization.
- Sec. 352. Inapplicability of other sections.
- Sec. 353. Effective date of filing.
- Sec. 354. Appointment of trustee.
- Sec. 355. Liability of direct guarantors for transfers to guaranteed creditors.
- Sec. 356. Effect of Federal legislation and Federal, state, and local regulations.
- Sec. 357. Liquidation.

TITLE IV—AMENDMENT TO TITLE 28, UNITED STATES CODE

- Sec. 401. Venue.

1 SEC. 2. FINDINGS AND PURPOSES.

2 The purposes of this Act are:

3 (1) To create a competitive and essentially self-
4 regulating private deposit insurance marketplace by
5 requiring each bank and savings association which
6 accepts deposits to protect the full amount of
7 deposits held along with most other nondeposit li-
8 abilities by obtaining cross-guarantee contracts from
9 syndicates of guarantors.

10 (2) To induce depository institutions to lend
11 and invest wisely by authorizing guarantors who
12 issue cross-guarantee contracts to—

13 (A) charge risk-sensitive premiums for the
14 guarantees provided; and

15 (B) negotiate with the banks and savings
16 association who enter into such contracts all
17 other terms and conditions, to the extent such
18 terms and conditions are not inconsistent with
19 this Act or other provision of law.

1 (3) To make the cross-guarantee process as
2 self-regulating as possible by establishing a closed
3 system of guarantors which has an inviolable “stop-
4 loss” mechanism and numerous constructive tensions
5 among the participants in the system.

6 (4) To regulate the cross-guarantee market-
7 place only to the extent necessary to maintain the
8 safety, soundness, and viability of the entire cross-
9 guarantee process and not the solvency of any indi-
10 vidual bank or savings association regardless of its
11 size.

12 **TITLE I—100 PERCENT CROSS-** 13 **GUARANTEES**

14 **Subtitle A—Definitions**

15 **SEC. 101. DEFINITIONS.**

16 (a) DEFINITIONS RELATING TO DEPOSITORY INSTI-
17 TUTIONS, NON-DEPOSITORY GUARANTORS, AND AFFILI-
18 ATES.—For purposes of this title:

19 (1) COMPANY.—The term “company”

20 (A) means any corporation, partnership,
21 business trust, association, or similar organiza-
22 tion; and

23 (B) does not include a branch or agency,
24 or a group of branches and agencies, of a for-
25 eign bank.

1 (2) DEPOSITORY INSTITUTION.—The term “de-
2 pository institution” has the meaning given to such
3 term in section 3(c) of the Federal Deposit Insur-
4 ance Act.

5 (3) FAILED DEPOSITORY INSTITUTION.—The
6 term “failed depository institution” means any de-
7 pository institution for which a conservator or re-
8 ceiver has been appointed by the FDIC.

9 (4) FOREIGN BANK BRANCHES AND AGEN-
10 CIES.—The terms “agency” and “branch”, when
11 used in connection with a reference to a foreign
12 bank, and the term “foreign bank” have the mean-
13 ings given to such terms in section 1(b) of the Inter-
14 national Banking Act of 1978.

15 (5) GUARANTEED BANKING OFFICE.—The term
16 “guaranteed banking office” means any branch or
17 agency of a foreign bank where the foreign bank has
18 entered into a cross-guarantee contract with a cross-
19 guarantee syndicate.

20 (6) GUARANTEED COMPANY.—

21 (A) IN GENERAL.—The term “guaranteed
22 company” means any company which has en-
23 tered into, and continues to be guaranteed
24 under, a cross-guarantee contract with a cross-
25 guarantee syndicate.

1 (B) FOREIGN BANKS.—

2 (i) IN GENERAL.—Notwithstanding
3 subparagraph (A), a foreign bank shall not
4 be a guaranteed company solely because a
5 branch or agency of such bank is a guar-
6 anteed banking office under a cross-guar-
7 antee contract.

8 (ii) EXCEPTION FOR FOREIGN BANKS
9 WHICH ARE SUBSIDIARIES.—Notwithstand-
10 ing clause (i), a foreign bank may be a
11 guaranteed company, if such bank is guar-
12 anteed under a cross-guarantee contract
13 under section 112(e)(1).

14 (7) GUARANTEED DEPOSITORY INSTITUTION.—
15 The term “guaranteed depository institution” means
16 a depository institution which is a guaranteed com-
17 pany.

18 (8) GUARANTEED FINANCIAL GROUP.—The
19 term “guaranteed financial group” means—

20 (A) a depository institution which is the
21 sole guaranteed company under a cross-guaran-
22 tee contract;

23 (B) 2 or more companies, at least 1 of
24 which is a depository institution and all of

1 which are guaranteed companies under the
2 same cross-guarantee contract;

3 (C) any guaranteed banking office which—

4 (i) is a branch; and

5 (ii) is the sole guaranteed banking of-
6 fice under a cross-guarantee contract; or

7 (D) any 2 or more branches and agencies,
8 at least 1 of which is a branch and all of which
9 ara guaranteed banking offices under the same
10 cross-guarantee contract.

11 (9) NONDEPOSITORY GUARANTOR.—The term
12 “nondepository guarantor” means any person which
13 has entered into a stop-loss contract with a stop-loss
14 syndicate.

15 (10) STATE DEPOSITORY INSTITUTION.—The
16 term “state depository institution” has the meaning
17 given to such term in section 3(c)(5) of the Federal
18 Deposit Insurance Act.

19 (11) TERMS RELATING TO AFFILIATION AND
20 CONTROL.—

21 (A) AFFILIATE.—The term “affiliate”
22 means, with respect to any company, any other
23 company that controls, is controlled by, or is
24 under common control with such company.

1 (B) CONTROL.—The term “control”
2 means, with respect to one company’s relation-
3 ship to another company, one company’s owner-
4 ship or power to, directly or indirectly, vote 5
5 percent or more of any class of voting securities
6 of another company.

7 (C) SUBSIDIARY.—The term “subsidiary”
8 means, with respect to any company, any com-
9 pany which such company controls.

10 (b) DEFINITIONS RELATING TO CROSS-GUARANTEE
11 AND STOP-LOSS CONTRACTS.—For purposes of this title:

12 (1) CROSS-GUARANTEE CONTRACT.—The term
13 “cross-guarantee contract” means a contract
14 which—

15 (A) is entered into between—

16 (i) 1 or more companies, at least 1 of
17 which is a depository institution; and

18 (ii) a cross-guarantee syndicate; and

19 (B) is approved by the Corporation under
20 section 123.

21 (2) CROSS-GUARANTEE OBLIGATION.—The
22 term “cross-guarantee obligation” means an obliga-
23 tion of a direct guarantor arising out of a cross-
24 guarantee or stop-loss contract, and shall include the
25 obligations of such guarantor under section

1 125(c)(2) of this title and sections 321 and 355 of
2 title III.

3 (3) CROSS-GUARANTEE SYNDICATE.—The term
4 “cross-guarantee syndicate” means any group of di-
5 rect guarantors which has entered into a cross-guar-
6 antee contract with a guaranteed financial group.

7 (4) DIRECT GUARANTOR.—The term “direct
8 guarantor” means a member of a cross-guarantee or
9 stop-loss syndicate which has entered into a cross-
10 guarantee or stop-loss contract with a guaranteed
11 party.

12 (5) GROUP CROSS-GUARANTEE SYNDICATE CON-
13 TRACT.—The term “group cross-guarantee syndicate
14 contract” means a contract which—

15 (A) is entered into between 2 or more
16 guaranteed financial groups and a cross-guar-
17 antee syndicate; and

18 (B) is approved by the Corporation under
19 sections 112(c)(2) and 123.

20 (6) GUARANTEED OBLIGATION.—

21 (A) IN GENERAL.—The term “guaranteed
22 obligation” means an obligation of a guaranteed
23 party on which a cross-guarantee or stop-loss
24 syndicate has guaranteed performance.

1 (B) RULE OF CONSTRUCTION.—The term
2 “performance” under subparagraph (A) shall be
3 construed to include making payment of prin-
4 cipal and interest at the promised time of pay-
5 ment, such that failure to immediately perform
6 in a timely manner constitutes a breach of con-
7 tract.

8 (7) GUARANTEED PARTY.—The term “guaran-
9 teed party” means any guaranteed company, guar-
10 anteed banking office, or nondepository guarantor.

11 (8) PROJECTED ANNUAL PREMIUM.—The term
12 “projected annual premium” means the amount cal-
13 culated under section 116(d)(2).

14 (9) PROJECTED ANNUAL PREMIUM CAPACITY.—
15 The term “projected annual premium capacity”
16 means the amount which is equal to—

17 (A) in the case of a guaranteed company,
18 3 percent of the equity capital of the guaran-
19 teed financial group which is the party guaran-
20 teed under the same cross-guarantee contract
21 under which such company is a guaranteed
22 company; or

23 (B) in the case of a nondepository guaran-
24 tor, 3 percent of the net worth of the guaran-
25 tor.

1 (10) PROJECTED ANNUAL PREMIUM LIMIT.—
2 The term “projected annual premium limit” means
3 the amount which is equal to 3 percent of projected
4 annual premium capacity.

5 (11) SECOND-TIER GUARANTOR.—The term
6 “second-tier guarantor” means a direct guarantor of
7 one of a guaranteed party’s direct guarantors.

8 (12) STOP-LOSS CONTRACT.—The term “stop-
9 loss contract” means a contract which—

10 (A) is entered into between a person and
11 a stop-loss syndicate; and

12 (B) is approved by the Corporation under
13 section 123 of this title.

14 (13) STOP-LOSS SYNDICATE.—The term “stop-
15 loss syndicate” means any group of direct guaran-
16 tors which has entered into a stop-loss contract with
17 a nondepository guarantor.

18 (14) SYNDICATE AGENT.—The term “syndicate
19 agent” means any person who acts as the agent for
20 the direct guarantors under any cross-guarantee or
21 stop-loss contract.

22 (c) DEFINITIONS RELATING TO FINANCIAL
23 TERMS.—For purposes of this title:

24 (1) EQUITY CAPITAL.—The term “equity cap-
25 ital” means, with respect to any guaranteed finan-

1 cial group, the amount, as valued pursuant to sec-
2 tion 114(c), which is equal to—

3 (A) the consolidated assets of the guaran-
4 teed financial group; minus

5 (B) the consolidated liabilities, including
6 the estimated liquidation value of contingent li-
7 abilities, of the guaranteed financial group.

8 (2) NET WORTH.—The term “net worth”—

9 (A) means, with respect to a nondepository
10 guarantor, the amount which is equal to the
11 stockholders’ equity, the partnership equity, the
12 net worth, or the fund balance of the guarantor,
13 as the case may be, as determined in accord-
14 ance with generally accepted accounting prin-
15 ciples;

16 (B) does not include any equitable interest
17 or liability which the Corporation determines
18 should not be treated as net worth for purposes
19 of this title; and

20 (C) in the case of any nondepository guar-
21 antor which controls another nondepository
22 guarantor or a guaranteed financial group, does
23 not include the net worth or equity capital of
24 the subsidiary guarantor or group.

1 (3) PREMIUM INCOME.—The term “premium
2 income” means any income accrued by a direct guar-
3 antor under any cross-guarantee or stop-loss con-
4 tract.

5 (4) SUBORDINATED DEBT.—

6 (A) IN GENERAL.—The term “subordi-
7 nated debt” means any obligation assumed by
8 a guaranteed company or guaranteed banking
9 office which is subordinate in right and pay-
10 ment to any general creditor of the company or
11 office.

12 (B) GENERAL CREDITORS.—The term
13 “general creditors” includes—

14 (i) any creditor to which a guaranteed
15 company or guaranteed banking office has
16 an obligation which is a guaranteed obliga-
17 tion under the cross-guarantee contract for
18 such company or office, unless that credi-
19 tor is otherwise specifically secured by one
20 or more assets of the company or office;
21 and

22 (ii) any creditor of the guaranteed
23 company or guaranteed banking office
24 who—

1 (I) is not protected under the
2 contract; and

3 (II) is not subject to preference
4 or subordination in a receivership or
5 bankruptcy proceeding.

6 (5) UNENCUMBERED LIQUID ASSETS.—The
7 term “unencumbered liquid assets” means, with re-
8 spect to any nondepository guarantor, the amount
9 which is equal to the sum of—

10 (A) the total amount of cash held by the
11 guarantor;

12 (B) the total amount on deposit for the
13 benefit of the guarantor in any transaction ac-
14 count at any guaranteed financial group or in
15 any Federal Reserve bank, including amounts
16 passed through any Federal home loan bank or
17 depository institution to a Federal Reserve
18 bank pursuant to the Federal Reserve Act;

19 (C) an amount equal to 95 percent of the
20 total market value of investment-grade debt se-
21 curities which are held by or for the benefit of
22 the guarantor and which mature in less than 5
23 years; and

1 (D) an amount equal to 80 percent of the
2 total market value of equity securities which are
3 held by or for the benefit of the guarantor,
4 to the extent any such amount is not pledged, re-
5 stricted, or otherwise encumbered.

6 (d) DEFINITIONS RELATING TO FUNDS.—For pur-
7 poses of this title:

8 (1) CROSS-GUARANTEE BACKUP FUND.—The
9 term “cross-guarantee backup fund” means the fund
10 established pursuant to section 128(a).

11 (2) DEPOSIT.—The term “deposit” has the
12 meaning given to such term in section 3(1) of the
13 Federal Deposit Insurance Act, except that such
14 term does not include any obligation which, under
15 section 114(a)(2), may not be a guaranteed obliga-
16 tion.

17 (3) FDIC SEVERANCE FUND.—The term
18 “FDIC severance fund” means the fund established
19 under section 145(d)(1) and administered by the
20 FDIC for the purpose of providing severance pay
21 and related benefits for employees of Federal or
22 State agencies engaged in the regulation of deposi-
23 tory institutions as of the date of the enactment of
24 this Act.

1 (4) INSURED DEPOSIT.—The term “insured de-
2 posit” means any deposit of a guaranteed depository
3 institution which is insured against loss by the cross-
4 guarantee backup fund under section 128.

5 (e) DEFINITIONS OF OTHER TERMS.—For purposes
6 of this title:

7 (1) BUSINESS DAY.—The term “business day”
8 means any day other than a Saturday, Sunday, or
9 legal holiday for the Federal Government.

10 (2) CENTRAL ELECTRONIC REPOSITORY.—The
11 term “central electronic repository” means the re-
12 pository established pursuant to section 124(a)(1).

13 (3) CLOSED LOOP.—The term “closed loop”
14 means a set of cross-guarantee and stop-loss con-
15 tracts in which any person which is a direct guaran-
16 tor under any contract which is part of such set of
17 contracts, and any person which is directly or indi-
18 rectly liable for a guaranteed obligation of any such
19 direct guarantor, are persons which are guaranteed
20 under a cross-guarantee or stop-loss contract which
21 is part of such set of contracts.

22 (4) CORPORATION.—The term “Corporation”
23 means the Cross-Guarantee Regulation Corporation.

24 (5) CROSS-GUARANTEE ACTIVATION DATE.—
25 The term “cross-guarantee activation date” means

1 the date on which the first cross-guarantee contracts
2 become effective under section 141(a).

3 (6) FDIC.—The term “FDIC” means the Fed-
4 eral Deposit Insurance Corporation.

5 **SEC. 102. RULES OF CONSTRUCTION.**

6 (a) IN GENERAL.—This title shall be liberally con-
7 strued and applied to promote its underlying purposes and
8 policies.

9 (b) SPECIFIC RULES OF CONSTRUCTION.—In this
10 title—

11 (1) the terms “guaranteed company,” “guaran-
12 teed depository institution,” “guaranteed party,”
13 and “nondepository guarantor” refer to a party in
14 such party’s capacity as a party guaranteed under a
15 cross-guarantee or stop-loss contract;

16 (2) the term “direct guarantor” refers to a
17 party in such party’s capacity as a guarantor under
18 a cross-guarantee or stop-loss contract;

19 (3) the use of the word “control” in such
20 phrases as “assumption of control” or “assumes
21 control” shall not take on the meaning given the
22 word control under section 101(a)(11)(B);

23 (4) “including” is not limiting; and

24 (5) the phrases “has entered into a cross-guar-
25 antee contract” and “has entered into a stop-loss

1 contract,” as used in sections 101(a)(5), 101(a)(6),
2 and 101(a)(9), shall not be construed to refer to a
3 contract which is no longer in effect.

4 **Subtitle B—Cross-Guarantee** 5 **Process**

6 **SEC. 111. DEPOSITORY INSTITUTIONS PROHIBITED FROM** 7 **OPERATING WITHOUT A CROSS-GUARANTEE** 8 **CONTRACT.**

9 After the applicable effective date under section 142,
10 a depository institution shall be a guaranteed depository
11 institution or guaranteed banking office unless the deposi-
12 tory institution—

13 (a) is a Federal branch that is not an insured
14 branch (as the terms “Federal branch” and “in-
15 sured branch” are defined in sections 3(r) and 3(s)
16 of the Federal Deposit Insurance Act);

17 (b) is a failed depository institution; or

18 (c) has not yet had a conservator or receiver
19 appointed by the FDIC under section 143.

20 **SEC. 112. PARTIES TO CROSS-GUARANTEE AND STOP-LOSS** 21 **CONTRACTS.**

22 (a) CROSS-GUARANTEE CONTRACTS.—

23 (1) IN GENERAL.—Each cross-guarantee con-
24 tract shall have at least the following parties:

1 (A) A guaranteed financial group as the
2 party guaranteed under the contract.

3 (B) The direct guarantors of the guaran-
4 teed financial group.

5 (C) A syndicate agent acting on behalf of
6 the direct guarantors.

7 (2) AFFILIATE GUARANTEE.—Any affiliate of a
8 depository institution may guarantee the perform-
9 ance of such institution's guaranteed obligations
10 under a cross-guarantee contract.

11 (b) STOP-LOSS CONTRACTS.—

12 (1) IN GENERAL.—Each stop-loss contract shall
13 have at least the following parties:

14 (A) A nondepository guarantor as the
15 party guaranteed under the contract.

16 (B) The direct guarantors of the
17 nondepository guarantor.

18 (C) A syndicate agent acting on behalf of
19 the direct guarantors.

20 (2) AFFILIATE GUARANTEE.—Any affiliate of a
21 nondepository guarantor may guarantee the per-
22 formance of the guaranteed obligations of such
23 nondepository guarantor.

24 (c) GROUP CROSS-GUARANTEE SYNDICATE CON-
25 TRACTS.—

1 (1) IN GENERAL.—

2 (A) POOLING OF RISK.—Subject to the
3 provisions of this subsection, the cross-guaran-
4 tee contracts of 2 or more guaranteed financial
5 groups may be pooled for syndication.

6 (B) SEPARATE CONTRACT FOR A SYN-
7 DICATE OF POOLED CONTRACTS.—The direct
8 guarantors comprising the cross-guarantee syn-
9 dicate for a group of cross-guarantee contracts
10 may enter into a separate contract (hereinafter
11 “group cross-guarantee syndicate contract”)
12 under which the cross-guaranteed contracts
13 pooled under such contract shall be incor-
14 porated by reference.

15 (C) PROPORTIONAL RISK.—Each direct
16 guarantor under a group cross-guarantee syn-
17 dicate contract shall have the same proportional
18 rights, privileges, duties, and obligations in each
19 cross-guarantee contract incorporated by ref-
20 erence in the syndicate contract as such guar-
21 antor has in the syndicate contract.

22 (2) APPROVAL OF GROUP CROSS-GUARANTEE
23 SYNDICATE CONTRACT AND ITS POOL OF CROSS-
24 GUARANTEE CONTRACTS.—The Corporation shall
25 approve or reject, as a group, a proposed group

1 cross-guarantee syndicate contract and the cross-
2 guarantee contracts pooled under that contract.

3 (3) AGGREGATION OF ASSETS FOR PURPOSES
4 OF RISK DIVERSIFICATION.—The assets of all guar-
5 anteed parties pooled under a group cross-guarantee
6 syndicate contract shall be aggregated for purposes
7 of applying the risk diversification requirement es-
8 tablished in section 114(b).

9 (4) NO CROSS LIABILITY OF GUARANTEED PAR-
10 TIES.—No guaranteed party under any cross-guar-
11 anteed contract shall be liable for any portion of the
12 guaranteed obligations of a guaranteed party under
13 any other cross-guarantee contract which is pooled
14 under the same group cross-guarantee syndicate
15 contract.

16 (5) INDIVIDUAL TERMS AND RATES.—The
17 terms, conditions, and premium rates under each
18 cross-guarantee contract which is pooled under a
19 group cross-guarantee syndicate contract may differ
20 from the terms, conditions, and premium rates
21 under any other cross-guarantee contract which is
22 pooled under the syndicate contract.

23 (6) PARTIES TO INDIVIDUAL CROSS-GUARANTTEE
24 CONTRACTS RETAIN SAME RIGHTS AND DUTIES.—No
25 right, privilege, duty, or obligation applicable under

1 this title to any party to a cross-guarantee contract
2 shall be affected by the inclusion of the cross-guar-
3 antee contract in a pool of contracts covered under
4 a group cross-guarantee syndicate contract.

5 (7) ADDITIONAL GUARANTEED PARTIES UNDER
6 A GROUP CROSS-GUARANTEE SYNDICATE CON-
7 TRACT.—A group cross-guarantee syndicate contract
8 can be amended under section 123 to add a guaran-
9 teed financial group or a depository institution with
10 a proposed cross-guarantee contract to the existing
11 syndicate contract if—

12 (A) the syndicate contract remains in com-
13 pliance with all of the provisions of this title
14 after the addition of the institution to the syn-
15 dicate contract; and

16 (B) the life of the syndicate contract is not
17 extended beyond the original term of any cross-
18 guarantee contract already pooled under the
19 syndicate contract by the addition of the insti-
20 tution.

21 (8) LIFE OF A GROUP CROSS-GUARANTEE SYN-
22 DICATE CONTRACT.—A group cross-guarantee syn-
23 dicate contract shall continue in force until each
24 guaranteed party which is guaranteed under the syn-
25 dicate contract has ceased to be a guaranteed party

1 under a cross-guarantee contract which is pooled
2 under the syndicate contract.

3 (9) LENGTH OF CROSS-GUARANTEE CONTRACT
4 POOLED UNDER A SYNDICATE CONTRACT.—No
5 cross-guarantee contract pooled under a group cross-
6 guarantee syndicate contract shall have a term
7 longer than the remaining term of the syndicate con-
8 tract.

9 (10) RULE OF CONSTRUCTION.—Nothing in
10 this subsection shall be construed as preventing a
11 cross-guarantee or stop-loss syndicate from becom-
12 ing a syndicate under 2 or more cross-guarantee or
13 stop-loss contracts without including such contracts
14 under a group cross-guarantee syndicate contract.

15 (d) AFFILIATES AND OTHER PARTIES RELATED TO
16 A DEPOSITORY INSTITUTION WHICH SHALL BE GUARAN-
17 TEED UNDER 1 CONTRACT.—

18 (1) IN GENERAL.—Subject to paragraph (4), a
19 guaranteed depository institution shall be guaran-
20 teed under the same cross-guarantee contract under
21 which any other affiliated guaranteed depository in-
22 stitution is guaranteed.

23 (2) CHAIN BANKS.—Subject to paragraph (4),
24 if more than two-thirds of the shares of any deposi-
25 tory institution are under common ownership or con-

1 trol with more than two-thirds of the shares of any
2 other depository institution, such depository institu-
3 tions shall be guaranteed depository institutions
4 under the same cross-guarantee contract.

5 (3) DOMESTIC BRANCHES AND AGENCIES OF
6 FOREIGN BANKS.—If any branch of a foreign bank
7 enters into a cross-guarantee contract with a cross-
8 guarantee syndicate, all branches and agencies of
9 such foreign bank shall be guaranteed banking of-
10 fices under the same cross-guarantee contract.

11 (4) REGULATIONS.—With respect to any depos-
12 itory institution controlled by more than 1 unaffili-
13 ated company, the Corporation shall prescribe regu-
14 lations determining under which cross-guarantee
15 contract the institution shall be a guaranteed deposi-
16 tory institution.

17 (e) SUBSIDIARIES WHICH MAY BE GUARANTEED
18 UNDER 1 CROSS-GUARANTEE CONTRACT.—

19 (1) IN GENERAL.—Any company controlled by
20 a guaranteed depository institution may be a guar-
21 anteed company under the same cross-guarantee
22 contract under which such depository institution is
23 guaranteed.

24 (2) DEFINITION OF CONTROL.—For purposes
25 of this subsection, the term “control” means, with

1 respect to a guaranteed depository institution's rela-
2 tionship to another company, the guaranteed deposit-
3 tory institution's ownership or power to, directly or
4 indirectly, vote more than 50 percent of any class of
5 voting securities of the other company.

6 (f) PROVISIONS RELATING TO SYNDICATE
7 AGENTS.—

8 (1) ANTI-AFFILIATION RULES.—A syndicate
9 agent may not—

10 (A) be an affiliate of any other person who
11 is a party to any cross-guarantee or stop-loss
12 contract; or

13 (B) acquire or retain any ownership inter-
14 est in any such person.

15 (2) NO DEPOSITORY INSTITUTION, FOREIGN
16 BANK, OR NON-DEPOSITORY GUARANTOR MAY BE A
17 SYNDICATE AGENT.—No depository institution, for-
18 eign bank, or nondepository guarantor may be a
19 syndicate agent.

20 (3) NO SYNDICATE AGENT MAY BE A DIRECT
21 GUARANTOR.—No person who is a syndicate agent
22 under any cross-guarantee or stop-loss contract may
23 be, as long as such contract is in effect, a direct
24 guarantor under any cross-guarantee or stop-loss
25 contract.

1 (4) PROHIBITION ON INTERLOCKS.—No direc-
2 tor, officer, employee, or subcontractor of a syn-
3 dicate agent under any cross-guarantee or stop-loss
4 contract or any director, officer, or employee of such
5 subcontractor may be a director, officer, or employee
6 of any other party to such contract.

7 **SEC. 113. REQUIREMENTS COMMON TO CROSS-GUARANTEE**
8 **AND STOP-LOSS CONTRACTS.**

9 (a) STOP-LOSS LIMIT FOR LOSSES OF A GUARAN-
10 TEED PARTY AS A DIRECT GUARANTOR OF OTHER GUAR-
11 ANTEED PARTIES.—

12 (1) DEFINITIONS.—For purposes of this sub-
13 section:

14 (A) LEVEL 1 PARTY.—The term “Level 1
15 party” means a guaranteed party under any
16 cross-guarantee or stop-loss contract.

17 (B) LEVEL 2 PARTY.—The term “Level 2
18 party” means a direct guarantor of a Level 1
19 party.

20 (C) LEVEL 3 PARTY.—The term “Level 3
21 party” means a direct guarantor of a Level 2
22 party.

23 (D) LOSS.—The term “loss” means the
24 present value, as of the date of a loss event, of
25 the cash outlays required to fulfill a Level 2

1 party's cross-guarantee obligations to a Level 1
2 party due to the occurrence of such loss event,
3 using as a discount rate the sum of—

4 (i) 2 percent; and

5 (ii) the average annual percentage
6 yield on 3-month bills issued by the Sec-
7 retary of the Treasury under section
8 3104(a) of title 31, United States Code, as
9 determined by the Corporation as of the
10 most recent issue date preceding the date
11 of the loss event.

12 (E) LOSS EVENT.—The term “loss event”
13 means any event described in paragraph (3).

14 (F) STOP-LOSS LIABILITY.—The term
15 “stop-loss liability” means a debt accrued by a
16 Level 3 party under a cross-guarantee or stop-
17 loss contract due to its obligation to a Level 2
18 party under paragraph (2).

19 (G) STOP-LOSS RECOVERY.—The term
20 “stop-loss recovery” means the amount accrued
21 in any calendar month by a Level 2 party due
22 to the obligation of a Level 3 party under para-
23 graph (2).

24 (2) STOP-LOSS OBLIGATION OF DIRECT GUAR-
25 ANTORS.—

1 (A) STOP-LOSS RECOVERY.—For any 12-
2 calendar month period in which a cross-guaran-
3 tee or stop-loss contract exists between Level 3
4 parties and a Level 2 party as of the end of the
5 first calendar month of such period, Level 3
6 parties shall be obligated to pay to a Level 2
7 party an amount equal to the total amount of
8 losses accrued by the Level 2 party in such par-
9 ty’s capacity as a direct guarantor of Level 1
10 parties during such 12-calendar month period,
11 minus the sum of—

12 (i) the greater of—

13 (I) the amount equal to 5 times
14 the total amount of cross-guarantee
15 and stop-loss premium income accru-
16 ing to a Level 2 party in such party’s
17 capacity as a direct guarantor of
18 Level 1 parties during such 12-cal-
19 endar month period;

20 (II) the amount equal to 5 times
21 the total amount of cross-guarantee
22 and stop-loss premium income accru-
23 ing to the Level 2 party in such par-
24 ty’s capacity as a direct guarantor of
25 Level 1 parties during the 12-calendar

1 month period preceding such 12-cal-
2 endar month period; or

3 (III) in the case of a calendar
4 month which is among the first 11
5 calendar months that the Level 2
6 party has ever been a party guaran-
7 teed under a cross-guarantee or stop-
8 loss contract, the amount equal to the
9 average monthly cross-guarantee and
10 stop-loss premium income accruing to
11 the Level 2 party in such party's ca-
12 pacity as a direct guarantor of Level
13 1 parties since first becoming a party
14 guaranteed under a cross-guarantee
15 or stop-loss contract, multiplied by 60;
16 and

17 (ii) recoveries accrued under this
18 paragraph by the Level 2 party for each
19 12-calendar month period ending at the
20 end of each of the first 11 calendar months
21 in such 12-calendar month period.

22 (B) CARRYOVER FROM PREVIOUS CON-
23 TRACTS.—The amounts calculated in subpara-
24 graph (A) shall include all losses, premium in-
25 come, and stop-loss recoveries of the Level 2

1 party under any cross-guarantee or stop-loss
2 contracts under which the Level 2 party was a
3 party guaranteed during such 12-calendar
4 month period.

5 (C) MERGER OF TWO OR MORE GUARAN-
6 TEED PARTIES.—In the case of any Level 2
7 party which merged with any other party which
8 was a Level 2 party guaranteed under another
9 cross-guarantee or stop-loss contract, the
10 amounts calculated in subparagraph (A) shall
11 include all losses, premium income, and stop-
12 loss recoveries of both of the parties prior to
13 the merger.

14 (D) OTHER GUARANTEED PARTIES UNDER
15 THE CONTRACT WHICH WERE PREVIOUSLY DI-
16 RECT GUARANTORS.—The amounts calculated
17 in subparagraph (A) for the Level 2 party shall
18 include all losses, premium income, and stop-
19 loss recoveries of any other party guaranteed
20 under the same cross-guarantee contract as the
21 Level 2 party, which occurred while such other
22 party was a Level 2 party while guaranteed
23 under the same or another cross-guarantee or
24 stop-loss contract.

1 (E) TIMING OF STOP-LOSS RECOVERY.—A
2 stop-loss recovery shall be accrued as of the last
3 day of the last calendar month of the 12-cal-
4 endar month period under which the stop-loss
5 recovery was calculated.

6 (F) ADJUSTMENT FOR CATASTROPHIC
7 LOSSES.—

8 (i) IN GENERAL.—If, for any calendar
9 month, a closed loop exists in which every
10 guaranteed party guaranteed under a con-
11 tract in the closed loop accrues a stop-loss
12 recovery for such month, then the calcula-
13 tion of stop-loss recovery for the 12-cal-
14 endar month period ending in such month
15 for all the contracts in the closed loop shall
16 be adjusted as required under clauses (ii)
17 and (iii).

18 (ii) ADJUSTMENT.—If, for any cal-
19 endar month, a closed loop meets the con-
20 ditions of clause (i), the amounts cal-
21 culated in subparagraph (A) shall, for the
22 12-calendar month period in which such
23 calendar month is the last month, be ad-
24 justed by increasing from 5 to 6, under
25 clauses (i)(I) and (i)(II) of subparagraph

1 (A), the amount multiplied by the premium
2 income accruing to a Level 2 party and by
3 increasing from 60 to 72, under clause
4 (i)(III) of subparagraph (A), the amount,
5 multiplied by the average monthly pre-
6 mium accruing to the Level 2 party.

7 (iii) FURTHER ADJUSTMENT.—If,
8 after making the adjustments to the cal-
9 culation of stop-loss recovery under clause
10 (ii), every contract in the closed loop under
11 clause (i) still accrues a stop-loss recovery,
12 the amounts under (i)(I) and (i)(II) shall
13 be increased by one and the amount under
14 (i)(III) shall be increased by twelve, until
15 at least one guaranteed party guaranteed
16 under a contract in such closed loop is not
17 accruing a stop-loss recovery for the cal-
18 endar month in clause (i).

19 (3) DETERMINATION OF TIME OF LOSS.—A
20 Level 2 party shall accrue a loss as the direct guar-
21 antor of a Level 1 party as of—

22 (A) the last day of the calendar month in
23 which a Level 1 party accrues a stop-loss recov-
24 ery; or

1 (B) the date on which, with respect to a
2 Level 1 party which is a guaranteed company,
3 the earliest of the following events occurs:

4 (i) Notice is filed with the Corporation
5 under section 118(d)(2)(C) by the cross-
6 guarantee syndicate of which the Level 2
7 party is a member that the syndicate has
8 assumed control of the Level 1 party.

9 (ii) A transaction which—

10 (I) involves the acquisition of the
11 Level 1 party or a significant portion
12 of the party's assets, the merger of
13 the Level 1 party with any other
14 party, the liquidation of the Level 1
15 party, or any other transaction involv-
16 ing a significant portion of the assets
17 or liabilities of the Level 1 party; and

18 (II) results directly in a loss for
19 which the Level 2 parties are liable
20 under the cross-guarantee contract.

21 (iii) The Level 1 party becomes a
22 debtor in a case under title 11, United
23 States Code.

24 (4) PREPARATION OF ORIGINAL LOSS ESTIMATE
25 BY SYNDICATE AGENT.—The syndicate agent for the

1 cross-guarantee contract under which a Level 2
2 party is a direct guarantor shall, whenever a loss
3 event under subparagraph (3)(B) occurs under such
4 contract—

5 (A) estimate the loss for such loss event;

6 and

7 (B) by the 15th day of the calendar month
8 following the calendar month in which such loss
9 event occurs, notify the central electronic repos-
10 itory of the estimate of the loss under subpara-
11 graph (A).

12 (5) REVISION OF LOSS ESTIMATE BY SYN-
13 DICATE AGENT.—The syndicate agent for the cross-
14 guarantee contract under which the Level 2 party is
15 a direct guarantor shall, whenever a loss event under
16 subparagraph (3)(B) occurs under such contract—

17 (A) revise the original estimate of the loss
18 for such loss event and notify the central elec-
19 tronic repository of such revised estimate at
20 least as often as the 15th day of—

21 (i) the third calendar month following
22 the calendar month in which the loss event
23 took place;

1 (ii) the twelfth calendar month follow-
2 ing the calendar month in which the loss
3 event took place; and

4 (iii) every twelfth month after the cal-
5 endar month in clause (ii); and

6 (B) for each estimate of the loss described
7 in clauses (A)(ii) and (A)(iii), obtain from a
8 third party a confirmation of the reasonableness
9 of the revised estimate of the loss.

10 (6) COMPLETION OF CASH OUTLAYS BECOMES
11 FINAL AMOUNT.—Notwithstanding paragraph (5),
12 once the Level 2 parties have made the final cash
13 disbursement to fulfill such parties' cross-guarantee
14 obligations due to any loss event under subpara-
15 graph (3)(B).—

16 (A) the syndicate agent for the cross-guar-
17 antee contract under which the Level 2 parties
18 are direct guarantors shall calculate the loss
19 from such loss event (subject to the third party
20 confirmation in subparagraph (5)(B)) and no-
21 tify the central electronic repository of this cal-
22 culation; and

23 (B) no further revisions of the loss from
24 such loss event need take place.

1 (7) CALCULATION AND CLEARINGHOUSE DU-
2 TIES OF CENTRAL ELECTRONIC REPOSITORY.—

3 (A) CALCULATION OF STOP-LOSS LIABIL-
4 ITY.—After notification under paragraphs (4),
5 (5), and (6), the central electronic repository
6 shall calculate the stop-loss recovery for every
7 Level 2 party for every 12-month calendar pe-
8 riod affected by the estimates, revised esti-
9 mates, and final loss amounts.

10 (B) ADJUSTMENT FOR INTEREST.—Upon
11 completing the calculations under subparagraph
12 (A), the central electronic repository shall then
13 adjust the amounts owed between Level 2 and
14 Level 3 parties as outlined in paragraph (8).

15 (C) NETTING CALCULATION.—Upon com-
16 pleting the calculations under subparagraph
17 (B), the central electronic repository shall, for
18 each person that is a direct guarantor or guar-
19 anteed party, net the amounts owed by such
20 person in its capacity as a Level 3 party with
21 the amount such person is entitled to receive in
22 its capacity as a Level 2 party to determine the
23 overall liability or right to payment for such
24 person.

1 (D) NOTIFICATION OF PARTIES.—Within
2 five business days after receiving notification
3 under paragraphs (4), (5), and (6), the central
4 electronic repository shall notify any Level 2
5 party or Level 3 party of the results of the cal-
6 culations under subparagraphs (A), (B), and
7 (C).

8 (E) SETTLEMENT.—

9 (i) RECEIPT OF PAYMENTS.—Within
10 three business days after receiving notifica-
11 tion under subparagraph (D), each party
12 which, given the calculations under sub-
13 paragraph (C), has a net liability shall pay
14 the amount of such liability to the central
15 electronic repository.

16 (ii) DISBURSAL OF PAYMENTS.—Upon
17 receiving all payments under clause (i), the
18 central electronic repository shall promptly
19 disburse to each party which has a right to
20 payment, given the calculations under sub-
21 paragraph (C), the amount owed such
22 party.

23 (iii) PENALTIES FOR LATE PAY-
24 MENT.—If an obligation under clause (i) is
25 not paid in a timely manner, any party

1 which fails to perform its obligation under
2 this title to pay the balance owed under
3 clause (i), including the guarantors of the
4 specific party most directly liable under
5 clause (i), shall be liable to the Corporation
6 for damages of 10 percent of the unpaid
7 amount for which the party is obliged, plus
8 interest at the rate specified under sub-
9 paragraph (C) of paragraph (8).

10 (F) REGULATIONS.—The Corporation may
11 prescribe regulations necessary to implement
12 this paragraph.

13 (8) CALCULATION OF STOP-LOSS PAYMENTS
14 PLUS INTEREST.—

15 (A) ORIGINAL ESTIMATE.—If a determina-
16 tion under subparagraph (7)(A) is based on the
17 original estimate of loss under paragraph (4)
18 and results in a stop-loss recovery for the Level
19 2 party, each Level 3 party shall owe to the
20 Level 2 party the amount of the stop-loss liabil-
21 ity for such Level 3 party plus interest on the
22 amount of such liability from the last day of the
23 month in which the loss occurred to the date of
24 payment under this subparagraph.

1 (B) REVISION OF ESTIMATES.—If a deter-
2 mination under subparagraph (7)(A) results
3 in—

4 (i) an increase from the previous esti-
5 mate of the stop-loss recovery for a par-
6 ticular month, then each Level 3 party
7 shall owe to the Level 2 party the amount
8 of the increase in the Level 3 party's stop-
9 loss liability plus interest on the amount of
10 the increase in such liability from the last
11 day of such month until payment is made
12 under this clause; or

13 (ii) a decrease from the previous esti-
14 mate of the stop-loss recovery for a par-
15 ticular month, then the Level 2 party shall
16 owe each Level 3 party the amount of the
17 decrease in such Level 3 party's stop-loss
18 liability plus interest on the amount of the
19 decrease in such liability from the last day
20 of such month until payment is made
21 under this clause.

22 (C) INTEREST RATE.—The parties to any
23 cross-guarantee or stop-loss contract shall agree
24 to the interest rate to be used for the calcula-

1 tion of interest under subparagraphs (A) and
2 (B).

3 (b) DIRECT GUARANTOR'S CROSS-GUARANTEE OBLI-
4 GATIONS UNDER THE CONTRACT ARE INDEPENDENT
5 FORM OTHER PARTIES' OBLIGATIONS.—The cross-guar-
6 antee obligations of a direct guarantor under any cross-
7 guarantee or stop-loss contract shall be independent of
8 any obligation of any other party under the contract.

9 (c) GUARANTEED PARTY CANNOT BE A DIRECT
10 GUARANTOR UNDER THE SAME CONTRACT.—No guaran-
11 teed party can be a direct guarantor under the cross-guar-
12 antee or stop-loss contract under which such party is a
13 guaranteed party.

14 (d) DIRECT GUARANTORS PROHIBITED FROM OB-
15 TAINING COLLATERAL FOR CROSS-GUARANTEE OBLIGA-
16 TIONS.—No direct guarantor under any cross-guarantee
17 or stop-loss contract may obtain or retain a security inter-
18 est in a guaranteed party under the contract, or in any
19 assets of the guaranteed party, in connection with such
20 guarantor's cross-guarantee obligations under the con-
21 tract, unless the guaranteed party is a guaranteed banking
22 office.

23 (e) PROVISIONS OF CONTRACT REGARDING DIVISION
24 OF LIABILITY.—

1 (1) SEVERAL LIABILITY.—No direct guarantor
2 under any cross-guarantee or stop-loss contract shall
3 be liable for the cross-guarantee obligations of any
4 other direct guarantor under the contract.

5 (2) DIVISION OF LIABILITY.—Subject to the
6 risk diversification requirements of section 116(d),
7 the terms of a cross-guarantee or stop-loss contract
8 shall establish the division of liability among the di-
9 rect guarantors under the contract.

10 (3) LIABILITY OF DIRECT GUARANTOR PROPOR-
11 TIONATE TO INTEREST IN SYNDICATE.—The rights,
12 privileges, duties, and obligations of a direct guaran-
13 tor under a cross-guarantee or stop-loss contract
14 shall be proportionate to such guarantor’s interest in
15 the syndicate.

16 (4) SYNDICATES NOT PARTNERSHIPS OR JOINT
17 VENTURES.—Notwithstanding any state law, a
18 cross-guarantee or stop-loss syndicate is not a part-
19 nership or joint venture, except for purposes of sec-
20 tion 117(c)(1).

21 (f) PREMIUM REQUIREMENTS.—

22 (1) IN GENERAL.—Each cross-guarantee and
23 stop-loss contract shall describe the method for cal-
24 culating and the timing of payment for any premium
25 payable to the direct guarantors under the contract.

1 (2) RESTRICTION ON REPRICING OF RISK DUE
2 TO STOP-LOSS OBLIGATION.—No method of calculat-
3 ing the premium payable under paragraph (1) shall,
4 directly or indirectly, take into account losses that a
5 guaranteed party accrues while guaranteed under
6 the contract in such party's capacity as a direct
7 guarantor under another cross-guarantee or stop-
8 loss contract.

9 (g) MAXIMUM EFFECTIVE PERIOD OF CONTRACT.—

10 (1) LENGTH OF CONTRACT.—A cross-guarantee
11 or stop-loss contract may not have an effective pe-
12 riod of more than 5 years.

13 (2) AMENDMENTS.—The parties to any cross-
14 guarantee or stop-loss contract may agree to extend
15 the length of the contract as long as the contract as
16 amended still expires within 5 years after the origi-
17 nal effective date of the contract.

18 (3) RENEWAL OF CONTRACT MUST BE AP-
19 PROVED BY THE CORPORATION.—No cross-guaran-
20 tee or stop-loss contract may be renewed by the par-
21 ties to the contract, and no successor contract may
22 become effective, without the approval of the Cor-
23 poration under section 123.

24 (4) PENALTIES FOR CONTINUING CONTRACT
25 AFTER EXPIRATION DATE.—For every day after the

1 30th day following the expiration of a cross-guaran-
2 tee contract in which—

3 (A) the direct guarantors have not as-
4 sumed control under section 118(a) of all the
5 guaranteed companies guaranteed under the
6 contract;

7 (B) a guaranteed party under such con-
8 tract has not become a guaranteed party under
9 another cross-guarantee contract;

10 (C) a successor contract is not being con-
11 sidered for approval under section 123 or the
12 Corporation has already rejected two successor
13 contracts;

14 (D) the guaranteed party is not appealing
15 the rejection by the Corporation, under section
16 123, of a successor contract or final judgment
17 has been reached on such an appeal; or

18 (E) the guaranteed party is not a debtor
19 under any proceeding under title 11 of the
20 United States Code,

21 the Corporation may at its discretion penalize each
22 direct guarantor under such contract up to
23 \$100,000.

24 (h) CANCELLATION OF CONTRACTS BY SYN-

25 DICATES.—

1 (1) RIGHT TO CANCEL.

2 (A) DEFAULT RULE.—Unless otherwise
3 agreed in a cross-guarantee or stop-loss con-
4 tract, a cross-guarantee or stop-loss syndicate
5 may cancel such contract at any time without
6 cause provided that the syndicate agent under
7 such contract provides written notice of such
8 cancellation to the Corporation and the guaran-
9 teed party or parties under the contract at least
10 90 days prior to the effective date of cancella-
11 tion.

12 (B) MINIMUM NOTICE PERIOD RE-
13 QUIRED.—The parties to a cross-guarantee or
14 stop-loss contract may agree to cancellation
15 rules different than those provided under sub-
16 paragraph (A), provided that the contract still
17 requires the syndicate agent under the contract
18 to give written notice of cancellation to the Cor-
19 poration and to the guaranteed party or parties
20 under the contract at least 90 days prior to the
21 effective date of the cancellation.

22 (2) CANCELLATION OF ONE GUARANTEED FI-
23 NANCIAL GROUP UNDER A GROUP CONTRACT.—A
24 cross-guarantee syndicate may cancel a cross-guar-
25 antee contract with 1 guaranteed financial group

1 under a group cross-guarantee syndicate contract
2 without affecting the rights, privileges, duties, and
3 obligations arising out of the syndicate contract with
4 regard to the other guaranteed financial groups
5 under the syndicate contract.

6 (3) LIMITATIONS ON GUARANTEED PARTY.—A
7 guaranteed party under any cross-guarantee or stop-
8 loss contract may not become a direct guarantor
9 under any other cross-guarantee or stop-loss con-
10 tract during any of the following periods:

11 (A) The period beginning on the date such
12 party receives a notice of cancellation under
13 paragraph (1) or (2) with respect to such con-
14 tract and ending on the date the party becomes
15 a guaranteed party under a successor contract.

16 (B) The period beginning on the date the
17 contract expires and ending on the date the
18 party becomes a guaranteed party under a suc-
19 cessor contract.

20 (4) CONTINUED EFFECTIVENESS OF CON-
21 TRACTS UNTIL OTHER COVERAGE IS OBTAINED.—

22 (A) IN GENERAL.—The obligations of any
23 party to a cross-guarantee or stop-loss contract
24 shall remain in effect after the effective date of
25 the cancellation of the contract by the direct

1 guarantors or after the expiration of such con-
2 tract, as the case may be, until—

3 (i) the guaranteed party becomes a
4 guaranteed party under another cross-
5 guarantee or stop-loss contract; or

6 (ii) in the case of a guaranteed party
7 which ceases to exist as a legal entity, the
8 guaranteed obligations of the institution
9 are liquidated or become guaranteed obli-
10 gations covered under another cross-guar-
11 antee or stop-loss contract.

12 (B) CANCELLATION WHEN NONDEPOS-
13 ITORY GUARANTOR IS NOT A DIRECT GUARAN-
14 TOR.—Notwithstanding subparagraph (A), a
15 cancellation of a stop-loss contract by a stop-
16 loss syndicate shall take effect immediately if
17 the nondepository guarantor which is the party
18 guaranteed under the contract—

19 (i) is not at the time of cancellation of
20 direct guarantor under any cross-guarantee
21 or stop-loss contract; and

22 (ii) has transferred any remaining
23 risk under any cross-guarantee or stop-loss
24 contract under which such guarantor was

1 formerly a direct guarantor to another di-
2 rect guarantor.

3 (i) CANCELLATION OF CONTRACTS BY GUARANTEED
4 PARTY.—

5 (1) IN GENERAL.—The guaranteed financial
6 group or nondepository guarantor which is the party
7 guaranteed under a cross-guarantee or stop-loss con-
8 tract may notify the direct guarantors under the
9 contract at any time of such party's intention to
10 cancel the contract.

11 (2) CANCELLATION NOT EFFECTIVE UNTIL
12 SUBSTITUTE COVERAGE IS OBTAINED.—The can-
13 cellation of any cross-guarantee or stop-loss contract
14 under paragraph (1) shall not take effect until the
15 cancelling party becomes a guaranteed financial
16 group or a nondepository guarantor under another
17 cross-guarantee or stop-loss contract.

18 (3) ALLOWING NONDEPOSITORY GUARANTORS
19 TO EXIT THE BUSINESS.—Notwithstanding para-
20 graph (2), a cancellation of a stop-loss contract by
21 a nondepository guarantor shall take effect imme-
22 diately if the nondepository guarantor—

23 (A) is not at the time of cancellation a di-
24 rect guarantor under any cross-guarantee or
25 stop-loss contract; and

1 (B) has transferred any remaining risk
2 under any cross-guarantee or stop-loss contract
3 under which such guarantor was formerly a di-
4 rect guarantor to another direct guarantor.

5 (4) CANCELLATION FEE.—The cross-guarantee
6 or stop-loss syndicate under a cross-guarantee or
7 stop-loss contract which is cancelled pursuant to
8 paragraph (1) may impose a cancellation fee in an
9 amount determined in accordance with the terms of
10 the contract.

11 (j) CONTINUED EFFECTIVENESS OF CONTRACTS
12 AFTER CONVERSION OF CHARTER OF DEPOSITORY INSTI-
13 TUTION.—If—

14 (1) any State depository institution becomes a
15 Federal depository institution;

16 (2) any Federal depository institution becomes
17 a State depository institution;

18 (3) any bank becomes a savings association;

19 (4) or any savings association becomes a bank,
20 through a conversion of the charter of the depository insti-
21 tution, any cross-guarantee contract under which the insti-
22 tution is a guaranteed depository institution and which is
23 in effect immediately before such conversion shall remain
24 in effect after the conversion.

1 (k) CONTINUING APPLICABILITY OF OBLIGATIONS
2 UNDER THE CONTRACTS.—

3 (1) NO VOIDING OR RESCINDING OF CON-
4 TRACTS.—No party to a cross-guarantee or stop-loss
5 contract may void or rescind the contract, regardless
6 of any defense to the existence or enforceability of
7 the contract that might exist under Federal or State
8 law.

9 (2) NO EXCUSES TO PERFORMANCE.—Notwith-
10 standing any provision of Federal or State law, no
11 excuse for the failure to perform any obligation
12 under a cross-guarantee or stop-loss contract shall
13 be effective.

14 (3) NONCOMPLIANCE DOES NOT AFFECT OBLI-
15 GATIONS.—A party to a cross-guarantee or stop-loss
16 contract shall remain obliged under the contract re-
17 gardless of whether—

18 (A) the contract ceases to comply with any
19 requirement under this title; or

20 (B) one or more parties to the contract fail
21 to comply with this title.

22 (l) SUBMISSION OF DISPUTES TO ARBITRATION.—
23 The terms of any cross-guarantee or stop-loss contract
24 may provide for resolving disputes under the contract
25 through binding arbitration.

1 (m) SUBSTITUTION OF DIRECT GUARANTORS.—

2 (1) IN GENERAL.—Any direct guarantor's
3 rights, privileges, duties and obligations under a
4 cross-guarantee or stop-loss contract, and any por-
5 tion of any such rights, privileges, duties, and obli-
6 gations, may be transferred to a successor direct
7 guarantor, subject to the approval of the Corpora-
8 tion (pursuant to section 123 of this title).

9 (2) TRANSFEROR NO LONGER OBLIGED ON
10 CONTRACT.—Notwithstanding any Federal or State
11 law, a transferor of an interest under paragraph (1)
12 shall not be obliged to performed on the contract
13 should the transferee fail to perform.

14 (3) PARTIES AUTHORIZED TO RESTRICT SUB-
15 STITUTION OF GUARANTORS IN A CONTRACT.—A
16 guaranteed party or a cross-guarantee or stop-loss
17 syndicate under a cross-guarantee or stop-loss con-
18 tract may provide in such contract that any transfer
19 under paragraph (1) of any interest of any direct
20 guarantor in such contract shall be subject to the
21 approval of such party or syndicate.

22 (n) SYNDICATE VOTING RULES.—

23 (1) PROPORTIONAL VOTING.—Each cross-guar-
24 antee and stop-loss contract shall provide that a di-
25 rect guarantor's voting rights in the cross-guarantee

1 or stop-loss syndicate shall be proportional to such
2 guarantor's interest in the syndicate.

3 (2) VARIATIONS PERMITTED IN VOTING RE-
4 QUIREMENTS.—A cross-guarantee or stop-loss con-
5 tract may provide that the number of votes needed
6 to approve an action by a cross-guarantee or stop-
7 loss syndicate under the contract may differ depend-
8 ing upon the action on which a vote is taken.

9 (o) GUARANTEED COMPANY CAN BE COVERED ONLY
10 UNDER 1 CONTRACT.—No guaranteed company under
11 any cross-guarantee or stop-loss contract may be a guar-
12 anteed company under another cross-guarantee or stop-
13 loss contract.

14 (p) AUTHORITY OF THE CGRC TO DIRECT ASSIGN-
15 MENT.—If any merger, acquisition, or other combination
16 of 2 direct guarantors within any cross-guarantee or stop-
17 loss syndicate occurs which causes the contract to materi-
18 ally exceed the limitations set forth in section 114(b)(1)
19 or paragraph (1) or (2) of section 115(b), the Corporation
20 may issue an order directing the merged guarantor to ob-
21 tain a successor for that part of the guarantor's interest
22 that exceeds the statutory limit.

23 (q) MERGER OF 2 OR MORE GUARANTEED COMPA-
24 NIES.—After any merger, acquisition, or other combina-
25 tion of 2 or more guaranteed companies, the successor

1 party's cross-guarantee or stop-loss contract shall meet
2 the same requirements under section 114(b)(1) or para-
3 graph (1) or (2) of section 115(b), that the successor
4 would have to meet if the successor sought to become a
5 guaranteed party under a new cross-guarantee or stop-loss
6 contract.

7 (r) MODIFICATION OF CONTRACTS.—An agreement
8 amending a cross-guarantee or stop-loss contract needs no
9 consideration to be binding.

10 (s) RULE OF CONSTRUCTION RELATING TO CON-
11 TRACT TERMS.—No provision of this title shall be con-
12 strued as prohibiting any cross-guarantee or stop-loss con-
13 tract from containing any term or condition other than
14 terms or conditions which are expressly prohibited by this
15 title.

16 **SEC. 114. REQUIREMENTS APPLICABLE ONLY TO CROSS-**
17 **GUARANTEE CONTRACTS**

18 (a) OBLIGATIONS GUARANTEED UNDER A CROSS-
19 GUARANTEE CONTRACT.—

20 (1) OBLIGATIONS REQUIRED TO BE GUARAN-
21 TEED OBLIGATIONS.—The following obligations of
22 any guaranteed company or guaranteed banking of-
23 fice shall be guaranteed obligations under a cross-
24 guarantee contract:

25 (A) DEPOSITS.—

1 (i) BANKS AND SAVINGS ASSOCIA-
2 TIONS.—In the case of a guaranteed de-
3 pository institution, all deposits (as deter-
4 mined without regard to subparagraph (A)
5 or (B) of section 3(l)(5) of the Federal De-
6 posit Insurance Act), including insured de-
7 posits, payable at any office of the guaran-
8 teed company located within or without the
9 United States.

10 (ii) BRANCHES OF FOREIGN DEPOSI-
11 TORY INSTITUTIONS.—In the case of a
12 guaranteed banking office, all deposits of
13 such office payable at a location within the
14 United States.

15 (B) LOANS AND ADVANCES FROM A DI-
16 RECT GUARANTOR, FEDERAL RESERVE BANK,
17 OR FEDERAL HOME LOAN BANK.—All loans and
18 advances from a direct guarantor, a Federal
19 Reserve bank, or a Federal home loan bank.

20 (C) INTEREST-BEARING OBLIGATIONS
21 OTHER THAN SUBORDINATED DEBT.—All other
22 interest-bearing obligations other than subordi-
23 nated debt.

24 (D) BALANCES DUE CLEARINGHOUSES,
25 THE FEDERAL RESERVE, AND IN SETTLEMENT

1 OF OTHER TRANSACTIONS.—All obligations
2 owed to clearinghouses, to the Federal Reserve
3 for funds transfers, to other funds transfer sys-
4 tems, and to any other person in settlement of
5 financial transactions.

6 (E) CROSS-GUARANTEE OBLIGATIONS.—
7 Cross-guarantee obligations for which the guar-
8 anteed company is liable as a direct guarantor
9 under any other cross-guarantee or stop-loss
10 contract.

11 (F) OBLIGATIONS INCURRED FOR FEE IN-
12 COME.—All other direct and contingent liabil-
13 ities under any contract or commitment for
14 which the guaranteed company or guaranteed
15 banking office has or may receive any fee or
16 other comparable consideration, including for
17 any letter of credit or bankers' acceptance, and
18 any securities contract, commodity contract,
19 forward contract, repurchase agreement, or
20 swap agreement (as such terms are defined in
21 section 11(e)(8)(D) of the Federal Deposit In-
22 surance Act).

23 (G) ASSESSMENTS ON DEPOSITORY INSTI-
24 TUTIONS FOR COSTS OF CLOSED LOOPS.—All li-
25 abilities assessed under section 125(c)(2).

1 (H) LIABILITY UNDER RECOURSE AGREE-
2 MENTS.—Any liability under recourse agree-
3 ments that arises when a guaranteed company
4 or guaranteed banking office sells loans or
5 other assets.

6 (2) OBLIGATIONS WHICH MAY NOT BE GUARAN-
7 TEED.—The following obligations of any guaranteed
8 company or guaranteed banking office may not be
9 guaranteed obligations under a cross-guarantee con-
10 tract:

11 (A) SUBORDINATED DEBT.—

12 (i) IN GENERAL.—Subordinated debt
13 issued by the guaranteed company or guar-
14 anteed banking office.

15 (ii) INCLUDES DEBT WHICH MAY BE
16 REDEEMED BY THE DEBTHOLDER BY
17 CHECK OR OTHER MEANS.—For purposes
18 of this subparagraph, the term “subordi-
19 nated debt” includes subordinated debt
20 which may be withdrawn by or credited to
21 the debtholder by a check, wire transfer, or
22 other order of the debtholder.

23 (B) EQUITY INTERESTS.—Any equity in-
24 terest in the guaranteed company or guaranteed
25 banking office.

1 (3) OBLIGATIONS WHICH MAY BE INCLUDED
2 UNDER A CROSS-GUARANTEE CONTRACT.—

3 (A) IN GENERAL.—Any obligation of any
4 guaranteed company or guaranteed banking of-
5 fice which is not required to be, or not prohib-
6 ited from being, a guaranteed obligation under
7 paragraphs (1) and (2) may be a guaranteed
8 obligation under a cross-guarantee contract to
9 the extent provided by the terms of the con-
10 tract.

11 (B) RULES UPON SWITCH TO A SUCCESSOR
12 CONTRACT.—Any obligation that was a guaran-
13 teed obligation under the previous cross-guaran-
14 tee contract shall be a guaranteed obligation
15 under the successor contract, if such obligation
16 accrues prior to the obligee receiving written
17 notice from the syndicate agent under the suc-
18 cessor contract that obligations of the same
19 type as were guaranteed under the previous
20 contract shall not be guaranteed under the suc-
21 cessor contract.

22 (4) JUDGMENTS AND SETTLEMENTS.—

23 (A) IN GENERAL.—Subject to subpara-
24 graph (B), a cross-guarantee contract may pro-
25 vide that any judgment against a guaranteed

1 company under the contract, or any obligation
2 of the company under a settlement agreement,
3 in any action against the company in the com-
4 pany's capacity as trustee or custodian with re-
5 spect to any person, shall be treated as a guar-
6 anteed obligation of such company to the extent
7 that the company's duty to act as trustee or
8 custodian with respect to such person, or to a
9 designated 3d-party beneficiary, was expressly
10 established by written agreement of the parties
11 or by operation of law.

12 (B) RULE OF CONSTRUCTION.—Subpara-
13 graph (A) shall not be construed to provide that
14 the amount of any judgment or settlement from
15 any action arising from any alleged tortious
16 conduct, breach of contract, or violation of stat-
17 utory obligation (other than the agreement es-
18 tablishing the duty of the institution to act as
19 trustee or custodian) is a guaranteed obligation
20 unless the cross-guarantee contract expressly so
21 provides.

22 (5) VICARIOUS LIABILITY.—

23 (A) IN GENERAL.—Subject to subpara-
24 graph (B), a direct guarantor or syndicate
25 agent under any cross-guarantee contract shall

1 not be vicariously liable for any alleged tortious
2 conduct, breach of contract, or violation of stat-
3 utory obligation by any guaranteed party under
4 the contract.

5 (B) EXCEPTION FOR FRAUD RELATED TO
6 SUBORDINATED DEBT.—Notwithstanding sub-
7 paragraph (A), the liability of any guaranteed
8 party under a cross-guarantee contract for
9 damages due to the fraudulent actions of such
10 party related to marketing subordinated debt
11 shall be a guaranteed obligation under the con-
12 tract.

13 (b) RISK DIVERSIFICATION.—

14 (1) MINIMUM NUMBER OF DIRECT AND SEC-
15 OND-TIER GUARANTORS.—Each cross-guarantee con-
16 tract shall comply with the requirements relating to
17 the maximum percentage of all guaranteed obliga-
18 tions under the contract which may be guaranteed
19 by any 1 direct guarantor and the minimum number
20 of second-tier guarantors which the guaranteed
21 party or parties shall have in the aggregate, as de-
22 termined under the following table (as adjusted pur-
23 suant to paragraph (2)) on the basis of the total as-
24 sets of all the guaranteed parties under the contract:

Aggregate amount of assets of all guaranteed parties under the contract	Maximum percentage of cross-guarantee liability assumable by any 1 direct guarantor	Minimum number of second-tier guarantors
\$100,000,000 or less	5.0	100
Greater than \$100,000,000 but less than or equal to \$500,000,000	4.0	125
Greater than \$500,000,000 but less than or equal to \$1,000,000,000	2.5	150
Greater than \$1,000,000,000 but less than or equal to \$10,000,000,000	1.5	200
More than \$10,000,000,000	1.0	250

1 (2) ADJUSTMENT OF DOLLAR AMOUNTS FOR
2 INFLATION.—The amounts contained in the table in
3 paragraph (1) relating to the aggregate assets of
4 guaranteed parties under any cross-guarantee con-
5 tract shall be adjusted annually by the Corporation
6 on the basis of changes in the deflator for the gross
7 domestic product.

8 (c) BASIS FOR VALUING ASSETS AND LIABILITIES.—
9 Each cross-guarantee contract shall describe the manner
10 in which the equity capital of the guaranteed financial
11 group shall be calculated for purposes of the contract.

12 (d) EMERGENCY LIQUIDITY.—Notwithstanding sec-
13 tion 113(e)(3), the parties to a cross-guarantee contract
14 may include terms relating to the provision of emergency
15 liquidity to a guaranteed party by any direct guarantor
16 without regard to the relative interest in the contract held
17 by any guarantor providing the liquidity.

1 (e) INTERNAL GUARANTEES.—A guaranteed com-
2 pany under any cross-guarantee contract shall be jointly
3 and severally liable to the direct guarantors under such
4 contract for any loss incurred by the guarantors in connec-
5 tion with the cross-guarantee obligations of the guarantors
6 to any other guaranteed company under such contract.

7 **SEC. 115. REQUIREMENTS APPLICABLE ONLY TO STOP-**
8 **LOSS CONTRACTS.**

9 (a) GUARANTEED OBLIGATIONS UNDER A STOP-
10 LOSS CONTRACT.—

11 (1) OBLIGATIONS REQUIRED TO BE GUARAN-
12 TEED OBLIGATIONS.—A nondepository guarantor's
13 cross-guarantee obligations shall be guaranteed obli-
14 gations under a stop-loss contract.

15 (2) NO OTHER GUARANTEED OBLIGATIONS.—
16 Except for the obligations described in paragraph
17 (1), no obligation of a nondepository guarantor may
18 be a guaranteed obligation.

19 (b) RISK DIVERSIFICATION.—

20 (1) MINIMUM NUMBERS OF DIRECT GUARAN-
21 TORS.—A direct guarantor under a stop-loss con-
22 tract may not guarantee more than 2 percent of the
23 guaranteed obligations under such contract.

24 (2) SECOND-TIER GUARANTORS.—The direct
25 guarantors under any stop-loss contract shall have,

1 in the aggregate, no fewer than 150 direct guaran-
2 tors.

3 **SEC. 116. ELIGIBILITY AND REQUIREMENTS FOR DIRECT**
4 **GUARANTORS.**

5 (a) ELIGIBILITY.—

6 (1) IN GENERAL.—No person may become a di-
7 rect guarantor unless such person is a guaranteed
8 company or a nondepository guarantor.

9 (2) NONDEPOSITORY GUARANTOR.—

10 (A) IN GENERAL.—Subject to subpara-
11 graphs (B) and (C) of this paragraph and sub-
12 section (c) of this section, any person may be
13 a nondepository guarantor.

14 (B) NONELIGIBILITY OF DEPOSITORY IN-
15 STITUTIONS.—

16 (i) IN GENERAL.—No depository insti-
17 tution, or subsidiary of a depository insti-
18 tution, may be a nondepository guarantor.

19 (ii) RULE OF CONSTRUCTION FOR
20 FOREIGN BANKS.—Clause (i) shall not be
21 construed as prohibiting a foreign bank
22 which has a branch in the United States
23 from being a nondepository guarantor.

24 (iii) FOREIGN BANK DEFINED.—For
25 purposes of clause (ii), the term “foreign

1 bank'' shall exclude any company orga-
2 nized under the laws of a territory of the
3 United States, Puerto Rico, Guam, Amer-
4 ican Samoa, or the Virgin Islands.

5 (C) NONELIGIBILITY OF GOVERNMENTS.—

6 (i) IN GENERAL.—No entity with di-
7 rect or indirect taxing authority may be a
8 nondepository guarantor.

9 (ii) RULE OF CONSTRUCTION FOR
10 GOVERNMENT PENSION FUNDS.—Clause
11 (i) shall not be construed as to prohibit
12 any pension fund operated for the benefit
13 of government employees from being a
14 nondepository guarantor.

15 (3) GUARANTEED DEPOSITORY INSTITUTIONS
16 AUTHORIZED TO BE DIRECT GUARANTORS.—Not-
17 withstanding any other Federal or State law restrict-
18 ing the powers of depository institutions, a guaran-
19 teed depository institution may be a direct guarantor
20 under any cross-guarantee or stop-loss contract.

21 (b) DESIGNATED DIRECT GUARANTOR.—

22 (1) ONLY ONE GUARANTEED COMPANY WITHIN
23 A GUARANTEED FINANCIAL GROUP MAY BE A DI-
24 RECT GUARANTOR.—No guaranteed company shall
25 be a direct guarantor if another guaranteed com-

1 pany under the same cross-guarantee contract al-
2 ready is a direct guarantor under any cross-guaran-
3 tee or stop-loss contract.

4 (2) DESIGNATION OF DIRECT GUARANTOR IN
5 CROSS-GUARANTEE CONTRACT.—In the case of a
6 cross-guarantee contract in which 2 or more compa-
7 nies are guaranteed under the contract, the contract
8 shall designate which guaranteed company may, in
9 accordance with paragraph (1), be a direct guaran-
10 tor.

11 (c) FINANCIAL RESOURCES REQUIREMENTS FOR
12 NONDEPOSITORY GUARANTORS.—

13 (1) NET WORTH.—No person may become a
14 nondepository guarantor unless such person has a
15 net worth of not less than \$100,000,000 at the time
16 such person would, but for this paragraph, become
17 a direct guarantor under a cross-guarantee or stop-
18 loss contract.

19 (2) LIQUIDITY RESOURCES.—Each nondepos-
20 itory guarantor shall maintain unencumbered liquid
21 assets in an amount equal to or greater than the
22 amount which is equal to 5 times the projected an-
23 nual premium from all cross-guarantee and stop-loss
24 contracts under which the nondepository guarantor
25 is a direct guarantor.

1 (3) ASSET REQUIREMENTS.—Only assets which
2 are maintained within the United States and subject
3 to the jurisdiction of a United States court may be
4 taken into account for purposes of meeting the re-
5 quirements of paragraphs (1) and (2).

6 (d) RISK DIVERSIFICATION REQUIREMENTS FOR DI-
7 RECT GUARANTORS.—

8 (1) PROJECTED ANNUAL PREMIUM CAPACITY
9 AND PROJECTED ANNUAL PREMIUM LIMIT.—A per-
10 son may not become a direct guarantor under a
11 cross-guarantee or stop-loss contract if, upon the
12 contract (but for this paragraph) taking effect—

13 (A) the sum of the estimated annual pre-
14 mium which the person would receive as a di-
15 rect guarantor under the contract and the per-
16 son's projected annual premium income would
17 exceed such person's projected annual premium
18 capacity as of—

19 (i) in the case of a contract which
20 would take effect on or before the 15th day
21 of any calendar month, the 2d calendar
22 month preceding such calendar month; or

23 (ii) in the case of a contract which
24 would take effect after the 15th day of any

1 calendar month, the end of the calendar
2 month preceding such calendar month; or

3 (B) the estimated annual premium which
4 the person would receive as a direct guarantor
5 under the contract would exceed such person's
6 projected annual premium limit as of—

7 (i) in the case of a contract which
8 would take effect on or before the 15th day
9 of any calendar month, the 2d calendar
10 month preceding such calendar month; or

11 (ii) in the case of a contract which
12 would take effect after the 15th day of any
13 calendar month, the end of the calendar
14 month preceding such calendar month.

15 (2) CALCULATION OF PROJECTED ANNUAL PRE-
16 MIUM.—

17 (A) IN GENERAL.—The syndicate agent
18 under any cross-guarantee or stop-loss contract
19 shall determine the projected annual premium
20 due any direct guarantor for any calendar
21 month by calculating the amount of such guar-
22 antor's share of the premium accrued by the
23 guaranteed party or parties under the contract
24 during such month and then annualizing such
25 amount.

1 (B) FIRST TWO MONTHS.—During the
2 first 2 calendar months in which any cross-
3 guarantee or stop-loss contract is in effect, the
4 syndicate agent shall determine the projected
5 annual premium under the contract for each of
6 these 2 calendar months by annualizing the pre-
7 mium rate in effect on the date the contract be-
8 comes effective.

9 (3) CALCULATION OF THE ESTIMATED ANNUAL
10 PREMIUM FOR THE APPROVED CONTRACT.—

11 (A) IN GENERAL.—For purposes of para-
12 graph (1), the term “estimated annual pre-
13 mium” means the annualized premium rate
14 likely to be in effect on the date the contract
15 becomes effective.

16 (B) SYNDICATE AGENT ESTIMATE.—The
17 proposed syndicate agent for the contract shall
18 make an estimate of the amount in paragraph
19 (1) within five days prior to the date on which
20 the contract is to become effective.

21 (4) CALCULATION OF PROJECTED ANNUAL PRE-
22 MIUM INCOME.—For purposes of making any deter-
23 mination under paragraph (1)(A) with respect to a
24 direct guarantor, the term “projected annual pre-
25 mium income” means the total projected annual pre-

1 miums from all cross-guarantee or stop-loss con-
2 tracts under which such guarantor is a direct guar-
3 antor, other than the contract for which such deter-
4 mination is being made, as of—

5 (A) in the case of contract which would be-
6 come effective on or before the 15th day of any
7 calendar month, the 2d calendar month preced-
8 ing such calendar month; and

9 (B) in the case of a contract which would
10 become effective after the 15th day of any cal-
11 endar month, the calendar month preceding
12 such calendar month.

13 (e) LIABILITY OF ACQUIRER OF ANY DIRECT GUAR-
14 ANTOR.—Any person who acquires (as defined in section
15 13(f)(8)(B) of the Federal Deposit Insurance Act) any di-
16 rect guarantor shall be obligated for all of the cross-guar-
17 antee obligations of such guarantor under any cross-guar-
18 antee or stop-loss contract to which such guarantor is a
19 direct guarantor.

20 **SEC. 117. PROVISIONS RELATING TO CROSS-GUARANTEE**
21 **AND STOP-LOSS SYNDICATES.**

22 (a) POWERS AND DUTIES OF SYNDICATE AGENTS.—

23 (1) SYNDICATE AGENT IS AGENT OF DIRECT
24 GUARANTORS.—

1 (A) IN GENERAL.—The syndicate agent
2 under any cross-guarantee or stop-loss contract
3 shall act as an agent of the direct guarantors
4 under such contract.

5 (B) EXCEPTIONS.—Notwithstanding sub-
6 paragraph (A), the syndicate agent also shall
7 have—

8 (i) a duty to protect the confidential-
9 ity of any aspect of a guaranteed party's
10 affairs which the contract specifies shall be
11 protected; and

12 (ii) duties to the Corporation as speci-
13 fied in this title.

14 (2) POWERS OF SYNDICATE AGENT.—No per-
15 son under a cross-guarantee or stop-loss contract
16 other than the syndicate agent shall have the follow-
17 ing powers:

18 (A) MONITOR PERFORMANCE.—Monitor
19 the performance, or contract with a third party
20 to monitor the performance, of any party guar-
21 anteed under such contract.

22 (B) COLLECT PREMIUMS.—Collect the pre-
23 miums due to the direct guarantors under such
24 contract.

1 (3) SYNDICATE AGENT REPORTS SUBMITTED TO
2 THE CENTRAL ELECTRONIC REPOSITORY.—The syn-
3 dicate agent under any cross-guarantee or stop-loss
4 contract shall submit in electronic form to the
5 central electronic repository by the 15th of each cal-
6 endar month a report—

7 (A) of the equity capital or the net worth,
8 as the case may be, of the guaranteed financial
9 group or nondepository guarantor under the
10 contract as of the end of the prior calendar
11 month;

12 (B) of the projected annual premium due
13 each direct guarantor, as of the end of the prior
14 calendar month; and

15 (C) in the case of a stop-loss contract, of
16 the unencumbered liquid assets of the
17 nondepository guarantor as of the end of the
18 prior calendar month.

19 (4) CONFIRMATION OF GUARANTEE OF SPE-
20 CIFIC OBLIGATIONS.—

21 (A) IN GENERAL.—The syndicate agent
22 under any cross-guarantee contract shall—

23 (i) determine, at the request of any
24 current or prospective creditor of a guar-

1 anted company or guaranteed banking of-
2 fice under such contract, whether—

3 (I) the company or office has or
4 will have an obligation to the creditor;
5 and

6 (II) such obligation is or would
7 be a guaranteed obligation under the
8 contract; and

9 (ii) promptly notify the current or
10 prospective creditor in writing of the
11 agent's determination.

12 (B) DETERMINATION BINDING ON SYN-
13 DICATE.—Any notification of determination
14 under subparagraph (A) with respect to any
15 guaranteed company or guaranteed banking of-
16 fice shall be binding on the cross-guarantee syn-
17 dicate which is a party to such contract.

18 (C) FEE.—A syndicate agent may charge
19 a creditor a fee for making the determination
20 and notifying the creditor under subparagraph
21 (A).

22 (5) SIDE CONTRACTS.—

23 (A) IN GENERAL.—Subject to subpara-
24 graph (B), no direct guarantor or group of di-
25 rect guarantors under a cross-guarantee or

1 stop-loss contract may enter into any other con-
2 tract or binding agreement pertaining to the
3 contract with the syndicate agent under such
4 cross-guarantee or stop-loss contract.

5 (B) EXCEPTION FOR CERTAIN LIMITED
6 CONTRACTS.—Notwithstanding subparagraph
7 (A), a syndicate agent and the direct guaran-
8 tors under a cross-guarantee or stop-loss con-
9 tract may enter into another contract or bind-
10 ing agreement if—

11 (i) the terms of such contract or
12 agreement relate solely to rights and obli-
13 gations of such parties to each other under
14 the cross-guarantee or stop-loss contract,
15 including the compensation of the agent, to
16 the extent such terms are not inconsistent
17 with the cross-guarantee or stop-loss con-
18 tract; and

19 (ii) the contract or agreement does
20 not affect any right or obligation of—

21 (I) any guaranteed party under
22 the cross-guarantee or stop-loss con-
23 tract; or

24 (II) any creditor or shareholder
25 of any such guaranteed company.

1 (b) SYNDICATION OF CROSS-GUARANTEE AND STOP-
2 LOSS RISKS.—Notwithstanding any provision of Federal
3 or State law, interests in any cross-guarantee or stop-loss
4 syndicate are not securities for any purpose and any per-
5 son or group of persons may organize and market the risk
6 of loss represented by the participation of any person as
7 a direct guarantor under any cross-guarantee or stop-loss
8 contract.

9 (c) TAXATION OF SYNDICATES.—

10 (1) TREATED AS PARTNERSHIP.—Any cross-
11 guarantee or stop-loss syndicate shall be treated as
12 a partnership for purposes of the Internal Revenue
13 Code of 1986.

14 (2) CONSOLIDATED RETURNS BY SYNDICATE
15 AGENT.—A syndicate agent may file an annual in-
16 formation return with respect to all syndicates for
17 which such agent is an agent, and all distributions
18 with respect to such syndicates, on a consolidated
19 basis.

20 (3) TAX-EXEMPT STATUS.—Any syndicate
21 under any cross-guarantee or stop-loss contract, any
22 income or gross receipts (including premiums), and
23 any activity of the syndicate shall be exempt from all
24 taxation imposed by any State, county, municipality,
25 or local taxing authority.

1 (d) AUDITS OF SYNDICATE AGENTS.—Unless other-
2 wise agreed, the direct guarantors under any cross-guar-
3 antee or stop-loss contract shall have the right to retain
4 a third party to audit the performance of the syndicate
5 agent under the terms of the contract.

6 (e) REPLACEMENT OF SYNDICATE AGENTS.—

7 (1) IN GENERAL.—The cross-guarantee or stop-
8 loss syndicate under any cross-guarantee or stop-loss
9 contract may at any time and without cause replace
10 the syndicate agent under such contract, subject to
11 the guaranteed financial group or nondepository
12 guarantor's approval of the new syndicate agent, by
13 amending the contract and obtaining the Corpora-
14 tion's approval of the new syndicate agent under sec-
15 tion 123.

16 (2) NO EFFECT ON CONTRACT.—The replace-
17 ment of a syndicate agent by the direct guarantors
18 in accordance with paragraph (1) shall not affect the
19 continuing existence or enforceability of the contract.

20 (3) WITHDRAWAL OF SYNDICATE AGENT.—

21 (A) IMMEDIATE SUBMISSION OF AMENDED
22 CONTRACT WITH NEW SYNDICATE AGENT.—If a
23 syndicate agent should resign or otherwise cease
24 providing required services under a cross-guar-
25 antee or stop-loss contract, whether wrongfully,

1 as allowed under such contract, or for any other
2 reason, the cross-guarantee or stop-loss syn-
3 dicate shall immediately submit an amendment
4 to the contract, with a successor syndicate
5 agent named in the amendment, to the Cor-
6 poration for approval.

7 (B) INTERIM CGRC APPOINTMENT.—The
8 Corporation may appoint a successor syndicate
9 agent to serve until a cross-guarantee or stop-
10 loss syndicate has complied with the require-
11 ments under subparagraph (A).

12 (f) CAUSE OF ACTION BY THE SYNDICATE AGAINST
13 THE SYNDICATE AGENT.—

14 (1) STANDARD OF LIABILITY.—Unless other-
15 wise agreed, a cross-guarantee or stop-loss syndicate
16 shall have a cause of action against the syndicate
17 agent for losses accrued by members of the syn-
18 dicate under a cross-guarantee or stop-loss contract
19 only if the syndicate consciously disregarded sub-
20 stantial and unjustifiable risks being taken by the
21 guaranteed party under the contract.

22 (2) CAUSE OF ACTION BELONGS TO THE SYN-
23 DICATE.—An action against a syndicate agent under
24 paragraph (1) may be brought solely by the syn-
25 dicate as a whole and no individual member of the

1 syndicate shall have a cause of action against the
2 syndicate agent.

3 **SEC. 118. ASSUMPTION OF CONTROL OF A GUARANTEED**
4 **COMPANY BY A CROSS-GUARANTEE SYN-**
5 **DICATE.**

6 (a) RIGHT OF CROSS-GUARANTEE SYNDICATE TO
7 ASSUME CONTROL.—A cross-guarantee syndicate under
8 any cross-guarantee contract shall have the right to as-
9 sume control of a guaranteed company under the contract
10 under the following circumstances:

11 (1) CANCELLATION.—Immediately after a can-
12 cellation of the contract by the syndicate or the
13 guaranteed financial group has become effective un-
14 less a successor cross-guarantee contract has taken
15 effect.

16 (2) EXPIRATION.—Immediately after the expi-
17 ration of the cross-guarantee contract unless a suc-
18 cessor cross-guarantee contract has taken effect.

19 (b) RIGHT OF GUARANTEED PARTY TO SEEK TO
20 STAY ASSUMPTION OF CONTROL.—

21 (1) IN GENERAL.—A guaranteed company may
22 file an action requesting a stay of any assumption
23 of control by a cross-guarantee syndicate.

24 (2) TIME LIMIT FOR OBJECTING TO ASSUMP-
25 TION OF CONTROL.—Except in the case in which the

1 guaranteed company has obtained a successor cross-
2 guarantee contract, any action under paragraph (1)
3 shall be filed either within thirty days after the no-
4 tice of cancellation under section 113(h)(1) is given
5 or more than sixty days prior to the expiration of
6 the contract, whichever the case may be.

7 (3) EXPEDITED REVIEW.—The United States
8 district court with jurisdiction over the cross-guaran-
9 tee contract shall provide expedited review of any ac-
10 tion under paragraph (1).

11 (4) BASIS OF DETERMINATION.—In any action
12 under paragraph (1), the court shall stay the as-
13 sumption of control by a cross-guarantee syndicate
14 only if the conditions for assuming control under
15 subsection (a) have not been met.

16 (c) RIGHTS OF CROSS-GUARANTEE SYNDICATE TO
17 ENJOIN VIOLATIONS OF THE CONTRACT UNTIL ASSUM-
18 ING CONTROL.—

19 (1) INJUNCTIVE REMEDIES.—Upon giving no-
20 tice of cancellation of the cross-guarantee contract
21 under section 113(h)(1) or the expiration of the con-
22 tract, the cross-guarantee syndicate shall be granted
23 injunctive relief to enforce any restrictions imposed
24 under the contract.

25 (2) APPOINTMENT OF A RECEIVER.—

1 (A) IN GENERAL.—Upon giving notice of
2 cancellation of the cross-guarantee contract
3 under section 113(h)(1) or the expiration of the
4 contract, the cross-guarantee syndicate may
5 seek the appointment of a receiver to serve until
6 the syndicate can assume control under sub-
7 section (a) and a court may in its discretion ap-
8 point such a receiver, but the court may ap-
9 point a receiver only if the remedies under
10 paragraph (1) are not adequate to protect the
11 interests of the cross-guarantee syndicate.

12 (B) CGRC SHALL SUBMIT LIST OF PRO-
13 SPECTIVE RECEIVERS.—The court shall appoint
14 a receiver under subparagraph (A) only from a
15 list supplied by the Corporation to the court of
16 five disinterested persons who are qualified and
17 willing to serve as the receiver in the case.

18 (3) EXPEDITED RELIEF.—The United States
19 district court with jurisdiction over the cross-guaran-
20 tee contract shall provide the relief under para-
21 graphs (1) and (2) on an expedited basis.

22 (d) POWERS AND DUTIES OF A CROSS-GUARANTTEE
23 SYNDICATE AFTER ASSUMPTION OF CONTROL.—

24 (1) GENERAL POWERS.—

1 (A) OPERATE THE COMPANY.—A cross-
2 guarantee syndicate which assumes control of a
3 guaranteed company under subsection (a) shall
4 have and may exercise all the powers of the
5 members or shareholders, the directors, and the
6 officers of the company and shall be entitled
7 to—

8 (i) conduct all business of the guaran-
9 teed company;

10 (ii) take over the books, records, and
11 assets of the guaranteed company;

12 (iii) collect all obligations and money
13 due the company;

14 (iv) perform in the name of the com-
15 pany all functions of the company consist-
16 ent with the appointment of the syndicate
17 as the successor to the managers and di-
18 rectors of the company and the duties of
19 the syndicate with respect to the company;
20 and

21 (v) preserve and conserve the assets
22 and property of such company.

23 (B) DISPOSITION OF COMPANY.—The
24 cross-guarantee syndicate which assumes con-

1 trol of a guaranteed company under subsection

2 (a) may—

3 (i) merge the guaranteed company
4 with another guaranteed company;

5 (ii) sell or otherwise dispose of the
6 company; or

7 (iii) place the company in liquidation
8 and proceed to realize upon the assets of
9 the company.

10 (2) DUTIES—

11 (A) DISTRIBUTION OF ASSETS.—In any
12 case in which funds remain from the liquida-
13 tion, sale, or other disposition of the assets of
14 any guaranteed company after all depositors,
15 creditors, other claimants, and administrative
16 expenses of the syndicate have been paid or oth-
17 erwise resolved, the syndicate shall promptly
18 distribute such funds to the company's share-
19 holders or members, as the case may be.

20 (B) FIDUCIARY DUTY.—A cross-guarantee
21 syndicate which assumes control of a guaran-
22 teed company in accordance with subsection (a)
23 shall succeed to the same fiduciary responsibil-
24 ity as the directors and officers of such com-
25 pany had under applicable law.

1 (C) NOTICE TO CGRC.—If a cross-guaran-
2 tee syndicate assumes control of a guaranteed
3 company under subsection (a), the syndicate
4 shall on the same day notify the Corporation
5 that it has assumed control.

6 (e) NO AUTHORITY FOR CGRC, ANY FEDERAL
7 BANKING AGENCY, OR STATE BANK SUPERVISOR TO
8 STAY ASSUMPTION OF CONTROL.—Neither the Corpora-
9 tion nor any Federal banking agency, State bank super-
10 visor, or any other Federal or State agency may take any
11 action to prevent the assumption of control of a guaran-
12 teed company under subsection (a).

13 (f) ASSUMPTION OF CONTROL NOT AN EVENT OF
14 DEFAULT OR GROUNDS FOR ACCELERATION OF OBLIGA-
15 TIONS.—The assumption of control of a guaranteed com-
16 pany under subsection (a) shall not be an event of default
17 by the guaranteed company or grounds for acceleration
18 of any guaranteed obligation under any agreement to
19 which the guaranteed company is a party.

20 (g) SECOND-TIER GUARANTORS CANNOT DISPUTE
21 LOSSES.—A direct guarantor of any direct guarantor
22 which is a member of a cross-guarantee syndicate which
23 assumes control of a guaranteed party under subsection
24 (a) may not bring a cause of action against the cross-guar-
25 antee syndicate based on damages arising out of the syn-

1 dicate's decision to assume control or failure to minimize
2 losses under the cross-guarantee contract.

3 **SEC. 119. ENFORCEMENT OF CONTRACTS.**

4 (a) JURISDICTION OF FEDERAL COURTS.—

5 (1) IN GENERAL.—For purposes of section
6 1331 of title 28, United States Code, any action
7 arising under any cross-guarantee or stop-loss con-
8 tract, or any contract arising under section
9 117(a)(5)(B), shall be deemed to arise under Fed-
10 eral law and may be brought in the district court of
11 the United States designated under paragraph (3).

12 (2) REMOVAL.—Any action arising under any
13 cross-guarantee or stop-loss contract, or any con-
14 tract under section 117(a)(5)(B), which is brought
15 in a State court may be removed by the defendant
16 or the defendants to the district court of the United
17 States designated under paragraph (3).

18 (3) DESIGNATION OF COURT IN CONTRACT.—
19 Each cross-guarantee and stop-loss contract shall
20 designate the district court of the United States
21 which shall have original jurisdiction over any action
22 brought in or removed to Federal court under para-
23 graphs (1) and (2).

24 (b) RESTRICTIONS ON THIRD PARTY BENEFICIARY
25 ACTIONS.—Notwithstanding any State law, no creditor of

1 any guaranteed party under any cross-guarantee or stop-
2 loss contract may bring an action against the cross-guar-
3 antee syndicate under such contract for failure to perform
4 any cross-guarantee obligation under the contract without
5 first having obtained a judgment against the guaranteed
6 party for failure to perform such obligation, unless the di-
7 rect guarantors have assumed control of the guaranteed
8 party under section 118(a).

9 (c) SERVICE OF PROCESS.—For purposes of any ac-
10 tion under subsection (a)—

11 (1) the syndicate agent shall be the agent for
12 all direct guarantors for service of process for ac-
13 tions brought against the syndicate; and

14 (2) service of process upon a syndicate agent
15 shall serve as the exclusive manner of service of
16 process upon any direct guarantor under the con-
17 tract.

18 (d) APPLICABLE STATE LAW.—

19 (1) STATE CONTRACT LAW AS INTERSTITIAL
20 LAW.—Unless otherwise indicated in this title, appli-
21 cable state law shall apply under this title to any
22 cross-guarantee or stop-loss contract.

23 (2) PARTIES' CHOICE OF STATE LAW.—Each
24 cross-guarantee and stop-loss contract shall des-

1 ignite the state law that shall be applicable under
2 paragraph (1).

3 **Subtitle C—Powers and Duties of**
4 **the CGRC**

5 **CHAPTER 1—CROSS-GUARANTEE**
6 **PROCESS**

7 **SEC. 121. THE CROSS-GUARANTEE REGULATION CORPORA-**
8 **TION.**

9 (a) CREATION.—

10 (1) IN GENERAL.—There is hereby established
11 a body corporate the “Cross Guarantee Regulation
12 Corporation” which shall have succession until dis-
13 solved by act of Congress.

14 (2) CORPORATION NOT AN AGENCY.—The Cor-
15 poration shall not be an agency or establishment of
16 the United States Government.

17 (3) HEADQUARTERED IN THE DISTRICT OF CO-
18 LUMBIA.—The Corporation shall maintain its prin-
19 cipal office in the District of Columbia.

20 (b) POWERS.—In addition to any powers granted to
21 the Corporation elsewhere in this title, the Corporation
22 shall have, consistent with this title, the power—

23 (1) to sue and be sued, complain and defend, in
24 its corporate name and through its own counsel, in
25 any State, Federal, or other court;

1 (2) to adopt, alter, and use a corporate seal
2 which shall be judicially noticed;

3 (3) to adopt, amend, and repeal, by its Board
4 of Directors, such bylaws as may be necessary or ap-
5 propriate to carry out the purposes of this title, in-
6 cluding bylaws relating to—

7 (A) the conduct of its business; and

8 (B) the indemnity of its directors, officers,
9 and employees for liabilities and expenses actu-
10 ally and reasonably incurred by any such person
11 in connection with the defense or settlement of
12 an action or suit if such person acted in good
13 faith and in a manner reasonably believed to be
14 consistent with the purposes of this chapter.

15 (4) to adopt, amend, and repeal, by its Board
16 of Directors, such rules as authorized under sub-
17 section (e)(2) of this section;

18 (5) to conduct business (including the carrying
19 on and maintenance of offices) and to exercise all
20 other rights and powers granted to it by this chapter
21 in any State or other jurisdiction without regard to
22 any qualification, licensing, or other statute in such
23 State or other jurisdiction;

24 (6) to lease, purchase, accept gifts or donations
25 of or otherwise acquire, to own, hold, improve, use,

1 or otherwise deal in or with, and to sell, convey,
2 mortgage, pledge, lease, exchange or otherwise dis-
3 pose of, any property, real, personal or mixed, or
4 any interest therein, wherever situated;

5 (7) subject to subsection (c), to hire such offi-
6 cers, attorneys, employees, and agents as may be re-
7 quired, to determine their qualifications to define
8 their duties, to fix their salaries, require bonds for
9 them and fix the penalty thereof; and

10 (8) to enter into contracts, to execute instru-
11 ments, to incur liabilities, and to do any and all
12 other acts and things as may be necessary or inci-
13 dental to the conduct of its business and the exercise
14 of all other rights and powers granted to the Cor-
15 poration under this title.

16 (c) BOARD OF DIRECTORS.—

17 (1) FUNCTIONS.—The Corporation shall have a
18 Board of Directors which, subject to the provisions
19 of this title, shall determine the policies which shall
20 govern the operations of the Corporation.

21 (2) NUMBER AND APPOINTMENT.—The Board
22 of Directors shall consist of seven persons as follows:

23 (A) One director shall be appointed by the
24 Secretary of the Treasury from among the offi-
25 cers of the Department of Treasury and shall

1 be removable by the Secretary without cause at
2 any time.

3 (B) Six directors shall be appointed by the
4 President, by and with the advice and consent
5 of the Senate, as follows—

6 (i) two such directors shall be selected
7 from among senior officers of companies
8 that are or are likely to be guaranteed de-
9 pository institutions, provided that the di-
10 rectors are not from the same geographical
11 area and represent different aspects of the
12 industry;

13 (ii) one such director shall be selected
14 from among senior officers of companies
15 that are or are likely to be nondepository
16 guarantors;

17 (iii) one such director shall be selected
18 from among senior officers of companies
19 that are or are likely to be syndicate
20 agents; and

21 (iv) two such directors shall be se-
22 lected from the general public from among
23 persons who are not either regulatory offi-
24 cials nor associated with a guaranteed de-
25 pository institution, syndicate agent, or

1 nondepository guarantor and have not been
2 such an official or had any such associa-
3 tion for the 2 years preceding appoint-
4 ment.

5 (3) CHAIRMAN AND VICE CHAIRMAN.—The
6 President shall designate a Chairman and Vice
7 Chairman from among those directors appointed
8 under paragraph (2)(B)(iv) of this subsection.

9 (4) TERMS.—

10 (A) FOUR-YEAR TERMS.—Except as pro-
11 vided under subparagraphs (B) and (C), each
12 director shall be appointed for a term of 4
13 years.

14 (B) TRANSITION RULES.—

15 (i) STAGGERED TERMS.—Of the direc-
16 tors first appointed under paragraph
17 (2)(B)—

18 (I) one shall hold office for a
19 term expiring on December 31 of the
20 first full calendar year after passage
21 of this Act;

22 (II) two shall hold office for a
23 term expiring on December 31 of the
24 second full calendar year after pas-
25 sage of this Act;

1 (III) one shall hold office for a
2 term expiring on December 31 of the
3 third full calendar year after passage
4 of this Act; and

5 (IV) two shall hold office for a
6 term expiring on December 31 of the
7 fourth full calendar year after passage
8 of this Act.

9 (ii) TIMING OF PARTICULAR DIREC-
10 TOR'S TERM.—

11 (I) INDUSTRY APPOINTEES'
12 TERMS WILL END IN DIFFERENT
13 YEARS.—One of the directors ap-
14 pointed under each of the clauses
15 (i)(I), (II), (III), (IV) shall consist of
16 the 4 directors appointed under para-
17 graphs (2)(B)(i), (ii), and (iii).

18 (II) APPOINTEES FROM THE
19 GENERAL PUBLIC.—One director ap-
20 pointed under both clause (i)(II) and
21 (IV) shall consist of one of the 2 di-
22 rectors appointed under paragraph
23 (2)(B)(iv).

24 (iii) TREASURY DIRECTOR MUST BE
25 APPOINTED SOON AFTER ENACTMENT.—

1 The Secretary of Treasury shall appoint
2 the director designated under paragraph
3 (2)(A) within 30 days after enactment of
4 this Act.

5 (C) VACANCIES.—

6 (i) APPOINTMENT IN SAME MAN-
7 NER.—A vacancy on the Board of Direc-
8 tors shall be filled in the same manner as
9 the original appointment was made.

10 (ii) APPOINTMENT ONLY FOR THE RE-
11 MAINDER OF THE TERM.—Any director ap-
12 pointed under clause (i) shall be appointed
13 only for the remainder of the term of his
14 predecessor.

15 (D) REMAINING A DIRECTOR UNTIL A SUC-
16 CESSOR IS APPOINTED.—A director may serve
17 after the expiration of his term until his succes-
18 sor has taken office.

19 (5) COMPENSATION.—

20 (A) CHAIRMAN AND VICE CHAIRMAN.—The
21 compensation of the Chairman and Vice Chair-
22 man shall be as provided in the bylaws of the
23 Corporation.

24 (B) OTHER DIRECTORS.—The remaining
25 five directors shall serve without compensation

1 except that they are entitled to receive reim-
2 bursement for expenses incurred in connection
3 with official business of the Corporation.

4 (6) OFFICER AND EMPLOYEES AS MEMBERS OF
5 THE BOARD OF DIRECTORS.—

6 (A) IN GENERAL.—Subject to Subpara-
7 graph (B), no officer, attorney, employee, or
8 agent of the Corporation shall be a member of
9 the Board of Directors.

10 (B) TRANSITION RULE.—The chief execu-
11 tive officer of the Corporation may be 1 of the
12 public members of the Board of Directors until
13 5 years after the cross-guarantee activation
14 date.

15 (7) BOARD OF DIRECTORS TO DETERMINE OF-
16 FICERS.—The officers of the Corporation shall be
17 employed at the will of the Board of Directors.

18 (8) DEFINITION OF OFFICER.—For purposes of
19 this subsection, the term “officer” includes any chief
20 executive officer, president, senior executive, or other
21 official with managerial or executive authority within
22 the Corporation.

23 (d) MEETINGS OF THE BOARD OF DIRECTORS.—

24 (1) TIMING OF MEETINGS.—The Board of Di-
25 rectors shall meet at the call of its Chairman, or as

1 otherwise provided by the bylaws of the Corporation,
2 except that the director appointed under subsection
3 (c)(2)(A) may by himself call a meeting until at
4 least three other directors have taken office.

5 (2) QUORUM TRANSITION RULE.—The bylaws
6 shall determine how many members constitute a
7 quorum when the Board of Directors meet, except
8 that the director appointed under subsection
9 (c)(2)(A) shall by himself constitute a quorum until
10 at least three other directors have taken office.

11 (e) BYLAWS AND RULEMAKING.—

12 (1) BYLAWS.—

13 (A) PROCEDURE.—The Board of Directors
14 shall file with the Secretary of the Treasury a
15 copy of the proposed initial bylaws of the Cor-
16 poration and any proposed bylaw changes ac-
17 companied by a concise general statement of
18 the basis and purpose for such changes.

19 (B) CHANGES BECOME EFFECTIVE UNLESS
20 THE TREASURY DEPARTMENT OBJECTS.—Any
21 bylaws submissions under subparagraph (A)
22 shall become effective 30 days after the filing of
23 such changes with the Secretary of the Treas-
24 ury, unless—

1 (i) the Secretary of the Treasury, by
2 notice to the Corporation setting forth the
3 reasons therefor, disapproves of such pro-
4 posed bylaw changes as being contrary to
5 the purposes of this title; or

6 (ii) the Secretary of the Treasury de-
7 cides, at its own discretion, that public
8 comment shall be obtained, in which case
9 it may, after notifying the Corporation in
10 writing of such finding, require that the
11 procedures set forth in paragraph (2) be
12 followed with respect to such a bylaw
13 change.

14 (2) RULEMAKING.—

15 (A) RULEMAKING AUTHORITY.—The Cor-
16 poration shall have the power to issue a rule
17 only if—

18 (i) the power to issue the rule is ex-
19 plicitly provided for in this title; or

20 (ii) the Corporation demonstrates
21 that—

22 (I) the rule implements statutory
23 language in this title; and

24 (II) improves the efficiency of the
25 cross-guarantee system.

1 (B) SUBSTANTIVE BASIS FOR RULES.—
2 Any proposed rule or proposed rule change shall
3 be approved only if there is substantial evidence
4 supporting the findings on which the proposed
5 rule is based.

6 (C) RULEMAKING PROCEDURES.—

7 (i) IN GENERAL.—The Corporation
8 shall use the informal rulemaking proce-
9 dures under the Administrative Procedures
10 Act (5 U.S.C. 553) in prescribing rules
11 under this paragraph.

12 (ii) RIGHT TO A HEARING.—In addi-
13 tion to the procedures under clause (i), any
14 person may during the comment period re-
15 quest a hearing and such hearing, if re-
16 quested, shall take place within 30 days
17 after the end of the comment period.

18 (iii) SUBMITTING RULES TO TREAS-
19 URY.—After having completed the proce-
20 dures under clauses (i) and (ii), the Cor-
21 poration shall file with the Secretary of the
22 Treasury a copy of the proposed rules.

23 (iv) TREASURY AUTHORITY TO RE-
24 JECT RULES.—Any proposed rules submit-
25 ted under clause (iii) shall become effective

1 30 days after the filing of such changes
2 with the Secretary of the Treasury, unless
3 the Secretary of the Treasury, by notice to
4 the Corporation setting forth the reasons
5 therefor, disapproves of such proposed rule
6 changes as being contrary to the purposes
7 of this title.

8 (D) JUDICIAL REVIEW.—

9 (i) STANDING.—Any person suffering
10 a legal wrong, or adversely affected or ag-
11 grieved within the meaning of this title, by
12 the rules issued under this paragraph is
13 entitled to judicial review thereof.

14 (ii) JURISDICTION.—The United
15 States Court of Appeals for the District of
16 Columbia shall have exclusive original ju-
17 risdiction over any action under clause (i).

18 (E) INITIAL DEADLINE.—For any rule cov-
19 ered by subparagraph (A)(i), the Corporation
20 shall issue a final rule within 1 year after pas-
21 sage of this Act.

22 (f) FUNDING.—

23 (1) INITIAL BORROWING.—

24 (A) BIF AND SAIF FINANCING.—The Cor-
25 poration shall have the power to borrow

1 \$20,000,000 from the Bank Insurance Fund
2 and Savings Association Insurance Fund, in the
3 manner described under section 144(d).

4 (B) USE OF SUCH FINANCING.—The Cor-
5 poration shall use any amount borrowed under
6 subparagraph (A) to establish the central elec-
7 tronic repository, pay initial salaries and other
8 operating expenses, buy equipment, develop
9 computer software, and otherwise begin oper-
10 ations.

11 (C) REPAYMENT.—The Corporation shall
12 repay any borrowing under subparagraph (A)
13 within 5 years after the cross-guarantee activa-
14 tion date from income obtained under para-
15 graph (2).

16 (D) INTEREST ON LOAN.—

17 (i) TIMING OF PAYMENTS.—No prin-
18 cipal or interest payments on the loan de-
19 scribed in subparagraph (A) shall be due
20 prior to 1 year after the cross-guarantee
21 activation date.

22 (ii) INTEREST RATE.—The interest
23 rate on the borrowing under this para-
24 graph shall be equal to .25 percent plus
25 the average annual percentage yield on 3-

1 month bills issued by the Secretary of the
2 Treasury under section 3104(a) of title 31,
3 United States Code.

4 (2) FINANCING FROM OPERATIONS.—

5 (A) SELF-SUPPORTING.—The Corporation
6 shall repay the loan under paragraph (1) and
7 pay for its ongoing operating expenses by as-
8 sessing fees as authorized under subparagraph
9 (B) and collecting penalties as authorized under
10 this title and shall not, subject to paragraph
11 (1), receive any financing or operating subsidies
12 from the United States Treasury.

13 (B) FEES.—The Corporation may assess a
14 reasonable fee upon any party which—

15 (i) submits a cross-guarantee, stop-
16 loss, or group cross-guarantee syndicate
17 contract for approval;

18 (ii) requests use of any service pro-
19 vided by the central electronic repository;
20 or

21 (iii) requests a certification under sec-
22 tion 124(b).

23 (g) MISCELLANEOUS PROVISIONS.—

24 (1) INSPECTION OF REPORTS.—

1 (A) IN GENERAL.—Any notice, report, or
2 other document filed with the Corporation pur-
3 suant to this title, other than financial state-
4 ments filed by nondepository guarantors pursu-
5 ant to section 117(a)(3)(A), shall be available
6 for public inspection unless the Corporation or
7 the Secretary of Treasury determines that dis-
8 closure thereof is not in the public interest.

9 (B) CONGRESSIONAL ACCESS.—Nothing
10 under subparagraph (A) shall act to deny docu-
11 ments or information to the Congress of the
12 United States or to the committees of either
13 House having jurisdiction over depository insti-
14 tutions and related matters under the rules of
15 each body.

16 (C) TREASURY ACCESS TO THE CORPORA-
17 TION'S DOCUMENTS.—The Corporation shall
18 provide the Secretary of Treasury with any doc-
19 ument or information which the Secretary in
20 his or her discretion requests.

21 (2) LIABILITY OF CORPORATION AND ITS OFFI-
22 CERS.—Neither the Corporation nor any of its direc-
23 tors, officers, attorneys, agents, or employees shall
24 have any liability to any person for any action taken

1 or omitted in good faith under or in connection with
2 any matter contemplated by this title.

3 (3) EXEMPTION FROM TAXATION.—The Cor-
4 poration, its property, its franchise, capital, reserves,
5 surplus, and its income, shall be exempt from all
6 taxation now or hereafter imposed by the United
7 States or by any State or local taxing authority, ex-
8 cept that any real property or tangible personal
9 property (other than cash and securities) of the Cor-
10 poration shall be subject to State and local taxation
11 to the same extent according to its value as other
12 real and tangible personal property is taxed.

13 (4) FISCAL YEAR.—The fiscal year of the Cor-
14 poration shall be the calendar year.

15 **SEC. 122. REGULATION OF THE CROSS-GUARANTEE PROC-**
16 **ESS.**

17 (a) CROSS-GUARANTEE REGULATION CORPORATION
18 ENFORCEMENT AUTHORITY.—

19 (1) IN GENERAL.—Subject to section 126, the
20 Corporation shall have exclusive authority to enforce
21 compliance with provisions of this title.

22 (2) ENFORCEMENT.—The Corporation shall
23 have the powers provided in subsections (b), (c), (d),
24 (h), (l), and (n) of section 8 of the Federal Deposit
25 Insurance Act and paragraph (1) and each subpara-

1 graph, other than subparagraphs (B) and (C), of
2 paragraph (2) of subsection (i) of such section in en-
3 forcing this title with respect to any syndicate agent
4 and to any direct guarantor, but only with respect
5 to any violation of any requirements under this title.

6 (b) LIMITATION ON STATE JURISDICTION.—

7 (1) IN GENERAL.—Notwithstanding any provi-
8 sion of state law, no State may exercise authority
9 over any party to any cross-guarantee or stop-loss
10 contract with respect to—

11 (A) whether such party may be a party to
12 a cross-guarantee or stop-loss contract; and

13 (B) the rights, duties, privileges, or obliga-
14 tions of such party under the contract or pursu-
15 ant to this title.

16 (2) RULE OF CONSTRUCTION.—Paragraph (1)
17 shall not be construed as affecting the authority of
18 any State to determine the powers and regulate the
19 activities of State depository institutions.

20 **SEC. 123. APPROVAL PROCESS FOR CROSS-GUARANTEE**
21 **AND STOP-LOSS CONTRACTS.**

22 (a) EXPEDITED APPROVAL OF CONTRACTS AND CON-
23 TRACT AMENDMENTS.—

24 (1) NOTICE AND REVIEW REQUIREMENT.—Ex-
25 cept as provided in paragraph (3), no cross-guaran-

1 tee, stop-loss, or group cross-guarantee syndicate
2 contract, and no amendment to any such contract,
3 may take effect unless—

4 (A) the Corporation has been given 15
5 business days to review the contract or amend-
6 ment; and

7 (B) before the end of the 15-day period de-
8 scribed in subparagraph (A), the Corporation
9 has not issued an order—

10 (i) disapproving the contract or
11 amendment, or

12 (ii) extending the period within which
13 the Corporation may disapprove the con-
14 tract or amendment in accordance with
15 paragraph (6).

16 (2) SUBMISSION OF CONTRACT OR AMENDMENT
17 IN ELECTRONIC FORM.—The Corporation shall pre-
18 scribe regulations requiring that any cross-guaran-
19 tee, stop-loss, or group cross-guarantee syndicate
20 contract, and any amendment to such contract,
21 being submitted for review under this subsection
22 shall be submitted in electronic form to the central
23 electronic repository.

24 (3) NOTICE OF APPROVAL BEFORE END OF DIS-
25 APPROVAL PERIOD.—A cross-guarantee, stop-loss, or

1 group cross-guarantee syndicate contract, and any
2 amendment to any such contract, may take effect
3 before the expiration of the period described in para-
4 graph (1)(A) (or extended in accordance with para-
5 graph (6)) for disapproving such contract if the Cor-
6 poration notifies the parties that the Corporation
7 does not intend to disapprove the contract.

8 (4) SUBMISSION OF INFORMATION AND CER-
9 TIFICATIONS.—

10 (A) IN GENERAL.—The syndicate agent
11 under any proposed cross-guarantee, stop-loss,
12 or group cross-guarantee syndicate contract, or
13 any amendment to any such contract, submitted
14 to the Corporation for review under paragraph
15 (1), shall also submit to the Corporation with
16 such proposed contract such information and
17 attestations or certifications as the Corporation
18 may require by regulation.

19 (B) LIMITATION ON SCOPE OF INFORMA-
20 TION REQUIRED.—The regulations prescribed
21 by the Corporation under subparagraph (A)
22 may not require the submission of any informa-
23 tion other than information directly necessary
24 for the Corporation to determine whether any
25 proposed cross-guarantee, stop-loss, or group

1 cross-guarantee syndicate contract, or amend-
2 ment thereto, submitted to the Corporation for
3 approval is in compliance with the requirements
4 of this title.

5 (5) ADDITIONAL INFORMATION.—

6 (A) IN GENERAL.—The Corporation may,
7 by specific request in connection with a particu-
8 lar proposed cross-guarantee, stop-loss, or
9 group cross-guarantee syndicate contract, or
10 amendment to any contract, submitted to the
11 Corporation, require, on 1 occasion only, that
12 additional information be submitted with re-
13 spect to such contract or amendment, except
14 that the Corporation may require only such in-
15 formation as may be relevant to—

16 (i) a determination of the extent to
17 which the proposed contract is in compli-
18 ance with the requirements of this title;
19 and

20 (ii) the Corporation's evaluation of the
21 contract in accordance with this section.

22 (B) WRITTEN NOTICE OF EXPLANATION.—
23 For any request for additional information
24 under subparagraph (A), the Corporation shall
25 provide a detailed explanation of the specific

1 reasons why such additional information is
2 needed.

3 (6) EXTENSION OF DISAPPROVAL PERIOD.—If,
4 in connection with a particular proposed cross-guar-
5 antee, stop-loss, or group cross-guarantee syndicate
6 contract, or any amendment to any such contract,
7 which is submitted to the Corporation, the Corpora-
8 tion requests additional information under para-
9 graph (5), the Corporation may by order provide
10 that the Corporation shall have any additional period
11 (not to exceed 5 business days beginning on the date
12 on which the Corporation receives such information)
13 within which to disapprove the proposed contract.

14 (b) LIMITED GROUNDS FOR DISAPPROVAL OF PRO-
15 POSED CONTRACT OR AMENDMENT.—The Corporation
16 may disapprove any proposed cross-guarantee, stop-loss or
17 group cross-guarantee syndicate contract, or any amend-
18 ment to any such contract, if and only if—

19 (1) the contract, including any party under the
20 contract, fails to meet the requirements of this title;
21 or

22 (2) the information submitted under subsection
23 (a) was insufficient to determine whether the con-
24 tract and the parties to the contract are in compli-
25 ance with this title.

1 (c) WRITTEN NOTICE OF DISAPPROVAL.—

2 (1) IN GENERAL.—If the Corporation dis-
3 approves any cross-guarantee, stop-loss, or group
4 cross-guarantee syndicate contract, or any amend-
5 ment thereto, the Corporation shall provide imme-
6 diate written notice to the parties to such contract
7 of any disapproval at the time of disapproval.

8 (2) STATEMENT OF REASON FOR DIS-
9 APPROVAL.—The written notice under paragraph (1)
10 shall contain a detailed explanation of the specific
11 reasons for the disapproval under this section.

12 (d) CONDITIONAL APPROVALS.—

13 (1) IN GENERAL.—The Corporation shall pre-
14 scribe regulations which would allow a cross-guaran-
15 tee, stop-loss, or group cross-guarantee syndicate
16 contract to be conditionally approved, in a manner
17 otherwise in accordance with this section, before the
18 effective date of the contract if, at the time such
19 conditional approval is granted, all the information
20 which is required for the Corporation to make a
21 final determination of whether the contract meets
22 the requirements of this title cannot be known or
23 ascertained.

24 (2) RECONFIRMATION.—The regulations pre-
25 scribed under paragraph (1) shall allow the Corpora-

1 tion, upon receipt of all the information the Cor-
2 poration needs to determine whether the contract
3 meets the requirements of this title, 3 business days
4 to give the contract a final approval.

5 (3) REPLACEMENT OF GUARANTORS.—The reg-
6 ulations prescribed under paragraph (1) shall allow,
7 without restriction, the replacement of a direct guar-
8 antor with another direct guarantor during the pe-
9 riod between the date of conditional approval and
10 final approval.

11 (e) JUDICIAL REVIEW.—

12 (1) CONTRACTS DISAPPROVED.—

13 (A) IN GENERAL.—Any party to a contract
14 disapproved under this section may seek judicial
15 review of the disapproval of a contract under
16 this section.

17 (B) LIMITATION ON STANDING.—Only a
18 party to a contract disapproved under this sec-
19 tion may bring an action under this paragraph.

20 (2) CONTRACTS APPROVED.—

21 (A) IN GENERAL.—Subject to subpara-
22 graph (B), any party to any cross-guarantee,
23 stop-loss, or group cross-guarantee syndicate
24 contract may seek judicial review of the ap-
25 proval of a contract under this section.

1 (B) LIMITATION OF REVIEW.—A contract
2 approved under this section may be reviewed
3 only with respect to whether the contract vio-
4 lates section 116(a) or section 125.

5 (C) REMEDIES.—

6 (i) IN GENERAL.—Any court which
7 under this paragraph holds that a contract
8 violates section 116(a) or section 125 shall
9 order the Corporation to use the remedies
10 available under section 125 to eliminate
11 the violation.

12 (ii) INJUNCTIONS DISALLOWED.—No
13 court may enjoin the operation of a con-
14 tract approved under this section.

15 (3) JURISDICTION.—No court other than a dis-
16 trict court of the United States shall have original
17 jurisdiction of any action under this subsection.

18 **SEC. 124. CENTRAL ELECTRONIC REPOSITORY.**

19 (a) ESTABLISHMENT.—

20 (1) CGRC ESTABLISHES CENTRAL ELECTRONIC
21 REPOSITORY.—Before the end of the 6-month period
22 beginning on the date of the enactment of this Act,
23 the Corporation shall establish and maintain a
24 central electronic repository for cross-guarantee,

1 stop-loss, and group cross-guarantee syndicate con-
2 tracts.

3 (2) MAINTENANCE OF ALL PAST AND CURRENT
4 CONTRACTS.—The central electronic repository shall
5 maintain files, in electronic form, of all cross-guar-
6 antee and stop-loss contracts which have not been
7 disapproved by the Corporation under section 123,
8 including expired and canceled contracts, all amend-
9 ments to any such contract which have not been dis-
10 approved by the Corporation under such section, and
11 all proposed contracts and contract amendments
12 which have been filed with the Corporation, but not
13 yet acted upon.

14 (3) DIRECT ACCESS FOR ALL GUARANTORS,
15 GUARANTEED PARTIES, AND SYNDICATE AGENTS.—
16 The files in the central electronic repository estab-
17 lished under this section shall be directly and imme-
18 diately accessible by electronic means to any direct
19 guarantor, guaranteed party, and syndicate agent,
20 and any other person who qualifies for access under
21 procedures established by the Corporation.

22 (4) LEGAL EVIDENCE OF THE CONTRACT.—The
23 provisions of any cross-guarantee contract or stop-
24 loss contract, including any amendment to such con-

1 tract, on file in the central electronic repository
2 shall—

3 (A) be irrebuttable evidence of the con-
4 tract; and

5 (B) be superior evidence to all other forms
6 or versions of the contract.

7 (b) AVAILABILITY OF CERTIFIED COPIES.—

8 (1) IN GENERAL.—The central electronic repos-
9 itory shall make available a copy of any cross-guar-
10 antee or stop-loss contract on file in the repository,
11 including any amendment to any such contract and
12 any proposed contract or proposed amendment to
13 any contract, to any person, any Government officer,
14 agency, or department, or any court upon request.

15 (2) CERTIFICATION OF COPIES.—

16 (A) IN GENERAL.—Each copy of a cross-
17 guarantee or stop-loss contract which is made
18 available in accordance with paragraph (1) shall
19 contain a certification by the central electronic
20 repository that such copy is true and correct.

21 (B) PRIMA FACIE EVIDENCE.—A copy of a
22 cross-guarantee or stop-loss contract which is
23 certified in accordance with subparagraph (A)
24 shall establish prima facie the contract.

1 (c) MAINTENANCE OF DATA BASE OF GUARAN-
2 TORS.—The central electronic repository shall maintain a
3 data base containing the names of the direct guarantors
4 under each cross-guarantee or stop-loss contract which
5 has not expired or been canceled and such other informa-
6 tion with regard to such contracts that will enable any
7 person to determine whether or not any such contract,
8 proposed contract, or proposed amendment to any con-
9 tract, is in compliance with this title and regulations pre-
10 scribed under this title.

11 (d) STANDARD CONTRACT LANGUAGE.—The Cor-
12 poration is hereby authorized to maintain in the central
13 electronic repository and update as needed standard lan-
14 guage for various provisions of cross-guarantee, stop-loss,
15 and group cross-guarantee syndicate contracts that par-
16 ties to these contracts may, at their sole discretion, incor-
17 porate by reference in contracts and contract amendments
18 they submit to the Corporation for approval.

19 **SEC. 125. RESTRICTIONS ON CLOSED LOOPS.**

20 (a) PROHIBITION OF MORE THAN 1 UNRELATED
21 CLOSED LOOP.—At no time shall 2 or more closed loops
22 exist unless at least one cross-guarantee or stop-loss con-
23 tract is a contract in each closed loop that exists in the
24 system.

1 (b) CGRC CALL-BACK.—If, at any time, the require-
2 ments of subsection (a) are violated—

3 (1) the Corporation shall immediately notify
4 each guaranteed party under each cross-guarantee
5 and stop-loss contract which is part of the closed
6 loop which has the fewest number of contracts that
7 it must obtain a successor cross-guarantee or stop-
8 loss contract; and

9 (2) each guaranteed party under paragraph (1)
10 shall have 10 business days upon notification to sub-
11 mit a successor contract to the Corporation for ap-
12 proval.

13 (c) CGRC FILING OF A BANKRUPTCY PETITION.—

14 (1) FILING OF A BANKRUPTCY PETITION BY
15 THE CGRC.—

16 (A) APPOINTMENT OF CGRC AS RE-
17 CEIVER.—The Corporation shall appoint itself
18 as receiver for a guaranteed company if and
19 only if the company has not met the deadline
20 to submit a contract for approval under sub-
21 section (b).

22 (B) CGRC IMMEDIATELY FILES A BANK-
23 RUPTCY PETITION.—Immediately upon appoint-
24 ing itself as receiver under paragraph (1), the
25 Corporation shall file a voluntary petition under

1 section 301 of title 11, United States Code, on
2 behalf of the guaranteed company for which the
3 Corporation appointed itself receiver.

4 (2) RECOVERY FROM ALL DEPOSITORY INSTI-
5 TUTIONS FOR LOSSES DUE TO CLOSED LOOPS.—

6 (A) IN GENERAL.—In the case of any
7 guaranteed company for which the Corporation
8 files a bankruptcy petition under paragraph
9 (1)(B), all depository institutions guaranteed
10 under a cross-guarantee contract shall be liable
11 to cover any loss to the bankruptcy estate aris-
12 ing out of the bankruptcy trustee's duty to per-
13 form on all guaranteed obligations of the guar-
14 anteed company.

15 (B) LIABILITY PROPORTIONAL TO AN IN-
16 STITUTION'S SHARE OF OVERALL GUARANTEED
17 OBLIGATIONS.—A guaranteed depository insti-
18 tution or guaranteed banking office shall be lia-
19 ble under subparagraph (A) in proportion to
20 such institution's or office's share of the depos-
21 its of all depository institutions at the time of
22 the filing of the bankruptcy petition by the Cor-
23 poration.

24 (C) CGRC AUTHORIZATION.—The Cor-
25 poration is authorized to, and shall, assess de-

1 pository institutions for any amounts owed
2 under this paragraph.

3 (d) **STANDING.**—Any person can bring an action in
4 a district court of the United States to force the Corpora-
5 tion to take action under this section.

6 **SEC. 126. TREASURY OVERSIGHT OF THE CROSS-GUARAN-**
7 **TEE REGULATION CORPORATION**

8 (a) **ENFORCEMENT OF THE ACT.**—In the event that
9 the Corporation should fail to fulfill any of its duties under
10 this title, the Secretary of Treasury may apply to the Fed-
11 eral district court for the District of Columbia for an order
12 requiring the Corporation to discharge its obligations
13 under this title and for such other relief as the court may
14 deem necessary to carry out the purposes of this title.

15 (b) **EXAMINATIONS AND REPORTS.**—

16 (1) **EXAMINATIONS.**—The Secretary of Treas-
17 ury may make such examinations and inspections of
18 the Corporation and require the Corporation to fur-
19 nish it with such reports and records or copies there-
20 of as the Secretary may consider necessary or appro-
21 priate to effectuate the purposes of this title.

22 (2) **REPORTS.**—

23 (A) **ANNUAL REPORT.**—Within 90 days
24 after the close of each fiscal year of the Cor-
25 poration, the Corporation shall submit to the

1 Treasury Department a written report relative
2 to the conduct of its business, and the exercise
3 of the other rights and powers granted by this
4 title, during such fiscal year.

5 (B) INFORMATION TO BE INCLUDED IN
6 REPORT.—The report under subparagraph (A)
7 shall include financial statements setting forth
8 the financial position of the Corporation at the
9 end of such fiscal year and the results of its op-
10 erations (including the source and application
11 of its funds) for such fiscal year.

12 (C) REQUIRED AUDIT.—The financial
13 statements included under subparagraph (B)
14 shall be examined by an independent public ac-
15 countant or firm of independent public account-
16 ants, selected by the Corporation and satisfac-
17 tory to the Treasury Department, and shall be
18 accompanied by the report thereon of such ac-
19 countant or firm.

20 (D) SUBMISSION TO THE PRESIDENT AND
21 CONGRESS.—The Secretary of Treasury shall
22 submit the report under subparagraph (A) to
23 the President and Congress with such comment
24 thereon as the Secretary deems appropriate.

1 **CHAPTER 2—PROTECTION OF INSURED**
2 **DEPOSITS**

3 **SEC. 128. BACKUP INSURANCE ON DEPOSITS AT GUARAN-**
4 **TEED DEPOSITORY INSTITUTIONS.**

5 (a) ESTABLISHMENT OF CROSS-GUARANTEE
6 BACKUP FUND.—

7 (1) IN GENERAL.—There is hereby established
8 the cross-guarantee backup fund consisting of
9 amounts deposited pursuant to section 144 and sub-
10 section (c) of this section.

11 (2) ADMINISTRATION OF FUND.—The cross-
12 guarantee backup fund shall be administered by the
13 Corporation.

14 (b) BACKUP DEPOSIT INSURANCE.—

15 (1) FUND LIABILITY.—Deposits in any guaran-
16 teed depository institution shall be insured against
17 loss, to the same extent as deposits are insured
18 against loss under section 11(a) of the Federal De-
19 posit Insurance Act (as in effect on the day before
20 the enactment of this Act), in the event that no ad-
21 justment under section 113(a)(2)(F)(iii) will be suf-
22 ficient to protect all guaranteed obligations of all
23 guaranteed companies against loss.

24 (2) SUBORDINATED DEBT NOT TREATED AS
25 DEPOSIT.—No subordinated debt of any guaranteed

1 depository institution or any guaranteed banking of-
2 fice may be treated as a deposit for purposes of
3 paragraph (1).

4 (c) USE AND DISPOSITION OF FUND.—

5 (1) IN GENERAL.—Amounts in the cross-guar-
6 antee backup fund may be used only to meet obliga-
7 tions incurred under subsection (b)(1).

8 (2) INVESTMENTS.—Amounts on deposit in the
9 cross-guarantee backup fund shall be invested in di-
10 rect obligations of the United States and interest
11 thereon shall accumulate in the fund.

12 **Subtitle D—Miscellaneous**
13 **Provisions**

14 **SEC. 131. INSTITUTIONS OFFERING UNINSURED DEPOSITS.**

15 The Corporation shall ensure that any company other
16 than—

17 (a) a depository institution;

18 (b) a branch which is not an insured branch (as
19 the term “insured branch” is defined in section 3(s)
20 of the Federal Deposit Insurance Act);

21 (c) an insured credit union or noninsured credit
22 union (as such terms are defined in section 101(7)
23 of the Federal Credit Union Act);

24 (d) a broker or dealer registered under the Se-
25 curities and Exchange Act of 1934; or

1 (e) an investment company registered under the
 2 Investment Company Act of 1940, which accepts de-
 3 posits or assumes obligations which would be de-
 4 posits if the institution were a bank or savings associa-
 5 tion (as defined in section 3 of the Federal Deposit
 6 Insurance Act) is accepting such deposits and as-
 7 suming such obligations in accordance with all appli-
 8 cable Federal and State laws which relate to the li-
 9 censing and regulation of institutions which accept
 10 deposits or assume such obligations.

11 **SEC. 132. PREEMPTION OF STATE DEPOSITOR PREF-**
 12 **ERENCE LAWS.**

13 Notwithstanding any State law, the depositors of any
 14 guaranteed depository institution shall be general credi-
 15 tors for purposes of any bankruptcy proceeding under title
 16 11.

17 **SEC. 133. FEDERAL RESERVE LENDING.**

18 (a) **NO COLLATERAL REQUIRED FOR LENDING TO**
 19 **GUARANTEED COMPANY.**—The cross-guarantee contract
 20 shall be sufficient collateral for any loan to a guaranteed
 21 company by any Federal Reserve bank for purposes of any
 22 provision of Federal law, any regulation prescribed by the
 23 Board of Governors of the Federal Reserve System, or any
 24 requirement of any such bank.

1 (b) CERTIFICATION OF NO LOSS.—Before February
2 1 of each calendar year beginning after the cross-guaran-
3 tee activation date, the Board of Governors of the Federal
4 Reserve System, shall submit a report to the Committee
5 on Banking, Finance and Urban Affairs of the House of
6 Representatives and the Committee on Banking, Housing,
7 and Urban Affairs of the Senate containing—

8 (1) a certification that—

9 (A) no loss was incurred by such Board or
10 any Federal Reserve Bank during the preceding
11 calendar year on any loan or other advance to
12 any guaranteed company during such year; and

13 (B) no loss is anticipated on any such loan
14 or advance which remains outstanding at the
15 end of such year; or

16 (2) the amount of any such loss or anticipated
17 loss.

18 **SEC. 134. ADVERTISING BY GUARANTEED FINANCIAL**
19 **GROUPS.**

20 (a) ADVERTISING DEPOSIT GUARANTEES.—

21 (1) IN GENERAL.—A guaranteed company or
22 guaranteed banking office may advertise that depos-
23 its and certain other liabilities are fully guaranteed
24 against any loss under a cross-guarantee contract
25 approved by the Corporation.

1 (2) CROSS-GUARANTEE LOGO.—Before the end
2 of the 1-year period beginning on the date of the en-
3 actment of this Act, the Corporation shall—

4 (A) design, after consultation with deposi-
5 tory institutions, a logotype for use by a guar-
6 anteed company or guaranteed banking office to
7 indicate that such a company or office is guar-
8 anteed under a cross-guarantee contract; and

9 (B) authorize guaranteed companies and
10 guaranteed banking offices to use such logo-
11 type.

12 (3) REGULATIONS GOVERNING MANNER OF AD-
13 VERTISING.—The Corporation shall prescribe regula-
14 tions governing the manner in which a guaranteed
15 company or guaranteed banking office may display
16 any logotype permitted under this subsection.

17 (b) ADVERTISING BACKUP INSURANCE.—A deposi-
18 tory institution which is guaranteed under a cross-guaran-
19 tee contract shall—

20 (1) display at each place of business of the in-
21 stitution any sign described in section 18(a) of the
22 Federal Deposit Insurance Act; and

23 (2) advertise that deposits at the institution are
24 insured by the Federal Government to \$100,000.

1 **SEC. 135. GUARANTEED DEPOSITORY INSTITUTIONS RE-**
2 **MAIN FEDERALLY INSURED DEPOSITORIES**
3 **FOR PURPOSES OF STATE LAW.**

4 Unless a State otherwise provides subsequent to the
5 passage of this Act, a guaranteed depository institution
6 shall be deemed to be a federally-insured depository insti-
7 tution within the meaning of section 3(c)(2) of the Federal
8 Deposit Insurance Act for purposes of any State or Fed-
9 eral law or private agreement which determines the legally
10 acceptable institutions with which to deposit funds.

11 **Subtitle E—Transition to 100**
12 **Percent Cross-Guarantee Process**

13 **SEC. 141. EFFECTIVE DATE OF SYSTEM BASED ON MINI-**
14 **MUM NUMBER OF GUARANTEED DEPOSITORY**
15 **INSTITUTIONS AND AMOUNT OF TOTAL AS-**
16 **SETS.**

17 (a) IN GENERAL.—No cross-guarantee or stop-loss
18 contract shall take effect before the later of—

19 (1) the end of the 18-month period beginning
20 on the date of the enactment of this Act; or

21 (2) forty business days after the date on which
22 the Corporation has approved, under subsection (b),
23 a minimum of 250 cross-guarantee contracts under
24 which depository institutions which, in the aggre-
25 gate, have total assets of not less than

1 \$500,000,000,000 are guaranteed companies or
2 guaranteed banking offices.

3 (b) CONTINGENT EFFECT OF CONTRACTS UNTIL EF-
4 FECTIVE DATE.—

5 (1) IN GENERAL.—The Corporation may condi-
6 tionally approve a cross-guarantee or stop-loss con-
7 tract to become effective on the date to be deter-
8 mined under subsection (a) even through not all di-
9 rect guarantors under the contract meet the require-
10 ments under section 116(a)(1).

11 (2) MINIMUM REQUIREMENTS.—No cross-guar-
12 antee or stop-loss contract conditionally approved
13 under paragraph (1) shall receive final approval
14 from the Corporation for purposes of subsection
15 (a)(2) unless—

16 (A) the cross-guarantee or stop-loss con-
17 tract is 1 of a set of contracts in which each
18 contract—

19 (i) is a contract in the same closed
20 loop; and

21 (ii) becomes effective at the same time
22 every other contract within the set of con-
23 tracts takes effect; and

1 (B) at the time such contract becomes ef-
2 fective, the requirements of section 125(a) are
3 met.

4 (c) PUBLICATION OF SUBSECTION (a) DATE.—The
5 Corporation shall publish a notice in the Federal Register
6 of the date by which contracts may take effect in accord-
7 ance with subsection (a).

8 (d) ONE-TIME CONVERSION TO GUARANTEED
9 PARTY STATUS.—Notwithstanding any provision of sec-
10 tion 142, section 111 shall apply with respect to any de-
11 pository institution as of the date—

12 (1) on which such institution first becomes a
13 guaranteed depository institution or guaranteed
14 banking office;

15 (2) on which any depository institution which is
16 affiliated with such depository institution becomes a
17 guaranteed depository institution; or

18 (3) on which any depository institution which is
19 under common ownership with such depository insti-
20 tution under section 112(d)(2) becomes a guaran-
21 teed depository institution.

22 **SEC. 142. MANDATORY PHASE-IN OF CROSS-GUARANTEES**
23 **AFTER EFFECTIVE DATE OF SYSTEM.**

24 (a) DEPOSITORY INSTITUTIONS WITH ASSETS OF
25 \$1,000,000,000 OR MORE.—Section 111 shall apply as of

1 the end of the 2-year period beginning on the cross-guar-
2 antee activation date with respect to any depository insti-
3 tution which has consolidated assets at book value which
4 are equal to or greater than \$1,000,000,000 as of the end
5 of such 2-year period.

6 (b) DEPOSITORY INSTITUTIONS WITH ASSETS OF
7 \$500,000,000 OR MORE.—Section 111 shall apply as of
8 the end of the 3-year period beginning on the cross-guar-
9 antee activation date with respect to any depository insti-
10 tution which has consolidated assets at book value which
11 are equal to or greater than \$500,000,000 as of the end
12 of such 3-year period.

13 (c) DEPOSITORY INSTITUTIONS WITH ASSETS OF
14 \$250,000,000 OR MORE.—Section 111 shall apply as of
15 the end of the 4-year period beginning on the cross-guar-
16 antee activation date with respect to any depository insti-
17 tution which has consolidated assets at book value which
18 are equal to or greater than \$250,000,000 as of the end
19 of such 4-year period.

20 (d) DEPOSITORY INSTITUTIONS WITH ASSETS OF
21 \$100,000,000 OR MORE.—Section 111 shall apply as of
22 the end of the 5-year period beginning on the cross-guar-
23 antee activation date with respect to any depository insti-
24 tution which has consolidated assets at book value which

1 are equal to or greater than \$100,000,000 as of the end
2 of such 5-year period.

3 (e) DEPOSITORY INSTITUTIONS WITH ASSETS OF
4 \$50,000,000 OR MORE.—Section 111 shall apply as of the
5 end of the 6-year period beginning on the cross-guarantee
6 activation date with respect to any depository institution
7 which has consolidated assets at book value which are
8 equal to or greater than \$50,000,000 as of the end of such
9 6-year period.

10 (f) DEPOSITORY INSTITUTIONS WITH ASSETS OF
11 \$25,000,000 OR MORE.—Section 111 shall apply as of the
12 end of the 7-year period beginning on the cross-guarantee
13 activation date with respect to any depository institution
14 which has consolidated assets at book value which are
15 equal to or greater than \$25,000,000 as of the end of such
16 7-year period.

17 (g) ALL OTHER DEPOSITORY INSTITUTIONS.—Sec-
18 tion 111 shall apply as of the end of the 8-year period
19 beginning on the cross-guarantee activation date with re-
20 spect to any depository institution which is not described
21 in subsection (a), (b), (c), (d), (e), or (f).

22 (h) CONSOLIDATED ASSETS AT BOOK VALUE DE-
23 FINED.—The term “consolidated assets at book value”
24 means the total value, as determined on a consolidated
25 basis and in accordance with generally accepted account-

1 ing principles, of all tangible and intangible property of
2 any depository institution, all subsidiaries of such institu-
3 tion, all affiliates of such institution which are depository
4 institutions, and all subsidiaries of such affiliates.

5 **SEC. 143. APPOINTMENT OF CONSERVATOR OR RECEIVER**
6 **FOR INSTITUTIONS WHICH FAIL TO COMPLY**
7 **WITH TRANSITION REQUIREMENTS.**

8 The FDIC shall immediately appoint a conservator
9 or receiver for any depository institution which is not a
10 guaranteed depository institution or guaranteed banking
11 office under any cross-guarantee contract as of the date
12 by which such institution is required to be a guaranteed
13 depository institution or guaranteed banking office under
14 section 142.

15 **SEC. 144. EXIT FEES.**

16 (a) CONTINGENT PAYMENT OF EXIT FEE UPON
17 CONVERSION OF DEPOSITORY INSTITUTION TO NEW SYS-
18 TEM.—

19 (1) PAYMENT OF EXIT FEE.—Any insurance
20 fund member which becomes a guaranteed deposi-
21 tory institution or guaranteed banking office may be
22 assessed an exit fee in an amount to be determined
23 and assessed under paragraph (2), and such fee
24 shall be deposited in the insurance fund of which the
25 guaranteed depository institution or guaranteed

1 banking office was a member on the cross-guarantee
2 activation date.

3 (2) DETERMINATION OF AMOUNT OF FEE.—

4 (A) TOTAL AMOUNT OF EXIT FEE TO COL-
5 LECT FROM MEMBERS OF AN INSURANCE
6 FUND.—The FDIC shall calculate for each in-
7 surance fund, as of the cross-guarantee activa-
8 tion date, the total amount of exit fees it would
9 collect as of that date if all members of the in-
10 surance fund, except those members the FDIC
11 projects will have to be liquidated, did become
12 a guaranteed depository institution or guaran-
13 teed banking office on such date.

14 (B) CALCULATION OF TOTAL AMOUNT OF
15 EXIT FEES.—For the purpose of subparagraph
16 (A), the total amount of exit fees to be collected
17 for each insurance fund shall be the greater of
18 zero or the present value of—

19 (i) the sum of—

20 (I) total insured deposits of the
21 members of an insurance fund on the
22 cross-guarantee activation date
23 (minus the insured deposits, on such
24 date, held by insurance fund members

1 which the FDIC estimates will be liq-
2 uidated) multiplied by 0.2 percent;

3 (II) losses incurred by an insur-
4 ance fund for depository institutions
5 placed into conservatorship or receiv-
6 ership after the cross-guarantee acti-
7 vation date;

8 (III) administrative expenses of
9 an insurance fund incurred after the
10 cross-guarantee activation date; and

11 (IV) transfers from an insurance
12 fund to the FDIC severance fund;
13 minus—

14 (ii) the sum of—

15 (I) the balance in an insurance
16 fund, as of the cross-guarantee activa-
17 tion date, after adding back any re-
18 serve for future losses as of such date,
19 provided that the balance in the Sav-
20 ings Association Insurance Fund on
21 that date shall be the greater of zero
22 or the sum of all amounts assessed
23 against Savings Association Insurance
24 Fund members and interest earned
25 during such period by such fund,

1 minus the sum of losses paid or ac-
2 crued for members of such fund
3 placed into conservatorship or receiv-
4 ership and administrative expenses
5 such fund incurs during such period;
6 and

7 (II) premiums earned by an in-
8 surance fund after the cross-guaran-
9 tee activation fund.

10 (C) AMOUNT OF EXIT FEE PAID BY MEM-
11 BERS OF AN INSURANCE FUND.—Each insur-
12 ance fund member, on the date such member
13 becomes a guaranteed depository institution or
14 guaranteed banking office, shall pay to the in-
15 surance fund of which such member was a
16 member on the cross-guarantee activation date
17 an amount equal to the amount calculated in
18 paragraph (B) multiplied by—

19 (i) The insured deposits of such mem-
20 ber on the cross-guarantee activation date;
21 divided by

22 (ii) The total amount of insured de-
23 posits of the members of such insurance
24 fund on the cross-guarantee activation
25 date, minus the insured deposits, as of

1 such date, held by insurance fund members
2 which the FDIC estimates as of that date
3 will be liquidated.

4 (D) INTEREST RATE PAID ON EXIT FEES
5 FOR CONTRACTS THAT BECOME EFFECTIVE
6 AFTER THE CROSS-GUARANTEE ACTIVATION
7 DATE.—Any insurance fund member which
8 pays an exit fee shall also pay on the same day
9 interest on the exit fee for the period between
10 the cross-guarantee activation date and the date
11 on which the exit fee is paid.

12 (3) LIABILITY FOR EXIT FEE.—Any acquirer of
13 an insurance fund member shall be liable for any
14 exit fee due when such acquirer becomes a guaran-
15 teed depository institution or guaranteed banking of-
16 fice or, if the acquirer already is a guaranteed de-
17 pository institution or guaranteed banking office, on
18 the day the acquisition transaction officially is con-
19 summated.

20 (b) ORIGINAL FUNDING OF CROSS-GUARANTEE
21 BACKUP-FUND.—Upon payment of any exit fee due under
22 paragraph (a)(1), the FDIC shall transfer from the insur-
23 ance fund of which the depository institution was a mem-
24 ber, as of the cross-guarantee activation date, to the cross-
25 guarantee backup fund an amount equal to 0.2 percent

1 of the insured deposits of such institution as of the cross-
2 guarantee activation date plus interest on the amount
3 transferred.

4 (c) FUNDING FOR FDIC SEVERANCE FUND.—When
5 necessary, the FDIC shall transfer cash from each insur-
6 ance fund to cover disbursements the FDIC makes from
7 the FDIC severance fund, with the amount transferred
8 from each fund bearing the same proportion as the insured
9 deposits of such fund, as of the cross-guarantee activation
10 date, bear to the total insured deposits of both funds as
11 of that date.

12 (d) LOANS TO THE CORPORATION.—The FDIC shall
13 extend loans from each of the insurance funds to the Cor-
14 poration, as authorized under section 121(f)(1)(A), with
15 the amount loaned by each fund bearing the same propor-
16 tion as the insured deposits of such fund, as of the enact-
17 ment date of this bill, bear to the total insured deposits
18 of both funds as of that date.

19 (e) ADDITIONAL ASSESSMENTS IN CASE OF SHORT-
20 FALL IN INSURANCE FUNDS.—

21 (1) ANNUAL REESTIMATE.—As of the first
22 eight anniversaries of the cross-guarantee activation
23 date, the FDIC shall reestimate for each insurance
24 fund the amounts calculated under subsection
25 (a)(2)(B).

1 (2) PUBLIC COMMENTS AND HEARING.—The
2 FDIC shall seek public comments and hold at least
3 one public hearing before issuing its final judgment
4 on any reestimate made under paragraph (1).

5 (3) DETERMINATION OF ADDITIONAL ASSESS-
6 MENT.—Within 60 days after a reestimate under
7 subsection (a)(2)(B), the FDIC shall determine
8 under subsection (a)(2)(C) for each member of an
9 insurance fund as of the cross-guarantee activation
10 date which still exists an amount equal to such
11 member's percentage share of the total insured de-
12 posits of all members of that insurance fund as of
13 such date which have not ceased to exist, multiplied
14 by the amount determined by the reestimate under
15 subsection (a)(2)(B) for the insurance fund of which
16 such member was a member.

17 (4) NO ADDITIONAL ASSESSMENTS WHEN A
18 FUND IS SOLVENT.—If any amount calculated under
19 paragraph (3) is less than zero, then the assessment
20 under such paragraph shall be zero.

21 (5) COLLECTION OF ADDITIONAL ASSESS-
22 MENT.—If an insurance fund member liable for an
23 additional assessment under paragraph (3) has be-
24 come, as of the effective date of the reestimate, a
25 guaranteed depository institution or guaranteed

1 banking office, then such member shall pay the addi-
2 tional assessment to the insurance fund to which it
3 belonged on the cross-guarantee activation date
4 within 20 business days after being notified of the
5 additional assessment.

6 (f) ASSESSMENT PROCEDURE.—The FDIC shall pre-
7 scribe, by regulation, procedures for assessing an exit fee
8 under subsections (a) and (e).

9 (g) EXCESS AMOUNT IN INSURANCE FUNDS SHALL
10 BE TRANSFERRED TO THE CROSS-GUARANTEE BACKUP
11 FUND.—On the eighth anniversary of the cross-guarantee
12 activation date and after first fully accruing for the
13 present value of all losses and expenses associated with
14 depository institutions to be placed in conservatorship or
15 receivership after the eighth anniversary date, any balance
16 remaining in each insurance fund shall be transferred to
17 the cross-guarantee backup fund.

18 (h) CALCULATION OF INTEREST OR DISCOUNT
19 RATE.—For the purpose of this section, the rate of inter-
20 est or the discount rate to be used in a calculation for
21 any insurance fund shall be the average daily percentage
22 yield earned on the investments of each insurance fund
23 for the period of time for which interest or a discounted
24 value is being calculated.

25 (i) DEFINITIONS.—For purposes of this section—

1 (1) the term “insurance fund” means the Bank
2 Insurance Fund or the Savings Association Insur-
3 ance Fund; and

4 (2) the term “insurance fund member” means
5 a depository institution, the deposits of which were
6 insured by an insurance fund on the cross-guarantee
7 activation date.

8 **SEC. 145. SEVERANCE PAY AND RELATED BENEFITS FOR**
9 **FORMER FEDERAL AND STATE BANKING**
10 **AGENCY EMPLOYEES.**

11 (a) DEFINITIONS.—For purposes of this section—

12 (1) ELIGIBLE EMPLOYEE.—The term “eligible
13 employee” means any individual—

14 (A) who is employed by a Federal banking
15 agency, a State bank supervisor, or the Federal
16 Financial Institutions Examination Council
17 (FFIEC) as of the date of the enactment of
18 this Act, including employees of the FDIC on
19 detail to the Resolution Trust Corporation; and

20 (B) Whose employment is terminated by
21 the agency or supervisor after such date other
22 than for cause.

23 (2) FEDERAL BANKING AGENCY.—The term
24 “Federal banking agency” has the meaning given to

1 such term in section 3(q) of the Federal Deposit
2 Insurance Act.

3 (3) STATE BANK SUPERVISOR.—The term
4 “state bank supervisor” means any officer, agency,
5 or other entity of any State (as defined in section
6 3(a)(3) of the Federal Deposit Insurance Act) which
7 has primary regulatory authority over State banks
8 or State savings associations (as such terms are de-
9 fined in section 3 of such Act) in such state.

10 (b) SEVERANCE PAY.—

11 (1) IN GENERAL.—Subject to paragraph (3),
12 any eligible employee shall be entitled to receive in
13 a lump sum, from the FDIC severance fund at the
14 time such employee’s employment by a Federal
15 banking agency, state bank supervisor, or the
16 FFIEC, is terminated, severance pay in the amount
17 which is equal to the sum of—

18 (A) the amount equal to 2 months of com-
19 pensation at the employee’s average annual rate
20 of base pay for the last 12 calendar months of
21 the employee’s employment by any Federal
22 banking agency or State bank supervisor; plus

23 (B) the product of—

24 (i) the amount equal to 3 weeks of
25 compensation at the employee’s annual

1 rate of base pay (as determined under sub-
2 paragraph (A)); and

3 (ii) the number of years (including
4 any fraction of a year) of full-time service
5 of such employee with any Federal banking
6 agency, State bank supervisor, or the
7 FFIEC, or any predecessor of any such
8 agency or supervisor, where such number
9 of years can include employment for more
10 than 1 such agency or supervisor and need
11 not be continuous employment.

12 (2) EXCEPTION FOR EMPLOYEES REEMPLOYED
13 BY ANOTHER FEDERAL OR STATE AGENCY.—Para-
14 graph (1) shall not apply with respect to any eligible
15 employee who—

16 (A) in the case of an individual who is an
17 eligible employee by virtue of being separated
18 from service with any Federal agency, transfers
19 to or becomes employed by another Federal de-
20 partment, agency, or Government corporation;
21 or

22 (B) in the case of an individual who is an
23 eligible employee by virtue of being separated
24 from service with a State bank supervisor,
25 transfers to or becomes employed by another

1 department, agency, or instrumentality of such
2 State.

3 (3) PROHIBITION OF CERTAIN GOVERNMENT
4 SERVICE AFTER ACCEPTING SEVERANCE PAY.—

5 (A) FEDERAL EMPLOYEE.—No individual
6 who receives severance pay under this sub-
7 section by virtue of being separated from serv-
8 ice with a Federal agency or State bank super-
9 visor may be employed by any Federal officer,
10 department, agency, or Government corporation
11 during the 5-year period beginning on the date
12 such severance pay is received by such individ-
13 ual.

14 (B) STATE EMPLOYEE.—No individual
15 who is, but for this subparagraph, entitled to
16 receive severance pay under this subsection by
17 virtue of being separated from service with a
18 State bank supervisor may receive such pay un-
19 less such individual has entered into a contract
20 with the FDIC under which such individual, in
21 consideration of the payment of such severance
22 pay, is obligated to return such amount in full,
23 plus interest, to the FDIC if such employee is
24 employed by any officer, department, or agency
25 of that State during the 5-year period begin-

1 ning on the date such severance pay is received
2 by such individual.

3 (4) PURCHASE OF ADDITIONAL RETIREMENT
4 BENEFITS.—An eligible employee may use any por-
5 tion of the severance pay to which the employee is
6 entitled under this subsection to purchase additional
7 benefits or make additional investments in any Fed-
8 eral retirement plan in which the employee is or was
9 entitled to participate as an employee before becom-
10 ing an eligible employee.

11 (c) RELOCATION EXPENSES AND HEALTH BENE-
12 FITS.—

13 (1) RELOCATION EXPENSES.—An eligible em-
14 ployee who obtains employment away from the place
15 such employee was employed by an appropriate Fed-
16 eral agency or State banking supervisor shall be en-
17 titled to receive travel, relocation, and moving ex-
18 penses from the FDIC severance fund to the same
19 extent Federal employees who are transferred or re-
20 employed are authorized to receive such expenses
21 under subchapter II of chapter 57 of title 5, United
22 States Code.

23 (2) HEALTH BENEFITS.—

24 (A) IN GENERAL.—An eligible employee
25 shall be entitled to receive the same health ben-

1 efits as such employee received as of the date
2 of termination for a time period which shall
3 consist of the shorter of—

4 (i) eighteen months following the date
5 of termination of employment; or

6 (ii) until such employee obtains alter-
7 native full-time employment.

8 (B) ADMINISTRATION OF THE PROVISION
9 OF HEALTH BENEFITS.—The agency which ter-
10 minated the employment of the eligible em-
11 ployee shall be responsible for administering the
12 provision of health benefits authorized under
13 subparagraph (A), unless such agency has been
14 abolished in which case the Federal or State
15 government (whichever case is appropriate)
16 shall provide for another agency or government
17 entity to perform this function.

18 (C) SEVERANCE FUND COMPENSATION.—
19 The FDIC severance fund shall reimburse any
20 agency or government entity for the costs of
21 providing the benefits authorized under sub-
22 paragraph (A).

23 (d) FUNDING BENEFITS FOR ELIGIBLE EMPLOY-
24 EES.—

1 (1) ESTABLISHMENT OF FDIC SEVERANCE
2 FUND.—There is hereby established the FDIC sever-
3 ance fund which shall be administered by the FDIC.

4 (2) RELATED EXPENSES.—Expenses incurred
5 by the FDIC in administering the FDIC severance
6 fund shall be paid from the fund.

7 **SEC. 146. ABOLITION OF FEDERAL FINANCIAL INSTITU-**
8 **TIONS EXAMINATION COUNCIL.**

9 The Federal Financial Institutions Examination
10 Council is hereby abolished, effective on the date on which
11 section 142(g) shall become effective.

12 **SEC. 147. ABOLITION OF THE FEDERAL DEPOSIT INSUR-**
13 **ANCE CORPORATION.**

14 The FDIC is hereby abolished, effective on the date
15 on which the last receivership or conservatorship resulting
16 from the appointment of a receiver or conservator by the
17 FDIC has been liquidated, disposed, of, or otherwise
18 resolved.

19 **TITLE II—AMENDMENTS TO**
20 **OTHER BANKING LAWS**

21 **SEC. 201. AMENDMENTS RELATING TO NATIONAL BANKS.**

22 (a) EXEMPTIONS FROM MINIMUM CAPITAL, STOCK,
23 AND OTHER REQUIREMENTS COVERED BY CROSS-GUAR-
24 ANTEE CONTRACTS.—

1 (1) CAPITAL OF NATIONAL BANKS.—Section
2 5138 of the Revised Statutes of the United States
3 (12 U.S.C. 51) is amended by adding at the end the
4 following new sentence: “This section shall not apply
5 with respect to any national bank which is a guaran-
6 teed depository institution (as defined in section
7 101(a)(7) of the Deposit Insurance Reform, Regu-
8 latory Modernization, and Taxpayer Protection Act
9 of 1993).”.

10 (2) PREFERRED STOCK IN MEMBER BANKS.—
11 Section 345 of the Banking Act of 1935 (12 U.S.C.
12 51B–1) is amended by adding at the end the follow-
13 ing new sentence: “This section shall not apply with
14 respect to any bank which is a guaranteed deposit-
15 ory institution (as defined in section 101(a)(7) of
16 the Deposit Insurance Reform, Regulatory Mod-
17 ernization, and Taxpayer Protection Act of 1993).”.

18 (3) DEFICIENT CAPITAL PROVISION FOR NA-
19 TIONAL BANKS.—Section 5205 of the Revised Stat-
20 utes of the United States (12 U.S.C. 55) is amended
21 by adding at the end the following new sentence:
22 “‘This section shall not apply with respect to any na-
23 tional bank which is a guaranteed depository institu-
24 tion (as defined in section 101(a)(7) of the Deposit

1 Insurance Reform, Regulatory Modernization, and
2 Taxpayer Protection Act of 1993).”.

3 (4) WITHDRAWAL OF CAPITAL PROVISION FOR
4 NATIONAL BANKS.—Section 5204 of the Revised
5 Statutes of the United States (12 U.S.C. 56) is
6 amended by adding at the end the following new
7 sentence: “This section shall not apply with respect
8 to any national bank which is a guaranteed deposi-
9 tory institution (as defined in section 101(a)(7) of
10 the Deposit Insurance Reform, Regulatory Mod-
11 ernization, and Taxpayer Protection Act of 1993).”.

12 (5) INCREASE IN CAPITAL PROVISION FOR NA-
13 TIONAL BANKS.—Section 5142 of the Revised Stat-
14 utes of the United States (12 U.S.C. 57) is amended
15 by adding at the end the following new sentence:
16 “This section shall not apply with respect to any na-
17 tional bank which is a guaranteed depository institu-
18 tion (as defined in section 101(a)(7) of the Deposit
19 Insurance Reform, Regulatory Modernization, and
20 Taxpayer Protection Act of 1993).”.

21 (6) DECREASE AND DISTRIBUTION OF CAPITAL
22 PROVISION FOR NATIONAL BANKS.—Section 5143 of
23 the Revised Statutes of the United States (12
24 U.S.C. 59) is amended by adding at the end the fol-
25 lowing new sentence: “Notwithstanding the preced-

1 ing sentence, the approval of the Comptroller of the
2 Currency shall not be required for any reduction of
3 capital stock, or any distribution to shareholders by
4 reason of any such reduction, under such sentence
5 by any national bank which is a guaranteed deposi-
6 tory institution (as defined in section 101(a)(7) of
7 the Deposit Insurance Reform, Regulatory Mod-
8 ernization, and Taxpayer Protection Act of 1993).’.

9 (7) DIVIDEND PROVISIONS.—

10 (A) IN GENERAL.—Section 5199(a) of the
11 Revised Statutes of the United States (12
12 U.S.C. 60(a)) is amended—

13 (i) by striking “(a) The directors”

14 and inserting:

15 “(a) DECLARATION OF DIVIDEND.—

16 “(1) IN GENERAL.—Subject to paragraph (2),
17 the directors”;

18 (ii) by striking “expedient; except that

19 until the surplus fund of such association”

20 and inserting “expedient”.

21 “(2) EXCEPTION FOR CERTAIN UNDER-
22 CAPITALIZED ASSOCIATIONS.—Until the surplus
23 fund of a national bank”;

24 and

1 (iii) by adding at the end of para-
2 graph (2) (as so redesignated by clause (ii)
3 of this subparagraph) the following: “This
4 paragraph shall not apply with respect to
5 any national bank which is a guaranteed
6 depository institution (as defined in section
7 101(a)(7) of the Deposit Insurance Re-
8 form, Regulatory Modernization, and Tax-
9 payer Protection Act of 1993).”.

10 (B) TECHNICAL AND CONFORMING AMEND-
11 MENT.—Section 5199(b) of the Revised Stat-
12 utes of the United States (12 U.S.C. 60(b)) is
13 amended—

14 (i) by striking “(b) The approval of
15 the Comptroller” and inserting:

16 “(b) APPROVAL OF THE COMPTROLLER.—Except in
17 the case of a national bank which is a guaranteed deposi-
18 tory institution (as defined in section 101(a)(7) of the De-
19 posit Insurance Reform, Regulatory Modernization, and
20 Taxpayer Protection Act of 1993), the approval of the
21 Comptroller”; and

22 (ii) by striking “such association” and
23 inserting “a national bank”.

24 (b) EXEMPTIONS FROM REQUIREMENTS RELATING
25 TO DIRECTORS OF BANKS.—

1 (1) QUALIFICATIONS OF NATIONAL BANK DI-
2 RECTORS.—Section 5146 of the Revised Statutes of
3 the United States (12 U.S.C. 72) is amended by
4 adding at the end the following new sentence: “This
5 section shall not apply with respect to any national
6 bank which is a guaranteed depository institution
7 (as defined in section 101(a)(7) of the Deposit In-
8 surance Reform, Regulatory Modernization, and
9 Taxpayer Protection Act of 1993).”.

10 (2) SERVICE OF PRESIDENT OF NATIONAL
11 BANK AS CHAIRMAN OF THE BANK’S BOARD OF DI-
12 RECTORS.—Section 5150 of the Revised Statutes of
13 the United States (12 U.S.C. 76) is amended by
14 adding at the end the following new sentence: “This
15 section shall not apply with respect to any national
16 bank which is a guaranteed depository institution
17 (as defined in section 101(a)(7) of the Deposit In-
18 surance Reform, Regulatory Modernization, and
19 Taxpayer Protection Act of 1993).”.

20 (3) MEMBER BANK DIRECTOR INTERLOCKS
21 WITH SECURITIES FIRMS.—Section 32 of the Bank-
22 ing Act of 1933 (12 U.S.C. 78) is amended by add-
23 ing at the end the following new sentence: “This sec-
24 tion shall not apply with respect to any member
25 bank which is a guaranteed depository institution

1 (as defined in section 101(a)(7) of the Deposit In-
2 surance Reform, Regulatory Modernization, and
3 Taxpayer Protection Act of 1993).”.

4 (4) LOANS ON OR PURCHASE OF NATIONAL
5 BANK’S OWN STOCK.—Section 5201 of the Revised
6 Statutes of the United States (12 U.S.C. 83) is
7 amended by adding at the end the following new
8 sentence: “This section shall not apply with respect
9 to any national bank which is a guaranteed deposi-
10 tory institution (as defined in section 101(a)(7) of
11 the Deposit Insurance Reform, Regulatory Mod-
12 ernization, and Taxpayer Protection Act of 1993).”.

13 (c) EXEMPTION FROM REQUIREMENT RELATING TO
14 LOANS TO 1 BORROWER.—Section 5200 of the Revised
15 Statutes of the United States (12 U.S.C. 84) is amended
16 by adding at the end the following new subsection:

17 “(e) EXEMPTION OF GUARANTEED COMPANIES.—
18 This section shall not apply with respect to any national
19 bank which is a guaranteed depository institution (as de-
20 fined in section 101(a)(7) of the Deposit Insurance Re-
21 form, Regulatory Modernization, and Taxpayer Protection
22 Act of 1993).”.

23 (d) EXEMPTION FROM REQUIREMENTS RELATING
24 TO SECURITY FOR DEPOSITS OF GOVERNMENT AGENCIES

1 AT NATIONAL BANKS.—Section 5153 of the Revised Stat-
2 utes of the United States (12 U.S.C. 90) is amended—

3 (1) in the 1st undesignated paragraph, by strik-
4 ing “All national banking associations” and insert-
5 ing:

6 “(a) IN GENERAL.—All national banks”;

7 (2) in the 2d undesignated paragraph, by strik-
8 ing “Any national banking association” and insert-
9 ing:

10 “(b) DEPOSITORY FOR STATE AND LOCAL GOVERN-
11 MENTS.—Any national bank”;

12 (3) in the 3d undesignated paragraph, by strik-
13 ing “Any national banking association” and insert-
14 ing:

15 “(c) DEPOSITORY FOR INDIAN TRIBES.—Any na-
16 tional bank”; and

17 (4) by adding at the end the following new sub-
18 section:

19 “(d) EXEMPTION FROM SECURITY AND COLLATERAL
20 REQUIREMENTS.—A national bank which is a guaranteed
21 depository institution (as defined in section 101(a)(7) of
22 the Deposit Insurance Reform, Regulatory Modernization,
23 and Taxpayer Protection Act of 1993) shall not be re-
24 quired to give any security which is otherwise required
25 under subsection (a), (b), or (c) for deposits with the bank

1 under this section or for the performance of the bank as
2 financial agent.”.

3 (e) EXEMPTION FROM PROVISION RELATING TO
4 TRANSFERS BY NATIONAL BANKS IN CONTEMPLATION OF
5 INSOLVENCY.—Section 5242 of the Revised Statutes of
6 the United States (12 U.S.C. 91) is amended by adding
7 at the end the following new sentence: “This section shall
8 not apply with respect to any national bank which is a
9 guaranteed depository institution (as defined in section
10 101(a)(7) of the Deposit Insurance Reform Regulatory
11 Modernization, and Taxpayer Protection Act of 1993.”.

12 (f) EXEMPTION FROM REQUIREMENTS RELATING TO
13 REPORTS OF CONDITION.—Section 5211 of the Revised
14 Statutes of the United States (12 U.S.C. 161) is amended
15 by adding at the end the following new subsection:

16 “(d) EXEMPTION OF GUARANTEED COMPANIES.—
17 This section shall not apply with respect to any national
18 bank which is a guaranteed depository institution (as de-
19 fined in section 101(a)(7) of the Deposit Insurance Re-
20 form, Regulatory Modernization, and Taxpayer Protection
21 Act of 1993.”.

22 (g) CONSENT OF GUARANTORS REQUIRED FOR VOL-
23 UNTARY DISSOLUTION.—

1 (1) IN GENERAL.—Section 5220 of the Revised
2 Statutes of the United States (12 U.S.C. 181) is
3 amended—

4 (A) in the 1st undesignated paragraph, by
5 striking “Any association” and inserting:

6 “(a) IN GENERAL.—Any national bank”;

7 (B) in the 2d undesignated paragraph, by
8 striking “The shareholders shall designate” and
9 inserting:

10 “(b) LIQUIDATING AGENT OR COMMITTEE.—The
11 shareholders shall designate”; and

12 (C) by adding at the end the following new
13 subsection:

14 “(c) CONSENT OF GUARANTORS REQUIRED FOR
15 GUARANTEED COMPANIES.—In the case of any national
16 bank which is a guaranteed depository institution (as de-
17 fined in section 101(a)(7) of the Deposit Insurance Re-
18 form, Regulatory Modernization, and Taxpayer Protection
19 Act of 1993), the national bank may go into liquidation
20 and be closed in accordance with subsection (a) only with
21 the consent of the direct guarantors of such bank.”.

22 (2) NOTICE TO SYNDICATE AGENT.—Section
23 5221 of the Revised Statutes of the United States
24 (12 U.S.C. 182) is amended by inserting “and, in
25 the case of a national bank which is a guaranteed

1 depository institution (as defined in section
2 101(a)(7) of the Deposit Insurance Reform, Regu-
3 latory Modernization, and Taxpayer Protection Act
4 of 1993), to the syndicate agent of such bank” after
5 “Comptroller of the Currency”.

6 (h) COMPTROLLER OF THE CURRENCY NOT AU-
7 THORIZED TO APPOINT RECEIVER.—

8 (1) IN GENERAL.—The Act entitled “An Act
9 authorizing the appointment of receivers of national
10 banking associations, and for other purposes.” and
11 approved June 30, 1876, is amended by inserting
12 after the 1st section (12 U.S.C. 191) the following
13 new section:

14 **“SEC. 2. EXEMPTION OF GUARANTEED NATIONAL BANKS.**

15 “This Act shall not apply with respect to any national
16 bank which is a guaranteed depository institution (as de-
17 fined in section 101(a)(7) of the Deposit Insurance Re-
18 form, Regulatory Modernization, and Taxpayer Protection
19 Act of 1993).”.

20 (2) EXEMPTION FROM ADDITIONAL GROUND
21 FOR THE APPOINTMENT OF RECEIVERS.—Section
22 5234 of the Revised Statutes (12 U.S.C. 192) is
23 amended by adding at the end the following new
24 sentence: “This sentence shall not apply with respect
25 to any national bank which is a guaranteed deposi-

1 tory institution (as defined in section 101(a)(7) of
2 the Deposit Insurance Reform, Regulatory Mod-
3 ernization, and Taxpayer Protection Act of 1993).”.

4 (i) COMPTROLLER OF THE CURRENCY NOT AUTHOR-
5 IZED TO APPOINT CONSERVATOR.—The Bank Conserva-
6 tion Act is amended by inserting after section 206 the fol-
7 lowing new section:

8 **“SEC. 207. EXEMPTION OF GUARANTEED NATIONAL BANKS.**

9 “This subchapter shall not apply with respect to any
10 national bank which is a guaranteed depository institution
11 (as defined in section 101(a)(7) of the Deposit Insurance
12 Reform, Regulatory Modernization, and Taxpayer Protec-
13 tion Act of 1993).”.

14 (j) COMPTROLLER OF THE CURRENCY NOT AUTHOR-
15 IZED TO EXAMINE GUARANTEED BANKS.—Section 5240
16 of the Revised Statutes of the United States (12 U.S.C.
17 481–485) is amended by adding at the end of the 1st
18 paragraph of such section the following new sentence:
19 “Notwithstanding any other provision of this section, the
20 authority of the Comptroller of the Currency to examine
21 any national bank or any affiliate of a national bank shall
22 not apply with respect to any national bank which is a
23 guaranteed depository institution (as defined in section
24 101(a)(7) of the Deposit Insurance Reform, Regulatory

1 Modernization, and Taxpayer Protection Act of 1993) or
2 any affiliate of such bank.”.

3 (k) EXEMPTION FROM LIMITATION OR CONDITIONS
4 ON REAL ESTATE LENDING AUTHORITY.—Section 24(a)
5 of the Federal Reserve Act (12 U.S.C. 371(a)) is amended
6 by adding at the end the following new sentence: “Not-
7 withstanding the preceding sentence, a national bank
8 which is a guaranteed depository institution (as defined
9 in section 101(a)(7) of the Deposit Insurance Reform,
10 Regulatory Modernization, and Taxpayer Protection Act
11 of 1993) shall not be subject to section 18(o) of the Fed-
12 eral Deposit Insurance Act or any restriction or require-
13 ment prescribed by the Comptroller of the Currency under
14 the preceding sentence.”.

15 **SEC. 202. AMENDMENTS RELATING TO MEMBER BANKS.**

16 (a) FEDERAL RESERVE BOARD AND FEDERAL RE-
17 SERVE BANKS NOT AUTHORIZED TO EXAMINE GUARAN-
18 TEED MEMBER BANKS.—

19 (1) IN GENERAL.—Section 11(a)(1) of the Fed-
20 eral Reserve Act (12 U.S.C. 248(a)(1)) is amended
21 by adding at the end the following new sentence:
22 “Notwithstanding any other provision of this section,
23 the authority of the Board or any Federal Reserve
24 bank to examine any member bank shall not apply
25 with respect to any member bank which is a guaran-

1 teed depository institution (as defined in section
2 101(a)(7) of the Deposit Insurance Reform, Regu-
3 latory Modernization, and Taxpayer Protection Act
4 of 1993).”.

5 (2) SPECIAL EXAMINATIONS.—The 1st sentence
6 of the 5th undesignated paragraph of section 5240
7 of the Revised Statutes of the United States (12
8 U.S.C. 483) is amended by inserting “which are not
9 guaranteed depository institutions (as defined in sec-
10 tion 101(a)(7) of the Deposit Insurance Reform,
11 Regulatory Modernization, and Taxpayer Protection
12 Act of 1993)” after “member banks within its dis-
13 trict”.

14 (3) FOREIGN OPERATION OF STATE MEMBER
15 BANKS.—The last sentence of the 6th undesignated
16 paragraph of section 5240 of the Revised Statutes of
17 the United States (12 U.S.C. 481) is amended by
18 inserting “and are not guaranteed depository institu-
19 tions (as defined in section 101(a)(7) of the Deposit
20 Insurance Reform, Regulatory Modernization, and
21 Taxpayer Protection Act of 1993)” before the pe-
22 riod.

23 (4) EXAMINATIONS IN CONNECTION WITH AD-
24 VANCES OR DISCOUNTS.—Section 11(n) of the Fed-
25 eral Reserve Act (12 U.S.C. 248(n)) is amended by

1 striking “depository institution,” and inserting “de-
2 pository institution (other than a guaranteed deposi-
3 tory institution (as defined in section 101(a)(7) of
4 the Deposit Insurance Reform, Regulatory Mod-
5 ernization, and Taxpayer Protection Act of 1993)),”.

6 (b) EXEMPTION FROM MEMBER BANK LOAN LIM-
7 TATIONS.—Section 11(m) of the Federal Reserve Act (12
8 U.S.C. 248(m)) is amended by adding at the end the fol-
9 lowing new sentence: “This paragraph shall not apply with
10 respect to any member bank which is a guaranteed deposi-
11 tory institution (as defined in section 101(a)(7) of the De-
12 posit Insurance Reform, Regulatory Modernization, and
13 Taxpayer Protection Act of 1993).”.

14 (c) EXEMPTION FROM LIMITATION ON ACCESS TO
15 FED WIRE.—Section 11 of the Federal Reserve Act (12
16 U.S.C. 248) is amended by inserting after paragraph (n)
17 the following new paragraph:

18 “(o) PROHIBITION ON LIMITS ON ACCESS TO PAY-
19 MENT AND CLEARING SYSTEMS BY GUARANTEED MEM-
20 BER BANKS.—Notwithstanding any other provision of law,
21 the Board may not limit or deny access by any member
22 bank which is a guaranteed depository institution (as de-
23 fined in section 101(a)(7) of the Deposit Insurance Re-
24 form, Regulatory Modernization, and Taxpayer Protection
25 Act of 1993) to the payment system or any system in ef-

1 fect for clearing transactions in securities for the purpose
2 of protecting any such system from any risk.”.

3 (d) FEDERAL RESERVE BOARD NOT AUTHORIZED
4 TO APPOINT CONSERVATOR OR RECEIVER.—Section
5 11(p) of the Federal Reserve Act (12 U.S.C. 248(p)) (as
6 added by section 133(f) of the Federal Deposit Insurance
7 Corporation Act of 1991) is amended to read as follows:

8 “(p) AUTHORITY TO APPOINT CONSERVATOR OR RE-
9 CEIVER.—

10 “(1) IN GENERAL.—Except as provided in sub-
11 paragraph (B), the Board may appoint the Federal
12 Deposit Insurance Corporation as conservator or re-
13 ceiver for a State member bank under section
14 11(c)(8) of the Federal Deposit Insurance Act.

15 “(2) EXCEPTION FOR GUARANTEED DEPOSI-
16 TORY INSTITUTIONS.—This paragraph shall not
17 apply with respect to any member bank which is a
18 guaranteed depository institution (as defined in sec-
19 tion 101(a)(7) of the Deposit Insurance Reform,
20 Regulatory Modernization, and Taxpayer Protection
21 Act of 1993).”.

22 (e) QUALIFICATION OF GUARANTEED STATE BANKS
23 FOR MEMBER BANK STATUS WITHOUT APPLICATION.—

24 (1) IN GENERAL.—The 1st undesignated para-
25 graph of section 9 of the Federal Reserve Act (12

1 U.S.C. 321) is amended by adding at the end the
2 following new sentence: “Notwithstanding the appli-
3 cation requirement contained in the 1st sentence of
4 this paragraph, any State bank which is a guaran-
5 teed depository institution (as defined in section
6 101(a)(7) of the Deposit Insurance Reform, Regu-
7 latory Modernization, and Taxpayer Protection Act
8 of 1993) may become a member of the Federal Re-
9 serve System without application by agreeing to be
10 subject to all applicable provisions of this Act and by
11 subscribing to stock in the same manner and
12 amount as a national bank under section 2.”.

13 (2) EXEMPTION FROM CAPITAL, RESERVE, AND
14 REPORTING REQUIREMENTS.—The 1st sentence of
15 the 6th undesignated paragraph of section 9 of the
16 Federal Reserve Act (12 U.S.C. 324) is amended by
17 inserting “, other than a bank which is a guaranteed
18 depository institution (as defined in section
19 101(a)(7) of the Deposit Insurance Reform, Regu-
20 latory Modernization, and Taxpayer Protection Act
21 of 1993),” after “banks admitted to membership
22 under authority of this section”.

23 (3) EXEMPTION FROM EXAMINATION.—The 7th
24 undesignated paragraph of section 9 of the Federal
25 Reserve Act (12 U.S.C. 325) is amended by striking

1 “such banks” and inserting “, any bank admitted to
2 membership under this section, other than a bank
3 which is a guaranteed depository institution (as de-
4 fined in section 101(a)(7) of the Deposit Insurance
5 Reform, Regulatory Modernization, and Taxpayer
6 Protection Act of 1993),”.

7 (4) EXEMPTION FROM SPECIAL EXAMINA-
8 TIONS.—The 8th undesignated paragraph of section
9 of the Federal Reserve Act (12 U.S.C. 326) is
10 amended by adding at the end the following new
11 sentence: “Notwithstanding any other provision of
12 this paragraph, the authority of the Board to exam-
13 ine any member bank shall not apply with respect to
14 any member bank which is a guaranteed depository
15 institution (as defined in section 101(a)(7) of the
16 Deposit Insurance Reform, Regulatory Moderniza-
17 tion, and Taxpayer Protection Act of 1993).”.

18 (5) EXEMPTION FROM CERTAIN FORFEITURE
19 PROVISION.—The 9th undesignated paragraph of
20 section 9 of the Federal Reserve Act (12 U.S.C.
21 327) is amended by inserting “, other than a bank
22 which is a guaranteed depository institution (as de-
23 fined in section 101(a)(7) of the Deposit Insurance
24 Reform, Regulatory Modernization, and Taxpayer
25 Protection Act of 1993),” after “a member bank”.

1 (6) EXEMPTION FROM ADDITIONAL CAPITAL
2 REQUIREMENT.—The 11th undesignated paragraph
3 of section 9 of the Federal Reserve Act (12 U.S.C.
4 329) is amended by adding at the end the following
5 new sentence: “This paragraph shall not apply with
6 respect to any member bank which is a guaranteed
7 depository institution (as defined in section
8 101(a)(7) of the Deposit Insurance Reform, Regu-
9 latory Modernization, and Taxpayer Protection Act
10 of 1993).”.

11 (7) EXEMPTION FROM SECURITY AND COLLAT-
12 ERAL REQUIREMENT.—The last sentence of the 15th
13 undesignated paragraph of section 9 of the Federal
14 Reserve Act (12 U.S.C. 332) is amended by insert-
15 ing “, other than a bank which is a guaranteed de-
16 pository institution (as defined in section 101(a)(7)
17 of the Deposit Insurance Reform, Regulatory Mod-
18 ernization, and Taxpayer Protection Act of 1993),”
19 after “the banks and trust companies thus des-
20 ignated”.

21 (8) MEMBERSHIP QUALIFICATION IN THE CASE
22 OF STATE MUTUAL SAVINGS BANKS.—The 16th un-
23 designated paragraph of section 9 of the Federal Re-
24 serve Act (12 U.S.C. 333) is amended by inserting
25 after the 1st sentence the following new sentence:

1 “Notwithstanding the application requirement con-
2 tained in the preceding sentence, any State mutual
3 savings bank which is a guaranteed depository insti-
4 tution (as defined in section 101(a)(7) of the De-
5 posit Insurance Reform, Regulatory Modernization,
6 and Taxpayer Protection Act of 1993) may become
7 a member of the Federal Reserve System without
8 application by agreeing to be subject to all applicable
9 provisions of this Act and by subscribing to stock in
10 the same manner and amount as provided in this
11 paragraph for State mutual savings banks applying
12 for membership.”.

13 (9) EXEMPTION FROM AFFILIATE REPORTING
14 REQUIREMENTS.—

15 (A) IN GENERAL.—The 1st sentence of the
16 17th undesignated paragraph of section 9 of
17 the Federal Reserve Act (12 U.S.C. 334) is
18 amended by inserting “, other than a bank
19 which is a guaranteed depository institution (as
20 defined in section 101(a)(7) of the Deposit In-
21 surance Reform, Regulatory Modernization, and
22 Taxpayer Protection Act of 1993),” after “bank
23 admitted to membership under this section”.

24 (B) EXEMPTION FROM ADDITIONAL AFFIL-
25 IATE REPORTING REQUIREMENTS.—The 18th

1 undesignated paragraph of section 9 of the
2 Federal Reserve Act (12 U.S.C. 334) is amend-
3 ed by inserting “, other than a bank which is
4 a guaranteed depository institution (as defined
5 in section 101(a)(7) of the Deposit Insurance
6 Reform, Regulatory Modernization, and Tax-
7 payer Protection Act of 1993),” after “affili-
8 ated member bank”.

9 (10) EXEMPTION FROM EXAMINATION RE-
10 QUIREMENTS.—The 22d undesignated paragraph of
11 section 9 of the Federal Reserve Act (12 U.S.C.
12 338) is amended by inserting “, other than a bank
13 which is a guaranteed depository institution (as de-
14 fined in section 101(a)(7) of the Deposit Insurance
15 Reform, Regulatory Modernization, and Taxpayer
16 Protection Act of 1993),” after “State member
17 banks” the 1st place such term appears.

18 (f) EXEMPTION FROM INTEREST REQUIREMENTS.—
19 Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a)
20 is amended by adding at the end the following new sen-
21 tence: “No provision of this subsection shall apply with
22 respect to a member bank which is a guaranteed deposi-
23 tory institution (as defined in section 101(a)(7) of the De-
24 posit Insurance Reform, Regulatory Modernization, and
25 Taxpayer Protection Act of 1993).”.

1 (g) EXEMPTION FROM REQUIREMENTS RELATING
2 TO INTERBANK LIABILITIES AND TRANSACTIONS WITH
3 AFFILIATES.—

4 (1) INTERBANK LIABILITIES.—Section 23 of
5 the Federal Reserve Act (12 U.S.C. 371(b-2)) is
6 amended by adding at the end the following new
7 subsection:

8 “(f) EXEMPTION FOR GUARANTEED DEPOSITORY IN-
9 STITUTIONS.—A guaranteed depository institution (as de-
10 fined in section 101(a)(7) of the Deposit Insurance Re-
11 form, Regulatory Modernization, and Taxpayer Protection
12 Act of 1993) shall not be subject to any regulation or
13 order issued under this section.”.

14 (2) EXEMPTION FROM RESTRICTIONS ON
15 TRANSACTIONS WITH AFFILIATES.—Sections 23A
16 and 23B of the Federal Reserve Act (12 U.S.C.
17 371c, 371c-1) are each amended by adding at the
18 end of each such section the following new sub-
19 section:

20 “(f) EXEMPTION FOR GUARANTEED DEPOSITORY IN-
21 STITUTIONS.—This section shall not apply to any guaran-
22 teed depository institution (as defined in section 101(a)(7)
23 of the Deposit Insurance Reform, Regulatory Moderniza-
24 tion, and Taxpayer Protection Act of 1993) or any affili-
25 ate of any such institution that is a guaranteed company

1 (as defined in section 101(a)(6) of the Deposit Insurance
2 Reform, Regulatory Modernization, and Taxpayer Protec-
3 tion Act of 1993).”.

4 (h) EXEMPTION FROM LIMITATION ON INVEST-
5 MENTS IN, OR LOANS ON, BANK PREMISES.—Section
6 24A of the Federal Reserve Act (12 U.S.C. 371d) is
7 amended by adding at the end the following new sentence:
8 “This section shall not apply to any guaranteed depository
9 institution (as defined in section 101(a)(7) of the Deposit
10 Insurance Reform, Regulatory Modernization, and Tax-
11 payer Protection Act of 1993).”.

12 (i) EXEMPTION FROM LIMITATIONS ON BANKERS’
13 ACCEPTANCES.—Section 13(7) of the Federal Reserve Act
14 (12 U.S.C. 372) is amended by adding at the end the fol-
15 lowing new subparagraph:

16 “(I) EXEMPTION FROM LIMITATIONS FOR
17 GUARANTEED DEPOSITORY INSTITUTIONS.—
18 Subparagraphs (B), (C), (D), (E), (F), and (H)
19 shall not apply to any guaranteed depository in-
20 stitution (as defined in section 101(a)(7) of the
21 Deposit Insurance Reform, Regulatory Mod-
22 ernization, and Taxpayer Protection Act of
23 1993).”.

24 (j) EXEMPTION FROM PURCHASING AND LENDING
25 LIMITS RELATING TO DIRECTORS AND OFFICERS.—Sec-

1 tion 22 of the Federal Reserve Act (12 U.S.C. 375, 376,
2 503, 375a, and 375b) is amended by inserting before sub-
3 section (d) the following new subsection:

4 “(c) EXEMPTION FOR GUARANTEED DEPOSITORY
5 INSTITUTIONS.—Subsections (d), (e), (g), and (h) shall
6 not apply to any guaranteed depository institution (as de-
7 fined in section 101(a)(7) of the Deposit Insurance Re-
8 form, Regulatory Modernization, and Taxpayer Protection
9 Act of 1993) or any affiliate of any such institution.”.

10 **SEC. 203. AMENDMENTS RELATING TO SAVINGS ASSOCIA-**
11 **TIONS.**

12 (a) GUARANTEED SAVINGS ASSOCIATION DE-
13 FINED.—Section 2 of the Home Owners’ Loan Act (12
14 U.S.C. 1462) is amended by adding at the end the follow-
15 ing new paragraphs:

16 “(10) GUARANTEED SAVINGS ASSOCIATION.—
17 The term ‘guaranteed savings association’ means a
18 savings association which is a guaranteed depository
19 institution (as defined in section 101(a)(7) of the
20 Deposit Insurance Reform, Regulatory Moderniza-
21 tion, and Taxpayer Protection Act of 1993).

22 “(11) GUARANTEED FEDERAL SAVINGS ASSO-
23 CIATION.—The term ‘guaranteed Federal savings as-
24 sociation’ means a Federal savings association which
25 is a guaranteed depository institution (as defined in

1 section 101(a)(7) of the Deposit Insurance Reform,
2 Regulatory Modernization, and Taxpayer Protection
3 Act of 1993).”.

4 (b) EXEMPTION FROM EXAMINATION AND REGULA-
5 TION BY DIRECTOR OF THE OFFICE OF THRIFT SUPER-
6 VISION.—

7 (1) IN GENERAL.—Section 4(a) of the Home
8 Owners’ Loan Act (12 U.S.C. 1463(a)) is amended
9 by adding at the end the following new paragraph:

10 “(4) EXEMPTION FOR GUARANTEED SAVINGS
11 ASSOCIATIONS.—The authority of the Director under
12 this subsection or subsection (b) or (c) to examine
13 any savings association or prescribe regulations to
14 savings associations shall not apply with respect to
15 any guaranteed savings association.”.

16 (2) FEDERAL SAVINGS ASSOCIATIONS.—Section
17 5(a) of the Home Owners’ Loan Act (12 U.S.C.
18 1464(a)) is amended by adding at the end the fol-
19 lowing new sentence: “The authority of the Director
20 under the preceding sentence to prescribe regula-
21 tions to provide for the examination and regulation
22 of Federal savings associations shall not apply with
23 respect to the examination or regulation of any
24 guaranteed Federal savings association.”.

1 (3) EXEMPTION FROM EXAMINATION FEE PRO-
2 VISIONS.—Section 9 of the Home Owners’ Loan Act
3 (12 U.S.C. 1467) is amended by adding at the end
4 the following new subsection:

5 “(n) EXEMPTION FOR GUARANTEED SAVINGS ASSO-
6 CIATIONS.—This section and the authority of the Director
7 under this section shall not apply with respect to any guar-
8 anteed savings association.”.

9 (c) EXCEPTIONS TO LIMITATIONS ON DEPOSIT AND
10 RELATED POWERS.—Section 5(b)(1) of the Home Own-
11 ers’ Loan Act (12 U.S.C. 1464(b)(1)) is amended by add-
12 ing at the end the following new subparagraph:

13 “(G) SPECIAL RULES APPLICABLE TO
14 GUARANTEED SAVINGS ASSOCIATIONS.—

15 “(i) STATUTORY AUTHORITY.—A
16 guaranteed Federal savings association
17 shall have the powers described in subpara-
18 graphs (C), (E), and (F) without regard to
19 the condition or limitation contained in
20 each such subparagraph relating to regula-
21 tions of the Director.

22 “(ii) LIMITATION ON REGULATORY
23 AUTHORITY.—The exercise by a guaran-
24 teed Federal savings association of powers
25 established under subparagraph (A) or (D)

1 or the last sentence of subparagraph (B)
2 shall not be subject to any regulations pre-
3 scribed by the Director under such provi-
4 sion.

5 “(iii) EXEMPTION.—A guaranteed
6 Federal savings association shall not be
7 subject to the 1st sentence of subpara-
8 graph (B).”.

9 (d) EXCEPTIONS TO LIMITATIONS ON LOAN AND IN-
10 VESTMENT POWERS.—Section 5(c) of the Home Owners’
11 Loan Act (12 U.S.C. 1464(c)) is amended by adding at
12 the end the following new paragraph:

13 “(7) EXCEPTIONS FOR GUARANTEED SAVINGS
14 ASSOCIATIONS.—

15 “(A) LIMITATION ON REGULATORY AU-
16 THORITY.—The exercise by a guaranteed Fed-
17 eral savings association of powers established
18 under any provision of this subsection shall not
19 be subject to any regulations prescribed by the
20 Director under this subsection.

21 “(B) EXEMPTION FROM MAXIMUM
22 AMOUNT LIMITATIONS.—A guaranteed Federal
23 savings association shall not be subject to any
24 limitation in this subsection on the outstanding
25 amount of loans or investments by the associa-

1 tion under any provision of this subsection,
2 without regard to whether such maximum
3 amount is expressed as a fixed dollar amount or
4 as a percentage of such association's assets or
5 capital.”.

6 (e) EXEMPTION FROM ENFORCEMENT AND
7 CONSERVATORSHIP AND RECEIVERSHIP PROVISIONS.—
8 Section 5(d) of the Home Owners' Loans Act (12 U.S.C.
9 1464(d)) is amended by adding at the end the following
10 new paragraph:

11 “(7) EXEMPTION FOR GUARANTEED SAVINGS
12 ASSOCIATIONS.—This subsection and the authority
13 of the Director under this subsection shall not apply
14 with respect to any guaranteed savings association.”.

15 (f) EXEMPTION FROM FITNESS STANDARDS.—Sec-
16 tion 5(e) of the Home Owners' Loan Act (12 U.S.C.
17 1464(e)) is amended by adding at the end the following
18 new sentence: “The preceding sentence shall not apply
19 with respect to any savings association which, at the time
20 the charter is granted, is a guaranteed depository institu-
21 tion (as defined in section 101(a)(7) of the Deposit Insur-
22 ance Reform, Regulatory Modernization, and Taxpayer
23 Protection Act of 1993) or is required to be a guaranteed
24 depository institution before such association accepts any
25 deposit.”.

1 (g) EXEMPTION FROM REQUIREMENTS RELATING
2 TO SECURITY FOR DEPOSITS OF GOVERNMENT AGEN-
3 CIES.—Section 5(k) of the Home Owners’ Loan Act (12
4 U.S.C. 1464(k)) is amended by adding at the end the fol-
5 lowing new sentence: “A guaranteed savings association
6 shall not be required to give any security for deposits with
7 the savings association under this section or for the per-
8 formance of the association as fiscal agent.”.

9 (h) EXEMPTION FROM MINIMUM CAPITAL REQUIRE-
10 MENTS.—Section 5(s) of the Home Owners’ Loan Act (12
11 U.S.C. 1464(s)) is amended by adding at the end the fol-
12 lowing new paragraph:

13 “(6) EXEMPTION FOR GUARANTEED SAVINGS
14 ASSOCIATIONS.—This subsection and the authority
15 of the Director under this subsection shall not apply
16 with respect to any guaranteed savings association.”.

17 (i) EXEMPTION FROM CAPITAL STANDARDS.—Sec-
18 tion 5(t)(1) of the Home Owners’ Loan Act (12 U.S.C.
19 1464(t)(1)) is amended by adding at the end the following
20 new subparagraph:

21 “(E) EXEMPTION FOR GUARANTEED SAV-
22 INGS ASSOCIATIONS.—This subsection and the
23 authority of the Director under this subsection
24 shall not apply with respect to any guaranteed
25 savings association.”.

1 (j) EXEMPTION FROM REQUIREMENT RELATING TO
2 LOANS TO 1 BORROWER.—Section 5(u) of the Home
3 Owners’ Loan Act (12 U.S.C. 1464(u)) is amended by
4 adding at the end the following new paragraph:

5 “(4) EXEMPTION FOR GUARANTEED SAVINGS
6 ASSOCIATIONS.—This subsection shall not apply with
7 respect to any guaranteed savings association.”.

8 (k) EXEMPTION FROM REQUIREMENT RELATING TO
9 REPORTS OF CONDITION.—Section 5(v) of the Home
10 Owners’ Loan Act (12 U.S.C. 1464(v)) is amended by
11 adding at the end the following new paragraph:

12 “(9) EXEMPTION FOR GUARANTEED SAVINGS
13 ASSOCIATIONS.—This subsection shall not apply with
14 respect to any guaranteed savings association.”.

15 (l) EXEMPTION FROM REQUIREMENT RELATING TO
16 LIQUID ASSETS.—Section 6 of the Home Owners’ Loan
17 Act (12 U.S.C. 1465) is amended by adding at the end
18 the following new subsection:

19 “(g) EXEMPTION FOR GUARANTEED SAVINGS ASSO-
20 CIATIONS.—This section shall not apply with respect to
21 any guaranteed savings associations.”.

22 (m) EXEMPTION FROM AFFILIATE TRANSACTION
23 AND LENDING LIMITS RELATING TO DIRECTORS AND OF-
24 FICERS.—Section 11 of the Home Owners’ Loan Act (12

1 U.S.C. 1468) is amended by adding at the end the follow-
2 ing new subsection:

3 “(d) EXEMPTION FOR GUARANTEED SAVINGS ASSO-
4 CIATIONS.—This section shall not apply with respect to
5 any guaranteed savings association.”.

6 **SEC. 204. AMENDMENTS RELATING TO SAVINGS AND LOAN**
7 **HOLDING COMPANIES.**

8 (a) GUARANTEED SAVINGS ASSOCIATION DE-
9 FINED.—Section 10(a)(1) of the Home Owners’ Loan Act
10 (12 U.S.C. 1467a(a)(1)) is amended by adding at the end
11 the following new subparagraph:

12 “(K) GUARANTEED SAVINGS ASSOCIA-
13 TION.—The term ‘guaranteed savings associa-
14 tion’ includes any savings association referred
15 to in subparagraph (A) which is a guaranteed
16 depository institution (as defined in section
17 101(a)(7) of the Deposit Insurance Reform,
18 Regulatory Modernization, and Taxpayer Pro-
19 tection Act of 1993).”.

20 (b) EXEMPTION FROM EXAMINATION AND REPORT-
21 ING REQUIREMENT.—Section 10(b) of the Home Owners’
22 Loan Act (12 U.S.C. 1467a(b)) is amended by adding at
23 the end the following new paragraph:

24 “(7) EXEMPTION FOR S&L HOLDING COMPANY
25 WHICH CONTROLS A GUARANTEED SAVINGS ASSOCIA-

1 TION.—Paragraphs (2), (3), and (4) and the author-
2 ity of the Director under any such paragraph shall
3 not apply with respect to any savings and loan hold-
4 ing company which controls a guaranteed savings as-
5 sociation and any subsidiary of such company.”.

6 (c) COORDINATION WITH SECTION 11.—Section
7 10(d) of the Home Owners’ Loan Act (12 U.S.C.
8 1467a(d)) is amended by striking “Transaction” and in-
9 serting “Subject to section 11(d), transactions”.

10 (d) EXEMPTION FROM REQUIREMENTS RELATING
11 TO DECLARATION OF DIVIDEND.—Section 10(f) of the
12 Home Owner’s Loan Act (12 U.S.C. 1467a(f)) is amended
13 by adding at the end the following new sentence: “This
14 subsection shall not apply with respect to any savings and
15 loan company which controls a guaranteed savings asso-
16 ciation.”.

17 (e) EXEMPTION FROM RESTRICTIONS ON HIGH-RISK
18 ACTIVITIES.—Section 10(p) of the Home Owners’ Loan
19 Act (12 U.S.C. 1467a(p)) is amended by adding at the
20 end the following new paragraph:

21 “(3) EXEMPTION FOR PARENT OF GUARAN-
22 TEED SAVINGS ASSOCIATION.—This subsection shall
23 not apply with respect to any savings and loan com-
24 pany which controls a guaranteed savings associa-
25 tion.”.

1 (f) NONAPPLICABILITY OF QUALIFIED STOCK ISSU-
2 ANCE PROVISIONS.—Section 10(q)(1)(A) of the Home
3 Owners’ Loan Act (12 U.S.C. 1467a(q)(1)(A)) is amend-
4 ed—

5 (1) in clause (i), by inserting “which is not a
6 guaranteed savings association” after
7 “undercapitalized savings association”; and

8 (2) in clause (ii), by inserting “and does not
9 control a guaranteed savings association” after
10 “controls an undercapitalized savings association”.

11 **SEC. 205. AMENDMENTS RELATING TO THE FEDERAL DE-**
12 **POSIT INSURANCE CORPORATION.**

13 (a) AMENDMENTS TO DEFINITIONS.—

14 (1) DEFINITIONS RELATING TO DEPOSITORY
15 INSTITUTIONS.—Section 3(c) of the Federal Deposit
16 Insurance Act (12 U.S.C. 1813(c)) is amended by
17 adding at the end the following new paragraphs:

18 “(6) GUARANTEED DEPOSITORY INSTITUTION
19 NOT INCLUDED.—Except as otherwise specifically
20 provided in any provision of this Act, the terms ‘de-
21 pository institution’ and ‘insured depository institu-
22 tion’ do not include any guaranteed depository insti-
23 tution.

24 “(7) GUARANTEED DEPOSITORY INSTITU-
25 TION.—The term ‘guaranteed depository institution’

1 has the meaning given to such term in section
2 101(a)(7) of the Deposit Insurance Reform, Regu-
3 latory Modernization, and Taxpayer Protection Act
4 of 1993.’’.

5 (2) DEFINITION RELATING TO BANKS.—Section
6 3(a) of the Federal Deposit Insurance Act (12
7 U.S.C. 1813(a)) is amended by adding at the end
8 the following new paragraph:

9 “(5) GUARANTEED DEPOSITORY INSTITUTIONS
10 NOT INCLUDED.—Except as otherwise specifically
11 provided in any provision of this Act, the terms
12 ‘bank’, ‘national bank’, ‘State bank’, ‘District bank’,
13 ‘branch’, and ‘Federal branch’, whether or not any
14 such term appears in conjunction with the term ‘in-
15 sured’, ‘member’, or ‘nonmember’, do not include
16 any guaranteed depository institution.’’.

17 (3) DEFINITION RELATING TO SAVINGS ASSO-
18 CIATIONS.—Section 3(b) of the Federal Deposit In-
19 surance Act (12 U.S.C. 1813(b)) is amended by
20 adding at the end the following new paragraph:

21 “(4) GUARANTEED DEPOSITORY INSTITUTIONS
22 NOT INCLUDED.—Except as otherwise specifically
23 provided in any provision of this Act, the terms ‘sav-
24 ings association’, ‘Federal savings association’, and
25 ‘State savings association’, whether or not any such

1 term appears in conjunction with the term ‘insured’,
2 do not include any guaranteed depository institu-
3 tion.”.

4 (4) DEFINITION RELATING TO APPROPRIATE
5 FEDERAL BANKING AGENCY.—Section 3(q) of the
6 Federal Deposit Insurance Act (12 U.S.C. 1813(q))
7 is amended by adding before the last sentence the
8 following new paragraph:

9 “(5) The Cross-Guarantee Regulation Corpora-
10 tion in the case of a guaranteed depository institu-
11 tion.”.

12 (b) PROHIBITION ON NEW INSURED DEPOSITORY
13 INSTITUTIONS, BY CHARTER OR CONVERSION, AFTER
14 EFFECTIVE DATE OF CROSS-GUARANTEE SYSTEM.—

15 (1) NO CONTINUATION OF INSURANCE IN CON-
16 NECTION WITH CONVERSIONS.—Section 4 of the
17 Federal Deposit Insurance Act (12 U.S.C. 1814) is
18 amended by adding at the end the following new
19 subsection:

20 “(e) INAPPLICABILITY OF SUBSECTIONS (b), (c), AND
21 (d) AFTER EFFECTIVE DATE OF CROSS-GUARANTEE SYS-
22 TEM.—Subsections (b), (c), and (d) shall not apply as of
23 the effective date of the cross-guarantee system under sub-
24 section (a) of section 141 of the Deposit Insurance Re-
25 form, Regulatory Modernization, and Taxpayer Protection

1 Act of 1993, as published by the Cross-Guarantee Regula-
2 tion Corporation in the Federal Register pursuant to sub-
3 section (c) of such section.”.

4 (2) NO NEW INSURANCE UNDER THE FEDERAL
5 DEPOSIT INSURANCE ACT.—Section 5 of the Federal
6 Deposit Insurance Act (12 U.S.C. 1815) is amended
7 by adding at the end the following new subsection:
8 “(f) PROHIBITION ON APPROVAL OF INSURANCE
9 AFTER EFFECTIVE DATE OF CROSS-GUARANTEE SYS-
10 TEM.—No application for insurance under this section
11 may be approved by the Corporation on or after the date
12 by which the Cross-Guarantee Regulation Corporation has
13 approved, under subsection (a) of section 141 of the De-
14 posit Insurance Reform, Regulatory Modernization, and
15 Taxpayer Protection Act of 1993, 250 cross-guarantee
16 contracts described in subsection (a)(2) of such section.”.

17 (c) TERMINATION OF DEPOSIT INSURANCE OF GUAR-
18 ANTEED DEPOSITORY INSTITUTION.—Section 8(a) of the
19 Federal Deposit Insurance Act (12 U.S.C. 1818(a)) is
20 amended—

21 (1) by redesignating paragraph (10) as para-
22 graph (11); and

23 (2) by inserting after paragraph (9), the follow-
24 ing new paragraph:

1 “(10) TERMINATION OF INSURANCE OF GUAR-
2 ANTEED DEPOSITORY INSTITUTION.—The status of
3 any insured depository institution as an insured de-
4 pository institution shall cease as of the date the in-
5 stitution becomes a guaranteed depository institu-
6 tion.”.

7 (d) INELIGIBILITY OF GUARANTEED DEPOSITORY
8 INSTITUTION FOR DEPOSIT INSURANCE UNDER THE
9 FEDERAL DEPOSIT INSURANCE ACT.—Section 5(a)(1) of
10 the Federal Deposit Insurance Act (12 U.S.C. 1815(a)(1))
11 is amended by striking “trust funds (as defined in section
12 3(p)),” and inserting “trust funds (as defined in section
13 3(p)) and is not a guaranteed depository institution.”.

14 (e) APPLICABILITY OF INSURANCE LOGO PROVI-
15 SIONS.—Section 18(a) of the Federal Deposit Insurance
16 Act (12 U.S.C. 1828(a)) is amended by adding at the end
17 the following new paragraph:

18 “(4) APPLICABILITY TO GUARANTEED INSTITU-
19 TIONS.—For purposes of this subsection, the terms
20 ‘insured bank’ and ‘insured savings association’ shall
21 be deemed to include any bank (as defined in section
22 3(a) without regard to paragraph (5) of such sec-
23 tion) and any savings association (as defined in sec-
24 tion 3(b) without regard to paragraph (4) of such

1 section) which is a guaranteed depository institu-
2 tion.”.

3 (f) GUARANTEED DEPOSITORY INSTITUTIONS NOT
4 EXEMPT FROM LIMITATION ON INSURANCE UNDERWRIT-
5 ING.—Section 24(b) of the Federal Deposit Insurance Act
6 (12 U.S.C. 1831a(b)) is amended by adding at the end
7 the following new paragraph:

8 “(3) APPLICABILITY TO GUARANTEED DEPOSI-
9 TORY INSTITUTIONS.—Notwithstanding section
10 3(a)(5), the term ‘insured State bank’ includes, for
11 purposes of this subsection, a State bank which is a
12 guaranteed depository institution.”.

13 **SEC. 206. AMENDMENTS TO OTHER BANKING LAWS.**

14 (a) EXEMPTION FROM DEPOSITORY INSTITUTION
15 MANAGEMENT INTERLOCKS ACT.—Section 205 of the De-
16 pository Institution Management Interlocks Act (12
17 U.S.C. 3204) is amended by adding at the end the follow-
18 ing new paragraph:

19 “(10) GUARANTEED DEPOSITORY INSTITU-
20 TION.—Any guaranteed depository institution and
21 any affiliate of such institution.”.

22 (b) EXEMPTION FROM REAL ESTATE APPRAISAL
23 REQUIREMENTS.—Section 1121(4) of the Financial Insti-
24 tutions Reform, Recovery, and Enforcement Act of 1989
25 (12 U.S.C. 3350(4)) is amended to read as follows:

1 “(4) FEDERALLY RELATED TRANSACTION.—

2 The term ‘Federally related transaction’—

3 “(A) means any real estate-related finan-
4 cial transaction which—

5 “(i) a Federal financial institutions
6 regulatory agency or the Resolution Trust
7 Corporation engages in, contracts for, or
8 regulates; and

9 “(ii) requires the services of an ap-
10 praiser; and

11 “(B) does not include any real estate-relat-
12 ed financial transaction which is regulated by a
13 Federal financial institutions regulatory agency
14 solely by reason of the involvement of a guaran-
15 teed depository institution (as defined in section
16 101(a)(7) of the Deposit Insurance Reform,
17 Regulatory Modernization, and Taxpayer Pro-
18 tection Act of 1993) in such transaction.”.

19 (c) EXEMPTION FROM PAYMENT SYSTEM REQUIRE-
20 MENTS.—Subtitle A of Title IV of the Federal Deposit
21 Insurance Corporation Improvement Act of 1991 (12
22 U.S.C. 4401 et seq.) is amended by adding at the end
23 the following new section:

1 **“SEC. 408. EXEMPTION FROM GUARANTEED DEPOSITORY**
2 **INSTITUTIONS.**

3 “This subtitle shall not apply with respect to a depos-
4 itory institution which is a guaranteed depository institu-
5 tion (as defined in section 101(a)(7) of the Deposit Insur-
6 ance Reform, Regulatory Modernization, and Taxpayer
7 Protection Act of 1993).”.

8 (d) EXEMPTION FROM THE INTERNATIONAL LEND-
9 ING SUPERVISION ACT OF 1983.—The last sentence of
10 section 903(2) of the International Lending Supervision
11 Act of 1983 (12 U.S.C. 3902(2)) is amended by inserting
12 “or a guaranteed depository institution (as defined in sec-
13 tion 101(a)(7) of the Deposit Insurance Reform, Regu-
14 latory Modernization, and Taxpayer Protection Act of
15 1993)” before the period.

16 **TITLE III—AMENDMENTS TO**
17 **TITLE 11, UNITED STATES CODE**
18 **Subtitle A—Amendments to**
19 **Chapter 1 of Title 11**

20 **SEC. 301. DEFINITIONS.**

21 Section 101 of Title 11, United States Code, is
22 amended—

23 (a) by redesignating subsection (3) as sub-
24 section “(29)”;

25 (b) by redesignating subsections (4)–(7) as sub-
26 sections “(3)”–“(6)”;

1 (c) by adding new subsection (7):

2 “(7) ‘company’ means any corporation, partner-
3 ship, business trust, association, or similar organiza-
4 tion;”;

5 (d) by adding new subsection (11):

6 “(11) ‘cross-guarantee contract’ means a con-
7 tract which—

8 “(A) is entered into between—

9 “(i) one or more companies, at least
10 one of which is a depository institution;
11 and

12 “(ii) a cross-guarantee syndicate; and

13 “(B) is approved by the regulation cor-
14 poration under section 123 of title I of this
15 Act;”;

16 (e) by adding new subsection (12):

17 “(12) ‘cross-guarantee obligation’ means an ob-
18 ligation of a direct guarantor arising out of a cross-
19 guarantee or stop-loss contract, and shall include the
20 obligations of such direct guarantor under section
21 125(c)(2) of title I of this Act and sections 321 and
22 355 of this title;”;

23 (f) by adding new subsection (13):

24 “(13) ‘cross-guarantee premium payment’
25 means the payment a guaranteed company periodi-

1 cally makes to the guaranteed company's direct
2 guarantors under the terms of a cross-guarantee
3 contract;”;

4 (g) by adding new subsection (14):

5 “(14) ‘cross-guarantee syndicate’ means any
6 group of direct guarantors which has entered into a
7 cross-guarantee contract with one or more guaran-
8 teed companies;”;

9 (h) by redesignating subsections (11), (12) and
10 (13) as subsection “(15)”, “(16)”, and “(17)”;

11 (i) by adding new subsection (18):

12 “(18) ‘depository institution’ has the meaning
13 given to such term in section 3(c)(1) of the Federal
14 Deposit Insurance Act (12 U.S.C. 1813(c)(1)), how-
15 ever, for the purposes of this title, depository institu-
16 tion shall not mean a Federal branch or an insured
17 branch as those terms are defined in Sections (3)(r)
18 and (3)(s) of the Federal Deposit Insurance Act (12
19 U.S.C. 1813(4) and (s));”;

20 (j) by adding new subsection (19):

21 “(19) ‘direct guarantor’ means a member of a
22 cross-guarantee or stop-loss syndicate which has en-
23 tered into a cross-guarantee or stop-loss contract
24 with a guaranteed party;”;

1 (k) by redesignating subsections (14)–(21A) as
2 subsections “(20)”–“(28)” and by redesignating
3 subsections (22)–(27) as subsections “(30)”–“(35)”;

4 (l) by adding new subsection (36):

5 “(36) ‘guaranteed company’ means any com-
6 pany which has entered into a cross-guarantee con-
7 tract with a cross-guarantee syndicate and has guar-
8 anteed obligations outstanding as of the date of the
9 filing of the petition;”;

10 (m) by adding new subsection (37):

11 “(37) ‘guaranteed creditor’ means any entity
12 who owns or is the beneficiary of a guaranteed obli-
13 gation;”;

14 (n) by adding new subsection (38):

15 “(38) ‘guaranteed obligation’ means an obliga-
16 tion of a guaranteed party on which a cross-guaran-
17 tee or stop-loss syndicate has guaranteed perform-
18 ance, including payment of principal and interest at
19 the promised time of payment, such that failure to
20 immediately perform in a timely manner constitutes
21 a breach of contract;”;

22 (o) by adding new subsection (39):

23 “(39) ‘guaranteed party’ means any guaranteed
24 company or nondepository guarantor;”;

1 (p) by redesignating subsections (28)–(35) as
2 subsections “(40)”–“(47)” and subsection (36)–(38)
3 as subsections “(49)”–“(51)”;

4 (q) by adding new subsection (53):

5 “(53) ‘monitoring fee payment’ means the peri-
6 odic payment made by a guaranteed party to a syn-
7 dicate agent under the terms of the guaranteed par-
8 ty’s cross-guarantee or stop-loss contract;”;

9 (r) by adding new subsection (55):

10 “(55) ‘nondepository guarantor’ means a guar-
11 anteed party under a stop-loss contract;”;

12 (s) by redesignating subsection (39) as sub-
13 section “(68)”;

14 (t) by redesignating subsection (40) as sub-
15 section “(54)”;

16 (u) by redesignating subsections (41)–(44) as
17 subsections “(56)”–“(59)”;

18 (v) by adding new subsection (60):

19 “(60) ‘regulation corporation’ means the Cross-
20 Guarantee Regulation Corporation;”;

21 (w) by redesignating subsections (45)–(51) as
22 subsections “(61)”–“(67)”;

23 (x) by redesignating subsections (52) and (53)
24 as subsections “(69)” and “(70)”;

1 as subsection “(79)” and subsection (54)¹ as sub-
2 section “(71)”;

3 (y) by adding new subsection (72):

4 “(72) ‘stop-loss contract’ means a contract
5 which—

6 “(A) is entered into between a person or a
7 company and a stop-loss syndicate; and

8 “(B) is approved by the regulation cor-
9 poration under section 123 of title I of this
10 Act,”;

11 (z) by adding new subsection (73):

12 “(73) ‘stop-loss premium payment’ means the
13 payment a nondepository guarantor periodically
14 makes to direct guarantors under the nondepository
15 guarantor’s stop-loss contract;”;

16 (aa) by adding new subsection (74):

17 “(74) ‘stop-loss syndicate’ means any group of
18 direct guarantors which has entered into a stop-loss
19 contract with a nondepository guarantor;”;

20 (bb) by adding new subsection (77):

21 “(77) ‘syndicate agent’ means any person or
22 company who acts as the agent for the direct guar-
23 antors under any cross-guarantee or stop-loss con-
24 tract;”;

1 (cc) by redesignating subsection (55) as sub-
2 section “(80)”, subsection (55)¹ as subsection
3 “(75)”; subsection (56) as subsection “(48)”, sub-
4 section (56)¹ as subsection “(76)” subsection (57)
5 as subsection “(52)”, and subsection (57)¹ as sub-
6 section “(78)”.

7 **SEC. 302. APPLICABILITY OF CHAPTERS.**

8 Section 103 of title 11, United States Code, is
9 amended—

10 (a) in subsection (a) by striking “section 1161”
11 and adding “sections 1161 and 1181”;

12 (b) by adding new subsection (h):

13 “(h) Subchapter V of chapter 11 of this title applies
14 only in a case under such chapter in which a guaranteed
15 company is the debtor”; and

16 (c) by redesignating subsection (h) and (i) to (i)
17 and (j).

18 **SEC. 303. PUBLIC ACCESS TO PAPERS.**

19 Section 107 of title 11, United States Code, is
20 amended—

21 (a) in subsection (a) by striking “subsection
22 (b)” and inserting “subsections (b) and (c)”; and

23 (b) by adding new subsection (c):

24 “(c) Notwithstanding subsection (a) of this section,
25 the identity of a guaranteed creditor and the amount of

1 a guaranteed creditor's claim in a case under subchapter
2 V of chapter 11 is not a matter of public record and shall
3 be kept confidential.”.

4 **SEC. 304. WHO MAY BE A DEBTOR.**

5 Section 109 of title 11, United States Code, is
6 amended—

7 (a) in subsection (b)(2) by adding at the end
8 “or a guaranteed company”;

9 (b) in subsection (d) by striking “and a rail-
10 road” and inserting “a railroad, and a guaranteed
11 company”; and

12 (c) by adding new subsection (h):

13 “(h) a guaranteed company may only be a debt-
14 or under subchapter V of chapter 11.”.

15 **Subtitle B—Amendments to**
16 **Chapter 3 of Title 11**

17 **SEC. 311. PARTY IN INTEREST.**

18 Title 11, United States Code, is amended by adding
19 new section 308:

20 **“§ 308. Party in interest**

21 “(a) The regulation corporation shall be a party in
22 interest in any action seeking to impair or limit the obliga-
23 tions or duties of the debtor or of a direct guarantor under
24 a cross-guarantee or stop-loss contract.

1 “(b) A cross-guarantee or stop-loss syndicate shall be
2 a party in interest in any determination of whether a claim
3 is a guaranteed obligation under a cross-guarantee or
4 stop-loss contract.

5 “(c) A cross-guarantee or stop-loss syndicate shall be
6 a party in interest for the purpose of filing objections to
7 the allowance of a claim or interest as provided under sec-
8 tion 502(a) of this title.”.

9 **SEC. 312. QUALIFICATION OF TRUSTEE.**

10 Section 322 of title 11, United States Code, is
11 amended—

12 (a) in subsection (a) by inserting “1183,” after
13 “1163,”; and

14 (b) by adding new subparagraph (b)(3):

15 “(3) In a case under subchapter V of chapter 11, the
16 United States trustee shall consult with the syndicate
17 agent monitoring the debtor as of the date of the filing
18 of the petition and shall consider any existing bonds cover-
19 ing the guaranteed company when determining the
20 amount of the bond required to be filed under subsection
21 (a) of this section.”.

22 **SEC. 313. NOTICE.**

23 Section 342 of title 11, United States Code, is
24 amended by adding new subsection (c):

1 “(c) Notwithstanding subsection (a) of this section,
2 notice of the entry of an order for relief in a case under
3 subchapter V of Chapter 11 shall be given by publication
4 and shall be given in writing to the syndicate agent and
5 to all creditors having claims that are not guaranteed obli-
6 gations. Notice to the syndicate agent shall constitute no-
7 tice to all guaranteed creditors in the case.”.

8 **SEC. 314. AUTOMATIC STAY.**

9 Section 362 of title 11, United States Code, is
10 amended by adding new subsection (b)(17):

11 “(17) under subsection (a) of this section, of
12 the exercise of any right of a guaranteed creditor
13 under applicable nonbankruptcy law to collect, en-
14 force or recover a guaranteed obligation from the
15 debtor.”.

16 **SEC. 315. EXECUTORY CONTRACTS AND UNEXPIRED**
17 **LEASES.**

18 Section 365 of title 11, United States Code, is
19 amended—

20 (a) in subsection (a) by striking “and (d)” and
21 inserting “(d), and (q)”;

22 (b) in subsection (e)(1), by substituting for the
23 existing language—“Notwithstanding a provision in
24 an executory contract, guaranteed obligation, or
25 unexpired lease, or in applicable law, an executory

1 contract, guaranteed obligation, or unexpired lease
2 of the debtor may not be terminated, modified, or
3 any liability thereunder accelerated, and any right,
4 obligation, or liability under such contract, guaran-
5 teed obligation, or lease may not be terminated,
6 modified, or accelerated, at any time after the com-
7 mencement of the case solely because of a provision
8 in such contract, guaranteed obligation, or lease that
9 is conditioned on—”;

10 (c) in subparagraph (e)(2)(B), by striking
11 “such contract is a” and inserting “such contract is
12 not a guaranteed obligation but is some other”;

13 (d) by adding a new subsection (q):

14 “(q) Notwithstanding subsection (c)(2) of this sec-
15 tion, the trustee shall be deemed to have assumed as of
16 the date of filing of the petition all cross-guarantee and
17 stop-loss contracts to which the debtor is a party. The
18 trustee shall immediately pay all cross-guarantee premium
19 payments, stop-loss premium payments, and monitoring
20 fee payments due under any cross-guarantee or stop-loss
21 contract so assumed. Any claim for a subsequent breach
22 of the obligations under such contracts shall be entitled
23 to priority under section 507(a)(1). The trustee shall not
24 reject any cross-guarantee or stop-loss contract”; and

1 (e) in subsection (f)(1) by inserting after “Ex-
2 cept as provided in subsection (c) of this section”
3 the following to complete the clause, “and excluding
4 those executory contracts described in subsection
5 (q)”.

6 **Subtitle C—Amendments to**
7 **Chapter 5 of Title 11**

8 **SEC. 321. CLAIMS OF DIRECT GUARANTORS.**

9 Title 11, United States Code, is amended by adding
10 a new section 511—

11 **“§ 511. Claims of direct guarantors**

12 “The direct guarantors of a debtor shall pay to the
13 trustee the amount by which losses accrued by the estate
14 as a direct guarantor since the date the petition was filed
15 exceed the cross-guarantee and stop-loss premiums the es-
16 tate has accrued since that date. Such payment shall be
17 received by the trustee on the effective date of a plan con-
18 firmed under section 1129 of this title or, in the case of
19 a liquidation under section 1186 of this title, at the time
20 of the transfer to an unrelated party or the termination
21 of all of the estate’s guaranteed obligations. The amount
22 paid by the direct guarantors in accordance with this sub-
23 section shall be subordinated to all other claims in the case
24 for the purpose of distribution under this title.”.

1 **SEC. 322. DEBTOR'S DUTIES.**

2 Section 521 of title 11, United States Code, is
3 amended—

4 (a) in subsection (1) by inserting “(a)” at the
5 beginning of the subsection; and

6 (b) by adding new subparagraph (1)(b)—

7 “(b) in a case under subchapter V of chapter
8 11 and subject to the requirement of subsection
9 107(c) of this title, file under seal the list of guaran-
10 teed creditors and the amount of the claims of guar-
11 anteed creditors.”.

12 **SEC. 323. EXCEPTIONS TO DISCHARGE.**

13 Section 523 of title 11, United States Code, is
14 amended by adding new subparagraph (a)(13):

15 “(13) which arises as a result of the debtor’s
16 cross-guarantee obligations.”.

17 **SEC. 324. LIMITATION ON AVOIDING POWERS.**

18 Section 546 of title 11, United States Code, is
19 amended by adding new subsection (h):

20 “(h) Notwithstanding sections 544, 545, 547 and
21 548(a)(2) of this title, the trustee may not avoid a transfer
22 that is a cross-guarantee premium payment, a stop-loss
23 premium payment, or a monitoring fee payment made be-
24 fore the commencement of the case, except under section
25 548(a)(1) of this title.”.

1 **SEC. 325. PREFERENCES.**

2 Section 547 of title 11, United States Code, is
3 amended by adding new subsection (h):

4 “(h) For the purposes of this section, a payment of
5 a guaranteed obligation is deemed to be a payment of a
6 debt incurred by the debtor in the ordinary course of busi-
7 ness or financial affairs of the debtor and the transferee.”.

8 **SEC. 326. FRAUDULENT TRANSFERS AND OBLIGATIONS.**

9 Section 548 of title 11, United States Code, is
10 amended in subsection (d)(2) by adding new subparagraph
11 (E):

12 “(E) A cross-guarantee syndicate or a syndicate
13 agent that receives a cross-guarantee premium pay-
14 ment, a stop-loss premium payment, or a monitoring
15 fee payment takes for value to the extent of such
16 payment.”.

17 **SEC. 327. POST-PETITION TRANSACTIONS.**

18 Section 549 of title 11, United States Code, is
19 amended—

20 (a) in subsection (a) by striking “subsections
21 (b) or (c)” and by inserting “subsections (b), (c), or
22 (d)”;

23 (b) by adding new subsection (d):

24 “(d) The trustee may not avoid under subsection (a)
25 of this section a transfer of property to a transferee whose

1 claim, in the absence of such transfer, would be guaran-
2 teed under a cross-guarantee or stop-loss contract”; and

3 (c) by redesignating subsection (d) as sub-
4 section (e).

5 **SEC. 328. CONTRACTUAL RIGHT TO LIQUIDATE A SECURI-**
6 **TIES CONTRACT.**

7 Section 555 of title 11, United States Code, is
8 amended—

9 (a) by inserting “(a)” at the beginning of the
10 section; and

11 (b) by adding new subsection (b):

12 “(b) Subsection (a) of this section shall not apply in
13 any case under subchapter V of chapter 11.”.

14 **SEC. 329. CONTRACTUAL RIGHT TO LIQUIDATE A COMMOD-**
15 **ITIES CONTRACT OR FORWARD CONTRACT.**

16 Section 556 of title 11, United States Code, is
17 amended—

18 (a) by inserting “(a)” at the beginning of the
19 section; and

20 (b) by adding new subsection (b):

21 “(b) Subsection (a) of this section shall not apply in
22 any case under subchapter V of chapter 11.”.

1 **SEC. 330. CONTRACTUAL RIGHT TO LIQUIDATE A REPUR-**
2 **CHASE AGREEMENT.**

3 Section 559 of title 11, United States Code, is
4 amended—

5 (a) by inserting “(a)” at the beginning of the
6 section; and

7 (b) by adding new subsection (b):

8 “(b) Subsection (a) of this section shall not apply in
9 any case under subchapter V of chapter 11.”.

10 **SEC. 331. CONTRACTUAL RIGHT TO TERMINATE A SWAP**
11 **AGREEMENT.**

12 Section 560 of title 11, United States Code, is
13 amended—

14 (a) by inserting “(a)” at the beginning of the
15 section; and

16 (b) by adding new subsection (b):

17 “(b) Subsection (a) of this section shall not apply in
18 any case under subchapter V of chapter 11.”.

19 **Subtitle D—Amendments to**
20 **Chapter 11 of Title 11**

21 **CHAPTER 1—AMENDMENTS TO EXISTING**
22 **LAW**

23 **SEC. 341. CREDITORS’ AND EQUITY SECURITY HOLDERS’**
24 **COMMITTEES.**

25 Section 1102 of title 11, United States Code, is
26 amended by subsection (a)(1) by inserting at the end “:

1 *Provided, however,* That only creditors holding claims that
2 are not guaranteed obligations under a cross-guarantee or
3 stop-loss contract and are not direct guarantors may be
4 appointed to such committee in a case under subchapter
5 V of chapter 11”.

6 **SEC. 342. WHO MAY FILE A PLAN.**

7 Section 1121 of title 11, United States Code, is
8 amended—

9 (a) by adding new subsection (d):

10 “(d) Notwithstanding subsection (c) of this section,
11 a guaranteed creditor may not file a plan in a case under
12 subchapter V of chapter 11”; and

13 (b) by redesignating subsection (d) as sub-
14 section (e).

15 **SEC. 343. IMPAIRMENT OF CLAIMS OR INTERESTS.**

16 Section 1124 of title 11, United States Code, is
17 amended—

18 (a) by inserting “(a)” at the beginning of the
19 section; and

20 (b) by adding new subsection (b):

21 “(b) Notwithstanding subsection (a) of this section,
22 the claim of a guaranteed creditor is deemed to be
23 unimpaired in a case under subchapter V of chapter 11.”.

1 **SEC. 344. ACCEPTANCE OF PLAN.**

2 Section 1126 of title 11, United States Code, is
3 amended in subsection (a) by inserting at the end of the
4 first sentence“: *Provided, however,* That a guaranteed
5 creditor is not entitled to accept or reject a plan in a case
6 under subchapter V of chapter 11”.

7 **SEC. 345. CONFIRMATION HEARING.**

8 Section 1128 of title 11, United States Code, is
9 amended in subsection (b) by inserting after “A party in
10 interest” “, other than a guaranteed creditor in a case
11 under subchapter V of chapter 11,”.

12 **SEC. 346. CONFIRMATION OF PLAN.**

13 Section 1129 of title 11, United States Code, is
14 amended—

15 (a) in subsection (a)(4), by inserting at the end
16 “: *Provided, however,* That no such approval of any
17 payment by a cross-guarantee or stop-loss syndicate
18 is required when the cross-guarantee or stop-loss
19 syndicate is the proponent of the plan and the pay-
20 ment is made pursuant to a cross-guarantee or stop-
21 loss contract”; and

22 (b) by adding new subsection (e):

23 “(e) Notwithstanding subsections (a) and (b) of this
24 section, the court may confirm a plan that otherwise meets
25 the requirements of subsection (a) and (b) of this section
26 even though, in a case under subchapter V of chapter 11,

1 a guaranteed creditor receives or retains no property
2 under the plan.”.

3 **SEC. 347. EFFECT OF CONFIRMATION.**

4 Section 1141 of title 11, United States Code, is
5 amended—

6 (a) in subsection (a) by striking “(d)(2) and
7 (d)(3)” and by inserting “(d)(2), (d)(3), and
8 (d)(4)”;

9 (b) by inserting new subsection (d)(4):

10 “(4) Except as provided in section 365(k) of this title,
11 the confirmation of a plan does not discharge a debtor
12 of its obligations and liabilities as a direct guarantor under
13 a cross-guarantee or stop-loss contract”; and

14 (c) by redesignating subsection (d)(4) as (d)(5).

15 **CHAPTER 2—ENACTMENT OF SUBCHAPTER V**

16 **SEC. 351. GUARANTEED COMPANY REORGANIZATION.**

17 Title 11, United States Code, is amended by adding
18 a new subchapter V—

19 **“Subchapter V—Guaranteed Company**
20 **Reorganization”.**

21 **SEC. 352. INAPPLICABILITY OF OTHER SECTIONS.**

22 Title 11, United States Code, is amended by adding
23 new section 1181—

1 **“§ 1181. Inapplicability of other sections**

2 “Sections 341, 343, 1104, 1105, and 1107 do not
3 apply in a case under subchapter V of Chapter 11.”.

4 **SEC. 353. EFFECTIVE DATE OF FILING.**

5 Title 11, United States Code, is amended by adding
6 new section 1182—

7 **“§ 1182. Effective date of filing**

8 “The effective date and time of the filing of a petition
9 under this subchapter shall be the close of business on
10 the business day preceding the date on which the petition
11 is actually filed.”.

12 **SEC. 354. APPOINTMENT OF TRUSTEE.**

13 Title 11, United States Code, is amended by adding
14 new section 1183:

15 **“§ 1183. Appointment of trustee**

16 “As soon as practicable after the entry to an order
17 for relief, the regulation corporation shall submit to the
18 United States Trustee a list of 5 disinterested persons who
19 are qualified and willing to serve as the trustee in the case.
20 The United States Trustee shall appoint one such person
21 to serve as the trustee in the case. The syndicate agent
22 monitoring the debtor as of the date of the filing of the
23 petition shall not be eligible to serve as the trustee. The
24 court, after notice and a hearing, may replace a trustee
25 for cause.”.

1 **SEC. 355. LIABILITY OF DIRECT GUARANTORS FOR TRANS-**
2 **FERS TO GUARANTEED CREDITORS.**

3 Title 11, United States Code, is amended by adding
4 new section 1184—

5 **“§ 1184. Liability of direct guarantors for transfers to**
6 **guaranteed creditors**

7 “The trustee may recover for the benefit of the estate
8 from the direct guarantors of the debtor the amount of
9 any transfers of property of the estate to or for the benefit
10 of guaranteed creditors that enable such creditors to re-
11 ceive more than such creditors would receive if the trustee
12 was engaged in a liquidation pursuant to section 1186 of
13 this chapter and such transfers had not been made.”.

14 **SEC. 356. EFFECTIVE OF FEDERAL LEGISLATION AND FED-**
15 **ERAL, STATE, AND LOCAL REGULATIONS.**

16 Title 11, United States Code, is amended by adding
17 new section 1185:

18 **“§ 1185. Effect of Federal legislation and Federal,**
19 **State, and local regulations**

20 “Except with respect to merger, modification of the
21 financial structure of the debtor, or the issuance or sale
22 of securities under a plan, the trustee and the debtor are
23 subject to all Federal legislation and to all Federal, State,
24 and local regulations and orders to the same extent as the
25 debtor would be if a petition commencing the case under
26 this chapter had not been filed.”.

1 **SEC. 357. LIQUIDATION.**

2 Title 11, United States Code, is amended by adding
3 new section 1186:

4 **“§ 1186. Liquidation**

5 “On request of a party in interest and after notice
6 and a hearing, the court may order the trustee to cease
7 the debtor’s operation and to collect and reduce to money
8 all of the property of the estate in the same manner as
9 if the case were a case under chapter 7 of this title if
10 such liquidation is in the best interest of creditors.”.

11 **TITLE IV—AMENDMENT TO**
12 **TITLE 28, UNITED STATES CODE**

13 **SEC. 401. VENUE.**

14 Title 28, United States Code, is amended by adding
15 new subsection 1409(f):

16 “(f) A proceeding arising in or related to a case under
17 subchapter V of chapter 11 of title 11 regarding the debt-
18 or’s satisfaction of a guaranteed obligation, whether aris-
19 ing before or after the commencement of the case, may
20 be commenced in the district court for the district where
21 the state of Federal court sits in which the party com-
22 mencing such proceeding may, under applicable non-bank-
23 ruptcy venue provisions, have brought an action on such
24 claim, or in the district court in which such case is pend-
25 ing. The cross-guarantee syndicate which has entered into
26 a cross-guarantee contract in such a case shall be a party

1 in interest in any proceeding commenced under this sub-
2 section.”.

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