

104TH CONGRESS
2D SESSION

H. R. 4318

To provide for a system of guaranteeing the deposits and certain other liabilities 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

SEPTEMBER 28, 1996

Mr. PETRI introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for a system of guaranteeing the deposits and certain other liabilities 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 1996”.

1 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

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. Judicial review of contracts and related actions.

Subtitle C—Powers and Duties of the CGRC

CHAPTER 1—CROSS-GUARANTEE PROCESS

Sec. 121. Cross-Guarantee Regulation Corporation.

Sec. 122. Regulation of the cross-guarantee process.

Sec. 123. Approval process for cross-guarantee, stop-loss, and group cross-guarantee contracts.

Sec. 124. Central electronic repository.

Sec. 125. Restriction on closed loops.

Sec. 126. Treasury oversight of the Cross-Guarantee Regulation Corporation.

CHAPTER 2—PROTECTION OF INSURED DEPOSITS

Sec. 128. Backup insurance for deposits in guaranteed depository institutions.

Subtitle D—Miscellaneous Provisions

Sec. 131. Institutions offering uninsured deposits.

Sec. 132. Federal Reserve lending.

Sec. 133. Advertising by guaranteed financial groups.

Sec. 134. Guaranteed depository institutions remain federally insured depositories for purposes of state or federal 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 date on which depository institutions must become guaranteed.

Sec. 143. Appointment of receiver for institutions which fail to comply with transition requirements.

Sec. 144. Funding the cross-guarantee backup fund.

- Sec. 145. Abolition of the Federal Financial Institutions Examination Council.
- Sec. 146. Abolition of the Federal Deposit Insurance Corporation.
- Sec. 147. Continuation of orders, resolutions, and determinations.

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. Money of estates.
- Sec. 315. Automatic stay.
- Sec. 316. Executory contracts and unexpired leases.

Subtitle C—Amendments to Chapter 5 of Title 11

- Sec. 321. Obligations 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 interests.
- 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. Replacement or modification of cross-guarantee contract.
 Sec. 357. Effect of Federal, state, and local legislation and regulations.
 Sec. 358. Liquidation.

TITLE IV—AMENDMENT TO TITLE 28, UNITED STATES CODE

Sec. 401. Venue.

1 **TITLE I—100-PERCENT CROSS-**
 2 **GUARANTEES**
 3 **Subtitle A—Definitions**

4 **SEC. 101. DEFINITIONS.**

5 In this title—

6 (1) **AFFILIATE.**—The term “affiliate” means,
 7 with respect to any company, any other company
 8 that controls, is controlled by, or is under common
 9 control with such company.

10 (2) **AGENCY.**—The term “agency”, when used
 11 in connection with a reference to a foreign bank, has
 12 the same meaning given to such term in section 1(b)
 13 of the International Banking Act of 1978.

14 (3) **BRANCH.**—The term “branch”, when used
 15 in connection with a reference to a foreign bank, has
 16 the same meaning given to such term in section 1(b)
 17 of the International Banking Act of 1978.

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

4 (5) CENTRAL ELECTRONIC REPOSITORY.—The
5 term “central electronic repository” means the re-
6 pository established under section 124(a)(1).

7 (6) CLOSED LOOP.—The term “closed loop”
8 means a set of cross-guarantee and stop-loss con-
9 tracts in which each direct guarantor under the set
10 of contracts also is a guaranteed party under one
11 contract within the set of contracts.

12 (7) COMPANY.—The term “company”—

13 (A) means any corporation, limited liability
14 company, partnership, business trust, associa-
15 tion, or similar organization; and

16 (B) does not include a branch or agency,
17 or a group of branches and agencies, of a for-
18 eign bank.

19 (8) CONTROL.—

20 (A) IN GENERAL.—The term “control”
21 means, with respect to one company’s relation-
22 ship to another company, one company’s owner-
23 ship or power to, directly or indirectly, vote an
24 aggregate of 5 percent or more of any class or
25 classes of the securities which separately or to-

1 gether, taking into account the relative voting
2 weight of different shares, have the power to
3 elect a majority of the members of such other
4 company’s board of directors.

5 (B) RULE.—The Corporation may pre-
6 scribe rules to implement the intent of this
7 paragraph.

8 (9) CORPORATION.—The term “Corporation”
9 means the Cross-Guarantee Regulation Corporation.

10 (10) CROSS-GUARANTEE ACTIVATION DATE.—
11 The term “cross-guarantee activation date” means
12 the date on which the first cross-guarantee contracts
13 become effective under section 141(a).

14 (11) CROSS-GUARANTEE BACKUP FUND.—The
15 term “cross-guarantee backup fund” means the fund
16 established pursuant to section 128(a).

17 (12) CROSS-GUARANTEE CONTRACT.—The term
18 “cross-guarantee contract” means a contract
19 which—

20 (A) is entered into between—

21 (i) one or more companies, at least
22 one of which is a depository institution;

23 and

24 (ii) a cross-guarantee syndicate;

1 (B) is approved by the Corporation under
2 section 123;

3 (C) has become effective in accordance
4 with the contract's terms; and

5 (D) is not enjoined under section
6 123(e)(2)(B).

7 (13) CROSS-GUARANTEE OBLIGATION.—The
8 term “cross-guarantee obligation” means an obliga-
9 tion of a direct guarantor arising out of a cross-
10 guarantee or stop-loss contract, and includes the ob-
11 ligations of such guarantor under section 125(e)(2)
12 of this title and sections 321 and 355 of title III.

13 (14) CROSS-GUARANTEE SYNDICATE.—The
14 term “cross-guarantee syndicate” means any group
15 of direct guarantors which has entered into a cross-
16 guarantee contract with a guaranteed financial
17 group.

18 (15) DEPOSIT.—

19 (A) IN GENERAL.—The term “deposit”
20 means—

21 (i) any obligation within the meaning
22 given the term in paragraphs (1) through
23 (4) of section 3(l) of the Federal Deposit
24 Insurance Act; and

1 (ii) any other obligation that the Cor-
2 poration determines is a deposit-like obli-
3 gation by general usage.

4 (B) DEPOSITS INCLUDE OBLIGATIONS PAY-
5 ABLE OUTSIDE THE UNITED STATES.—The
6 term “deposit” includes any obligation de-
7 scribed in subparagraph (A) without regard to
8 whether the obligation is payable within or
9 without the United States.

10 (C) EXCLUSION FOR CHECKABLE SUBOR-
11 DINATED DEBT.—The term “deposit” shall not
12 include any obligation which, under section
13 114(a)(2)(A), may not be a guaranteed obliga-
14 tion.

15 (16) DEPOSITORY INSTITUTION.—The term
16 “depository institution” has the meaning given to
17 such term in section 3(c) of the Federal Deposit In-
18 surance Act.

19 (17) DIRECT GUARANTOR.—The term “direct
20 guarantor” means a member of a cross-guarantee or
21 stop-loss syndicate which has entered into a cross-
22 guarantee or stop-loss contract with a guaranteed fi-
23 nancial group or nondepository guarantor.

24 (18) 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 (19) FAILED DEPOSITORY INSTITUTION.—The
9 term “failed depository institution” means any de-
10 pository institution for which a conservator or re-
11 ceiver has been appointed by the Federal Deposit In-
12 surance Corporation.

13 (20) FOREIGN BANK.—The term “foreign
14 bank” has the same meaning given to such term in
15 section 1(b) of the International Banking Act of
16 1978, except that such term shall not include any
17 bank organized under the laws of Puerto Rico,
18 Guam, American Samoa, the Virgin Islands, or any
19 territory of the United States.

20 (21) GROUP CROSS-GUARANTEE CONTRACT.—
21 The term “group cross-guarantee contract” means a
22 contract which—

23 (A) is entered into between two or more
24 guaranteed financial groups and a cross-guar-
25 antee syndicate;

1 (B) is approved by the Corporation under
2 section 123;

3 (C) has become effective in accordance
4 with the contract's terms; and

5 (D) is not enjoined under section
6 123(e)(2)(B).

7 (22) GUARANTEED BANKING OFFICE.—The
8 term “guaranteed banking office” means any branch
9 or agency of a foreign bank where—

10 (A) the foreign bank is a guaranteed com-
11 pany pursuant to section 112(e); or

12 (B) the branch or agency has entered into
13 a cross-guarantee contract with a cross-guaran-
14 tee syndicate.

15 (23) GUARANTEED COMPANY.—

16 (A) IN GENERAL.—The term “guaranteed
17 company” means any company which has en-
18 tered into a cross-guarantee contract with a
19 cross-guarantee syndicate.

20 (B) FOREIGN BANKS.—

21 (i) IN GENERAL.—Notwithstanding
22 subparagraph (A), a foreign bank shall not
23 be a guaranteed company solely because a
24 branch or agency of such bank is a guar-

1 anted banking office under a cross-guar-
2 antee contract.

3 (ii) EXCEPTION FOR FOREIGN BANKS
4 WHICH ARE SUBSIDIARIES.—Notwithstand-
5 ing clause (i), a foreign bank may be a
6 guaranteed company, if such bank is guar-
7 anteed under a cross-guarantee contract
8 under section 112(e).

9 (24) GUARANTEED DEPOSITORY INSTITU-
10 TION.—The term “guaranteed depository institu-
11 tion” means a depository institution which is a guar-
12 anteed company.

13 (25) GUARANTEED FINANCIAL GROUP.—The
14 term “guaranteed financial group” means one or
15 more guaranteed companies or guaranteed banking
16 offices guaranteed under the same cross-guarantee
17 contract.

18 (26) GUARANTEED OBLIGATION.—

19 (A) IN GENERAL.—The term “guaranteed
20 obligation” means an obligation of a guaranteed
21 party the performance of which has been guar-
22 anteed by a cross-guarantee or stop-loss syn-
23 dicate.

24 (B) RULE OF CONSTRUCTION.—The term
25 “performance” under subparagraph (A) in-

1 cludes timely payment of any deposit or other
2 obligation, including interest, if failure to pay in
3 a timely manner would constitute a breach of
4 contract.

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

8 (28) INSURED DEPOSIT.—The term “insured
9 deposit” means any deposit of a guaranteed deposit-
10 tory institution which is insured against loss by the
11 cross-guarantee backup fund under section 128.

12 (29) NET WORTH.—The term “net worth”—

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

20 (B) does not include any equitable interest
21 or liability which the Corporation determines
22 should not be treated as net worth for purposes
23 of this title; and

24 (C) in the case of any nondepository guar-
25 antor which controls another nondepository

1 guarantor or a guaranteed financial group, does
2 not include the net worth or equity capital of
3 the subsidiary guarantor or group.

4 (30) NONDEPOSITORY GUARANTOR.—The term
5 “nondepository guarantor” means any person which
6 has entered into a stop-loss contract with a stop-loss
7 syndicate.

8 (31) PREMIUM INCOME.—The term “premium
9 income” means any income accrued by a direct guar-
10 antor under any cross-guarantee or stop-loss con-
11 tract.

12 (32) PROJECTED ANNUAL PREMIUM.—The
13 term “projected annual premium” means the
14 amount calculated under section 116(d)(2).

15 (33) PROJECTED ANNUAL PREMIUM CAPAC-
16 ITY.—The term “projected annual premium capac-
17 ity” means the amount which is equal to—

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

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

1 (34) 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 (35) SECOND-TIER GUARANTOR.—The term
6 “second-tier guarantor” means a direct guarantor of
7 a direct guarantor.

8 (36) STATE DEPOSITORY INSTITUTION.—The
9 term “state depository institution” has the meaning
10 given to such term in section 3(e)(5) of the Federal
11 Deposit Insurance Act.

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

14 (A) is entered into between a person and
15 a stop-loss syndicate;

16 (B) is approved by the Corporation under
17 section 123;

18 (C) has become effective in accordance
19 with the contract’s terms; and

20 (D) is not enjoined under section
21 123(e)(2)(B).

22 (38) STOP-LOSS SYNDICATE.—The term “stop-
23 loss syndicate” means any group of direct guaran-
24 tors which has entered into a stop-loss contract with
25 a nondepository guarantor.

1 (39) SUBORDINATED DEBT.—

2 (A) IN GENERAL.—The term “subordi-
3 nated debt” means an obligation assumed by a
4 guaranteed company or guaranteed banking of-
5 fice which is subordinate in right of payment to
6 any general creditor of the company or office.

7 (B) GENERAL CREDITOR.—For purposes
8 of this paragraph, the term “general creditor”
9 means—

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

18 (ii) any creditor of the guaranteed
19 company or guaranteed banking office
20 which is—

21 (I) not protected under the con-
22 tract; and

23 (II) not subordinated to the claims of
24 other creditors or treated as a preference
25 in a bankruptcy proceeding.

1 (40) SUBSIDIARY.—The term “subsidiary”
2 means, with reference to a company, any company
3 which such company controls.

4 (41) SYNDICATE AGENT.—The term “syndicate
5 agent” means any person which acts as the agent
6 for the direct guarantors under any cross-guarantee
7 or stop-loss contract.

8 **SEC. 102. RULES OF CONSTRUCTION.**

9 (a) GENERAL RULES OF CONSTRUCTION.—

10 (1) IN GENERAL.—This title shall be liberally
11 construed and applied to promote its underlying pur-
12 poses and policies.

13 (2) PURPOSES OF THIS TITLE.—The purposes
14 of this title are—

15 (A) to create and maintain a private, com-
16 petitive deposit insurance marketplace;

17 (B) to require each bank and savings asso-
18 ciation which accepts deposits to protect the full
19 amount of such deposits, along with most other
20 nondeposit liabilities, by obtaining cross-guar-
21 antee contracts from syndicates of direct guar-
22 antors;

23 (C) to induce depository institutions to
24 lend and invest wisely by authorizing direct

1 guarantors which issue cross-guarantee con-
2 tracts to—

3 (i) charge risk-sensitive premiums for
4 the guarantees provided; and

5 (ii) negotiate with the banks and sav-
6 ings associations which enter into such
7 contracts all other terms and conditions, to
8 the extent such terms and conditions are
9 not inconsistent with this Act or other pro-
10 visions of law;

11 (D) to make the cross-guarantee process as
12 self-regulating as possible by establishing nu-
13 merous constructive tensions among the partici-
14 pants in the system;

15 (E) to establish a closed system of guaran-
16 tors with tier after tier of guarantors to stand
17 behind a guarantee and a “stop-loss” mecha-
18 nism to spread large losses as widely as possible
19 to ensure that no guaranteed obligation will
20 ever go unpaid;

21 (F) to force guarantors to pay promptly
22 for any losses that do occur and to prevent
23 guarantors from using legal actions to recover
24 any losses from other persons, except under
25 highly exceptional circumstances; and

1 (G) to regulate the cross-guarantee mar-
2 ketplace only to the extent necessary to main-
3 tain the safety, soundness, and viability of the
4 entire cross-guarantee process and not the sol-
5 vency of any individual bank or savings associa-
6 tion regardless of its size.

7 (b) SPECIFIC RULES OF CONSTRUCTION.—In this
8 title—

9 (1) the terms “guaranteed company,” “guaran-
10 teed depository institution,” “guaranteed financial
11 group,” “guaranteed party,” and “nondepository
12 guarantor” refer to those parties in their capacity as
13 parties guaranteed under a cross-guarantee or stop-
14 loss contract;

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

18 (3) the term “control” in such phrases as “as-
19 sumption of control” or “assumes control” shall not
20 have the meaning given the term under section
21 101(8);

22 (4) “including” shall not be construed more re-
23 strictively than the ordinary usage of such term so
24 as to exclude any other thing not referred to or de-
25 scribed; and

1 (5) the phrases “has entered into a cross-guar-
2 antee contract” and “has entered into a stop-loss
3 contract,” as used in sections 101(22), 101(23), and
4 101(30), shall not be construed to refer to a con-
5 tract which is no longer in effect.

6 **Subtitle B—Cross-Guarantee Process**

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

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

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

18 (b) is a failed depository institution.

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

21 (a) CROSS-GUARANTEE CONTRACTS.—

22 (1) SCOPE OF CROSS-GUARANTEE SYSTEM.—

23 (A) LIMIT ON GUARANTEED COMPANIES.—

24 Subject to section 112(e), no company which is

1 not a depository institution may be a guaran-
2 teed company.

3 (B) LIMIT ON THE NUMBER OF GUARAN-
4 TEED PARTIES WITHIN A GUARANTEED FINAN-
5 CIAL GROUP.—Subject to sections 112(d) and
6 112(e), no guaranteed company or guaranteed
7 banking office shall be guaranteed under the
8 same cross-guarantee contract as another guar-
9 anteed company or guaranteed banking office.

10 (2) NECESSARY PARTIES.—Each cross-guaran-
11 tee contract shall have the following parties:

12 (A) A guaranteed financial group consist-
13 ing of the party or parties guaranteed under
14 the contract.

15 (B) The direct guarantors of the guaran-
16 teed financial group.

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

19 (3) AFFILIATE GUARANTEE.—Any affiliate of a
20 depository institution may guarantee the perform-
21 ance of such institution's guaranteed obligations
22 under a cross-guarantee contract.

23 (b) STOP-LOSS CONTRACTS.—

24 (1) IN GENERAL.—Each stop-loss contract shall
25 have the following parties:

1 (A) A nondepository guarantor as the
2 party guaranteed under the contract.

3 (B) The direct guarantors of the non-
4 depository guarantor.

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

7 (2) AFFILIATE GUARANTEE.—Any affiliate of a
8 nondepository guarantor may guarantee the per-
9 formance of the guaranteed obligations of such non-
10 depository guarantor.

11 (c) GROUP CROSS-GUARANTEE CONTRACTS.—

12 (1) IN GENERAL.—

13 (A) POOLING OF RISK.—Subject to the
14 provisions of this subsection, the cross-guaran-
15 tee contracts of two or more guaranteed finan-
16 cial groups may be pooled for syndication.

17 (B) SEPARATE CONTRACT FOR A SYN-
18 DICATE OF POOLED CONTRACTS.—The direct
19 guarantors comprising the cross-guarantee syn-
20 dicate for a group of cross-guarantee contracts
21 may enter into a separate contract (hereinafter
22 “group cross-guarantee contract”) under which
23 the cross-guaranteed contracts pooled under
24 such contract shall be incorporated by ref-
25 erence.

1 (C) PROPORTIONAL RISK.—Each direct
2 guarantor under a group cross-guarantee con-
3 tract shall have the same proportional rights,
4 privileges, duties, and obligations in each cross-
5 guarantee contract incorporated by reference in
6 the syndicate contract as such guarantor has in
7 the syndicate contract.

8 (2) APPROVAL OF GROUP CROSS-GUARANTEE
9 CONTRACT AND ITS POOL OF CROSS-GUARANTEE
10 CONTRACTS.—The Corporation shall approve or re-
11 ject, as a group, a proposed group cross-guarantee
12 contract and the cross-guarantee contracts pooled
13 under that contract.

14 (3) AGGREGATION OF ASSETS FOR PURPOSES
15 OF RISK DIVERSIFICATION.—The assets of all guar-
16 anteed parties pooled under a group cross-guarantee
17 contract shall be aggregated for purposes of apply-
18 ing the risk diversification requirement established
19 in section 114(b).

20 (4) NO CROSS LIABILITY OF GUARANTEED PAR-
21 TIES.—No guaranteed party under any cross-guar-
22 antee contract shall be liable for any portion of the
23 guaranteed obligations of a guaranteed party under
24 any other cross-guarantee contract which is pooled
25 under the same group cross-guarantee contract.

1 (5) INDIVIDUAL TERMS AND RATES.—The
2 terms, conditions, and premium rates of a cross-
3 guarantee contract pooled under a group cross-guar-
4 antee contract may differ from the terms, condi-
5 tions, and premium rates under any other cross-
6 guarantee contract pooled under the syndicate con-
7 tract.

8 (6) PARTIES TO INDIVIDUAL CROSS-GUARANTEE
9 CONTRACTS RETAIN SAME RIGHTS AND DUTIES.—No
10 right, privilege, duty, or obligation that applies
11 under this title to any party to a cross-guarantee
12 contract shall be affected by the pooling of the cross-
13 guarantee contract with other contracts covered by
14 a group cross-guarantee contract.

15 (7) ADDITIONAL GUARANTEED PARTIES UNDER
16 A GROUP CROSS-GUARANTEE CONTRACT.—A group
17 cross-guarantee contract may be amended under sec-
18 tion 123 to add a guaranteed financial group or a
19 depository institution with a proposed cross-guaran-
20 tee contract to the existing syndicate contract if—

21 (A) the syndicate contract remains in com-
22 pliance with all of the provisions of this title
23 after the addition of the institution to the syn-
24 dicate contract; and

1 (B) the term of the syndicate contract is
2 not extended beyond the original term of any
3 cross-guarantee contract already pooled under
4 the syndicate contract by the addition of the in-
5 stitution.

6 (8) TERM OF A GROUP CROSS-GUARANTEE CON-
7 TRACT.—A group cross-guarantee contract shall con-
8 tinue in force until each guaranteed party which is
9 guaranteed under the syndicate contract has ceased
10 to be a guaranteed party under a cross-guarantee
11 contract pooled under the syndicate contract.

12 (9) LENGTH OF CROSS-GUARANTEE CONTRACT
13 POOLED UNDER A SYNDICATE CONTRACT.—No
14 cross-guarantee contract pooled under a group cross-
15 guarantee contract shall have a term longer than the
16 remaining term of the syndicate contract.

17 (10) RULE OF CONSTRUCTION.—Nothing in
18 this subsection shall be construed as preventing a
19 cross-guarantee or stop-loss syndicate from becom-
20 ing a syndicate under two or more cross-guarantee
21 or stop-loss contracts without including such con-
22 tracts under a group cross-guarantee contract.

23 (d) AFFILIATES AND OTHER PARTIES RELATED TO
24 A DEPOSITORY INSTITUTION WHICH SHALL BE GUARAN-
25 TEED UNDER ONE CONTRACT.—

1 (1) IN GENERAL.—Subject to paragraph (4), a
2 guaranteed depository institution shall be guaran-
3 teed under the same cross-guarantee contract with
4 all other affiliated guaranteed depository institu-
5 tions.

6 (2) CHAIN BANKS.—Subject to paragraph (4),
7 if more than two-thirds of the shares of any deposi-
8 tory institution are directly or indirectly under com-
9 mon ownership with more than two-thirds of the
10 shares of any other depository institution, such de-
11 pository institutions shall be guaranteed depository
12 institutions under the same cross-guarantee con-
13 tract.

14 (3) DOMESTIC BRANCHES AND AGENCIES OF
15 FOREIGN BANKS.—

16 (A) IN GENERAL.—If any branch of a for-
17 eign bank is a guaranteed banking office, all
18 branches and agencies of such foreign bank
19 shall be guaranteed banking offices under the
20 same cross-guarantee contract.

21 (B) BRANCHES AND AGENCIES AFFILI-
22 ATED WITH GUARANTEED DEPOSITORY INSTI-
23 TUTIONS.—

24 (i) IN GENERAL.—A guaranteed bank-
25 ing office shall be guaranteed under the

1 same cross-guarantee contract as any af-
2 filiated guaranteed depository institution.

3 (ii) DEFINITION OF AFFILIATION.—

4 (I) IN GENERAL.—For purposes
5 of this subparagraph, the term “affili-
6 ate” shall have the same meaning as
7 defined in section 101(1) except that
8 “control” shall mean the ownership or
9 power to, directly or indirectly, vote
10 an aggregate of 50 percent or more of
11 any class or classes of the securities
12 which separately or together, taking
13 into account the relative voting weight
14 of different shares, have the power to
15 elect a majority of the members of the
16 company’s board of directors.

17 (II) RULES.—The Corporation
18 shall prescribe rules to implement the
19 intent of this subparagraph.

20 (4) RULES.—For cases under this subsection in
21 which a guaranteed depository institution may be re-
22 quired to be guaranteed under more than one con-
23 tract, the Corporation shall prescribe rules for deter-
24 mining which cross-guarantee contract shall guaran-
25 tee such a depository institution’s obligations.

1 (e) NONDEPOSITORY INSTITUTIONS WHICH MAY BE-
2 COME GUARANTEED COMPANIES.—

3 (1) SUBSIDIARIES.—

4 (A) IN GENERAL.—A company controlled
5 by a guaranteed depository institution may be
6 a guaranteed company under the same cross-
7 guarantee contract under which the guaranteed
8 depository institution is guaranteed.

9 (B) DEFINITION OF CONTROL.—

10 (i) IN GENERAL.—For purposes of
11 this paragraph, the term “control” means,
12 with respect to one company’s relationship
13 to another company, one company’s owner-
14 ship or power to, directly or indirectly, vote
15 an aggregate of 50 percent or more of any
16 class or classes of the securities which sep-
17 arately or together, taking into account the
18 relative voting weight of different shares,
19 have the power to elect a majority of the
20 members of such other company’s board of
21 directors.

22 (ii) RULES.—The Corporation shall
23 prescribe rules to implement the intent of
24 this paragraph.

25 (2) AFFILIATED FOREIGN BANKS.—

1 (A) IN GENERAL.—A foreign bank affili-
2 ated to a guaranteed depository institution may
3 be guaranteed under the same cross-guarantee
4 contract under which the guaranteed depository
5 institution is guaranteed.

6 (B) DEFINITION OF AFFILIATION.—

7 (i) IN GENERAL.—For purposes of
8 this subparagraph, the term “affiliate”
9 shall have the same meaning as defined in
10 section 101(1) except that “control” shall
11 mean the ownership or power to, directly
12 or indirectly, vote an aggregate of 50 per-
13 cent or more of any class or classes of the
14 securities which separately or together,
15 taking into account the relative voting
16 weight of different shares, have the power
17 to elect a majority of the members of the
18 company’s board of directors.

19 (ii) RULES.—The Corporation shall
20 prescribe rules to implement the intent of
21 this paragraph.

22 (f) PROVISIONS RELATING TO SYNDICATE
23 AGENTS.—

24 (1) ANTI-AFFILIATION RULES.—A syndicate
25 agent may not—

1 (A) be an affiliate of any guaranteed party
2 under any cross-guarantee or stop-loss contract;
3 or

4 (B) acquire or retain any ownership inter-
5 est in any guaranteed party under any cross-
6 guarantee or stop-loss contract.

7 (2) NO DEPOSITORY INSTITUTION, FOREIGN
8 BANK, OR NONDEPOSITORY GUARANTOR MAY BE A
9 SYNDICATE AGENT.—No depository institution, for-
10 eign bank, or nondepository guarantor may be a
11 syndicate agent under any cross-guarantee or stop-
12 loss contract.

13 (3) PROHIBITIONS ON INTERLOCKS.—

14 (A) IN GENERAL.—No owner, director, of-
15 ficer, employee, agent, or partner of a syndicate
16 agent may be an owner, director, officer, em-
17 ployee, agent, or partner of any guaranteed
18 party or other syndicate agent under any cross-
19 guarantee or stop-loss contract.

20 (B) SUBCONTRACTORS.—

21 (i) IN GENERAL.—A subcontractor of
22 a syndicate agent may be a subcontractor
23 to any guaranteed party or other syndicate
24 agent under any cross-guarantee or stop-
25 loss contract.

1 (ii) PERSONNEL OVERLAPS.—

2 (I) IN GENERAL.—Subject to
3 subclause (II), an owner, director, of-
4 ficer, employee, agent, or partner of a
5 subcontractor of a syndicate agent
6 may be an owner, director, officer,
7 employee, agent, or partner of any
8 guaranteed party or other syndicate
9 agent under any cross-guarantee or
10 stop-loss contract.

11 (II) EXCEPTION FOR GUARAN-
12 TEED PARTY UNDER THE SAME CON-
13 TRACT.—An owner, director, officer,
14 employee, agent, or partner of a sub-
15 contractor of a syndicate agent per-
16 forming monitoring work on a guaran-
17 teed party under a cross-guarantee or
18 stop-loss contract may not be an
19 owner, director, officer, employee,
20 agent, or partner of the guaranteed
21 party under the contract.

22 (C) DEFINITION OF OWNER.—For pur-
23 poses of this paragraph, the term “owner”
24 means, with respect to any company, a person
25 who controls the company.

1 **SEC. 113. REQUIREMENTS COMMON TO CROSS-GUARANTEE**
2 **AND STOP-LOSS CONTRACTS.**

3 (a) STOP-LOSS LIMIT FOR LOSSES OF A GUARAN-
4 TEED PARTY AS A DIRECT GUARANTOR OF OTHER GUAR-
5 ANTEED PARTIES.—

6 (1) DEFINITIONS.—For purposes of this sub-
7 section:

8 (A) LEVEL 1 PARTY.—The term “level 1
9 party” means a guaranteed party under any
10 cross-guarantee or stop-loss contract.

11 (B) LEVEL 2 PARTY.—The term “level 2
12 party” means a direct guarantor of a level 1
13 party.

14 (C) LEVEL 3 PARTY.—The term “level 3
15 party” means a direct guarantor of a level 2
16 party.

17 (D) LOSS.—The term “loss” means the
18 present value, as of the date of a loss event, of
19 the cash outlays, including administrative ex-
20 penses, required to fulfill a level 2 party’s cross-
21 guarantee obligations to a level 1 party due to
22 the occurrence of such loss event, using as a
23 discount rate the sum of—

24 (i) 2 percent; and

25 (ii) the average annual percentage
26 yield on 3-month bills issued by the Sec-

1 retary of the Treasury under section
2 3104(a) of title 31, United States Code, as
3 determined by the Corporation as of the
4 most recent issue date preceding the date
5 of the loss event.

6 (E) LOSS EVENT.—The term “loss event”
7 means an event described in paragraph (3).

8 (F) STOP-LOSS LIABILITY.—The term
9 “stop-loss liability” means an obligation ac-
10 crued by a level 3 party to a level 2 party under
11 paragraph (2).

12 (G) STOP-LOSS RECOVERY.—The term
13 “stop-loss recovery” means the amount accrued
14 by a level 2 party due to the obligation of a
15 level 3 party under paragraph (2).

16 (2) STOP-LOSS OBLIGATION OF DIRECT GUAR-
17 ANTORS.—

18 (A) STOP-LOSS RECOVERY.—For any 12-
19 calendar month period in which a cross-guaran-
20 tee or stop-loss contract exists between level 3
21 parties and a level 2 party as of the first day
22 of the first calendar month of such period, the
23 level 3 parties shall be obligated to pay to the
24 level 2 party an amount equal to the total
25 amount of losses accrued by the level 2 party

1 in such party's capacity as a direct guarantor
2 of level 1 parties during such 12-calendar-
3 month period, minus the sum of—

4 (i) the greater of—

5 (I) the amount equal to 5 times
6 the total amount of cross-guarantee
7 and stop-loss premium income accru-
8 ing to the level 2 party in such party's
9 capacity as a direct guarantor of level
10 1 parties during such 12-calendar-
11 month period;

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

20 (III) in the case of a 12-cal-
21 endar-month period ending in a
22 month which is among the first 11
23 calendar months that the level 2 party
24 has ever been a party guaranteed
25 under a cross-guarantee or stop-loss

1 contract, the amount equal to the av-
2 erage monthly cross-guarantee and
3 stop-loss premium income accruing to
4 the level 2 party in such party's ca-
5 pacity as a direct guarantor of level 1
6 parties since first becoming a party
7 guaranteed under a cross-guarantee
8 or stop-loss contract, multiplied by 60;
9 or

10 (IV) in the case of a 12-calendar-
11 month period ending in a month
12 which is among the first 23 calendar
13 months that the level 2 party has ever
14 been a party guaranteed under a
15 cross-guarantee or stop-loss contract,
16 the amount equal to 5 times the total
17 amount of cross-guarantee and stop-
18 loss premium income accruing to the
19 level 2 party in such party's capacity
20 as a direct guarantor of level 1 par-
21 ties, without taking into account any
22 reduction in premium income due to
23 the transfer, under section 113(m), of
24 the level 2 party's interest in any

1 cross-guarantee or stop-loss syndicate;

2 and

3 (ii) recoveries accrued under this
4 paragraph by the level 2 party for each 12-
5 calendar-month period ending at the end of
6 each of the first 11 calendar months in
7 such 12-calendar-month period.

8 (B) CARRYOVER FROM PREVIOUS CON-
9 TRACTS.—The amounts calculated in subpara-
10 graph (A) shall include all losses, premium in-
11 come, and stop-loss recoveries of the level 2
12 party under any cross-guarantee or stop-loss
13 contracts under which the level 2 party was a
14 party guaranteed during such 12-calendar-
15 month period.

16 (C) MERGER OR CONSOLIDATION OF TWO
17 OR MORE GUARANTEED PARTIES.—In the case
18 of any level 2 party which merged or consoli-
19 dated with any other party which was a level 2
20 party guaranteed under another cross-guaran-
21 tee or stop-loss contract, the amounts cal-
22 culated in subparagraph (A) shall include all
23 losses, premium income, and stop-loss recover-
24 ies of both of the parties prior to the merger or
25 consolidation.

1 (D) OTHER GUARANTEED PARTIES UNDER
2 THE CONTRACT WHICH WERE PREVIOUSLY DI-
3 RECT GUARANTORS.—The amounts calculated
4 in subparagraph (A) for the level 2 party shall
5 include all losses, premium income, and stop-
6 loss recoveries of any other party guaranteed
7 under the same cross-guarantee contract as the
8 level 2 party, which occurred while such other
9 party was a level 2 party while guaranteed
10 under the same or another cross-guarantee or
11 stop-loss contract.

12 (E) TIMING OF STOP-LOSS RECOVERY.—A
13 stop-loss recovery shall accrue as of the last day
14 of the last calendar month of the 12-calendar-
15 month period under which the stop-loss recov-
16 ery was calculated.

17 (F) ADJUSTMENT FOR CATASTROPHIC
18 LOSSES.—

19 (i) IN GENERAL.—If, for any calendar
20 month, a closed loop exists in which every
21 direct guarantor under the contracts in the
22 closed loop accrues a stop-loss recovery for
23 such month, then the calculation of stop-
24 loss recovery for the 12-calendar-month pe-
25 riod ending in such month for all the con-

1 tracts in the closed loop shall be adjusted
2 as required under clauses (ii) and (iii).

3 (ii) ADJUSTMENT.—If, for any cal-
4 endar month, a closed loop meets the con-
5 ditions of clause (i), the amounts cal-
6 culated in subparagraph (A) shall, for the
7 12-calendar month period in which such
8 calendar month is the last month, be ad-
9 justed by increasing from 5 to 6, under
10 clauses (i)(I) and (i)(II) of subparagraph
11 (A), the amount multiplied by the premium
12 income accruing to a level 2 party and by
13 increasing from 60 to 72, under clause
14 (i)(III) of subparagraph (A), the amount
15 multiplied by the average monthly pre-
16 mium accruing to the level 2 party.

17 (iii) FURTHER ADJUSTMENT.—If,
18 after making the adjustments to the cal-
19 culation of stop-loss recovery under clause
20 (ii), every contract in the closed loop under
21 clause (i) still accrues a stop-loss recovery,
22 the amounts under clauses (i)(I) and
23 (i)(II) of subparagraph (A) shall be in-
24 creased by 1 and the amount under clause
25 (i)(III) of subparagraph (A) shall be in-

1 creased by 12, until at least one direct
2 guarantor under a contract in such closed
3 loop is not accruing a stop-loss recovery
4 for the calendar month in clause (i).

5 (3) DETERMINATION OF TIME OF LOSS.—A
6 level 2 party shall accrue a loss as the direct guaran-
7 tor of a Level 1 party as of—

8 (A) the last day of the calendar month in
9 which the level 1 party accrues a stop-loss re-
10 covery; or

11 (B) the day on which, with respect to a
12 level 1 party which is a guaranteed company,
13 the earliest of the following occurs:

14 (i) Notice is filed with the Corporation
15 under section 118(d)(2)(D) by the cross-
16 guarantee syndicate of which the level 2
17 party is a member that the syndicate has
18 assumed control of the level 1 party.

19 (ii) A transaction is completed which
20 the Corporation, upon request by the syn-
21 dicate agent under the contract and pursu-
22 ant to paragraph (9), determines—

23 (I) involves the acquisition of the
24 level 1 party or a significant portion
25 of the party's assets, the merger or

1 consolidation of the level 1 party with
2 any other party, the liquidation of the
3 level 1 party, or any other similar
4 transaction involving the level 1 party;
5 and

6 (II) results proximately in a loss
7 for the level 2 parties in their capacity
8 as guarantors under the cross-guaran-
9 tee contract.

10 (iii) The level 1 party becomes a debt-
11 or in a case under title 11, United States
12 Code.

13 (4) PREPARATION OF ORIGINAL LOSS ESTIMATE
14 BY SYNDICATE AGENT.—The syndicate agent for the
15 cross-guarantee contract under which a level 2 party
16 is a direct guarantor shall, whenever a loss event
17 under subparagraph (3)(B) occurs under such con-
18 tract—

19 (A) estimate the loss for such loss event;
20 and

21 (B) by the 15th day of the calendar month
22 following the calendar month in which such loss
23 event occurs, notify the central electronic repos-
24 itory of the estimate of the loss under subpara-
25 graph (A).

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

6 (A) revise the original estimate of the loss
7 for such loss event and notify the central elec-
8 tronic repository of such revised estimate at
9 least as often as the 15th day of—

10 (i) the third calendar month following
11 the calendar month in which the loss event
12 took place;

13 (ii) the twelfth calendar month follow-
14 ing the calendar month in which the loss
15 event took place; and

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

18 (B) for each estimate of the loss described
19 in clauses (A)(ii) and (A)(iii), obtain from a
20 third party a confirmation of the reasonableness
21 of the revised estimate of the loss.

22 (6) COMPLETION OF CASH OUTLAYS BECOMES
23 FINAL AMOUNT.—Notwithstanding paragraph (5),
24 once a level 2 party has made the final cash dis-
25 bursement to fulfill such party's cross-guarantee ob-

1 ligations due to any loss event under subparagraph
2 (3)(B)—

3 (A) the syndicate agent for the cross-guar-
4 antee contract under which the level 2 party is
5 a direct guarantor shall calculate the loss from
6 such loss event (subject to the third party con-
7 firmation in subparagraph (5)(B)) and notify
8 the central electronic repository of this calcula-
9 tion; and

10 (B) no further revisions of the loss from
11 such loss event shall be permitted.

12 (7) CALCULATION AND CLEARINGHOUSE DU-
13 TIES OF CENTRAL ELECTRONIC REPOSITORY.—

14 (A) CALCULATION OF STOP-LOSS LIABIL-
15 ITY.—After notification under paragraphs (4),
16 (5), and (6), the central electronic repository
17 shall calculate the stop-loss recovery for every
18 level 2 party for every 12-month calendar pe-
19 riod affected by the initial estimate, revised es-
20 timates, and final loss amounts.

21 (B) ADJUSTMENT FOR INTEREST.—Upon
22 completing the calculations under subparagraph
23 (A), the central electronic repository shall then
24 adjust the amounts owed between level 2 and
25 level 3 parties as specified in paragraph (8).

1 (C) NETTING CALCULATION.—Upon com-
2 pleting the calculations under subparagraph
3 (B), the central electronic repository shall, for
4 each person that is a direct guarantor or guar-
5 anteed party, net the amounts owed by such
6 person in its capacity as a level 3 party with
7 the amount such person is entitled to receive in
8 its capacity as a level 2 party to determine the
9 overall liability or right to payment for such
10 person.

11 (D) NOTIFICATION OF PARTIES.—Within
12 five business days after receiving notification
13 under paragraphs (4), (5), and (6), the central
14 electronic repository shall notify any level 2
15 party or level 3 party of the results of the cal-
16 culations under subparagraphs (A), (B), and
17 (C).

18 (E) SETTLEMENT.—

19 (i) PAYMENTS TO BE MADE.—Within
20 three business days after receiving notifica-
21 tion under subparagraph (D), each party
22 which, given the calculations under sub-
23 paragraph (C), has a net liability shall pay
24 the amount of such liability to the central
25 electronic repository.

1 (ii) DISBURSEMENT OF PAYMENTS.—

2 Upon receiving all payments under clause
3 (i), the central electronic repository shall
4 promptly disburse to each party which has
5 a right to payment, given the calculations
6 under subparagraph (C), the amount owed
7 such party.

8 (iii) PENALTIES FOR LATE PAY-
9 MENT.—If an obligation under clause (i) is
10 not paid in a timely manner, any party
11 which fails to perform its obligation under
12 this title to pay the balance owed under
13 clause (i), including the guarantors of the
14 specific party most directly liable under
15 clause (i), shall be liable to the Corporation
16 for damages of 10 percent of the unpaid
17 amount for which the party is obligated,
18 plus interest at the rate specified under
19 subparagraph (C) of paragraph (8).

20 (F) RULES.—The Corporation may pre-
21 scribe such rules as may be necessary to imple-
22 ment this paragraph.

23 (8) CALCULATION OF STOP-LOSS PAYMENTS
24 PLUS INTEREST.—

1 (A) ORIGINAL ESTIMATE.—If a determina-
2 tion under subparagraph (7)(A) is based on the
3 original estimate of loss under paragraph (4)
4 and results in a stop-loss recovery for a level 2
5 party, each level 3 party shall owe to the level
6 2 party the amount of the stop-loss liability for
7 such level 3 party plus interest on the amount
8 of such liability from the last day of the month
9 in which the loss occurred to the date of pay-
10 ment under this subparagraph.

11 (B) REVISION OF ESTIMATES.—If a deter-
12 mination under subparagraph (7)(A) results
13 in—

14 (i) an increase from the previous esti-
15 mate of the stop-loss recovery for a par-
16 ticular month, then each level 3 party shall
17 owe to the level 2 party the amount of the
18 increase in the level 3 party's stop-loss li-
19 ability plus interest on the amount of the
20 increase in such liability from the last day
21 of such month until payment is made
22 under this clause; or

23 (ii) a decrease from the previous esti-
24 mate of the stop-loss recovery for a par-
25 ticular month, then the level 2 party shall

1 owe each level 3 party the amount of the
2 decrease in such level 3 party's stop-loss
3 liability plus interest on the amount of the
4 decrease in such liability from the last day
5 of such month until payment is made
6 under this clause.

7 (C) INTEREST RATE.—The parties to any
8 cross-guarantee or stop-loss contract shall agree
9 to the interest rate to be used for the calcula-
10 tion of interest under subparagraphs (A) and
11 (B).

12 (9) CGRC ADJUDICATION OF TIMING OF LOSS
13 EVENTS.—

14 (A) INFORMAL CGRC ADJUDICATION.—The
15 Corporation shall establish procedures to deter-
16 mine the timing of loss events under paragraph
17 (3)(B)(ii).

18 (B) JUDICIAL REVIEW.—Any guaranteed
19 party may seek judicial review of any deter-
20 mination under subparagraph (A).

21 (b) DIRECT GUARANTOR'S CROSS-GUARANTEE OBLI-
22 GATIONS UNDER THE CONTRACT ARE INDEPENDENT
23 FROM OTHER PARTIES' OBLIGATIONS.—The cross-guar-
24 antee obligations of a direct guarantor under any cross-

1 guarantee or stop-loss contract shall be independent of
2 any obligation of any other party under the contract.

3 (c) GUARANTEED PARTY CANNOT BE A DIRECT
4 GUARANTOR UNDER THE SAME CONTRACT.—No guaran-
5 teed party may be a direct guarantor under the cross-
6 guarantee or stop-loss contract under which such party is
7 a guaranteed party.

8 (d) DIRECT GUARANTORS PROHIBITED FROM OB-
9 TAINING COLLATERAL FOR CROSS-GUARANTEE OBLIGA-
10 TIONS.—No direct guarantor under any cross-guarantee
11 or stop-loss contract may obtain or retain a lien or security
12 interest in a guaranteed party under the contract, or in
13 any assets of the guaranteed party, in connection with
14 such guarantor's cross-guarantee obligations under the
15 contract, unless the guaranteed party is a guaranteed
16 banking office.

17 (e) PROVISIONS OF CONTRACT REGARDING DIVISION
18 OF LIABILITY.—

19 (1) SEVERAL LIABILITY.—No direct guarantor
20 under any cross-guarantee or stop-loss contract shall
21 be jointly liable for the cross-guarantee obligations
22 of any other direct guarantor under the contract.

23 (2) DIVISION OF LIABILITY.—

24 (A) DETERMINED BY CONTRACT.—Subject
25 to section 116(d), the terms of a cross-guaran-

1 tee or stop-loss contract shall establish the divi-
2 sion of liability among the direct guarantors
3 under the contract.

4 (B) ADJUSTMENT.—If the division of li-
5 ability under a cross-guarantee or stop-loss con-
6 tract does not equal 100 percent, each direct
7 guarantor’s assigned liability under the contract
8 shall be adjusted proportionately so that the di-
9 vision of liability equals 100 percent.

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.—Each cross-guaran-
22 tee and stop-loss contract shall describe the method for
23 calculating, and the timing of payment, for any premium
24 payable to the direct guarantors under the contract.

25 (g) MAXIMUM TERM OF CONTRACTS.—

1 (1) TERM OF CONTRACT.—A cross-guarantee or
2 stop-loss contract may not have a term of more than
3 5 years.

4 (2) AMENDMENTS.—The parties to any cross-
5 guarantee or stop-loss contract may agree to extend
6 the term of the contract as long as the contract as
7 amended still expires within 5 years after the origi-
8 nal effective date of the contract.

9 (3) RENEWAL OF CONTRACT MUST BE AP-
10 PROVED BY THE CORPORATION.—No cross-guaran-
11 tee or stop-loss contract may be renewed by the par-
12 ties to the contract, and no successor contract may
13 become effective, without the approval of the Cor-
14 poration under section 123.

15 (4) REMEDY FOR CONTINUING A CROSS-GUAR-
16 ANTEE CONTRACT AFTER EXPIRATION DATE.—After
17 the 30th day following the expiration of a cross-
18 guarantee contract in which—

19 (A) the direct guarantors have not as-
20 sumed control under section 118(a) of all the
21 guaranteed companies guaranteed under the
22 contract;

23 (B) a guaranteed party under such con-
24 tract has not become a guaranteed party under
25 another cross-guarantee contract;

1 (C) a successor contract is not being con-
2 sidered for approval under section 123 or the
3 Corporation has already rejected two successor
4 contracts;

5 (D) the guaranteed party is not appealing
6 the rejection by the Corporation, under section
7 123, of a successor contract or final judgment
8 has been reached on such an appeal; or

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

12 the Corporation may appoint a receiver for the guar-
13 anteed party and file a bankruptcy petition, pursu-
14 ant to section 125(c).

15 (h) CANCELLATION OF CONTRACTS BY SYN-
16 DICATES.—

17 (1) RIGHT TO CANCEL.—

18 (A) DEFAULT RULE.—Unless otherwise
19 agreed in a cross-guarantee or stop-loss con-
20 tract, a cross-guarantee or stop-loss syndicate
21 may cancel such contract at any time without
22 cause provided that the syndicate agent under
23 such contract provides notice of such cancella-
24 tion to the Corporation and the guaranteed

1 party or parties under the contract at least 90
2 days prior to the effective date of cancellation.

3 (B) MINIMUM NOTICE PERIOD STILL RE-
4 QUIRED FOR ANY CONTRARY AGREEMENT.—If
5 the parties to a cross-guarantee or stop-loss
6 contract agree to cancellation rules different
7 than those provided under subparagraph (A),
8 the contract shall still require the syndicate
9 agent under the contract to give notice of can-
10 cellation to the Corporation and to the guaran-
11 teed party or parties under the contract at least
12 90 days prior to the effective date of the can-
13 cellation.

14 (C) WITHDRAWAL OF CANCELLATION NO-
15 TICE.—A cross-guarantee syndicate may, prior
16 to the cancellation becoming effective, withdraw
17 the cancellation notice issued under this para-
18 graph.

19 (2) CANCELLATION OF ONE GUARANTEED FI-
20 NANCIAL GROUP UNDER A GROUP CONTRACT.—A
21 cross-guarantee syndicate may cancel a cross-guar-
22 antee contract with 1 guaranteed financial group
23 under a group cross-guarantee contract without af-
24 fecting the rights, privileges, duties, and obligations
25 arising out of the syndicate contract with regard to

1 the other guaranteed financial groups under the syn-
2 dicate contract.

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

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

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

19 (4) CONTINUED EFFECTIVENESS OF CROSS-
20 GUARANTEE CONTRACTS UNTIL OTHER COVERAGE IS
21 OBTAINED.—

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

1 direct guarantors or after the expiration of such
2 contract, 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 satisfied or become guaranteed obliga-
10 tions covered under another cross-guaran-
11 tee or stop-loss contract.

12 (B) CANCELLATION WHEN NONDEPOSITORY GUARANTOR IS NOT A DIRECT GUARAN-
13 TORY 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 party guaranteed under the contract—

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

21 (ii) has transferred any remaining
22 risk under any cross-guarantee or stop-loss
23 contract under which such guarantor was
24 formerly a direct guarantor to another di-
25 rect guarantor.

1 (i) CANCELLATION OF CONTRACTS BY GUARANTEED
2 PARTY.—

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

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

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

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

24 (B) has transferred any remaining risk
25 under any cross-guarantee or stop-loss contract

1 under which such guarantor was formerly a di-
2 rect guarantor to another direct guarantor.

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

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

12 (1) any State depository institution becomes a
13 Federal depository institution;

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

16 (3) any bank becomes a savings association;

17 (4) any savings association becomes a bank; or

18 (5) any depository institution in any other way
19 modifies its legal status,

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) DISTRIBUTION OF LOSSES BETWEEN PRIOR AND
23 SUCCESSOR SYNDICATES.—

24 (1) CLAIMS-MADE GUARANTEE.—Subject to
25 paragraph (2), as between two or more cross-guar-

1 antee or stop-loss syndicates which have over time
2 guaranteed a particular guaranteed party, a cross-
3 guarantee obligation shall lie with the syndicate
4 which was the cross-guarantee or stop-loss syndicate
5 at the time a cause of action described under section
6 117(e)(1)(A)(i) was filed with respect to the obliga-
7 tion.

8 (2) EXCEPTION FOR STOP-LOSS OBLIGA-
9 TIONS.—The obligation of direct guarantors under
10 section 113(a) shall lie with the cross-guarantee syn-
11 dicate described under paragraph (2)(A) of such
12 subsection.

13 (m) SUBSTITUTION OF DIRECT GUARANTORS.—

14 (1) AUTHORIZATION OF TRANSFERS SUBJECT
15 TO CGRC APPROVAL.—

16 (A) IN GENERAL.—Any direct guarantor’s
17 rights, privileges, duties, and obligations under
18 a cross-guarantee or stop-loss contract, and any
19 portion of any such rights, privileges, duties,
20 and obligations, may be transferred to a succes-
21 sor direct guarantor, subject to the approval of
22 the Corporation (pursuant to section 123 of
23 this title).

24 (B) TRANSFER OF LONG-TAIL OBLIGA-
25 TIONS.—A person which was formerly a direct

1 guarantor under a cross-guarantee or stop-loss
2 contract which was formerly, but no longer is,
3 in effect may transfer to any person which is a
4 designated direct guarantor under section
5 116(b) any residual rights, privileges, duties,
6 and obligations under the contract, subject to
7 the approval of the Corporation (pursuant to
8 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 perform the transferee’s obli-
13 gations under the contract should the transferee fail
14 to perform.

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

23 (4) ALLOCATION OF INCOME AND LOSSES BE-
24 TWEEN THE TRANSFEROR AND TRANSFEREE.—

1 (A) IN GENERAL.—Subject to subpara-
2 graph (B), a transferor’s accrued (but unpaid)
3 premium income and losses as of the date of
4 transfer under paragraph (1) may be allocated
5 between the transferor and transferee in any
6 manner provided for in the transfer agreement.

7 (B) LOSSES ON CROSS-GUARANTEE OBLI-
8 GATIONS.—The transferor shall be liable for
9 any losses due to a loss event (as defined in sec-
10 tion 113(a)) occurring prior to a transfer under
11 paragraph (1) and the transferee shall be liable
12 for any losses due to a loss event after the
13 transfer.

14 (n) SYNDICATE VOTING RULES.—

15 (1) PROPORTIONAL VOTING.—Each cross-guar-
16 antee and stop-loss contract shall provide that a di-
17 rect guarantor’s voting rights in the cross-guarantee
18 or stop-loss syndicate shall be proportional to such
19 guarantor’s interest in the syndicate.

20 (2) VARIATIONS PERMITTED IN VOTING RE-
21 QUIREMENTS.—A cross-guarantee or stop-loss con-
22 tract may provide that the number of votes needed
23 to approve an action by a cross-guarantee or stop-
24 loss syndicate under the contract may differ depend-
25 ing upon the action on which a vote is taken.

1 (o) GUARANTEED PARTY CAN BE COVERED ONLY
2 UNDER ONE CONTRACT.—No guaranteed party under
3 any cross-guarantee or stop-loss contract may be a guar-
4 anteed party under another cross-guarantee or stop-loss
5 contract.

6 (p) AUTHORITY OF THE CGRC TO DIRECT TRANS-
7 FER.—

8 (1) IN GENERAL.—If any merger, acquisition,
9 consolidation, or other combination of two or more
10 direct guarantors within any cross-guarantee or
11 stop-loss syndicate occurs which causes the contract
12 to materially exceed the limitations set forth in sec-
13 tion 114(b)(1) or paragraph (1) or (2) of section
14 115(b), the Corporation may issue an order direct-
15 ing the merged or consolidated guarantor to obtain
16 a successor for that part of the guarantor's interest
17 that exceeds the statutory limit.

18 (2) EXTENT OF GUARANTEED PARTY'S ABILITY
19 TO BLOCK TRANSFER.—In the case of any transfer
20 under paragraph (1), a guaranteed party may bar
21 the transfer under the authority of subsection
22 (m)(3) if such party demonstrates to the Corpora-
23 tion that that transfer of the interest to a particular
24 guarantor would raise reasonable competitive con-
25 cerns.

1 (q) MERGER OR CONSOLIDATION OF TWO OR MORE
2 GUARANTEED PARTIES.—After any merger, acquisition,
3 consolidation, or other combination of two or more guar-
4 anteed parties, the successor party’s cross-guarantee or
5 stop-loss contract shall meet the same requirements under
6 section 114(b)(1) or paragraph (1) or (2) of section
7 115(b), that the successor would have to meet if the suc-
8 cessor sought to become a guaranteed party under a new
9 cross-guarantee or stop-loss contract.

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

13 (s) BAR ON REINSURANCE.—Subject to sections
14 112(a)(3) and 112(b)(2), a direct guarantor may not rein-
15 sure such guarantor’s interest in a cross-guarantee or
16 stop-loss contract.

17 (t) RULE OF CONSTRUCTION RELATING TO CON-
18 TRACT TERMS.—No provision of this title shall be con-
19 strued as prohibiting any cross-guarantee or stop-loss con-
20 tract from containing any term or condition other than
21 terms or conditions expressly prohibited by this title.

22 **SEC. 114. REQUIREMENTS APPLICABLE ONLY TO CROSS-**
23 **GUARANTEE CONTRACTS.**

24 (a) OBLIGATIONS GUARANTEED UNDER A CROSS-
25 GUARANTEE CONTRACT.—

1 (1) OBLIGATIONS REQUIRED TO BE GUARAN-
2 TEED OBLIGATIONS.—The following obligations of
3 any guaranteed company or guaranteed banking of-
4 fice shall be guaranteed obligations under a cross-
5 guarantee contract:

6 (A) DEPOSITS.—

7 (i) BANKS AND SAVINGS ASSOCIA-
8 TIONS.—In the case of a guaranteed de-
9 pository institution, all deposits.

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) INTEREST-BEARING OBLIGATIONS
16 OTHER THAN SUBORDINATED DEBT.—All inter-
17 est-bearing obligations other than subordinated
18 debt.

19 (C) ALL OTHER CUSTOMER BALANCES AND
20 PROPERTY.—All balances owed by, or previously
21 identified property held in custody by, the guar-
22 anteed company or guaranteed banking office in
23 its capacity as a fiduciary, including escrows,
24 balances in brokerage accounts, and balances
25 on stored-value cards.

1 (D) BALANCES DUE CLEARINGHOUSES,
2 THE FEDERAL RESERVE, AND IN SETTLEMENT
3 OF OTHER TRANSACTIONS.—All obligations
4 owed to clearinghouses, to the Federal Reserve
5 for funds transfers, and to other funds and se-
6 curities clearance and settlement systems.

7 (E) OTHER OBLIGATIONS OWED TO DI-
8 RECT GUARANTORS OR GUARANTEED DEPOSI-
9 TORY INSTITUTIONS.—All non-interest-bearing
10 obligations owed to a direct guarantor or guar-
11 anteed depository institution.

12 (F) CROSS-GUARANTEE OBLIGATIONS.—
13 Cross-guarantee obligations for which the guar-
14 anteed company is liable as a direct guarantor
15 under any other cross-guarantee or stop-loss
16 contract.

17 (G) BACKUP FUND PAYMENTS.—Obliga-
18 tions to repay the cross-guarantee backup fund
19 pursuant to section 128(c)(3).

20 (H) CERTAIN OTHER OBLIGATIONS.—All
21 direct and contingent liabilities under any con-
22 tract or commitment under—

23 (i) any letter of credit or bankers' ac-
24 ceptance; and

1 (ii) any securities contract, commodity
2 contract, forward contract, repurchase
3 agreement, or swap agreement (as such
4 terms are defined in section 11(e)(8)(D) of
5 the Federal Deposit Insurance Act).

6 (I) LIABILITY UNDER RECOURSE AGREE-
7 MENTS.—Any liability under recourse agree-
8 ments that arises when a guaranteed company
9 or guaranteed banking office sells loans or
10 other assets.

11 (J) CERTAIN LINES OF CREDIT.—Any
12 binding commitment to lend funds.

13 (K) ACCRUED INTEREST.—Any accrued in-
14 terest on an underlying obligation which is a
15 guaranteed obligation.

16 (L) FRAUD RELATED TO SUBORDINATED
17 DEBT.—The liability of any guaranteed party
18 for damages due to the fraudulent actions of
19 such party related to marketing subordinated
20 debt.

21 (M) OBLIGATIONS ERRONEOUSLY CON-
22 FIRMED BY SYNDICATE AGENT.—Any obligation
23 binding on the cross-guarantee syndicate under
24 section 117(a)(4)(B).

1 (N) RESIDUAL OBLIGATIONS WHICH THE
2 CGRC DEEMS MUST BE GUARANTEED.—Subject
3 to paragraph (3)(C), any other obligation which
4 the Corporation determines, through rules con-
5 sistent with the purposes of this title, should be
6 guaranteed under each cross-guarantee con-
7 tract.

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

13 (A) SUBORDINATED DEBT.—

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

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

1 (B) EQUITY INTERESTS.—Any equity in-
2 terest in the guaranteed company or guaranteed
3 banking office.

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

6 (A) IN GENERAL.—Any obligation of any
7 guaranteed company or guaranteed banking of-
8 fice which is not required to be, or not prohib-
9 ited from being, a guaranteed obligation under
10 paragraphs (1) and (2) may be a guaranteed
11 obligation under a cross-guarantee contract to
12 the extent the contract so expressly provides.

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

24 (C) JUDGMENTS AND SETTLEMENTS.—
25 Unless the cross-guarantee contract expressly

1 provides to the contrary, no judgment or settle-
 2 ment from any action arising from any alleged
 3 tortious conduct, breach of contract, or viola-
 4 tion of statutory obligation by the guaranteed
 5 company shall be a guaranteed obligation.

6 (b) RISK DIVERSIFICATION.—

7 (1) MINIMUM NUMBER OF DIRECT AND SEC-
 8 OND-TIER GUARANTORS.—Each cross-guarantee con-
 9 tract shall comply with the requirements relating to
 10 the maximum percentage of all guaranteed obliga-
 11 tions under the contract which may be guaranteed
 12 by any one direct guarantor and the minimum num-
 13 ber of second-tier guarantors which the guaranteed
 14 party or parties shall have in the aggregate, as de-
 15 termined under the following table (as adjusted pur-
 16 suant to paragraph (2)) on the basis of the total as-
 17 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

18 (2) ADJUSTMENT OF DOLLAR AMOUNTS FOR
 19 INFLATION.—The amounts contained in the table in

1 paragraph (1) relating to the aggregate assets of
2 guaranteed parties under any cross-guarantee con-
3 tract shall be adjusted annually by the Corporation,
4 after the end of the 1-year period beginning on the
5 date of the enactment of this Act, based on the
6 change in the implicit price deflator for the gross do-
7 mestic product or its successor measure.

8 (c) BASIS FOR CALCULATING EQUITY CAPITAL.—

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.

18 (e) INTERNAL GUARANTEES.—A guaranteed com-
19 pany under any cross-guarantee contract shall be jointly
20 and severally liable to the direct guarantors under such
21 contract for any loss incurred by the guarantors in connec-
22 tion with the cross-guarantee obligations of the guarantors
23 to any other guaranteed company under such contract.

24 (f) DELEGATION OF PERFORMANCE OF GUARAN-
25 TEED OBLIGATIONS.—

1 (1) IN GENERAL.—No guaranteed company or
2 guaranteed banking office may delegate or assign
3 the performance of a guaranteed obligation unless
4 the person to which the performance is delegated or
5 assigned is a guaranteed company or guaranteed
6 banking office.

7 (2) TRANSFERRING PARTY AND SYNDICATE NO
8 LONGER OBLIGED ON OBLIGATION.—Notwithstand-
9 ing any Federal or State law, a guaranteed company
10 or guaranteed banking office that was the transferor
11 of the guaranteed obligation, and the cross-guaran-
12 tee syndicate for such a company or office, shall not
13 be obliged to perform on a guaranteed obligation
14 transferred in compliance with paragraph (1).

15 **SEC. 115. REQUIREMENTS APPLICABLE ONLY TO STOP-**
16 **LOSS CONTRACTS.**

17 (a) OBLIGATIONS GUARANTEED UNDER A STOP-
18 LOSS CONTRACT.—

19 (1) OBLIGATIONS REQUIRED TO BE GUARAN-
20 TEED OBLIGATIONS.—A nondepository guarantor’s
21 cross-guarantee obligations shall be guaranteed obli-
22 gations under a stop-loss contract.

23 (2) NO OTHER GUARANTEED OBLIGATIONS.—
24 Except for the obligations described in paragraph

1 (1), no obligation of a nondepository guarantor may
2 be a guaranteed obligation.

3 (b) RISK DIVERSIFICATION.—

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

8 (2) SECOND-TIER GUARANTORS.—The direct
9 guarantors under any stop-loss contract shall have,
10 in the aggregate, no fewer than 150 direct guaran-
11 tors.

12 **SEC. 116. ELIGIBILITY AND REQUIREMENTS FOR DIRECT**
13 **GUARANTORS.**

14 (a) ELIGIBILITY.—

15 (1) IN GENERAL.—No person may become a di-
16 rect guarantor unless such person is a guaranteed
17 company or a nondepository guarantor.

18 (2) NONDEPOSITORY GUARANTOR.—

19 (A) IN GENERAL.—Subject to subpara-
20 graphs (B) and (C) of this paragraph and sub-
21 section (c) of this section, any person may be
22 a nondepository guarantor.

23 (B) INELIGIBILITY OF DEPOSITORY INSTI-
24 TUTIONS.—

1 (i) IN GENERAL.—No depository insti-
2 tution, or subsidiary of a depository insti-
3 tution, may be a nondepository guarantor.

4 (ii) RULE OF CONSTRUCTION FOR
5 FOREIGN BANKS.—Clause (i) shall not be
6 construed as prohibiting a foreign bank
7 which has a branch in the United States
8 from being a nondepository guarantor.

9 (iii) RULE IF FOREIGN BANK IS A
10 GUARANTEED COMPANY.—A foreign bank
11 which is a guaranteed company may not be
12 a nondepository guarantor.

13 (C) INELIGIBILITY OF GOVERNMENT ENTI-
14 TIES.—

15 (i) IN GENERAL.—No entity which—
16 (I) has direct or indirect taxing
17 authority;
18 (II) is a government sponsored
19 enterprise; or
20 (III) may issue securities in
21 which the owners of the securities are
22 exempt from taxation under State or
23 Federal law,
24 may be a nondepository guarantor.

1 (ii) RULE OF CONSTRUCTION FOR
2 GOVERNMENT PENSION FUNDS.—Clause
3 (i) shall not be construed as to prohibit
4 any pension fund operated for the benefit
5 of government employees from being a
6 nondepository guarantor.

7 (3) GUARANTEED DEPOSITORY INSTITUTIONS
8 AUTHORIZED TO BE DIRECT GUARANTORS.—Not-
9 withstanding any other Federal or State law restrict-
10 ing the powers of depository institutions, a guaran-
11 teed depository institution may be a direct guarantor
12 under any cross-guarantee or stop-loss contract.

13 (b) DESIGNATED DIRECT GUARANTOR.—

14 (1) ONLY ONE GUARANTEED COMPANY WITHIN
15 A GUARANTEED FINANCIAL GROUP MAY BE A DI-
16 RECT GUARANTOR.—No guaranteed company shall
17 be a direct guarantor if another guaranteed com-
18 pany under the same cross-guarantee contract al-
19 ready is a direct guarantor under any cross-guaran-
20 tee or stop-loss contract.

21 (2) DESIGNATION OF DIRECT GUARANTOR IN
22 CROSS-GUARANTEE CONTRACT.—In the case of a
23 cross-guarantee contract in which two or more com-
24 panies are guaranteed under the contract, the con-
25 tract shall designate which guaranteed company

1 may, in accordance with paragraph (1), be a direct
2 guarantor.

3 (c) FINANCIAL RESOURCE REQUIREMENTS FOR
4 NONDEPOSITORY GUARANTORS.—No person may become
5 a nondepository guarantor unless such person has a net
6 worth of at least \$100,000,000 at the time such person
7 would, but for this paragraph, become a direct guarantor
8 under a cross-guarantee or stop-loss contract.

9 (d) RISK DIVERSIFICATION REQUIREMENTS FOR DI-
10 RECT GUARANTORS.—

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

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

22 (i) in the case of a contract which
23 would take effect on or before the 15th day
24 of any calendar month, the second cal-

1 endar month preceding such calendar
2 month; or

3 (ii) in the case of a contract which
4 would take effect after the 15th day of any
5 calendar month, the end of the calendar
6 month preceding such calendar month; or

7 (B) the estimated annual premium which
8 the person would receive as a direct guarantor
9 under the contract would exceed such person's
10 projected annual premium limit as of—

11 (i) in the case of a contract which
12 would take effect on or before the 15th day
13 of any calendar month, the second cal-
14 endar month preceding such calendar
15 month; or

16 (ii) in the case of a contract which
17 would take effect after the 15th day of any
18 calendar month, the end of the calendar
19 month preceding such calendar month.

20 (2) CALCULATION OF PROJECTED ANNUAL PRE-
21 MIUM.—

22 (A) IN GENERAL.—The syndicate agent
23 under any cross-guarantee or stop-loss contract
24 shall determine the projected annual premium
25 earned by any direct guarantor for any calendar

1 month by calculating the amount of such guar-
2 antor's share of the premium accrued under the
3 contract during such month and then
4 annualizing such amount.

5 (B) FIRST TWO MONTHS.—During the
6 first two calendar months in which any cross-
7 guarantee or stop-loss contract is in effect, the
8 syndicate agent shall determine the projected
9 annual premium under the contract for each of
10 these two calendar months by annualizing the
11 premium rate in effect on the date the contract
12 becomes effective.

13 (3) CALCULATION OF THE ESTIMATED ANNUAL
14 PREMIUM FOR THE APPROVED CONTRACT.—

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

20 (B) SYNDICATE AGENT ESTIMATE.—The
21 proposed syndicate agent for the contract shall
22 make a reasonable estimate of the amount in
23 paragraph (1) within five days prior to the date
24 on which the contract is to become effective.

1 (4) CALCULATION OF PROJECTED ANNUAL PRE-
2 MIUM INCOME.—For purposes of making any deter-
3 mination under paragraph (1)(A) with respect to a
4 direct guarantor, the term “projected annual pre-
5 mium income” means the total projected annual pre-
6 miums from all cross-guarantee and stop-loss con-
7 tracts under which such guarantor is a direct guar-
8 antor, other than the contract for which such deter-
9 mination is being made, as of—

10 (A) in the case of contract which would be-
11 come effective on or before the 15th day of any
12 calendar month, the second calendar month
13 preceding such calendar month; and

14 (B) in the case of a contract which would
15 become effective after the 15th day of any cal-
16 endar month, the calendar month preceding
17 such calendar month.

18 (5) ADJUSTMENT OF PROJECTED ANNUAL PRE-
19 MIUM CAPACITY FOR CHANGED CIRCUMSTANCES.—
20 The Corporation may, by rulemaking, set the pro-
21 jected annual premium capacity below 3 percent if
22 the Corporation determines that the existing per-
23 centage is too high to ensure an adequate capital
24 base for the cross-guarantee system.

1 (e) LIABILITY OF ACQUIRER OF ANY DIRECT GUAR-
2 ANTOR.—Any person which acquires (as defined in section
3 13(f)(8)(B) of the Federal Deposit Insurance Act) any di-
4 rect guarantor shall be obligated for all of the cross-guar-
5 antee obligations of such guarantor under any cross-guar-
6 antee or stop-loss contract to which such guarantor is a
7 direct guarantor.

8 **SEC. 117. PROVISIONS RELATING TO CROSS-GUARANTEE**
9 **AND STOP-LOSS SYNDICATES.**

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

11 (1) SYNDICATE AGENT IS AGENT OF DIRECT
12 GUARANTORS.—

13 (A) IN GENERAL.—The syndicate agent
14 under any cross-guarantee or stop-loss contract
15 shall act as an agent of the direct guarantors
16 under such contract.

17 (B) EXCEPTIONS.—Notwithstanding sub-
18 paragraph (A), the syndicate agent also shall
19 have—

20 (i) a duty to protect the confidential-
21 ity of any aspect of a guaranteed party's
22 affairs which the contract specifies shall be
23 protected; and

24 (ii) duties to the Corporation as speci-
25 fied in this title.

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

5 (A) MONITOR PERFORMANCE.—Monitor
6 the performance, or contract with a third party
7 to monitor the performance, of any party guar-
8 anteed under such contract.

9 (B) COLLECT PREMIUMS.—Collect the pre-
10 miums due to the direct guarantors under such
11 contract.

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

18 (A) of the equity capital or the net worth,
19 as the case may be, of the guaranteed financial
20 group or nondepository guarantor under the
21 contract as of the end of the prior calendar
22 month; and

23 (B) of the projected annual premium due
24 each direct guarantor, as of the end of the prior
25 calendar month.

1 (4) CONFIRMATION OF GUARANTEE OF SPE-
2 CIFIC OBLIGATIONS.—

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

5 (i) determine, at the request of any
6 current or prospective creditor of a guar-
7 anteed company or guaranteed banking of-
8 fice under such contract, whether, assum-
9 ing that the company or office has or will
10 have an obligation to the creditor, such ob-
11 ligation would be a guaranteed obligation
12 under the contract; and

13 (ii) promptly notify the current or
14 prospective creditor of the agent's deter-
15 mination.

16 (B) DETERMINATION BINDING ON SYN-
17 DICATE.—Any notification of determination
18 under subparagraph (A) shall be binding on the
19 cross-guarantee syndicate.

20 (C) FEE.—A syndicate agent may charge
21 a current or prospective creditor a fee for mak-
22 ing the determination and notifying the creditor
23 under subparagraph (A).

1 (5) AGREEMENT GOVERNING THE RELATION-
2 SHIP BETWEEN THE SYNDICATE AND SYNDICATE
3 AGENT.—

4 (A) IN GENERAL.—Any agreement between
5 the direct guarantors and the syndicate agent
6 governing the relationship between such parties
7 must be included in the cross-guarantee or
8 stop-loss contract.

9 (B) LIMITS ON SIDE CONTRACTS.—No di-
10 rect guarantor or group of direct guarantors
11 under a cross-guarantee or stop-loss contract
12 may enter into any other contract or binding
13 agreement pertaining to the contract with the
14 syndicate agent under such cross-guarantee or
15 stop-loss contract.

16 (6) AUTHORIZATION OF INFORMATION SHARING
17 AMONG SYNDICATE AGENTS.—Notwithstanding Fed-
18 eral or State law, the Corporation may prescribe
19 rules allowing syndicate agents to share information
20 if the Corporation finds that the benefits of such in-
21 formation sharing outweigh the anticompetitive risks
22 of such sharing.

23 (b) EXEMPTION FROM SECURITIES LAWS.—Notwith-
24 standing Federal or State law, interests in any cross-guar-

1 antee or stop-loss syndicate are not securities for any pur-
2 pose.

3 (c) TAXATION OF SYNDICATES.—

4 (1) TREATED AS PARTNERSHIP.—Any cross-
5 guarantee or stop-loss syndicate shall be treated as
6 a partnership for purposes of the Internal Revenue
7 Code of 1986.

8 (2) CONSOLIDATED RETURNS BY SYNDICATE
9 AGENT.—A syndicate agent shall file an annual in-
10 formation return with the Internal Revenue Service
11 with respect to all syndicates for which such agent
12 is an agent, and all distributions with respect to
13 such syndicates, on a consolidated basis.

14 (3) TAX EXEMPT STATUS.—Any syndicate
15 under any cross-guarantee or stop-loss contract, any
16 income or gross receipts (including premiums), and
17 any activity of the syndicate shall be exempt from all
18 taxation imposed by any State, county, municipality,
19 or local taxing authority.

20 (d) REPLACEMENT OF SYNDICATE AGENTS.—

21 (1) IN GENERAL.—The cross-guarantee or stop-
22 loss syndicate under any cross-guarantee or stop-loss
23 contract may at any time and without cause replace
24 the syndicate agent under such contract, subject to
25 the guaranteed financial group or nondepository

1 guarantor's approval of the new syndicate agent, by
2 amending the contract and obtaining the Corpora-
3 tion's approval of the new syndicate agent under sec-
4 tion 123.

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

9 (3) WITHDRAWAL OF SYNDICATE AGENT.—

10 (A) SAME-DAY SUBMISSION OF AMENDED
11 CONTRACT WITH NEW SYNDICATE AGENT.—If a
12 syndicate agent should resign or otherwise cease
13 providing required services under a cross-guar-
14 antee or stop-loss contract, whether wrongfully,
15 as allowed under such contract, or for any other
16 reason, the cross-guarantee or stop-loss syn-
17 dicate shall by the end of the business day on
18 which the resignation or cessation of services is
19 effective submit an amendment to the contract,
20 with a successor syndicate agent named in the
21 amendment, to the Corporation for approval.

22 (B) INTERIM CGRC APPOINTMENT.—The
23 Corporation may appoint a successor syndicate
24 agent to serve until a cross-guarantee or stop-

1 loss syndicate has complied with the require-
2 ments under subparagraph (A).

3 (e) CAUSES OF ACTION AGAINST A SYNDICATE OR
4 SYNDICATE AGENT.—

5 (1) CAUSES OF ACTION AGAINST A SYN-
6 DICATE.—

7 (A) IN GENERAL.—A cross-guarantee or
8 stop-loss syndicate shall be sued as an entity,
9 and no direct guarantor may be sued in such
10 guarantor’s individual capacity, for—

11 (i) breach of the cross-guarantee or
12 stop-loss contract;

13 (ii) liability for the acts or omissions
14 of the syndicate agent under the contract;
15 or

16 (iii) wrongs arising out of any action
17 authorized by the syndicate, including ac-
18 tions undertaken pursuant to sections
19 113(n) and 117(h)(2).

20 (B) SEVERAL LIABILITY.—Section 113(e)
21 shall apply in determining a direct guarantor’s
22 liability under any cause of action under sub-
23 paragraph (A).

24 (C) SERVICE OF PROCESS.—For the pur-
25 poses of any action under subparagraph (A)—

1 (i) the syndicate agent shall be the
2 agent for the cross-guarantee or stop-loss
3 syndicate for service of process; and

4 (ii) service of process upon a syn-
5 dicate agent shall serve as the exclusive
6 manner of service of process upon the syn-
7 dicate under the contract.

8 (2) CONDUCT FOR WHICH SYNDICATES HAVE
9 NO LEGAL DUTY TO THIRD PARTIES.—A cross-guar-
10 antee or stop-loss syndicate shall have no legal duty
11 under Federal or State law to any person with re-
12 spect to—

13 (A) the level or accuracy of the premium
14 rate under a cross-guarantee or stop-loss con-
15 tract;

16 (B) the adequacy of a syndicate agent's
17 monitoring of a guaranteed party; or

18 (C) the decision whether to enforce or
19 waive a right or privilege of the syndicate under
20 the cross-guarantee or stop-loss contract.

21 (3) CONDUCT FOR WHICH SYNDICATE AGENTS
22 HAVE NO LEGAL DUTY TO THIRD PARTIES.—A syn-
23 dicate agent shall have no legal duty under Federal
24 or State law to any person other than the parties to
25 a cross-guarantee or stop-loss contract with respect

1 to the adequacy of the agent's performance of such
2 agent's contractual obligations under the contract.

3 (4) LIABILITY FOR ACTS OF A GUARANTEED
4 PARTY.—Subject to sections 114(a) and 115(a), a
5 cross-guarantee syndicate, stop-loss syndicate, or
6 syndicate agent shall not be liable for any alleged
7 tortious conduct, breach of contract, or violation of
8 statutory obligation by a guaranteed party under the
9 contract.

10 (5) BAR ON PUNITIVE DAMAGES.—No punitive
11 damages shall be allowed in any action against a
12 cross-guarantee syndicate, stop-loss syndicate, or
13 syndicate agent in the syndicate's or agent's capac-
14 ity as such under a cross-guarantee or stop-loss con-
15 tract.

16 (f) CAUSES OF ACTION BY A SYNDICATE, SYNDICATE
17 AGENT, OR DIRECT GUARANTOR.—

18 (1) DIRECT GUARANTORS CANNOT SUE IN
19 THEIR INDIVIDUAL CAPACITY IN ACTIONS THAT ARE
20 DERIVATIVE OF ACTIONS OF THE SYNDICATE.—No
21 direct guarantor may sue, in such guarantor's indi-
22 vidual capacity, any person under Federal or State
23 law for injuries arising out of any cross-guarantee or
24 stop-loss contract unless—

1 (A) such guarantor's injury is a special in-
2 jury distinct from injuries suffered by other di-
3 rect guarantors which are members of the
4 cross-guarantee or stop-loss syndicate; or

5 (B) such guarantor's claim is against the
6 cross-guarantee or stop-loss syndicate itself.

7 (2) BAR ON CERTAIN ACTIONS AGAINST THIRD
8 PARTIES.—Except for an action for breach of con-
9 tract, a cross-guarantee syndicate, stop-loss syn-
10 dicate, or syndicate agent shall not have a cause of
11 action under Federal or State law against any per-
12 son for any loss arising out of any cross-guarantee
13 or stop-loss contract unless the syndicate or syn-
14 dicate agent (as the case may be), in addition to
15 proving the required elements of a cause of action
16 under Federal or State law, proves by a preponder-
17 ance of the evidence that—

18 (A) the party made a false representation
19 to the syndicate, guarantor, or syndicate agent;

20 (B) the party had actual knowledge that
21 the representation was false; and

22 (C) the false representation was material;

23 (g) CAUSE OF ACTION BY THE SYNDICATE AGAINST
24 THE SYNDICATE AGENT.—In any action by the cross-
25 guarantee or stop-loss syndicate against the syndicate

1 agent to recover damages due to a loss (as the term “loss”
2 is defined in section 113(a)(1)(D)), the syndicate must,
3 in addition to proving the required elements of a cause
4 of action under Federal or State law, prove by a prepon-
5 derance of the evidence—

6 (1) that—

7 (A) the syndicate agent made a false rep-
8 resentation to the syndicate;

9 (B) the syndicate agent had actual knowl-
10 edge that the representation was false; and

11 (C) the false representation was material;

12 or

13 (2) that the syndicate agent consciously dis-
14 regarded substantial and unjustifiable risks being
15 taken by the guaranteed party under the contract.

16 (h) RELATIONSHIP AMONG SYNDICATE MEMBERS.—

17 (1) SYNDICATE MEMBERS NOT AGENTS FOR
18 EACH OTHER.—Subject to paragraph (2), no direct
19 guarantor in a cross-guarantee or stop-loss syndicate
20 shall be liable under agency law for the actions of
21 any other direct guarantor in the syndicate.

22 (2) SYNDICATE MAY VOTE TO APPOINT A MEM-
23 BER AS AGENT FOR THE SYNDICATE.—A cross-guar-
24 antee or stop-loss syndicate may, consistent with
25 section 113(n), vote to appoint one or more direct

1 guarantors under the contract as an agent for the
2 syndicate.

3 (i) REGISTRATION OF SYNDICATES.—

4 (1) IN GENERAL.—The Corporation shall pre-
5 scribe rules providing for the registering of cross-
6 guarantee and stop-loss syndicates for the purpose
7 solely of allowing persons a reference by which to
8 identify individual syndicates.

9 (2) REGISTRATION UPON SUBMISSION OF THE
10 CONTRACT FOR APPROVAL.—The rules under para-
11 graph (1) shall provide for the automatic registra-
12 tion of a cross-guarantee or stop-loss syndicate upon
13 submission for approval of a cross-guarantee or
14 stop-loss contract under section 123.

15 (3) DISTINGUISHING AMONG SYNDICATES.—
16 The rules under paragraph (1) shall reference a
17 cross-guarantee or a stop-loss syndicate as a unique
18 syndicate with permanent identification.

19 **SEC. 118. ASSUMPTION OF CONTROL OF A GUARANTEED**
20 **COMPANY BY A CROSS-GUARANTEE SYN-**
21 **DICATE.**

22 (a) RIGHT OF CROSS-GUARANTEE SYNDICATE TO
23 ASSUME CONTROL.—A cross-guarantee syndicate under
24 any cross-guarantee contract shall have the right to as-

1 sume control of a guaranteed company under the contract
2 under the following circumstances:

3 (1) CANCELLATION.—Immediately after a can-
4 cellation of the contract by the syndicate or the
5 guaranteed financial group has become effective un-
6 less a successor cross-guarantee contract has taken
7 effect.

8 (2) Expiration.—Immediately after the expira-
9 tion of the cross-guarantee contract unless a succes-
10 sor cross-guarantee contract has taken effect.

11 (b) RIGHT OF GUARANTEED PARTY TO SEEK TO
12 STAY ASSUMPTION OF CONTROL.—

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

16 (2) TIME LIMIT FOR OBJECTING TO ASSUMP-
17 TION OF CONTROL.—

18 (A) IN GENERAL.—Any action under para-
19 graph (1) shall be filed either within 30 days
20 after the notice of cancellation under section
21 113(h)(1) is given or more than 60 days prior
22 to the expiration of the contract, whichever the
23 case may be.

24 (B) EXCEPTION IF SUCCESSOR CONTRACT
25 IS OBTAINED.—Subparagraph (A) shall not

1 apply to a guaranteed company which has, sub-
2 sequent to the notice of cancellation or the date
3 60 days prior to expiration, become guaranteed
4 under a successor cross-guarantee contract.

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

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

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

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

23 (2) APPOINTMENT OF A CONSERVATOR.—

24 (A) IN GENERAL.—Upon giving notice of
25 cancellation of the cross-guarantee contract

1 under section 113(h)(1) or the expiration of the
2 contract, the cross-guarantee syndicate may
3 seek the appointment of a conservator to serve
4 until the syndicate can assume control under
5 subsection (a) and a court may appoint such a
6 conservator, but the court may appoint a con-
7 servator only if the remedies under paragraph
8 (1) are not adequate to protect the interests of
9 the cross-guarantee syndicate.

10 (B) COURT SHALL APPOINT A CONSERVA-
11 TOR FROM A LIST SUBMITTED BY CGRC.—The
12 court shall appoint a conservator under sub-
13 paragraph (A) only from a list supplied by the
14 Corporation to the court of 5 disinterested per-
15 sons who are qualified and willing to serve as
16 the conservator in the case, and no such person
17 may be a regulatory agency or an employee of
18 a regulatory agency.

19 (C) POWERS OF CONSERVATOR.—

20 (i) IN GENERAL.—The conservator's
21 duties under this paragraph shall be lim-
22 ited to monitoring compliance by the guar-
23 anteed company with the court's orders
24 and the cross-guarantee contract and mak-

1 ing reports to the court, as necessary, to
2 ensure such compliance.

3 (ii) NO POWER TO OPERATE COM-
4 PANY.—The conservator shall have no
5 power to operate the guaranteed company.

6 (D) GUARANTEED COMPANY CAN STILL
7 OBTAIN A SUCCESSOR CONTRACT.—

8 (i) IN GENERAL.—The appointment of
9 a conservator under this paragraph shall
10 not prevent a guaranteed company from
11 obtaining a successor cross-guarantee con-
12 tract.

13 (ii) DISCHARGE OF CONSERVATOR.—
14 If a guaranteed company obtains a succes-
15 sor cross-guarantee contract, the conserva-
16 tor appointed under this contract shall be
17 discharged when the successor contract has
18 become effective according to the successor
19 contract's terms.

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

24 (d) POWERS AND DUTIES OF A CROSS-GUARANTEE
25 SYNDICATE AFTER ASSUMPTION OF CONTROL.—

1 (1) GENERAL POWERS.—

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

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

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

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

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

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

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

1 trol of a guaranteed company under subsection

2 (a) may—

3 (i) merge or consolidate the guaran-
4 teed company with another guaranteed
5 company;

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

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

11 (2) DUTIES.—

12 (A) PAYMENT OF OBLIGATIONS.—

13 (i) IN GENERAL.—If a cross-guaran-
14 tee syndicate assumes control of a guaran-
15 teed company, the guaranteed company re-
16 mains liable for all of the company's obli-
17 gations without regard to such assumption
18 of control.

19 (ii) ASSUMPTION OF CONTROL DOES
20 NOT MAKE SYNDICATE LIABLE FOR
21 UNGUARANTEED OBLIGATIONS.—Nothing
22 in this subparagraph shall be construed to
23 the effect that the act of assuming control
24 of a guaranteed company makes members
25 of the cross-guarantee syndicate liable for

1 the obligations of the guaranteed company
2 which are not guaranteed obligations.

3 (B) DISTRIBUTION OF ASSETS.—In any
4 case in which funds remain from the liquida-
5 tion, sale, or other disposition of the assets of
6 any guaranteed company after all depositors,
7 creditors, other claimants, and administrative
8 expenses of the syndicate have been paid or oth-
9 erwise resolved, the syndicate shall promptly
10 distribute such funds to the company’s share-
11 holders or members, as the case may be.

12 (C) FIDUCIARY DUTY.—A cross-guarantee
13 syndicate which assumes control of a guaran-
14 teed company in accordance with subsection (a)
15 shall succeed to the same fiduciary responsibil-
16 ity as the directors of such company had under
17 applicable law.

18 (D) NOTICE TO CGRC.—If a cross-guaran-
19 tee syndicate assumes control of a guaranteed
20 company under subsection (a), the syndicate
21 shall on the same day notify the Corporation
22 that it has assumed control.

23 (3) SPECIAL FDIC POWERS DO NOT APPLY.—
24 Nothing in this title shall be construed to give a
25 cross-guarantee syndicate, upon assuming control of

1 a guaranteed company under this section, the power
2 to limit or expand the rights and obligations of the
3 guaranteed company, by analogous reference to any
4 statutory law or common law which grants, or may
5 be construed as granting, special rights to the Fed-
6 eral Deposit Insurance Corporation to repudiate con-
7 tracts of an insured depository institution for which
8 the Federal Deposit Insurance Corporation has been
9 appointed a conservator or receiver.

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

17 (f) ASSUMPTION OF CONTROL NOT AN EVENT OF
18 DEFAULT OR GROUNDS FOR ACCELERATION OF OBLIGA-
19 TIONS.—The assumption of control of a guaranteed com-
20 pany under subsection (a) shall not be an event of default
21 by the guaranteed company or grounds for acceleration
22 of any obligation, whether or not it is a guaranteed obliga-
23 tion, under any agreement to which the guaranteed com-
24 pany is a party.

1 (g) SECOND-TIER GUARANTORS CANNOT DISPUTE
2 LOSSES.—A direct guarantor of any direct guarantor
3 which is a member of a cross-guarantee syndicate which
4 assumes control of a guaranteed party under subsection
5 (a) may not bring a cause of action against the cross-guar-
6 antee syndicate based on damages arising out of the syn-
7 dicate’s decision to assume control or failure to minimize
8 losses under the cross-guarantee contract.

9 **SEC. 119. JUDICIAL REVIEW OF CONTRACTS AND RELATED**
10 **ACTIONS.**

11 (a) JURISDICTION OF FEDERAL COURTS.—

12 (1) IN GENERAL.—For purposes of section
13 1331 of title 28, United States Code, any action
14 arising under any cross-guarantee or stop-loss con-
15 tract shall be deemed to arise under Federal law.

16 (2) REMOVAL.—Any action arising under any
17 cross-guarantee or stop-loss contract which is
18 brought in a State court may be removed by the de-
19 fendant or the defendants to a district court of the
20 United States.

21 (3) DESIGNATION OF COURT IN CONTRACT.—
22 Each cross-guarantee and stop-loss contract shall
23 designate the district court of the United States
24 which shall have original jurisdiction over any action
25 described under section 117(e)(1)(A)(i).

1 (b) THIRD PARTY BENEFICIARY ACTIONS.—

2 (1) RESTRICTIONS ON THIRD PARTY BENE-
3 FICIARY ACTIONS.—Notwithstanding any State law,
4 no creditor of any guaranteed party under any cross-
5 guarantee contract may bring an action against the
6 cross-guarantee syndicate under such contract for
7 failure to perform any cross-guarantee obligation
8 under the contract without first having obtained a
9 judgment against the guaranteed party for failure to
10 perform such obligation, unless the direct guarantors
11 have assumed control of the guaranteed party under
12 section 118(a).

13 (2) INTERVENTION BY SYNDICATE.—

14 (A) IN GENERAL.—A cross-guarantee or
15 stop-loss syndicate under any cross-guarantee
16 or stop-loss contract may intervene in any ac-
17 tion brought by one or more creditors against
18 a guaranteed party under the contract if any
19 judgment against the guaranteed party in such
20 action could affect the potential liabilities of the
21 direct guarantors under the contract.

22 (B) RIGHT OF INTERVENTION BELONGS
23 TO THE SYNDICATE AS A WHOLE.—Any inter-
24 vention under subparagraph (A) shall be exer-
25 cised by a cross-guarantee or stop-loss syn-

1 dicate as a whole and no individual member of
2 a cross-guarantee or stop-loss syndicate shall
3 have a right to intervene in any action de-
4 scribed in subparagraph (A).

5 (c) APPLICABLE STATE LAW.—

6 (1) IN GENERAL.—Unless otherwise indicated
7 in this title, State law shall apply under this title to
8 any cross-guarantee or stop-loss contract.

9 (2) PARTIES’ CHOICE OF STATE CONTRACT
10 LAW.—Each cross-guarantee and stop-loss contract
11 shall designate the State law that shall be applicable
12 under paragraph (1).

13 **Subtitle C—Powers and Duties of the CGRC**

14 **CHAPTER 1—CROSS-GUARANTEE PROCESS**

15 **SEC. 121. THE CROSS-GUARANTEE REGULATION CORPORA-**
16 **TION.**

17 (a) CREATION.—

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

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

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

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

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

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

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

16 (A) the conduct of its business; and

17 (B) the indemnity of its directors, officers,
18 and employees for liabilities and expenses actu-
19 ally and reasonably incurred by any such person
20 in connection with the defense or settlement of
21 an action or suit if such person acted in good
22 faith and in a manner reasonably believed to be
23 consistent with the purposes of this chapter.

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

4 (5) to conduct business (including the carrying
5 on and maintenance of offices) and to exercise all
6 other rights and powers granted to it by this chapter
7 in any State or other jurisdiction without regard to
8 any qualification, licensing, or other statute in such
9 State or other jurisdiction;

10 (6) to lease, purchase, accept gifts or donations
11 of or otherwise acquire, to own, hold, improve, use,
12 or otherwise deal in or with, and to sell, convey,
13 mortgage, pledge, lease, exchange or otherwise dis-
14 pose of, any property, real, personal or mixed, or
15 any interest therein, wherever situated;

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

21 (8) to enter into contracts, to execute instru-
22 ments, to incur liabilities, and to do any and all
23 other acts and things as may be necessary or inci-
24 dental to the conduct of its business and the exercise

1 of all other rights and powers granted to the Cor-
2 poration under this title.

3 (c) BOARD OF DIRECTORS.—

4 (1) FUNCTIONS.—The Corporation shall have a
5 Board of Directors which, subject to the provisions
6 of this title, shall determine the policies which shall
7 govern the operations of the Corporation.

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

10 (A) One director shall be appointed by the
11 Secretary of the Treasury from among the offi-
12 cers of the Department of Treasury that have
13 been confirmed with the advice and consent of
14 the Senate, and shall be removable by the Sec-
15 retary without cause at any time.

16 (B) Six directors shall be appointed by the
17 President, by and with the advice and consent
18 of the Senate, as follows—

19 (i) three such directors shall be se-
20 lected from among senior officers of com-
21 panies that are or are likely to be guaran-
22 teed depository institutions, provided that
23 the directors are not from the same geo-
24 graphical area and represent different as-
25 pects of the industry;

1 (ii) one such director shall be selected
2 from among senior officers of companies
3 that are or are likely to be syndicate
4 agents; and

5 (iii) two such directors shall be se-
6 lected from the general public from among
7 persons who are not either regulatory offi-
8 cials nor associated with a guaranteed de-
9 pository institution, syndicate agent, or
10 nondepository guarantor and have not been
11 such an official or had any such associa-
12 tion for the five years preceding appoint-
13 ment.

14 (3) CHAIRMAN AND VICE CHAIRMAN.—The
15 President shall designate a Chairman and Vice
16 Chairman from among those directors appointed
17 under paragraph (2)(B)(iii) of this subsection.

18 (4) TERMS.—

19 (A) FOUR-YEAR TERMS.—Except as pro-
20 vided under subparagraphs (B) and (C), each
21 director shall be appointed for a term of four
22 years.

23 (B) TRANSITION RULES.—

1 (i) STAGGERED TERMS.—Of the direc-
2 tors first appointed under paragraph
3 (2)(B)—

4 (I) one shall hold office for a
5 term expiring on December 31 of the
6 first full calendar year after passage
7 of this Act;

8 (II) two shall hold office for a
9 term expiring on December 31 of the
10 second full calendar year after pas-
11 sage of this Act;

12 (III) one shall hold office for a
13 term expiring on December 31 of the
14 third full calendar year after passage
15 of this Act; and

16 (IV) two shall hold office for a
17 term expiring on December 31 of the
18 fourth full calendar year after passage
19 of this Act.

20 (ii) TIMING OF PARTICULAR DIREC-
21 TOR'S TERM.—

22 (I) INDUSTRY APPOINTEES'
23 TERMS WILL END IN DIFFERENT
24 YEARS.—One of the directors ap-
25 pointed under each of the clauses

1 (i)(I), (II), (III), (IV) shall consist of
2 the four directors appointed under
3 paragraphs (2)(B)(i) and (ii).

4 (II) APPOINTEES FROM THE
5 GENERAL PUBLIC.—One director ap-
6 pointed under both clause (i)(II) and
7 (IV) shall consist of one of the two di-
8 rectors appointed under paragraph
9 (2)(B)(iii).

10 (iii) TREASURY DIRECTOR MUST BE
11 APPOINTED SOON AFTER ENACTMENT.—
12 The Secretary of the Treasury shall ap-
13 point the director designated under para-
14 graph (2)(A) within 30 days after enact-
15 ment of this Act.

16 (C) VACANCIES.—

17 (i) APPOINTMENT IN SAME MAN-
18 NER.—A vacancy on the Board of Direc-
19 tors shall be filled in the same manner as
20 the original appointment was made.

21 (ii) APPOINTMENT ONLY FOR THE RE-
22 MAINDER OF THE TERM.—Any director ap-
23 pointed under clause (i) shall be appointed
24 only for the remainder of the term of his
25 predecessor.

1 (D) REMAINING A DIRECTOR UNTIL A SUC-
2 CESSOR HAS TAKEN OFFICE.—A director may
3 serve after the expiration of his term until his
4 successor has taken office.

5 (5) COMPENSATION.—

6 (A) CHAIRMAN AND VICE CHAIRMAN.—The
7 compensation of the Chairman and Vice Chair-
8 man shall be as provided in the bylaws of the
9 Corporation.

10 (B) OTHER DIRECTORS.—The remaining
11 five directors shall serve without compensation
12 except that they are entitled to receive reim-
13 bursement for expenses incurred in connection
14 with official business of the Corporation.

15 (6) OFFICERS AND EMPLOYEES AS MEMBERS
16 OF THE BOARD OF DIRECTORS.—No officer, attor-
17 ney, employee, or agent of the Corporation shall be
18 a member of the Board of Directors.

19 (7) BOARD OF DIRECTORS TO DETERMINE OFFI-
20 CERS.—The officers of the Corporation shall be em-
21 ployed at the will of the Board of Directors.

22 (8) DEFINITION OF OFFICER.—For purposes of
23 this subsection, the term “officer” includes any chief
24 executive officer, president, senior executive, or other

1 official with managerial or executive authority within
2 the Corporation.

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

4 (1) TIMING OF MEETINGS.—The Board of Di-
5 rectors shall meet at the call of its Chairman, or as
6 otherwise provided by the bylaws of the Corporation,
7 except that the director appointed under subsection
8 (c)(2)(A) may call a meeting until at least three
9 other directors have taken office.

10 (2) QUORUM TRANSITION RULE.—The bylaws
11 shall determine how many members constitute a
12 quorum when the Board of Directors meet, except
13 that the director appointed under subsection
14 (c)(2)(A) shall alone constitute a quorum until at
15 least three other directors have taken office.

16 (e) BYLAWS AND RULEMAKING.—

17 (1) BYLAWS.—

18 (A) PROCEDURE.—The Board of Directors
19 shall file with the Secretary of the Treasury a
20 copy of the proposed initial bylaws of the Cor-
21 poration and any proposed bylaw changes ac-
22 companied by a concise general statement of
23 the basis and purpose for such changes.

24 (B) CHANGES BECOME EFFECTIVE UNLESS
25 THE TREASURY DEPARTMENT OBJECTS.—Any

1 bylaws submissions under subparagraph (A)
2 shall become effective thirty days after the fil-
3 ing of such changes with the Secretary of the
4 Treasury, unless—

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

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

18 (2) RULEMAKING.—

19 (A) RULEMAKING AUTHORITY.—The Cor-
20 poration shall have the power to issue a rule
21 only if—

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

24 (ii) the Corporation demonstrates
25 that—

1 (I) the rule implements statutory
2 language in this title; and

3 (II) improves the efficiency of the
4 cross-guarantee system.

5 (B) SUBSTANTIVE BASIS FOR RULES.—

6 Any proposed rule or proposed rule change shall
7 be approved only if there is substantial evidence
8 supporting the findings on which the proposed
9 rule is based.

10 (C) RULEMAKING PROCEDURES.—

11 (i) IN GENERAL.—The Corporation
12 shall use the informal rulemaking proce-
13 dures under the Administrative Procedures
14 Act (5 U.S.C. § 553) in prescribing rules
15 under this paragraph.

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

22 (iii) SUBMITTING RULES TO TREAS-
23 URY.—After having completed the proce-
24 dures under clauses (i) and (ii), the Cor-

1 poration shall file with the Secretary of the
2 Treasury a copy of the proposed rules.

3 (iv) **TREASURY AUTHORITY TO RE-**
4 **JECT RULES.**—Any proposed rules or rule
5 changes submitted under clause (iii) shall
6 become effective thirty days after the filing
7 of such proposed rules or rule changes with
8 the Secretary of the Treasury, unless the
9 Secretary of the Treasury, by notice to the
10 Corporation setting forth the reasons
11 therefor, disapproves of such proposed
12 rules or rule changes as being contrary to
13 the purposes of this title.

14 (D) **JUDICIAL REVIEW.**—

15 (i) **STANDING.**—Any person suffering
16 a legal wrong, or adversely affected or ag-
17 grieved within the meaning of this title, by
18 the rules issued under this paragraph is
19 entitled to judicial review thereof.

20 (ii) **JURISDICTION.**—The United
21 States Court of Appeals for the District of
22 Columbia shall have exclusive original ju-
23 risdiction over any action under clause (i).

24 (iii) **FINALITY.**—A rule must be final
25 to be reviewable under this subparagraph.

1 (iv) TIMING.—A petition for review
2 under this subparagraph must be filed
3 within 90 days after the date on which the
4 rule became final.

5 (E) INITIAL DEADLINE.—For any rule cov-
6 ered by subparagraph (A)(i), the Corporation
7 shall issue a final rule within one year after
8 passage of this Act.

9 (f) FUNDING.—

10 (1) INITIAL BORROWING.—

11 (A) BIF FINANCING.—The Corporation
12 shall have the power to borrow up to \$20 mil-
13 lion from the Bank Insurance Fund.

14 (B) USE OF SUCH FINANCING.—The Cor-
15 poration shall use any amount borrowed under
16 subparagraph (A) to establish the central elec-
17 tronic repository, pay initial salaries and other
18 operating expenses, buy equipment, develop
19 computer software, and otherwise begin oper-
20 ations.

21 (C) REPAYMENT.—The Corporation shall
22 repay any borrowing under subparagraph (A)
23 within 5 years after the cross-guarantee activa-
24 tion date from income obtained under para-
25 graph (2).

1 (D) INTEREST ON LOAN.—

2 (i) TIMING OF PAYMENTS.—No prin-
3 cipal or interest payments on the loan de-
4 scribed in subparagraph (A) shall be due
5 prior to one year after the cross-guarantee
6 activation date.

7 (ii) INTEREST RATE.—The interest
8 rate on the borrowing under this para-
9 graph shall be equal to .25 percent plus
10 the average annual percentage yield on 3-
11 month bills issued by the Secretary of the
12 Treasury under section 3104(a) of title 31,
13 United States Code.

14 (2) FINANCING FROM OPERATIONS.—

15 (A) SELF-SUPPORTING.—The Corporation
16 shall repay the loan under paragraph (1) and
17 pay for its ongoing operating expenses by as-
18 sessing fees as authorized under subparagraph
19 (B) and collecting penalties as authorized under
20 this title and shall not, subject to paragraph
21 (1), receive any financing or operating subsidies
22 from the United States Treasury.

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

1 (i) submits a cross-guarantee, stop-
2 loss, or group cross-guarantee contract, or
3 amendment thereto, for approval;

4 (ii) requests use of any service pro-
5 vided by the central electronic repository;

6 or

7 (iii) requests a certification under sec-
8 tion 124(b).

9 (g) MISCELLANEOUS PROVISIONS.—

10 (1) INSPECTION OF REPORTS.—

11 (A) IN GENERAL.—Any notice, report, or
12 other document filed with the Corporation pur-
13 suant to this title, other than financial state-
14 ments filed by nondepository guarantors pursu-
15 ant to section 117(a)(3)(A), shall be available
16 for public inspection unless the Corporation or
17 the Secretary of Treasury determines that dis-
18 closure thereof is not in the public interest.

19 (B) CONGRESSIONAL ACCESS.—Nothing
20 under subparagraph (A) shall act to deny docu-
21 ments or information to the Congress of the
22 United States or to the committees of either
23 House having jurisdiction over depository insti-
24 tutions and related matters under the rules of
25 each body.

1 (C) TREASURY ACCESS TO THE CORPORA-
2 TION'S DOCUMENTS.—The Corporation shall
3 provide the Secretary of Treasury with any doc-
4 ument or information which the Secretary in
5 his or her discretion requests.

6 (2) SUITS AGAINST THE CORPORATION AND ITS
7 OFFICERS.—

8 (A) WAIVER OF SOVEREIGN IMMUNITY.—
9 The Corporation waives sovereign immunity to
10 the same extent provided for under the Admin-
11 istrative Procedures Act (5 U.S.C. § 702).

12 (B) SUITS FOR MONEY DAMAGES.—Nei-
13 ther the Corporation nor any of the Corpora-
14 tion's directors, officers, attorneys, agents, or
15 employees shall have any liability to any person
16 for any action taken or not taken under or in
17 connection with any matter contemplated by
18 this title, if the act was taken or not taken in
19 good faith or there were reasonable grounds for
20 taking or not taking the action.

21 (3) EXEMPTION FROM TAXATION.—The Cor-
22 poration, its property, its franchise, capital, reserves,
23 surplus, and its income, shall be exempt from all
24 taxation now or hereafter imposed by the United
25 States or by any State or local taxing authority, ex-

1 cept that any real property or tangible personal
2 property (other than cash and securities) of the Cor-
3 poration shall be subject to State and local taxation
4 to the same extent according to its value as other
5 real and tangible personal property is taxed.

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

8 **SEC. 122. REGULATION OF THE CROSS-GUARANTEE PROC-**
9 **ESS.**

10 (a) CROSS-GUARANTEE REGULATION CORPORATION
11 ENFORCEMENT AUTHORITY.—

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

15 (2) ENFORCEMENT.—The Corporation shall
16 have the powers provided in subsections (b), (c), (d),
17 (h), (l), and (n) of section 8 of the Federal Deposit
18 Insurance Act and paragraph (1) and each subpara-
19 graph, other than subparagraphs (B) and (C), of
20 paragraph (2) of subsection (i) of such section in en-
21 forcing this title with respect to any syndicate agent,
22 guaranteed party, or direct guarantor, but only with
23 respect to any violation of any requirements under
24 this title.

25 (b) LIMITATION ON STATE JURISDICTION.—

1 (1) IN GENERAL.—Notwithstanding any provi-
2 sion of state law, no state may exercise authority
3 over any party to any cross-guarantee or stop-loss
4 contract with respect to—

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

7 (B) the rights, duties, privileges, or obliga-
8 tions of such party under the contract or pursu-
9 ant to this title.

10 (2) RULE OF CONSTRUCTION.—Paragraph (1)
11 shall not be construed as affecting the authority of
12 any state to determine the powers and regulate the
13 activities of state depository institutions.

14 **SEC. 123. APPROVAL PROCESS FOR CROSS-GUARANTEE,**
15 **STOP-LOSS, AND GROUP CROSS-GUARANTEE**
16 **CONTRACTS.**

17 (a) EXPEDITED APPROVAL OF CONTRACTS AND CON-
18 TRACT AMENDMENTS.—

19 (1) NOTICE AND REVIEW REQUIREMENT.—Ex-
20 cept as provided in paragraph (3), no cross-guaran-
21 tee, stop-loss, or group cross-guarantee contract, and
22 no amendment to any such contract, shall be deemed
23 approved unless—

1 (A) the Corporation has been given 15
2 business days to review the contract or amend-
3 ment; and

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

7 (i) disapproving the contract or
8 amendment; or

9 (ii) extending the period within which
10 the Corporation may disapprove the con-
11 tract or amendment in accordance with
12 paragraph (6).

13 (2) SUBMISSION OF CONTRACT OR AMENDMENT
14 IN ELECTRONIC FORM.—The Corporation shall pre-
15 scribe rules requiring that any cross-guarantee, stop-
16 loss, or group cross-guarantee contract, and any
17 amendment to such contract, being submitted for re-
18 view under this subsection shall be submitted in elec-
19 tronic form to the central electronic repository.

20 (3) NOTICE OF APPROVAL BEFORE END OF DIS-
21 APPROVAL PERIOD.—A cross-guarantee, stop-loss, or
22 group cross-guarantee contract, and any amendment
23 to any such contract, shall be deemed approved be-
24 fore the expiration of the period described in para-
25 graph (1)(A) (or extended in accordance with para-

1 graph (6)) for disapproving such contract if the Cor-
2 poration notifies the parties that the Corporation
3 does not intend to disapprove the contract.

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

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

15 (B) LIMITATION ON SCOPE OF INFORMA-
16 TION REQUIRED.—The rules prescribed by the
17 Corporation under subparagraph (A) may not
18 require the submission of any information other
19 than information directly necessary for the Cor-
20 poration to determine whether any proposed
21 cross-guarantee, stop-loss, or group cross-guar-
22 antee contract, or amendment thereto, submit-
23 ted to the Corporation for approval is in compli-
24 ance with the requirements of this title.

25 (5) ADDITIONAL INFORMATION.—

1 (A) IN GENERAL.—The Corporation may,
2 by specific request in connection with a particu-
3 lar proposed cross-guarantee, stop-loss, or
4 group cross-guarantee contract, or amendment
5 to any contract, submitted to the Corporation,
6 require, on one occasion only, that additional
7 information be submitted with respect to such
8 contract or amendment, except that the Cor-
9 poration may require only such information as
10 may be relevant to—

11 (i) a determination of the extent to
12 which the proposed contract is in compli-
13 ance with the requirements of this title;
14 and

15 (ii) the Corporation’s evaluation of the
16 contract in accordance with this section.

17 (B) NOTICE OF EXPLANATION.—For any
18 request for additional information under sub-
19 paragraph (A), the Corporation shall provide a
20 detailed explanation of the specific reasons why
21 such additional information is needed.

22 (6) EXTENSION OF DISAPPROVAL PERIOD.—If,
23 in connection with a particular proposed cross-guar-
24 antee, stop-loss, or group cross-guarantee contract,
25 or any amendment to any such contract, which is

1 submitted to the Corporation, the Corporation re-
2 quests additional information under paragraph (5),
3 the Corporation may by order provide that the Cor-
4 poration shall have any additional period (not to ex-
5 ceed 5 business days beginning on the date on which
6 the Corporation receives such information) within
7 which to disapprove the proposed contract.

8 (7) REVOCATION OF APPROVAL.—The Corpora-
9 tion may revoke its approval of a contract under this
10 subsection if a court has enjoined the operation of
11 the contract under subsection (e)(2)(B).

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

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

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

24 (c) NOTICE OF DISAPPROVAL.—

1 (1) IN GENERAL.—If the Corporation dis-
2 approves any cross-guarantee, stop-loss, or group
3 cross-guarantee contract, or any amendment thereto,
4 the Corporation shall immediately notify the parties
5 to such contract of the disapproval.

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

10 (d) CONDITIONAL APPROVALS.—

11 (1) IN GENERAL.—The Corporation shall pre-
12 scribe rules which would allow a cross-guarantee,
13 stop-loss, or group cross-guarantee contract to be
14 conditionally approved, in a manner otherwise in ac-
15 cordance with this section, if, at the time such condi-
16 tional approval is granted, all the information re-
17 quired by the Corporation to make a final deter-
18 mination of whether the contract meets the require-
19 ments of this title cannot be known or ascertained.

20 (2) RECONFIRMATION.—The rules prescribed
21 under paragraph (1) shall allow the Corporation,
22 upon receipt of all the information the Corporation
23 needs to determine whether the contract meets the
24 requirements of this title, 3 business days to give the
25 contract a final approval.

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

7 (e) JUDICIAL REVIEW.—

8 (1) CONTRACTS DISAPPROVED.—

9 (A) IN GENERAL.—Any party to a contract
10 disapproved under this section may seek judicial
11 review of the disapproval of a contract under
12 this section.

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

16 (2) CONTRACTS APPROVED.—

17 (A) IN GENERAL.—Any guaranteed party
18 may seek judicial review of the approval of a
19 contract under this section.

20 (B) INJUNCTIVE RELIEF IF THE CON-
21 TRACT HAS NOT YET TAKEN EFFECT.—If a
22 guaranteed party brings an action under sub-
23 paragraph (A) and the contract approved under
24 this section has not yet become effective accord-
25 ing to the contract's terms, a court may enjoin

1 the operation of the contract if it violates any
2 requirement under this title.

3 (C) LIMITATION ON REVIEW IF THE CON-
4 TRACT HAS BECOME EFFECTIVE.—

5 (i) IN GENERAL.—A cross-guarantee
6 or stop-loss contract may be reviewed only
7 with respect to whether the contract vio-
8 lates section 116(a) or section 125.

9 (ii) REMEDIES.—

10 (I) SECTION 125 VIOLATION.—

11 Any court which holds that a cross-
12 guarantee or stop-loss contract vio-
13 lates section 125 shall order the Cor-
14 poration to use the remedies available
15 under section 125 to eliminate the vio-
16 lation.

17 (II) SECTION 116(a) VIOLA-

18 TION.—Any court which holds that a
19 cross-guarantee or stop-loss contract
20 violates section 116(a) shall order the
21 Corporation to adjust each direct
22 guarantor's liability pursuant to sec-
23 tion 113(e)(2)(B).

24 (III) INJUNCTIONS DIS-
25 ALLOWED.—No court may enjoin the

1 operation of a cross-guarantee or
2 stop-loss contract.

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

6 (f) RULES TO AVOID FRAUDULENT SIGNATORIES TO
7 CONTRACTS.—

8 (1) IN GENERAL.—The Corporation shall issue
9 rules which will provide a means, within the time
10 frame of subsection (a), by which, prior to approval
11 of a cross-guarantee, stop-loss, or group cross-guar-
12 antee contract, the Corporation can ensure that
13 every party listed as a party to the contract agreed
14 to become a party to the contract.

15 (2) AVOIDING DUPLICATION.—In issuing the
16 rules under paragraph (1), the Corporation may rely
17 on mechanisms established by the parties to cross-
18 guarantee, stop-loss, or group cross-guarantee con-
19 tracts to ensure that all signatories to the contract
20 agreed to the contract's terms and shall, whenever
21 possible, avoid duplicating such efforts.

22 (3) REMEDIES IF PARTY STILL FALSELY LIST-
23 ED AS DIRECT GUARANTOR.—

24 (A) IN GENERAL.—Any guaranteed party
25 named as a direct guarantor under any cross-

1 guarantee or stop-loss contract even though
2 such party did not agree to become a party to
3 the contract shall have all the rights, privileges,
4 duties, and obligations of a direct guarantor
5 under the contract.

6 (B) REMEDIES.—Subject to 113(k), any
7 guaranteed party falsely listed as a direct guar-
8 antor under subparagraph (A) shall have any
9 recourse provided under Federal or State law
10 against the persons responsible for the false
11 listing.

12 (g) ACCELERATED REVIEW FOR SECONDARY TRANS-
13 FERS OF SYNDICATE INTERESTS.—In the case of a con-
14 tract amendment which consists solely of a transfer of in-
15 terest under section 113(m), the provisions of this section
16 shall apply except—

17 (1) the applicable period for approval under
18 subsection (a)(1) shall be 3 business days instead of
19 15 business days;

20 (2) the Corporation may not extend the dis-
21 approval period as provided for under subsection
22 (a)(6); and

23 (3) the Corporation may disapprove the con-
24 tract amendment under subsection (b) only if the

1 amended contract would violate section 113(m), sec-
2 tion 116(a), or section 125.

3 **SEC. 124. CENTRAL ELECTRONIC REPOSITORY.**

4 (a) ESTABLISHMENT.—

5 (1) CGRC ESTABLISHES CENTRAL ELECTRONIC
6 REPOSITORY.—Before the end of the 6-month period
7 beginning on the date of the enactment of this Act,
8 the Corporation shall establish and maintain a
9 central electronic repository for cross-guarantee,
10 stop-loss, and group cross-guarantee contracts.

11 (2) MAINTENANCE OF ALL PAST, CURRENT,
12 DISAPPROVED, AND PROPOSED CONTRACTS.—The
13 central electronic repository shall maintain files, in
14 electronic form, of all cross-guarantee, stop-loss, and
15 group cross-guarantee contracts, including expired,
16 cancelled, and disapproved contracts, all amend-
17 ments to any such contract, and all proposed con-
18 tracts and contract amendments which have been
19 filed with the Corporation, but not yet acted upon.

20 (3) DIRECT ACCESS TO CENTRAL ELECTRONIC
21 REPOSITORY.—The files in the central electronic re-
22 pository established under this section shall be di-
23 rectly and immediately accessible by any person
24 under procedures established by the Corporation.

1 (4) CENTRAL ELECTRONIC REPOSITORY VER-
2 SION OF THE CONTRACT AS A COMPLETELY INTE-
3 GRATED AGREEMENT.—

4 (A) LEGAL EVIDENCE OF THE CON-
5 TRACT.—The provisions of any cross-guarantee,
6 stop-loss, or group cross-guarantee contract, in-
7 cluding any amendment to any such contract,
8 on file in the central electronic repository shall
9 be—

10 (i) irrebuttable evidence of the con-
11 tract; and

12 (ii) superior evidence to all other
13 forms or versions of the contract.

14 (B) PROHIBITION ON ADDITIONAL
15 TERMS.—The contract on file in the central
16 electronic repository shall be a complete and ex-
17 clusive statement of the terms of any cross-
18 guarantee, stop-loss, or group cross-guarantee
19 contract and no evidence of additional terms is
20 admissible to supplement the contract on file in
21 the repository.

22 (b) AVAILABILITY OF CERTIFIED COPIES.—

23 (1) IN GENERAL.—The central electronic repos-
24 itory shall provide upon request a copy of any con-
25 tract maintained under subsection (a)(2) to any per-

1 son, any government officer, agency, or department,
2 or any court.

3 (2) CERTIFICATION OF COPIES.—

4 (A) IN GENERAL.—Each copy of a cross-
5 guarantee or stop-loss contract provided in ac-
6 cordance with paragraph (1) shall contain a
7 certification by the central electronic repository
8 that such copy is true and correct.

9 (B) PRIMA FACIE EVIDENCE.—A copy of a
10 cross-guarantee or stop-loss contract which is
11 certified in accordance with subparagraph (A)
12 shall establish prima facie the contract.

13 (c) MAINTENANCE OF DATA BASE OF ACTIVE GUAR-
14 ANTORS.—The central electronic repository shall maintain
15 in electronic form a data base containing the names of
16 the direct guarantors under each cross-guarantee or stop-
17 loss contract which has not expired or been canceled and
18 such other information with regard to such contracts that
19 will enable any person to determine whether or not any
20 such contract, proposed contract, or proposed amendment
21 to any contract, is in compliance with this title and the
22 rules prescribed under this title.

23 (d) STANDARD CONTRACT LANGUAGE.—The Cor-
24 poration is authorized to maintain in the central electronic
25 repository and update as needed standard language for

1 various provisions of cross-guarantee, stop-loss, and group
2 cross-guarantee contracts that parties to these contracts
3 may, at their sole discretion, incorporate by reference in
4 contracts and contract amendments they submit to the
5 Corporation for approval.

6 (e) **REGISTRY OF INDIVIDUALS WITH A QUESTION-**
7 **ABLE RECORD.**—The Corporation is authorized to main-
8 tain in the central electronic repository a list of individuals
9 who have been indicted or convicted of a crime related to
10 a financial institution or had a judgment entered against
11 them in a civil case related to financial institutions.

12 **SEC. 125. RESTRICTION ON CLOSED LOOPS.**

13 (a) **PROHIBITION OF MORE THAN ONE UNRELATED**
14 **CLOSED LOOP.**—At no time shall two or more closed loops
15 exist unless at least one cross-guarantee or stop-loss con-
16 tract is a contract in each closed loop that exists in the
17 system.

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

20 (1) the Corporation shall on the same business
21 day notify each guaranteed party under each cross-
22 guarantee and stop-loss contract which is part of the
23 closed loop which has the fewest number of contracts
24 that it must obtain a successor cross-guarantee or
25 stop-loss contract; and

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

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

6 (1) FILING OF A BANKRUPTCY PETITION BY
7 THE CGRC.—

8 (A) APPOINTMENT OF CGRC AS RE-
9 CEIVER.—

10 (i) FAILURE TO SUBMIT A CON-
11 TRACT.—If a guaranteed company has not
12 met the deadline to submit a contract for
13 approval under subsection (b), the Cor-
14 poration shall appoint itself as receiver for
15 the company.

16 (ii) LIMITS ON CGRC'S POWERS.—Ex-
17 cept as provided in this paragraph and sec-
18 tion 113(g)(4), the Corporation may not
19 appoint itself receiver or file a bankruptcy
20 petition for a guaranteed company.

21 (B) CGRC IMMEDIATELY FILES A BANK-
22 RUPTCY PETITION.—On the same business day
23 that the Corporation appoints itself as receiver,
24 the Corporation shall file a voluntary petition
25 under section 301 of title 11, United States

1 Code, on behalf of the guaranteed company for
2 which the Corporation appointed itself receiver.

3 (2) RECOVERY FROM ALL GUARANTEED PAR-
4 TIES FOR LOSSES DUE TO CLOSED LOOPS.—

5 (A) IN GENERAL.—In the case of any
6 guaranteed company for which the Corporation
7 files a bankruptcy petition under paragraph
8 (1)(B), all guaranteed parties shall be liable to
9 cover any loss to the bankruptcy estate arising
10 out of the bankruptcy trustee's duty to perform
11 on all guaranteed obligations of the guaranteed
12 company.

13 (B) LIABILITY PROPORTIONAL TO A PAR-
14 TY'S SHARE OF OVERALL GUARANTEED OBLIGA-
15 TIONS.—A guaranteed party shall be liable
16 under subparagraph (A) in proportion to such
17 party's share of the guaranteed obligations of
18 all guaranteed parties at the time of the filing
19 of the bankruptcy petition by the Corporation.

20 (C) CGRC AUTHORIZATION.—The Cor-
21 poration is authorized to, and shall, assess
22 guaranteed parties for any amounts owed under
23 this paragraph.

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

4 **SEC. 126. TREASURY OVERSIGHT OF THE CROSS-GUARAN-**
5 **TEE REGULATION CORPORATION.**

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

13 (b) EXAMINATIONS AND REPORTS.—

14 (1) EXAMINATIONS.—The Secretary of the
15 Treasury may make such examinations and inspec-
16 tions of the Corporation and require the Corporation
17 to furnish it with such reports and records or copies
18 thereof as the Secretary may consider necessary to
19 implement the purposes of this title.

20 (2) REPORTS.—

21 (A) ANNUAL REPORT.—Within 90 days
22 after the close of each fiscal year of the Cor-
23 poration, the Corporation shall submit to the
24 Treasury Department a written report relative
25 to the conduct of its business, and the exercise

1 of the other rights and powers granted by this
2 title, during such fiscal year.

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

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

18 (D) SUBMISSION TO THE PRESIDENT AND
19 CONGRESS.—The Secretary of the Treasury
20 shall submit the report under subparagraph (A)
21 to the President and Congress with such com-
22 ment thereon as the Secretary deems appro-
23 priate.

CHAPTER 2—PROTECTION OF INSURED**DEPOSITS****SEC. 128. BACKUP INSURANCE FOR DEPOSITS IN GUARANTEED DEPOSITORY INSTITUTIONS.**

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

(1) IN GENERAL.—There is hereby established the cross-guarantee backup fund consisting of amounts deposited pursuant to section 144 and subsection (c).

(2) ADMINISTRATION OF FUND.—The cross-guarantee backup fund shall be administered by the Federal Deposit Insurance Corporation until such time as the administration of the fund is transferred to the Corporation as provided for in section 144(e)(3).

(b) BACKUP DEPOSIT INSURANCE.—

(1) FUND LIABILITY.—Deposits in any guaranteed depository institution or guaranteed banking office shall be insured against loss, to the same extent as deposits are insured against loss under section 11(a) of the Federal Deposit Insurance Act (as in effect on the day before the enactment of this Act), in the event that no adjustment under section 113(a)(2)(F)(iii) will be sufficient to protect all

1 guaranteed obligations of all guaranteed companies
2 against loss.

3 (2) SUBORDINATED DEBT NOT TREATED AS
4 DEPOSIT.—No subordinated debt of any guaranteed
5 depository institution or any guaranteed banking of-
6 fice may be treated as a deposit for purposes of
7 paragraph (1).

8 (c) USE AND DISPOSITION OF FUND.—

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

12 (2) INVESTMENTS.—Amounts on deposit in the
13 cross-guarantee backup fund shall be invested in di-
14 rect obligations of the United States and interest
15 thereon shall accumulate in the fund.

16 (3) REPAYMENT.—A guaranteed depository in-
17 stitution or guaranteed banking office shall be
18 obliged to repay the cross-guarantee backup fund,
19 including any foregone interest under paragraph (2),
20 for any payments made to the institution or banking
21 office or the institution's or banking office's deposi-
22 tors pursuant to paragraph (1).

23 (d) ASSESSMENTS.—If the repayment required pur-
24 suant to paragraph (3) of subsection (c) is not repaid to
25 the cross-guarantee backup fund within 30 days after pay-

1 ment under paragraph (1) of subsection (e), the Federal
2 Deposit Insurance Corporation or the Corporation, as the
3 case may be, shall levy pro rata on all insured deposits
4 in guaranteed depository institutions and guaranteed
5 banking offices, as of the end of the calendar quarter pre-
6 ceding the payment under paragraph (1), an amount equal
7 to the amount owed under paragraph (3).

8 **Subtitle D—Miscellaneous Provisions**

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

10 The Corporation shall ensure that any company,
11 other than—

12 (a) a depository institution;

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

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

19 (d) a broker or dealer registered under the Se-
20 curities Exchange Act of 1934; or

21 (e) an investment company registered under the
22 Investment Company Act of 1940,

23 which accepts deposits or assumes obligations which would
24 be deposits if the company were a bank or savings associa-
25 tion (as defined in section 3 of the Federal Deposit Insur-

1 ance Act) is accepting such deposits and assuming such
2 obligations in accordance with all applicable Federal and
3 State laws which relate to the licensing and regulation of
4 institutions which accept deposits or assume such obliga-
5 tions.

6 **SEC. 132. FEDERAL RESERVE LENDING.**

7 Before February 1 of each calendar year beginning
8 after the cross-guarantee activation date, the Board of
9 Governors of the Federal Reserve System shall submit a
10 report to the committees of both Houses of the Congress
11 of the United States having jurisdiction over depository
12 institutions containing—

13 (a) a certification that—

14 (1) no loss was incurred by such Board or
15 any Federal Reserve Bank during the preceding
16 calendar year on any loan or other advance to
17 any guaranteed company during such year; and

18 (2) no loss is anticipated on any such loan
19 or advance which remains outstanding at the
20 end of such year; or

21 (b) the amount of any such loss or anticipated
22 loss.

23 **SEC. 133. ADVERTISING BY GUARANTEED FINANCIAL**
24 **GROUPS.**

25 (a) ADVERTISING DEPOSIT GUARANTEES.—

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

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

9 (A) shall design, after consultation with
10 depository institutions, a logotype for use by a
11 guaranteed company or guaranteed banking of-
12 fice, which shall include language which states
13 “This institution is operating under a cross-
14 guarantee contract approved by the Cross-
15 Guarantee Regulation Corporation”; and

16 (B) authorize guaranteed companies and
17 guaranteed banking offices to use such logo-
18 type.

19 (3) RULES GOVERNING MANNER OF ADVERTIS-
20 ING.—The Corporation shall prescribe rules govern-
21 ing the manner in which a guaranteed company or
22 guaranteed banking office may display any logotype
23 permitted under this subsection.

1 (b) ADVERTISING BACKUP INSURANCE.—A deposi-
2 tory institution which is guaranteed under a cross-guaran-
3 tee contract—

4 (1) shall display at each place of business of the
5 institution any sign described in section 18(a) of the
6 Federal Deposit Insurance Act; and

7 (2) may advertise that deposits at the institu-
8 tion are insured by the federal government to the
9 same extent as deposits are insured against loss
10 under section 11(a) of the Federal Deposit Insur-
11 ance Act (as in effect on the date before the enact-
12 ment of this Act).

13 (c) EQUAL TREATMENT IN ADVERTISING THE FDIC
14 LOGO.—The rules governing advertising under subsection
15 (b) shall not provide for different treatment based on
16 whether or not a depository institution is a guaranteed
17 depository institution.

18 **SEC. 134. GUARANTEED DEPOSITORY INSTITUTIONS RE-**
19 **MAIN FEDERALLY INSURED DEPOSITORIES**
20 **FOR PURPOSES OF STATE OR FEDERAL LAW.**

21 Unless a State or party to a contract otherwise pro-
22 vides subsequent to the passage of this act, a guaranteed
23 depository institution shall be deemed to be a federally in-
24 sured depository institution within the meaning of section
25 3(c)(2) of the Federal Deposit Insurance Act for purposes

1 of any State or Federal law or private agreement which
2 determines the legally acceptable institutions in which to
3 deposit funds.

4 **Subtitle E—Transition to 100 Percent Cross-**
5 **Guarantee Process**

6 **SEC. 141. EFFECTIVE DATE OF SYSTEM BASED ON MINI-**
7 **MUM NUMBER OF GUARANTEED DEPOSITORY**
8 **INSTITUTIONS AND AMOUNT OF TOTAL AS-**
9 **SETS.**

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

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

14 (2) 40 business days after the date on which
15 the Corporation has approved, under subsection (b),
16 a minimum of 250 cross-guarantee contracts under
17 which depository institutions which, in the aggre-
18 gate, have total assets of not less than
19 \$500,000,000,000 are guaranteed companies or
20 guaranteed banking offices.

21 (b) CONTINGENT EFFECT OF CONTRACTS UNTIL EF-
22 FECTIVE DATE.—

23 (1) IN GENERAL.—The Corporation may condi-
24 tionally approve a cross-guarantee or stop-loss con-
25 tract to become effective on the date to be deter-

1 mined under subsection (a) even though not all di-
2 rect guarantors under the contract meet the require-
3 ments under section 116(a)(1).

4 (2) MINIMUM REQUIREMENTS.—No cross-guar-
5 antee or stop-loss contract conditionally approved
6 under paragraph (1) shall receive final approval
7 from the Corporation for purposes of subsection
8 (a)(2) unless—

9 (A) the cross-guarantee or stop-loss con-
10 tract is 1 of a set of contracts in which each
11 contract—

12 (i) is a contract in the same closed
13 loop; and

14 (ii) becomes effective at the same time
15 every other contract within the set of con-
16 tracts takes effect; and

17 (B) at the time such contract becomes ef-
18 fective, the requirements of section 125(a) are
19 met.

20 (c) PUBLICATION OF CROSS-GUARANTEE ACTIVA-
21 TION DATE.—The Corporation shall submit for publica-
22 tion in the Federal Register the date of the cross-guaran-
23 tee activation date on the day that such date is
24 ascertained.

1 (d) ONE-TIME CONVERSION TO GUARANTEED PARTY
2 STATUS.—Notwithstanding any provision of section 142,
3 section 111 shall apply with respect to any depository in-
4 stitution as of the date—

5 (1) on which such institution first becomes a
6 guaranteed depository institution or guaranteed
7 banking office;

8 (2) on which any depository institution which is
9 affiliated with such depository institution becomes a
10 guaranteed depository institution; or

11 (3) on which any depository institution which is
12 under common ownership with such depository insti-
13 tution under section 112(d)(2) becomes a guaran-
14 teed depository institution.

15 **SEC. 142. MANDATORY DATE ON WHICH DEPOSITORY INSTI-**
16 **TUTIONS MUST BECOME GUARANTEED.**

17 (a) IN GENERAL.—A depository institution may oper-
18 ate without being a guaranteed depository institution until
19 the end of a two-year period beginning on the last day
20 of a calendar quarter in which—

21 (1) more than 90 percent of the consolidated
22 assets at book value of all depository institutions are
23 owned by guaranteed depository institutions; or

24 (2) more than 90 percent of all depository insti-
25 tutions are guaranteed depository institutions.

1 (b) CONSOLIDATED ASSETS AT BOOK VALUE DE-
2 FINED.—

3 (1) IN GENERAL.—The term “consolidated as-
4 sets at book value” means the total value, as deter-
5 mined on a consolidated basis and in accordance
6 with generally accepted accounting principles, of all
7 tangible and intangible property of any depository
8 institution, all subsidiaries of such institution, all af-
9 filiates of such institution which are depository insti-
10 tutions, and all subsidiaries of such affiliates.

11 (2) RULES.—The Corporation may issue rules
12 to further define the term consistent with this sub-
13 section.

14 **SEC. 143. APPOINTMENT OF RECEIVER FOR INSTITUTIONS**
15 **WHICH FAIL TO COMPLY WITH TRANSITION**
16 **REQUIREMENTS.**

17 The Federal Deposit Insurance Corporation shall im-
18 mediately appoint a receiver for any depository institution
19 which is not a guaranteed depository institution or guar-
20 anteed banking office under any cross-guarantee contract
21 as of the date by which such institution is required to be
22 a guaranteed depository institution or guaranteed banking
23 office under section 142.

1 **SEC. 144. FUNDING THE CROSS-GUARANTEE BACKUP FUND.**

2 (a) SEQUENCE OF ACTIONS TO BE TAKEN ON THE
3 CROSS-GUARANTEE ACTIVATION DATE.—On the cross-
4 guarantee activation date, the Federal Deposit Insurance
5 Corporation shall:

6 (1) MERGE EXISTING DEPOSIT INSURANCE
7 FUNDS.—Merge the Savings Association Insurance
8 Fund (established under section 11(a)(6)(A) of the
9 Federal Deposit Insurance Act) into the Bank In-
10 surance Fund (established under section 11(a)(5)(A)
11 of the Federal Deposit Insurance Act) with the
12 Bank Insurance Fund assuming all of the assets and
13 liabilities of the Savings Association Insurance
14 Fund.

15 (2) ADJUST LOSS RESERVE IN THE BANK IN-
16 SURANCE FUND.—Subsequent to the merger under
17 paragraph (1), adjust the Bank Insurance Fund’s
18 reserve for losses to reflect the present value of the
19 fund’s expected losses due to depository institutions
20 that did not become guaranteed depository institu-
21 tions on the cross-guarantee activation date.

22 (3) TRANSFER FUNDS TO FICO.—Transfer from
23 the Bank Insurance Fund to the Financing Corpora-
24 tion (established under section 21(a) of the Federal
25 Home Loan Bank Act) such sums as shall be suffi-
26 cient to carry out the purposes of subsection (c).

1 (4) ADJUST DESIGNATED RESERVE RATIO FOR
2 THE BANK INSURANCE FUND.—After carrying out
3 the provisions of paragraphs (1) through (3), cal-
4 culate a designated reserve ratio for the Bank Insur-
5 ance Fund that shall be used after the cross-guaran-
6 tee activation date for the purpose of determining
7 deposit insurance assessments in lieu of the des-
8 ignated reserve ratio specified under section
9 7(b)(2)(A)(iv)(I) of the Federal Deposit Insurance
10 Act.

11 (b) ACTIONS SUBSEQUENT TO THE CROSS-GUARAN-
12 TEE ACTIVATION DATE.—Within 30 days after carrying
13 out the provisions of subsection (a), the Federal Deposit
14 Insurance Corporation shall transfer to the cross-guaran-
15 tee backup fund an amount equal to the product of—

16 (1) the estimated insured deposits held by de-
17 pository institutions becoming guaranteed depository
18 institutions on the cross-guarantee activation date;
19 and

20 (2) the ratio calculated under subsection (a)(4).

21 (c) DEFEASE REMAINING INTEREST PAYABLE ON
22 FICO BONDS.—

23 (1) PURCHASE ZERO COUPON INSTRUMENTS.—

24 The directors of the Financing Corporation (estab-
25 lished under section 21(a) of the Federal Home

1 Loan Bank Act) shall use the funds transferred to
2 the Financing Corporation under subsection (a)(3)
3 to purchase noninterest bearing direct obligations of
4 the United States with face amounts (the amount of
5 principal payable at maturity) and maturities ap-
6 proximately equal to the remaining interest due and
7 payable on obligations issued by the Financing Cor-
8 poration under section 21(e) of the Federal Home
9 Loan Bank Act.

10 (2) TERMINATE FICO ASSESSMENT AUTHOR-
11 ITY.—Upon purchasing the securities described in
12 paragraph (1), the Financing Corporation shall
13 cease making assessments authorized under section
14 21(f) of the Federal Home Loan Bank Act.

15 (d) ACTIONS TO BE TAKEN ON EVERY JUNE 30 AND
16 DECEMBER 31 AFTER THE CROSS-GUARANTEE ACTIVA-
17 TION DATE.—

18 (1) ADJUST RESERVES FOR LOSSES.—On every
19 June 30 and December 31 after the cross-guarantee
20 activation date, the Federal Deposit Insurance Cor-
21 poration shall adjust the reserve for losses in the
22 Bank Insurance Fund to reflect contemporaneous
23 estimates of the present value of future losses to be
24 paid from the fund.

1 (2) TRANSFER ADDITIONAL FUNDS TO BACKUP
2 FUND.—Upon making the adjustments described in
3 paragraph (1), the Federal Deposit Insurance Cor-
4 poration shall transfer to the cross-guarantee
5 backup fund an amount equal to the product of—

6 (A) the estimated insured deposits, as of
7 the beginning of the six-month period ending on
8 June 30 or December 31, for all depository in-
9 stitutions that became guaranteed depository
10 institutions during such a six-month period;
11 and

12 (B) the ratio calculated under subsection
13 (a)(4).

14 (e) ACTIONS TO BE TAKEN AFTER THE TRANSITION
15 PERIOD.—

16 (1) SEQUENCE OF ACTIONS TO BE TAKEN AT
17 THE END OF THE TRANSITION PERIOD.—Imme-
18 diately upon the appointment of all receivers under
19 section 143, the Federal Deposit Insurance Corpora-
20 tion shall—

21 (A) adjust the Bank Insurance Fund's re-
22 serves for losses to reflect the expenses of wind-
23 ing up each Federal Deposit Insurance Cor-
24 poration receivership still open after all receiv-
25 ers have been appointed under section 143; and

1 (B) after making the adjustment described
2 in subparagraph (A), transfer all funds remain-
3 ing in the Bank Insurance Fund to the cross-
4 guarantee backup fund.

5 (2) ACTIONS TO BE TAKEN AS FDIC RECEIVER-
6 SHIPS ARE CLOSED OUT.—Upon liquidating all as-
7 sets and paying all remaining claims and direct and
8 indirect expenses of a receivership administered by
9 the Federal Deposit Insurance Corporation, except
10 the claim of the Federal Deposit Insurance Corpora-
11 tion, the Federal Deposit Insurance Corporation
12 shall transfer to the cross-guarantee backup fund all
13 of the funds remaining in the receivership.

14 (3) FINAL TRANSFER TO THE CROSS-GUARAN-
15 TEE BACKUP FUND.—After closing out the last
16 Bank Insurance Fund receivership, the Federal De-
17 posit Insurance Corporation shall liquidate all of its
18 remaining assets, transfer all of its remaining funds
19 to the cross-guarantee backup fund, and then trans-
20 fer the administration of the fund to the Corpora-
21 tion.

22 **SEC. 145. ABOLITION OF THE FEDERAL FINANCIAL INSTI-**
23 **TUTIONS EXAMINATION COUNCIL.**

24 The Federal Financial Institutions Examination
25 Council is hereby abolished, effective on the date on which,

1 pursuant to section 142, all depository institutions shall
2 be guaranteed depository institutions.

3 **SEC. 146. ABOLITION OF THE FEDERAL DEPOSIT INSUR-**
4 **ANCE CORPORATION.**

5 (a) IN GENERAL.—The Federal Deposit Insurance
6 Corporation is hereby abolished, effective on the date on
7 which the last receivership or conservatorship resulting
8 from the appointment of a receiver or conservator by the
9 Federal Deposit Insurance Corporation has been liq-
10 uidated, disposed of, or otherwise resolved.

11 (b) SAVINGS PROVISIONS RELATED TO THE FDIC.—

12 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
13 TIONS NOT AFFECTED.—Subsection (a) shall not af-
14 fect the validity of any right, privilege, duty, or obli-
15 gation of the United States, the Federal Deposit In-
16 surance Corporation, or any other person, which ex-
17 isted on the day before the date of the enactment of
18 this Act.

19 (2) CONTINUATION OF SUITS.—No action or
20 other proceeding commenced by or against the Fed-
21 eral Deposit Insurance Corporation shall abate by
22 reason of the enactment of this Act, except that the
23 Secretary of Treasury shall be substituted for the
24 Federal Deposit Insurance Corporation as a party to
25 any such action or proceeding.

1 **SEC. 147. CONTINUATION OF ORDERS, RESOLUTIONS, AND**
2 **DETERMINATIONS.**

3 All orders, resolutions, determinations, and rules
4 which have been issued, made, prescribed, or allowed prior
5 to a depository institution becoming a guaranteed deposi-
6 tory institution shall continue in effect according to the
7 terms of such orders, resolutions, determinations, and
8 rules until modified, terminated, set aside, or superseded
9 in accordance with applicable law by the agency which is-
10 sued the order, resolution, determination, or rule, by any
11 court of competent jurisdiction, by operation of this Act,
12 or by operation of law.

13 **TITLE II—AMENDMENTS TO OTHER**
14 **BANKING LAWS**

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

16 (a) EXEMPTIONS FROM MINIMUM CAPITAL, STOCK,
17 AND OTHER REQUIREMENTS COVERED BY CROSS-GUAR-
18 ANTEE CONTRACTS.—

19 (1) CAPITAL OF NATIONAL BANKS.—Section
20 5138 of the Revised Statutes of the United States
21 (12 U.S.C. 51) is amended by adding at the end the
22 following new sentence: “This section shall not apply
23 with respect to any national bank which is a guaran-
24 teed depository institution (as defined in section
25 101(a)(7) of the Deposit Insurance Reform, Regu-

1 latory Modernization, and Taxpayer Protection Act
2 of 1996).”.

3 (2) PREFERRED STOCK IN MEMBER BANKS.—
4 Section 345 of the Banking Act of 1935 (12 U.S.C.
5 51B–1) is amended by adding at the end the follow-
6 ing new sentence: “This section shall not apply with
7 respect to any bank which is a guaranteed deposi-
8 tory institution (as defined in section 101(a)(7) of
9 the Deposit Insurance Reform, Regulatory Mod-
10 ernization, and Taxpayer Protection Act of 1996).”.

11 (3) DEFICIENT CAPITAL PROVISION FOR NA-
12 TIONAL BANKS.—Section 5205 of the Revised Stat-
13 utes of the United States (12 U.S.C. 55) is amended
14 by adding at the end the following new sentence:
15 “This section shall not apply with respect to any na-
16 tional bank which is a guaranteed depository institu-
17 tion (as defined in section 101(a)(7) of the Deposit
18 Insurance Reform, Regulatory Modernization, and
19 Taxpayer Protection Act of 1996).”.

20 (4) WITHDRAWAL OF CAPITAL PROVISION FOR
21 NATIONAL BANKS.—Section 5204 of the Revised
22 Statutes of the United States (12 U.S.C. 56) is
23 amended by adding at the end the following new
24 sentence: “This section 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 1996).”.

4 (5) INCREASE IN CAPITAL PROVISION FOR NA-
5 TIONAL BANKS.—Section 5142 of the Revised Stat-
6 utes of the United States (12 U.S.C. 57) is amended
7 by adding at the end the following new sentence:
8 “This section shall not apply with respect to any na-
9 tional bank which is a guaranteed depository institu-
10 tion (as defined in section 101(a)(7) of the Deposit
11 Insurance Reform, Regulatory Modernization, and
12 Taxpayer Protection Act of 1996).”.

13 (6) DECREASE AND DISTRIBUTION OF CAPITAL
14 PROVISION FOR NATIONAL BANKS.—Section 5143 of
15 the Revised Statutes of the United States (12
16 U.S.C. 59) is amended by adding at the end the fol-
17 lowing new sentence: “Notwithstanding the preced-
18 ing sentence, the approval of the Comptroller of the
19 Currency shall not be required for any reduction of
20 capital stock, or any distribution to shareholders by
21 reason of any such reduction, under such sentence
22 by any national bank which is a guaranteed depository
23 tory institution (as defined in section 101(a)(7) of
24 the Deposit Insurance Reform, Regulatory Mod-
25 ernization, and Taxpayer Protection Act of 1996).”.

1 (7) DIVIDEND PROVISIONS.—

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

5 (i) by striking “(a) The directors” and in-
6 serting:

7 “(a) DECLARATION OF DIVIDEND.—

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

10 (ii) by striking “expedient; except that
11 until the surplus fund of such association”
12 and inserting “expedient.

13 “(2) EXCEPTION FOR CERTAIN UNDERCAPITAL-
14 IZED ASSOCIATIONS.—Until the surplus fund of a
15 national bank”; and

16 (iii) by adding at the end of para-
17 graph (2) (as so redesignated by clause (ii)
18 of this subparagraph) the following: “This
19 paragraph shall not apply with respect to
20 any national bank which is a guaranteed
21 depository institution (as defined in section
22 101(a)(7) of the Deposit Insurance Re-
23 form, Regulatory Modernization, and Tax-
24 payer Protection Act of 1996).”.

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

5 (i) by striking “(b) The approval of
6 the Comptroller” and inserting “(b) AP-
7 PROVAL OF THE COMPTROLLER.—Except
8 in the case of a national bank which is a
9 guaranteed depository institution (as de-
10 fined in section 101(a)(7) of the Deposit
11 Insurance Reform, Regulatory Moderniza-
12 tion, and Taxpayer Protection Act of
13 1996), the approval of the Comptroller”;
14 and

15 (ii) by striking “such association” and
16 inserting “a national bank”.

17 (b) EXEMPTIONS FROM REQUIREMENTS RELATING
18 TO DIRECTORS OF BANKS.—

19 (1) QUALIFICATIONS OF NATIONAL BANK DI-
20 RECTORS.—Section 5146 of the Revised Statutes of
21 the United States (12 U.S.C. 72) is amended by
22 adding at the end the following new sentence: “This
23 section shall not apply with respect to any national
24 bank which is a guaranteed depository institution
25 (as defined in section 101(a)(7) of the Deposit In-

1 surance Reform, Regulatory Modernization, and
2 Taxpayer Protection Act of 1996).”.

3 (2) SERVICE OF PRESIDENT OF NATIONAL
4 BANK AS CHAIRMAN OF THE BANK’S BOARD OF DI-
5 RECTORS.—Section 5150 of the Revised Statutes of
6 the United States (12 U.S.C. 76) is amended by
7 adding at the end the following new sentence: “This
8 section shall not apply with respect to any national
9 bank which is a guaranteed depository institution
10 (as defined in section 101(a)(7) of the Deposit In-
11 surance Reform, Regulatory Modernization, and
12 Taxpayer Protection Act of 1996).”.

13 (3) MEMBER BANK DIRECTOR INTERLOCKS
14 WITH SECURITIES FIRMS.—Section 32 of the Bank-
15 ing Act of 1933 (12 U.S.C. 78) is amended by add-
16 ing at the end the following new sentence: “This sec-
17 tion shall not apply with respect to any member
18 bank which is a guaranteed depository institution
19 (as defined in section 101(a)(7) of the Deposit In-
20 surance Reform, Regulatory Modernization, and
21 Taxpayer Protection Act of 1996).”.

22 (4) LOANS ON OR PURCHASE OF NATIONAL
23 BANK’S OWN STOCK.—Section 5201 of the Revised
24 Statutes of the United States (12 U.S.C. 83) is
25 amended by adding at the end the following new

1 sentence: “This section shall not apply with respect
2 to any national bank which is 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 1996).”.

6 (c) EXEMPTION FROM REQUIREMENT RELATING TO
7 LOANS TO ONE BORROWER.—Section 5200 of the Revised
8 Statutes of the United States (12 U.S.C. 84) is amended
9 by adding at the end the following new subsection:

10 “(e) EXEMPTION OF GUARANTEED COMPANIES.—
11 This section shall not apply with respect to any national
12 bank which is a guaranteed depository institution (as de-
13 fined in section 101(a)(7) of the Deposit Insurance Re-
14 form, Regulatory Modernization, and Taxpayer Protection
15 Act of 1996).”.

16 (d) EXEMPTION FROM REQUIREMENTS RELATING
17 TO SECURITY FOR DEPOSITS OF GOVERNMENT AGENCIES
18 AT NATIONAL BANKS.—Section 5153 of the Revised Stat-

19 utes of the United States (12 U.S.C. 90) is amended—

20 (1) in the 1st undesignated paragraph, by strik-
21 ing “All national banking associations” and insert-
22 ing “(a) IN GENERAL.—All national banks”;

23 (2) in the 2nd undesignated paragraph, by
24 striking “Any national banking association” and in-

1 serting “(b) DEPOSITORY FOR STATE AND LOCAL
2 GOVERNMENTS.—Any national bank”;

3 (3) in the 3rd undesignated paragraph, by
4 striking “Any national banking association” and in-
5 serting “(c) DEPOSITORY FOR INDIAN TRIBES.—
6 Any national bank”; and

7 (4) by adding at the end the following new sub-
8 section:

9 “(d) EXEMPTION FROM SECURITY AND COLLATERAL
10 REQUIREMENTS.—A national bank which is a guaranteed
11 depository institution (as defined in section 101(a)(7) of
12 the Deposit Insurance Reform, Regulatory Modernization,
13 and Taxpayer Protection Act of 1996) shall not be re-
14 quired to give any security which is otherwise required
15 under subsection (a), (b), or (c) for deposits with the bank
16 under this section or for the performance of the bank as
17 financial agent.”.

18 (e) EXEMPTION FROM PROVISION RELATING TO
19 TRANSFERS BY NATIONAL BANKS IN CONTEMPLATION OF
20 INSOLVENCY.—Section 5242 of the Revised Statutes of
21 the United States (12 U.S.C. 91) is amended by adding
22 at the end the following new sentence: “This section shall
23 not apply with respect to any national bank which is a
24 guaranteed depository institution (as defined in section

1 101(a)(7) of the Deposit Insurance Reform, Regulatory
2 Modernization, and Taxpayer Protection Act of 1996.)”.

3 (f) EXEMPTION FROM REQUIREMENTS RELATING TO
4 REPORTS OF CONDITION.—Section 5211 of the Revised
5 Statutes of the United States (12 U.S.C. 161) is amended
6 by adding at the end the following new subsection:

7 “(d) EXEMPTION OF GUARANTEED COMPANIES.—
8 This section shall not apply with respect to any national
9 bank which is 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 1996.)”.

13 (g) CONSENT OF GUARANTORS REQUIRED FOR VOL-
14 UNTARY DISSOLUTION.—

15 (1) IN GENERAL.—Section 5220 of the Revised
16 Statutes of the United States (12 U.S.C. 181) is
17 amended—

18 (A) in the 1st undesignated paragraph, by
19 striking “Any association” and inserting “(a)
20 IN GENERAL.—Any national bank”;

21 (B) in the 2nd undesignated paragraph, by
22 striking “The shareholders shall designate” and
23 inserting “(b) LIQUIDATING AGENT OR COM-
24 MITTEE.—The shareholders shall designate”;
25 and

1 (C) by adding at the end the following new
2 subsection:

3 “(c) CONSENT OF GUARANTORS REQUIRED FOR
4 GUARANTEED COMPANIES.—In the case of any national
5 bank which is a guaranteed depository institution (as de-
6 fined in section 101(a)(7) of the Deposit Insurance Re-
7 form, Regulatory Modernization, and Taxpayer Protection
8 Act of 1996), the national bank may go into liquidation
9 and be closed in accordance with subsection (a) only with
10 the consent of the direct guarantors of such bank.”.

11 (2) NOTICE TO SYNDICATE AGENT.—Section
12 5221 of the Revised Statutes of the United States
13 (12 U.S.C. 182) is amended by inserting “and, in
14 the case of a national bank which is a guaranteed
15 depository institution (as defined in section
16 101(a)(7) of the Deposit Insurance Reform, Regu-
17 latory Modernization, and Taxpayer Protection Act
18 of 1996), to the syndicate agent of such bank” after
19 “Comptroller of the Currency”.

20 (h) COMPTROLLER OF THE CURRENCY NOT AUTHOR-
21 IZED TO APPOINT RECEIVER.—

22 (1) IN GENERAL.—The Act entitled “An Act
23 authorizing the appointment of receivers of national
24 banking associations, and for other purposes.” and
25 approved June 30, 1876, is amended by inserting

1 after the 1st section (12 U.S.C. 191) the following
2 new section:

3 **“SEC. 2. EXEMPTION OF GUARANTEED NATIONAL BANKS.**

4 “This Act shall not apply with respect to any national
5 bank which is a guaranteed depository institution (as de-
6 fined in section 101(a)(7) of the Deposit Insurance Re-
7 form, Regulatory Modernization, and Taxpayer Protection
8 Act of 1996).”.

9 (2) EXEMPTION FROM ADDITIONAL GROUND
10 FOR THE APPOINTMENT OF RECEIVERS.—Section
11 5234 of the Revised Statutes (12 U.S.C. 192) is
12 amended by adding at the end the following new
13 sentence: “This sentence shall not apply with respect
14 to any national bank which is a guaranteed deposi-
15 tory institution (as defined in section 101(a)(7) of
16 the Deposit Insurance Reform, Regulatory Mod-
17 ernization, and Taxpayer Protection Act of 1996).”.

18 (i) COMPTROLLER OF THE CURRENCY NOT AUTHOR-
19 IZED TO APPOINT CONSERVATOR.—The Bank Conserva-
20 tion Act is amended by inserting after section 206 the fol-
21 lowing new section:

22 **“SEC. 207. EXEMPTION OF GUARANTEED NATIONAL BANKS.**

23 “This subchapter shall not apply with respect to any
24 national bank which is a guaranteed depository institution
25 (as defined in section 101(a)(7) of the Deposit Insurance

1 Reform, Regulatory Modernization, and Taxpayer Protec-
2 tion Act of 1996).”.

3 (j) COMPTROLLER OF THE CURRENCY NOT AUTHOR-
4 IZED TO EXAMINE GUARANTEED BANKS.—Section 5240
5 of the Revised Statutes of the United States (12 U.S.C.
6 481—485) is amended by adding at the end of the 1st
7 paragraph of such section the following new sentence:
8 “Notwithstanding any other provision of this section, the
9 authority of the Comptroller of the Currency to examine
10 any national bank or any affiliate of a national bank shall
11 not apply with respect to any national bank which is a
12 guaranteed depository institution (as defined in section
13 101(a)(7) of the Deposit Insurance Reform, Regulatory
14 Modernization, and Taxpayer Protection Act of 1996) or
15 any affiliate of such bank.”.

16 (k) EXEMPTION FROM LIMITATION OR CONDITIONS
17 ON REAL ESTATE LENDING AUTHORITY.—Section 24(a)
18 of the Federal Reserve Act (12 U.S.C. 371(a)) is amended
19 by adding at the end the following new sentence: “Not-
20 withstanding the preceding sentence, a national bank
21 which is a guaranteed depository institution (as defined
22 in section 101(a)(7) of the Deposit Insurance Reform,
23 Regulatory Modernization, and Taxpayer Protection Act
24 of 1996) shall not be subject to section 18(o) of the Fed-
25 eral Deposit Insurance Act or any restriction or require-

1 ment prescribed by the Comptroller of the Currency under
2 the preceding sentence.”.

3 **SEC. 202. AMENDMENTS RELATING TO MEMBER BANKS.**

4 (a) FEDERAL RESERVE BOARD AND FEDERAL RE-
5 SERVE BANKS NOT AUTHORIZED TO EXAMINE GUARAN-
6 TEED MEMBER BANKS.—

7 (1) IN GENERAL.—Section 11(a)(1) of the Fed-
8 eral Reserve Act (12 U.S.C. 248(a)(1)) is amended
9 by adding at the end the following new sentence:
10 “Notwithstanding any other provision of this section,
11 the authority of the Board or any Federal reserve
12 bank to examine any member bank shall not apply
13 with respect to any member bank which is a guaran-
14 teed depository institution (as defined in section
15 101(a)(7) of the Deposit Insurance Reform, Regu-
16 latory Modernization, and Taxpayer Protection Act
17 of 1996).”.

18 (2) SPECIAL EXAMINATIONS.—The 1st sentence
19 of the 5th undesignated paragraph of section 5240
20 of the Revised Statutes of the United States (12
21 U.S.C. 483) is amended by inserting “which are not
22 guaranteed depository institutions (as defined in sec-
23 tion 101(a)(7) of the Deposit Insurance Reform,
24 Regulatory Modernization, and Taxpayer Protection

1 Act of 1996)” after “member banks within its dis-
2 trict”.

3 (3) FOREIGN OPERATION OF STATE MEMBER
4 BANKS.—The last sentence of the 6th undesignated
5 paragraph of section 5240 of the Revised Statutes of
6 the United States (12 U.S.C. 481) is amended by
7 inserting “and are not guaranteed depository institu-
8 tions (as defined in section 101(a)(7) of the Deposit
9 Insurance Reform, Regulatory Modernization, and
10 Taxpayer Protection Act of 1996)” before the pe-
11 riod.

12 (4) EXAMINATIONS IN CONNECTION WITH AD-
13 VANCES OR DISCOUNTS.—Section 11(n) of the Fed-
14 eral Reserve Act (12 U.S.C. 248(n)) is amended by
15 striking “depository institution,” and inserting “de-
16 pository institution (other than a guaranteed deposi-
17 tory institution (as defined in section 101(a)(7) of
18 the Deposit Insurance Reform, Regulatory Mod-
19 ernization, and Taxpayer Protection Act of 1996)),”.

20 (b) EXEMPTION FROM MEMBER BANK LOAN LIM-
21 TATIONS.—Section 11(m) of the Federal Reserve Act (12
22 U.S.C. 248(m)) is amended by adding at the end the fol-
23 lowing new sentence: “This paragraph shall not apply with
24 respect to any member bank which is a guaranteed deposi-
25 tory institution (as defined in section 101(a)(7) of the De-

1 posit Insurance Reform, Regulatory Modernization, and
2 Taxpayer Protection Act of 1996).”.

3 (c) EXEMPTION FROM LIMITATION ON ACCESS TO
4 FED WIRE.—Section 11 of the Federal Reserve Act (12
5 U.S.C. 248) is amended by inserting after paragraph (n)
6 the following new paragraph:

7 “(o) PROHIBITION ON LIMITS ON ACCESS TO PAY-
8 MENT AND CLEARING SYSTEMS BY GUARANTEED MEM-
9 BER BANKS.—Notwithstanding any other provision of law,
10 the Board may not limit or deny access by any member
11 bank which is a guaranteed depository institution (as de-
12 fined in section 101(a)(7) of the Deposit Insurance Re-
13 form, Regulatory Modernization, and Taxpayer Protection
14 Act of 1996) to the payment system or any system in ef-
15 fect for clearing transactions in securities for the purpose
16 of protecting any such system from any risk.”.

17 (d) FEDERAL RESERVE BOARD NOT AUTHORIZED
18 TO APPOINT CONSERVATOR OR RECEIVER.—Section
19 11(p) of the Federal Reserve Act (12 U.S.C. 248(p)) (as
20 added by section 133(f) of the Federal Deposit Insurance
21 Corporation Act of 1991) is amended to read as follows:

22 “(p) AUTHORITY TO APPOINT CONSERVATOR OR RE-
23 CEIVER.—

24 “(A) IN GENERAL.—Except as provided in sub-
25 paragraph (B), the Board may appoint the Federal

1 Deposit Insurance Corporation as conservator or re-
2 ceiver for a State member bank under section
3 11(c)(8) of the Federal Deposit Insurance Act.

4 “(B) EXCEPTION FOR GUARANTEED DEPOSI-
5 TORY INSTITUTIONS.—This paragraph shall not
6 apply with respect to any member bank which is a
7 guaranteed depository institution (as defined in sec-
8 tion 101(a)(7) of the Deposit Insurance Reform,
9 Regulatory Modernization, and Taxpayer Protection
10 Act of 1996).”.

11 (e) QUALIFICATION OF GUARANTEED STATE BANKS
12 FOR MEMBER BANK STATUS WITHOUT APPLICATION.—

13 (1) IN GENERAL.—The 1st undesignated para-
14 graph of section 9 of the Federal Reserve Act (12
15 U.S.C. 321) is amended by adding at the end the
16 following new sentence: “Notwithstanding the appli-
17 cation requirement contained in the 1st sentence of
18 this paragraph, any State bank which is a guaran-
19 teed depository institution (as defined in section
20 101(a)(7) of the Deposit Insurance Reform, Regu-
21 latory Modernization, and Taxpayer Protection Act
22 of 1996) may become a member of the Federal Re-
23 serve System without application by agreeing to be
24 subject to all applicable provisions of this Act and by

1 subscribing to stock in the same manner and
2 amount as a national bank under section 2.”.

3 (2) EXEMPTION FROM CAPITAL, RESERVE, AND
4 REPORTING REQUIREMENTS.—The 1st sentence of
5 the 6th undesignated paragraph of section 9 of the
6 Federal Reserve Act (12 U.S.C. 324) is amended by
7 inserting “, other than a bank which is a guaranteed
8 depository institution (as defined in section
9 101(a)(7) of the Deposit Insurance Reform, Regu-
10 latory Modernization, and Taxpayer Protection Act
11 of 1996),” after “banks admitted to membership
12 under authority of this section”.

13 (3) EXEMPTION FROM EXAMINATION.—The 7th
14 undesignated paragraph of section 9 of the Federal
15 Reserve Act (12 U.S.C. 325) is amended by striking
16 “such banks” and inserting “, any bank admitted to
17 membership under this section, other than a bank
18 which is a guaranteed depository institution (as de-
19 fined in section 101(a)(7) of the Deposit Insurance
20 Reform, Regulatory Modernization, and Taxpayer
21 Protection Act of 1996),”.

22 (4) EXEMPTION FROM SPECIAL EXAMINA-
23 TIONS.—The 8th undesignated paragraph of section
24 9 of the Federal Reserve Act (12 U.S.C. 326) is
25 amended by adding at the end the following new

1 sentence: “Notwithstanding any other provision of
2 this paragraph, the authority of the Board to exam-
3 ine any member bank shall not apply with respect to
4 any member bank which is a guaranteed depository
5 institution (as defined in section 101(a)(7) of the
6 Deposit Insurance Reform, Regulatory Moderniza-
7 tion, and Taxpayer Protection Act of 1996).”.

8 (5) EXEMPTION FROM CERTAIN FORFEITURE
9 PROVISION.—The 9th undesignated paragraph of
10 section 9 of the Federal Reserve Act (12 U.S.C.
11 327) is amended by inserting “, other than a bank
12 which is a guaranteed depository institution (as de-
13 fined in section 101(a)(7) of the Deposit Insurance
14 Reform, Regulatory Modernization, and Taxpayer
15 Protection Act of 1996),” after “a member bank”.

16 (6) EXEMPTION FROM ADDITIONAL CAPITAL
17 REQUIREMENT.—The 11th undesignated paragraph
18 of section 9 of the Federal Reserve Act (12 U.S.C.
19 329) is amended by adding at the end the following
20 new sentence: “This paragraph shall not apply with
21 respect to any member bank which is a guaranteed
22 depository institution (as defined in section
23 101(a)(7) of the Deposit Insurance Reform, Regu-
24 latory Modernization, and Taxpayer Protection Act
25 of 1996).”.

1 (7) EXEMPTION FROM SECURITY AND COLLAT-
2 ERAL REQUIREMENT.—The last sentence of the 15th
3 undesignated paragraph of section 9 of the Federal
4 Reserve Act (12 U.S.C. 332) is amended by insert-
5 ing “, other than a bank which 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 1996),”
9 after “the banks and trust companies thus des-
10 ignated”.

11 (8) MEMBERSHIP QUALIFICATION IN THE CASE
12 OF STATE MUTUAL SAVINGS BANKS.—The 16th un-
13 designated paragraph of section 9 of the Federal Re-
14 serve Act (12 U.S.C. 333) is amended by inserting
15 after the 1st sentence the following new sentence:
16 “Notwithstanding the application requirement con-
17 tained in the preceding sentence, any State mutual
18 savings bank which is a guaranteed depository insti-
19 tution (as defined in section 101(a)(7) of the De-
20 posit Insurance Reform, Regulatory Modernization,
21 and Taxpayer Protection Act of 1996) may become
22 a member of the Federal Reserve System without
23 application by agreeing to be subject to all applicable
24 provisions of this Act and by subscribing to stock
25 in the same manner and amount as provided in this

1 paragraph for State mutual savings banks applying
2 for membership.”

3 (9) EXEMPTION FROM AFFILIATE REPORTING
4 REQUIREMENTS.—

5 (A) IN GENERAL.—The 1st sentence of the
6 17th undesignated paragraph of section 9 of
7 the Federal Reserve Act (12 U.S.C. 334) is
8 amended by inserting “, other than a bank
9 which is a guaranteed depository institution (as
10 defined in section 101(a)(7) of the Deposit In-
11 surance Reform, Regulatory Modernization, and
12 Taxpayer Protection Act of 1996),” after “bank
13 admitted to membership under this section”.

14 (B) EXEMPTION FROM ADDITIONAL AFFIL-
15 IATE REPORTING REQUIREMENTS.—The 18th
16 undesignated paragraph of section 9 of the
17 Federal Reserve Act (12 U.S.C. 334) is amend-
18 ed by inserting “, other than a bank which is
19 a guaranteed depository institution (as defined
20 in section 101(a)(7) of the Deposit Insurance
21 Reform, Regulatory Modernization, and Tax-
22 payer Protection Act of 1996),” after “affili-
23 ated member bank”.

24 (10) EXEMPTION FROM EXAMINATION RE-
25 QUIREMENTS.—The 22d undesignated paragraph of

1 section 9 of the Federal Reserve Act (12 U.S.C.
2 338) is amended by inserting “, 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 1996),” after “State member
7 banks” the 1st place such term appears.

8 (f) EXEMPTION FROM INTEREST REQUIREMENTS.—
9 Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a)
10 is amended by adding at the end the following new sen-
11 tence: “No provision of this subsection shall apply with
12 respect to a member bank which is a guaran-
13 teed depository institution (as defined in section 101(a)(7) of the De-
14 posit Insurance Reform, Regulatory Modernization, and
15 Taxpayer Protection Act of 1996).”.

16 (g) EXEMPTION FROM REQUIREMENTS RELATING
17 TO INTERBANK LIABILITIES AND TRANSACTIONS WITH
18 AFFILIATES.—

19 (1) INTERBANK LIABILITIES.—Section 23 of
20 the Federal Reserve Act (12 U.S.C. 371(b-2)) is
21 amended by adding at the end the following new
22 subsection:

23 “(f) EXEMPTION FOR GUARANTEED DEPOSITORY IN-
24 STITUTIONS.—A guaranteed depository institution (as de-
25 fined in section 101(a)(7) of the Deposit Insurance Re-

1 form, Regulatory Modernization, and Taxpayer Protection
2 Act of 1996) shall not be subject to any regulation or
3 order issued under this section.”.

4 (2) EXEMPTION FROM RESTRICTIONS ON
5 TRANSACTIONS WITH AFFILIATES.—Sections 23A
6 and 23B of the Federal Reserve Act (12 U.S.C.
7 371e, 371e–1) are each amended by adding at the
8 end of each such section the following new sub-
9 section:

10 “(f) EXEMPTION FOR GUARANTEED DEPOSITORY IN-
11 STITUTIONS.—This section shall not apply to any guaran-
12 teed depository institution (as defined in section 101(a)(7)
13 of the Deposit Insurance Reform, Regulatory Moderniza-
14 tion, and Taxpayer Protection Act of 1996) or any affili-
15 ate of any such institution that is a guaranteed company
16 (as defined in section 101(a)(6) of the Deposit Insurance
17 Reform, Regulatory Modernization, and Taxpayer Protec-
18 tion Act of 1996).”.

19 (h) EXEMPTION FROM LIMITATION ON INVEST-
20 MENTS IN, OR LOANS ON, BANK PREMISES.—Section 24A
21 of the Federal Reserve Act (12 U.S.C. 371d) is amended
22 by adding at the end the following new sentence: “This
23 section shall not apply to any guaranteed depository insti-
24 tution (as defined in section 101(a)(7) of the Deposit In-

1 surance Reform, Regulatory Modernization, and Taxpayer
2 Protection Act of 1996).”.

3 (i) EXEMPTION FROM LIMITATIONS ON BANKERS’
4 ACCEPTANCES.—Section 13(7) of the Federal Reserve Act
5 (12 U.S.C. 372) is amended by adding at the end the fol-
6 lowing new subparagraph:

7 “(I) EXEMPTION FROM LIMITATIONS FOR
8 GUARANTEED DEPOSITORY INSTITUTIONS.—
9 Subparagraphs (B), (C), (D), (E), (F), and (H)
10 shall not apply to any guaranteed depository in-
11 stitution (as defined in section 101(a)(7) of the
12 Deposit Insurance Reform, Regulatory Mod-
13 ernization, and Taxpayer Protection Act of
14 1996).”

15 (j) EXEMPTION FROM PURCHASING AND LENDING
16 LIMITS RELATING TO DIRECTORS AND OFFICERS.—Sec-
17 tion 22 of the Federal Reserve Act (12 U.S.C. 375, 376,
18 503, 375a, and 375b) is amended by inserting before sub-
19 section (d) the following new subsection:

20 “(c) EXEMPTION FOR GUARANTEED DEPOSITORY IN-
21 STITUTIONS.—Subsections (d), (e), (g), and (h) shall not
22 apply to any guaranteed depository institution (as defined
23 in section 101(a)(7) of the Deposit Insurance Reform,
24 Regulatory Modernization, and Taxpayer Protection Act
25 of 1996) or any affiliate of any such institution.”.

1 **SEC. 203. AMENDMENTS RELATING TO SAVINGS ASSOCIA-**
2 **TIONS.**

3 (a) GUARANTEED SAVINGS ASSOCIATION DE-
4 FINED.—Section 2 of the Home Owners’ Loan Act (12
5 U.S.C. 1462) is amended by adding at the end the follow-
6 ing new paragraphs:

7 “(10) GUARANTEED SAVINGS ASSOCIATION.—
8 The term ‘guaranteed savings association’ means a
9 savings association which is a guaranteed depository
10 institution (as defined in section 101(a)(7) of the
11 Deposit Insurance Reform, Regulatory Moderniza-
12 tion, and Taxpayer Protection Act of 1996).

13 “(11) GUARANTEED FEDERAL SAVINGS ASSO-
14 CIATION.—The term ‘guaranteed Federal savings as-
15 sociation’ means a Federal savings association which
16 is a guaranteed depository institution (as defined in
17 section 101(a)(7) of the Deposit Insurance Reform,
18 Regulatory Modernization, and Taxpayer Protection
19 Act of 1996).”.

20 (b) EXEMPTION FROM EXAMINATION AND REGULA-
21 TION BY DIRECTOR OF THE OFFICE OF THRIFT SUPER-
22 VISION.—

23 (1) IN GENERAL.—Section 4(a) of the Home
24 Owners’ Loan Act (12 U.S.C. 1463(a)) is amended
25 by adding at the end the following new paragraph:

1 “(4) EXEMPTION FOR GUARANTEED SAVINGS
2 ASSOCIATIONS.—“The authority of the Director
3 under this subsection or subsection (b) or (c) to ex-
4 amine any savings association or prescribe regula-
5 tions applicable to savings associations shall not
6 apply with respect to any guaranteed savings asso-
7 ciation.”.

8 (2) FEDERAL SAVINGS ASSOCIATIONS.—Section
9 5(a) of the Home Owners’ Loan Act (12 U.S.C.
10 1464(a)) is amended by adding at the end the fol-
11 lowing new sentence: “The authority of the Director
12 under the preceding sentence to prescribe regula-
13 tions to provide for the examination and regulation
14 of Federal savings associations shall not apply with
15 respect to the examination or regulation of any
16 guaranteed Federal savings association.”.

17 (3) EXEMPTION FROM EXAMINATION FEE PRO-
18 VISIONS.—Section 9 of the Home Owners’ Loan Act
19 (12 U.S.C. 1467) is amended by adding at the end
20 the following new subsection:

21 “(n) EXEMPTION FOR GUARANTEED SAVINGS ASSO-
22 CIATIONS.—This section and the authority of the Director
23 under this section shall not apply with respect to any guar-
24 anteed savings association.”.

1 (c) EXCEPTIONS TO LIMITATIONS ON DEPOSIT AND
2 RELATED POWERS.—Section 5(b)(1) of the Home Own-
3 ers' Loan Act (12 U.S.C. 1464(b)(1)) is amended by add-
4 ing at the end the following new subparagraph:

5 “(G) SPECIAL RULES APPLICABLE TO GUARAN-
6 TEED SAVINGS ASSOCIATIONS.—

7 “(i) STATUTORY AUTHORITY.—A guaran-
8 teed Federal savings association shall have the
9 powers described in subparagraphs (C), (E),
10 and (F) without regard to the condition or limi-
11 tation contained in each such subparagraph re-
12 lating to regulations of the Director.

13 “(ii) LIMITATION ON REGULATORY AU-
14 THORITY.—The exercise by a guaranteed Fed-
15 eral savings association of powers established
16 under subparagraph (A) or (D) or the last sen-
17 tence of subparagraph (B) shall not be subject
18 to any regulations prescribed by the Director
19 under such provision.

20 “(iii) EXEMPTION.—A guaranteed Federal
21 savings association shall not be subject to the
22 1st sentence of subparagraph (B).”.

23 (d) EXCEPTIONS TO LIMITATIONS ON LOAN AND IN-
24 VESTMENT POWERS.—Section 5(c) of the Home Owners'

1 Loan Act (12 U.S.C. 1464(c)) is amended by adding at
2 the end the following new paragraph:

3 “(7) EXCEPTIONS FOR GUARANTEED SAVINGS
4 ASSOCIATIONS.—

5 “(A) LIMITATION ON REGULATORY AU-
6 THORITY.—The exercise by a guaranteed Fed-
7 eral savings association of powers established
8 under any provision of this subsection shall not
9 be subject to any regulations prescribed by the
10 Director under this subsection.

11 “(B) EXEMPTION FROM MAXIMUM
12 AMOUNT LIMITATIONS.—A guaranteed Federal
13 savings association shall not be subject to any
14 limitation in this subsection on the outstanding
15 amount of loans or investments by the associa-
16 tion under any provision of this subsection,
17 without regard to whether such maximum
18 amount is expressed as a fixed dollar amount or
19 as a percentage of such association’s assets or
20 capital.”.

21 (e) EXEMPTION FROM ENFORCEMENT AND
22 CONSERVATORSHIP AND RECEIVERSHIP PROVISIONS.—
23 Section 5(d) of the Home Owners’ Loan Act (12 U.S.C.
24 1464(d)) is amended by adding at the end the following
25 new paragraph:

1 “(7) EXEMPTION FOR GUARANTEED SAVINGS
2 ASSOCIATIONS.—This subsection and the authority
3 of the Director under this subsection shall not apply
4 with respect to any guaranteed savings association.”.

5 (f) EXEMPTION FROM FITNESS STANDARDS.—Sec-
6 tion 5(e) of the Home Owners’ Loan Act (12 U.S.C.
7 1464(e)) is amended by adding at the end the following
8 new sentence:

9 “The preceding sentence shall not apply with respect to
10 any savings association which, at the time the charter is
11 granted, is a guaranteed depository institution (as defined
12 in section 101(a)(7) of the Deposit Insurance Reform,
13 Regulatory Modernization, and Taxpayer Protection Act
14 of 1996) or is required to be a guaranteed depository insti-
15 tution before such association accepts any deposit.”.

16 (g) EXEMPTION FROM REQUIREMENTS RELATING
17 TO SECURITY FOR DEPOSITS OF GOVERNMENT AGEN-
18 CIES.—Section 5(k) of the Home Owners’ Loan Act (12
19 U.S.C. 1464(k)) is amended by adding at the end the fol-
20 lowing new sentence: “A guaranteed savings association
21 shall not be required to give any security for deposits with
22 the savings association under this section or for the per-
23 formance of the association as fiscal agent.”.

24 (h) EXEMPTION FROM MINIMUM CAPITAL REQUIRE-
25 MENTS.—Section 5(s) of the Home Owners’ Loan Act (12

1 U.S.C. 1464(s)) is amended by adding at the end the fol-
2 lowing new paragraph:

3 “(6) EXEMPTION FOR GUARANTEED SAVINGS
4 ASSOCIATIONS.—This subsection and the authority
5 of the Director under this subsection shall not apply
6 with respect to any guaranteed savings association.”.

7 (i) EXEMPTION FROM CAPITAL STANDARDS.—Sec-
8 tion 5(t)(1) of the Home Owners’ Loan Act (12 U.S.C.
9 1464(t)(1)) is amended by adding at the end the following
10 new subparagraph:

11 “(E) 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 (j) EXEMPTION FROM REQUIREMENT RELATING TO
16 LOANS TO ONE BORROWER.—Section 5(u) of the Home
17 Owners’ Loan Act (12 U.S.C. 1464(u)) is amended by
18 adding at the end the following new paragraph:

19 “(4) EXEMPTION FOR GUARANTEED SAVINGS
20 ASSOCIATIONS.—This subsection shall not apply with
21 respect to any guaranteed savings association.”.

22 (k) EXEMPTION FROM REQUIREMENT RELATING TO
23 REPORTS OF CONDITION.—Section 5(v) of the Home
24 Owners’ Loan Act (12 U.S.C. 1464(v)) is amended by
25 adding at the end the following new paragraph:

1 “(9) EXEMPTION FOR GUARANTEED SAVINGS
 2 ASSOCIATIONS.—This subsection shall not apply with
 3 respect to any guaranteed savings association.”.

4 (l) EXEMPTION FROM REQUIREMENT RELATING TO
 5 LIQUID ASSETS.—Section 6 of the Home Owners’ Loan
 6 Act (12 U.S.C. 1465) is amended by adding at the end
 7 the following new subsection:

8 “(g) EXEMPTION FOR GUARANTEED SAVINGS ASSO-
 9 CIATIONS.—This section shall not apply with respect to
 10 any guaranteed savings associations.”.

11 (m) EXEMPTION FROM AFFILIATE TRANSACTION
 12 AND LENDING LIMITS RELATING TO DIRECTORS AND OF-
 13 FICERS.—Section 11 of the Home Owners’ Loan Act (12
 14 U.S.C. 1468) is amended by adding at the end the follow-
 15 ing new subsection:

16 “(d) EXEMPTION FOR GUARANTEED SAVINGS ASSO-
 17 CIATIONS.—This section shall not apply with respect to
 18 any guaranteed savings association.”.

19 **SEC. 204. AMENDMENTS RELATING TO SAVINGS AND LOAN**
 20 **HOLDING COMPANIES.**

21 (a) GUARANTEED SAVINGS ASSOCIATION DE-
 22 FINED.—Section 10(a)(1) of the Home Owners’ Loan Act
 23 (12 U.S.C. 1467a(a)(1)) is amended by adding at the end
 24 the following new subparagraph:

1 “(K) GUARANTEED SAVINGS ASSOCIA-
2 TION.—The term ‘guaranteed savings associa-
3 tion’ includes any savings association referred
4 to in subparagraph (A) which is a guaranteed
5 depository institution (as defined in section
6 101(a)(7) of the Deposit Insurance Reform,
7 Regulatory Modernization, and Taxpayer Pro-
8 tection Act of 1996).”.

9 (b) EXEMPTION FROM EXAMINATION AND REPORT-
10 ING REQUIREMENT.—Section 10(b) of the Home Owners’
11 Loan Act (12 U.S.C. 1467a(b)) is amended by adding at
12 the end the following new paragraph:

13 “(7) EXEMPTION FOR S&L HOLDING COMPANY
14 WHICH CONTROLS A GUARANTEED SAVINGS ASSOCIA-
15 TION.—Paragraphs (2), (3), and (4) and the author-
16 ity of the Director under any such paragraph shall
17 not apply with respect to any savings and loan hold-
18 ing company which controls a guaranteed savings as-
19 sociation and any subsidiary of such company.”.

20 (c) COORDINATION WITH SECTION 11.—Section
21 10(d) of the Home Owners’ Loan Act (12 U.S.C.
22 1467a(d)) is amended by striking “Transaction” and in-
23 serting “Subject to section 11(d), transactions”.

24 (d) EXEMPTION FROM REQUIREMENTS RELATING
25 TO DECLARATION OF DIVIDEND.—Section 10(f) of the

1 Home Owners' Loan Act (12 U.S.C. 1467a(f)) is amended
2 by adding at the end the following new sentence: "This
3 subsection shall not apply with respect to any savings and
4 loan company which controls a guaranteed savings asso-
5 ciation."

6 (e) EXEMPTION FROM RESTRICTIONS ON HIGH-RISK
7 ACTIVITIES.—Section 10(p) of the Home Owners' Loan
8 Act (12 U.S.C. 1467a(p)) is amended by adding at the
9 end the following new paragraph:

10 "(3) EXEMPTION FOR PARENT OF GUARAN-
11 TEED SAVINGS ASSOCIATION.—This subsection shall
12 not apply with respect to any savings and loan com-
13 pany which controls a guaranteed savings associa-
14 tion."

15 (f) NONAPPLICABILITY OF QUALIFIED STOCK ISSU-
16 ANCE PROVISIONS.—Section 10(q)(1)(A) of the Home
17 Owners' Loan Act (12 U.S.C. 1467a(q)(1)(A)) is amend-
18 ed—

19 (1) in clause (i), by inserting "which is not a
20 guaranteed savings association" after "undercapital-
21 ized savings association"; and

22 (2) in clause (ii), by inserting "and does not
23 control a guaranteed savings association" after
24 "controls an undercapitalized savings association".

1 **SEC. 205. AMENDMENTS RELATING TO THE FEDERAL DE-**
2 **POSIT INSURANCE CORPORATION.**

3 (a) AMENDMENTS TO DEFINITIONS.—

4 (1) DEFINITIONS RELATING TO DEPOSITORY
5 INSTITUTIONS.—Section 3(c) of the Federal Deposit
6 Insurance Act (12 U.S.C. 1813(c)) is amended by
7 adding at the end the following new paragraphs:

8 “(6) GUARANTEED DEPOSITORY INSTITUTION
9 NOT INCLUDED.—Except as otherwise specifically
10 provided in any provision of this Act, the terms ‘de-
11 pository institution’ and ‘insured depository institu-
12 tion’ do not include any guaranteed depository insti-
13 tution.

14 “(7) GUARANTEED DEPOSITORY INSTITU-
15 TION.—The term ‘guaranteed depository institution’
16 has the meaning given to such term in section
17 101(a)(7) of the Deposit Insurance Reform, Regu-
18 latory Modernization, and Taxpayer Protection Act
19 of 1996.”.

20 (2) DEFINITION RELATING TO BANKS.—Section
21 3(a) of the Federal Deposit Insurance Act (12
22 U.S.C. 1813(a)) is amended by adding at the end
23 the following new paragraph:

24 “(5) GUARANTEED DEPOSITORY INSTITUTIONS
25 NOT INCLUDED.—Except as otherwise specifically
26 provided in any provision of this Act, the terms

1 ‘bank’, ‘national bank’, ‘State bank’, ‘District bank’,
2 ‘branch’, and ‘Federal branch’, whether or not any
3 such term appears in conjunction with the term ‘in-
4 sured’, ‘member’, or ‘nonmember’, do not include
5 any guaranteed depository institution.”.

6 (3) DEFINITION RELATING TO SAVINGS ASSO-
7 CIATIONS.—Section 3(b) of the Federal Deposit In-
8 surance Act (12 U.S.C. 1813(b)) is amended by
9 adding at the end the following new paragraph:

10 “(4) GUARANTEED DEPOSITORY INSTITUTIONS
11 NOT INCLUDED.—Except as otherwise specifically
12 provided in any provision of this Act, the terms ‘sav-
13 ings association’, ‘Federal savings association’, and
14 ‘State savings association’, whether or not any such
15 term appears in conjunction with the term ‘insured’,
16 do not include any guaranteed depository institu-
17 tion.”.

18 (4) DEFINITION RELATING TO APPROPRIATE
19 FEDERAL BANKING AGENCY.—Section 3(q) of the
20 Federal Deposit Insurance Act (12 U.S.C. 1813(q))
21 is amended by adding before the last sentence the
22 following new paragraph:

23 “(5) The Cross-Guarantee Regulation Corpora-
24 tion in the case of a guaranteed depository institu-
25 tion.”.

1 (b) PROHIBITION ON NEW INSURED DEPOSITORY IN-
2 STITUTIONS, BY CHARTER OR CONVERSION, AFTER EF-
3 FECTIVE DATE OF CROSS-GUARANTEE SYSTEM.—

4 (1) NO CONTINUATION OF INSURANCE IN CON-
5 NECTION WITH CONVERSIONS.—Section 4 of the
6 Federal Deposit Insurance Act (12 U.S.C. 1814) is
7 amended by adding at the end the following new
8 subsection:

9 “(e) INAPPLICABILITY OF SUBSECTIONS (b), (c), AND
10 (d) AFTER EFFECTIVE DATE OF CROSS-GUARANTEE SYS-
11 TEM.—Subsections (b), (c), and (d) shall not apply as of
12 the effective date of the cross-guarantee system under sub-
13 section (a) of section 141 of the Deposit Insurance Re-
14 form, Regulatory Modernization, and Taxpayer Protection
15 Act of 1996, as published by the Cross-Guarantee Regula-
16 tion Corporation in the Federal Register pursuant to sub-
17 section (c) of such section.”.

18 (2) NO NEW INSURANCE UNDER THE FEDERAL
19 DEPOSIT INSURANCE ACT.—Section 5 of the Federal
20 Deposit Insurance Act (12 U.S.C. 1815) is amended
21 by adding at the end the following new subsection:

22 “(f) PROHIBITION ON APPROVAL OF INSURANCE
23 AFTER EFFECTIVE DATE OF CROSS-GUARANTEE SYS-
24 TEM.—No application for insurance under this section
25 may be approved by the Corporation on or after the date

1 by which the Cross-Guarantee Regulation Corporation has
2 approved, under subsection (a) of section 141 of the De-
3 posit Insurance Reform, Regulatory Modernization, and
4 Taxpayer Protection Act of 1996, 250 cross-guarantee
5 contracts described in subsection (a)(2) of such section.”.

6 (c) TERMINATION OF DEPOSIT INSURANCE OF GUAR-
7 ANTEED DEPOSITORY INSTITUTION.—Section 8(a) of the
8 Federal Deposit Insurance Act (12 U.S.C. 1818(a)) is
9 amended—

10 (1) by redesignating paragraph (10) as para-
11 graph (11); and

12 (2) by inserting after paragraph (9), the follow-
13 ing new paragraph:

14 “(10) TERMINATION OF INSURANCE OF GUAR-
15 ANTEED DEPOSITORY INSTITUTION.—The status of
16 any insured depository institution as an insured de-
17 pository institution shall cease as of the date the in-
18 stitution becomes a guaranteed depository institu-
19 tion.”.

20 (d) INELIGIBILITY OF GUARANTEED DEPOSITORY
21 INSTITUTION FOR DEPOSIT INSURANCE UNDER THE
22 FEDERAL DEPOSIT INSURANCE ACT.—Section 5(a)(1) of
23 the Federal Deposit Insurance Act (12 U.S.C. 1815(a)(1))
24 is amended by striking “trust funds (as defined in section

1 3(p)),” and inserting “trust funds (as defined in section
2 3(p)) and is not a guaranteed depository institution,”.

3 (e) APPLICABILITY OF INSURANCE LOGO PROVI-
4 SIONS.—Section 18(a) of the Federal Deposit Insurance
5 Act (12 U.S.C. 1828(a)) is amended by adding at the end
6 the following new paragraph:

7 “(4) APPLICABILITY TO GUARANTEED INSTITU-
8 TIONS.—For purposes of this subsection, the terms
9 ‘insured bank’ and ‘insured savings association’ shall
10 be deemed to include any bank (as defined in section
11 3(a) without regard to paragraph (5) of such sec-
12 tion) and any savings association (as defined in sec-
13 tion 3(b) without regard to paragraph (4) of such
14 section) which is a guaranteed depository institu-
15 tion.”.

16 (f) GUARANTEED DEPOSITORY INSTITUTIONS NOT
17 EXEMPT FROM LIMITATION ON INSURANCE UNDERWRIT-
18 ING.—Section 24(b) of the Federal Deposit Insurance Act
19 (12 U.S.C. 1831a(b)) is amended by adding at the end
20 the following new paragraph:

21 “(3) APPLICABILITY TO GUARANTEED DEPOSI-
22 TORY INSTITUTIONS.—Notwithstanding section
23 3(a)(5), the term ‘insured State bank’ includes, for
24 purposes of this subsection, a State bank which is a
25 guaranteed depository institution.”.

1 **SEC. 206. AMENDMENTS TO OTHER BANKING LAWS.**

2 (a) EXEMPTION FROM DEPOSITORY INSTITUTION
3 MANAGEMENT INTERLOCKS ACT.—Section 205 of the De-
4 pository Institution Management Interlocks Act (12
5 U.S.C. 3204) is amended by adding at the end the follow-
6 ing new paragraph:

7 “(10) GUARANTEED DEPOSITORY INSTITU-
8 TION.—Any guaranteed depository institution and
9 any affiliate of such institution.”.

10 (b) EXEMPTION FROM REAL ESTATE APPRAISAL
11 REQUIREMENTS.—Section 1121(4) of the Financial Insti-
12 tutions Reform, Recovery, and Enforcement Act of 1989
13 (12 U.S.C. 3350(4)) is amended to read as follows:

14 “(4) FEDERALLY RELATED TRANSACTION.—
15 The term ‘Federally related transaction’—

16 “(A) means any real estate-related finan-
17 cial transaction which—

18 “(i) a Federal financial institutions
19 regulatory agency or the Resolution Trust
20 Corporation engages in, contracts for, or
21 regulates;

22 “(ii) requires the services of an ap-
23 praiser; and

24 “(B) does not include any real estate-relat-
25 ed financial transaction which is regulated by a
26 Federal financial institutions regulatory agency

1 solely by reason of the involvement of a guaran-
2 teed depository institution (as defined in section
3 101(a)(7) of the Deposit Insurance Reform,
4 Regulatory Modernization, and Taxpayer Pro-
5 tection Act of 1996) in such transaction.”.

6 (c) EXEMPTION FROM PAYMENT SYSTEM REQUIRE-
7 MENTS.—Subtitle A of title IV of the Federal Deposit In-
8 surance Corporation Improvement Act of 1991 (12 U.S.C.
9 4401 et seq.) is amended by adding at the end the follow-
10 ing new section:

11 **“SEC. 408. EXEMPTION FOR GUARANTEED DEPOSITORY IN-**
12 **STITUTIONS.**

13 “This subtitle shall not apply with respect to a depos-
14 itory institution which is a guaranteed depository institu-
15 tion (as defined in section 101(a)(7) of the Deposit Insur-
16 ance Reform, Regulatory Modernization, and Taxpayer
17 Protection Act of 1996).”.

18 (d) EXEMPTION FROM THE INTERNATIONAL LEND-
19 ING SUPERVISION ACT OF 1983.—The last sentence of
20 section 903(2) of the International Lending Supervision
21 Act of 1983 (12 U.S.C. 3902(2)) is amended by inserting
22 “or a guaranteed depository institution (as defined in sec-
23 tion 101(a)(7) of the Deposit Insurance Reform, Regu-
24 latory Modernization, and Taxpayer Protection Act of
25 1996)” before the period.

1 **TITLE III—AMENDMENTS TO TITLE 11,**
2 **UNITED STATES CODE**
3 **Subtitle A—Amendments to Chapter 1 of**
4 **Title 11**

5 **SEC. 301. DEFINITIONS.**

6 Section 101 of title 11, United States Code, is
7 amended—

8 (a) by adding new subsection (7A)—

9 “(7A) ‘company’ means any corporation, part-
10 nership, limited liability company, business trust, as-
11 sociation, or similar organization, but does not in-
12 clude a governmental unit;”;

13 (b) by adding new subsection (10A)—

14 “(10A) ‘cross-guarantee contract’ means a con-
15 tract which—

16 “(A) is entered into between—

17 “(i) one or more companies, at least
18 one of which is a depository institution;

19 and

20 “(ii) a cross-guarantee syndicate;

21 “(B) is approved by the regulation cor-
22 poration under section 123 of title I of this Act;

23 “(C) has become effective in accordance
24 with the contract’s terms; and

1 “(D) is not enjoined under section
2 123(e)(2)(B) of title I of this Act;”;

3 (c) by adding new subsection (10B)—

4 “(10B) ‘cross-guarantee obligation’ means an
5 obligation of a direct guarantor arising out of a
6 cross-guarantee or stop-loss contract, and includes
7 the obligations of such guarantor under section
8 125(e)(2) of title I of this Act and sections 321 and
9 355 of this title;”;

10 (d) by adding new subsection (10C)—

11 “(10C) ‘cross-guarantee premium payment’
12 means the payment a guaranteed company periodi-
13 cally makes to the guaranteed company’s direct
14 guarantors under the terms of a cross-guarantee
15 contract;”;

16 (e) by adding new subsection (10D)—

17 “(10D) ‘cross-guarantee syndicate’ means any
18 group of direct guarantors which has entered into a
19 cross-guarantee contract with one or more guaran-
20 teed companies;”;

21 (f) by adding new subsection (13A)—

22 “(13A) ‘depository institution’ has the meaning
23 given to such term in section 3(e)(1) of the Federal
24 Deposit Insurance Act (12 U.S.C. 1813(e)(1)), how-
25 ever, for the purposes of this title, depository institu-

1 tion shall not mean a Federal branch or an insured
2 branch as those terms are defined in sections (3)(r)
3 and (3)(s) of the Federal Deposit Insurance Act (12
4 U.S.C. 1813(r) and (s));”;

5 (g) by adding new subsection (13B)—

6 “(13B) ‘direct guarantor’ means a member of a
7 cross-guarantee or stop-loss syndicate which has en-
8 tered into a cross-guarantee or stop-loss contract
9 with a guaranteed party;”;

10 (h) by adding new subsection (27A)—

11 “(27A) ‘guaranteed company’ means any com-
12 pany which has entered into a cross-guarantee con-
13 tract with a cross-guarantee syndicate and has guar-
14 anteed obligations outstanding as of the date of the
15 filing of the petition;”;

16 (i) by adding new subsection (27B)—

17 “(27B) ‘guaranteed creditor’ means any entity
18 who owns or is the beneficiary of a guaranteed obli-
19 gation;”;

20 (j) by adding new subsection (27C)—

21 “(27C) ‘guaranteed obligation’ means an obli-
22 gation of a guaranteed party of which a cross-guar-
23 antee or stop-loss syndicate has guaranteed perform-
24 ance, including the timely payment of principal and

1 interest, if a failure to perform in a timely manner
2 constitutes a breach of contract;”;

3 (k) by adding new subsection (27D)—

4 “(27D) ‘guaranteed party’ means any guaran-
5 teed company or nondepository guarantor;”;

6 (l) by adding new subsection (39A)—

7 “(39A) ‘monitoring fee payment’ means the
8 periodic payment made by a guaranteed party to a
9 syndicate agent under the terms of the guaranteed
10 party’s cross-guarantee or stop-loss contract;”;

11 (m) by adding new subsection (40A)—

12 “(40A) ‘nondepository guarantor’ means any
13 person or company which has entered into a stop-
14 loss contract with a stop-loss syndicate;”;

15 (n) by adding new subsection (44A)—

16 “(44A) ‘regulation corporation’ means the
17 Cross Guarantee Regulation Corporation;”;

18 (o) by adding new subsection (53E):

19 “(53E) ‘stop-loss contract’ means a contract
20 which—

21 “(A) is entered into between a person or a
22 company and a stop-loss syndicate;

23 “(B) is approved by the regulation cor-
24 poration under section 123 of title I of this Act;

1 “(C) has become effective in accordance
2 with the contract’s terms; and

3 “(D) is not enjoined under section
4 123(e)(2)(B) of title I of this Act;”;

5 (p) by adding new subsection (53F)—

6 “(53F) ‘stop-loss premium payment’ means the
7 payment a nondepository guarantor periodically
8 makes to direct guarantors under the nondepository
9 guarantor’s stop-loss contract;”;

10 (q) by adding new subsection (53G)—

11 “(53G) ‘stop-loss syndicate’ means any group of
12 direct guarantors which has entered into a stop-loss
13 contract with a nondepository guarantor;”;

14 (r) by adding new subsection (53H)—

15 “(53H) ‘syndicate agent’ means any person or
16 company who acts as the agent for the direct guar-
17 antors under any cross-guarantee or stop-loss con-
18 tract;”.

19 **SEC. 302. APPLICABILITY OF CHAPTERS.**

20 Section 103 of title 11, United States Code, is
21 amended—

22 (a) in subsection (a) by striking “section 1161”
23 and adding “sections 1161 and 1181”;

24 (b) by adding new subsection (h)—

1 “(h) Subchapter V of chapter 11 of this title applies
2 only in a case under such chapter in which a guaranteed
3 company is the debtor”; and

4 (c) by redesignating subsections (h) and (i) as
5 (i) and (j).

6 **SEC. 303. PUBLIC ACCESS TO PAPERS.**

7 Section 107 of title 11, United States Code, is
8 amended—

9 (a) in subsection (a) by striking “subsection
10 (b)” and inserting “subsections (b) and (c)”; and

11 (b) by adding new subsection (c)—

12 “(c) Notwithstanding subsection (a) of this sec-
13 tion, the identity of a guaranteed creditor and the
14 amount of a guaranteed creditor’s claim in a case
15 under subchapter V of chapter 11 is not a matter
16 of public record and shall be kept confidential.”.

17 **SEC. 304. WHO MAY BE A DEBTOR.**

18 Section 109 of title 11, United States Code, is
19 amended—

20 (a) in subsection (b)(2) by striking “or” from
21 the end of the subsection;

22 (b) in subsection (b)(3) by striking “.” and
23 adding “; or” at the end of the subsection;

24 (c) by adding new paragraph (b)(4)—

25 “(4) a guaranteed company.”;

1 (d) in subsection (d) by striking “and a rail-
2 road” and inserting “a railroad, and a guaranteed
3 company”;

4 (e) by adding new subsection (h)—

5 “(h) A company must be a debtor under subchapter
6 V of chapter 11 if—

7 “(1) the company is a guaranteed company; or

8 “(2) the company would be a guaranteed com-
9 pany but for the requirement that the company has
10 guaranteed obligations outstanding as of the date of
11 the filing of the petition and after the date of the
12 filing of the petition, the company incurs guaranteed
13 obligations.”; and

14 (f) by adding new subsection (i)—

15 “(i) Once a guaranteed company has become a debtor
16 under subchapter V of chapter 11, it is not eligible for
17 relief under any other subchapter of chapter 11 or under
18 any other chapter in this title.”

19 **Subtitle B—Amendments to Chapter 3 of**

20 **Title 11**

21 **SEC. 311. PARTY IN INTEREST.**

22 Title 11, United States Code, is amended by adding
23 new section 308—

1 **“§ 308. Party in Interest**

2 “(a) The regulation corporation shall be a party in
3 interest in any action seeking to impair or limit the obliga-
4 tions or duties of the debtor or of a direct guarantor under
5 a cross-guarantee or stop-loss contract.

6 “(b) A cross-guarantee or stop-loss syndicate shall be
7 a party in interest for the purpose of filing objections to
8 the allowance of a claim or interest as provided under sec-
9 tion 502(a) of this title.

10 “(c) A cross-guarantee or stop-loss syndicate shall be
11 a party in interest in any determination of whether a claim
12 is a guaranteed obligation under a cross-guarantee or
13 stop-loss contract in a case under subchapter V of chapter
14 11 of this title.”.

15 **SEC. 312. QUALIFICATION OF TRUSTEE.**

16 Section 322 of title 11, United States Code, is
17 amended—

18 (a) in subsection (a) by inserting “1183,” after
19 “1163,”; and

20 (b) by adding new paragraph (b)(3)—

21 “(3) In a case under subchapter V of chapter
22 11, the United States trustee shall consult with the
23 syndicate agent monitoring the debtor as of the date
24 of the filing of the petition and shall consider any
25 existing bonds covering the guaranteed company

1 when determining the amount of the bond required
2 to be filed under subsection (a) of this section.”.

3 **SEC. 313. NOTICE.**

4 Section 342 of title 11, United States Code, is
5 amended by adding new subsection (d)—

6 “(d) Notwithstanding subsection (a) of this section,
7 notice of the entry of an order for relief in a case under
8 subchapter V of chapter 11 shall be given by publication
9 and shall be given in writing to the syndicate agent and
10 to all creditors having claims that are not guaranteed obli-
11 gations. Notice to the syndicate agent shall constitute no-
12 tice to all guaranteed creditors in the case.”.

13 **SEC. 314. MONEY OF ESTATES.**

14 Section 345 of title 11, United States Code, is
15 amended in subsection (b) by inserting after the third
16 usage of “United States” “or is guaranteed under a cross-
17 guarantee contract.”.

18 **SEC. 315. AUTOMATIC STAY.**

19 Section 362 of title 11, United States Code, is
20 amended by adding new paragraph (b)(19):

21 “(19) under subsection (a) of this section, of
22 the exercise of any right of a guaranteed creditor
23 under applicable nonbankruptcy law to collect, en-
24 force or recover a guaranteed obligation from the
25 debtor.”.

1 **SEC. 316. EXECUTORY CONTRACTS AND UNEXPIRED**
2 **LEASES.**

3 Section 365 of title 11, United States Code, is
4 amended—

5 (a) in subsection (a) by striking “and (d)” and
6 inserting “(d), and (q)”;

7 (b) in paragraph (e)(1), by inserting “guaran-
8 teed obligation,” after the first usage of “contract”;
9 by inserting “, guaranteed obligation,” after the sec-
10 ond usage of “contract”; by striking “or” after the
11 first usage of “terminated”; by inserting “;” after
12 the first usage of “terminated”; by inserting “or any
13 liability thereunder accelerated,” after the first
14 usage of “modified,”; by striking “or” after “right”;
15 by inserting “;” after “right”; by inserting “, or li-
16 ability” after “obligation”; by inserting “, guaran-
17 teed obligation,” after the third usage of “contract”;
18 by striking “or” after the second usage of “termi-
19 nated”; by inserting “;” after the second usage of
20 “terminated”; by inserting “or accelerated” after the
21 second usage of “modified,”; and by inserting “,
22 guaranteed obligation,” after the fourth usage of
23 “contract”;

24 (c) in subparagraph (e)(2)(B), by striking
25 “such contract is a” and inserting “such contract is
26 not a guaranteed obligation but is some other”;

1 (d) by adding a new subsection (p):

2 “(p) Notwithstanding subsection (c)(2) of this sec-
 3 tion, the trustee shall be deemed to have assumed as of
 4 the date of filing of the petition all cross-guarantee and
 5 stop-loss contracts to which the debtor is a party. The
 6 trustee shall immediately pay all cross-guarantee premium
 7 payments, stop-loss premium payments, and monitoring
 8 fee payments due under any cross-guarantee or stop-loss
 9 contract so assumed. Any claim for a subsequent breach
 10 of the obligations under such contracts shall be entitled
 11 to priority under section 507(a)(1). The trustee shall not
 12 reject any cross-guarantee or stop-loss contract.”; and

13 (e) in paragraph (f)(1) by inserting after “Ex-
 14 cept as provided in subsection (e) of this section”
 15 the following to complete the clause, “and excluding
 16 those executory contracts described in subsection
 17 (p)”.

18 **Subtitle C—Amendments to Chapter 5 of**

19 **Title 11**

20 **SEC. 321. OBLIGATIONS OF DIRECT GUARANTORS.**

21 Title 11, United States Code, is amended by adding
 22 a new section 511:

23 **“§ 511. Obligations of Direct Guarantors**

24 “The direct guarantors of a debtor shall pay to the
 25 trustee the amount by which losses accrued by the estate

1 as a direct guarantor since the date the petition was filed
2 exceed the cross-guarantee and stop-loss premiums the es-
3 tate has accrued since that date. Such payment shall be
4 received by the trustee on the effective date of a plan con-
5 firmed under section 1129 of this title or, in the case of
6 a liquidation under section 1187 of this title, at the time
7 of the transfer to an unrelated party or the termination
8 of all of the estate's guaranteed obligations. The claim re-
9 sulting from the amount paid by the direct guarantors in
10 accordance with this subsection shall be subordinated to
11 all other claims in the case for the purpose of distribution
12 under this title.”.

13 **SEC. 322. DEBTOR'S DUTIES.**

14 Section 521 of title 11, United States Code, is
15 amended—

16 (a) in paragraph (1) by inserting “(a)” at the
17 beginning of the paragraph; and

18 (b) by adding new subparagraph (1)(b):

19 “(b) in a case under subchapter V of chapter 11 and
20 subject to the requirement of subsection 107(c) of this
21 title, file under seal the list of guaranteed creditors and
22 the amount of the claims of the guaranteed creditors.”.

23 **SEC. 323. EXCEPTIONS TO DISCHARGE.**

24 Section 523 of title 11, United States Code, is
25 amended by adding new paragraph (a)(17):

1 “(17) which arises as a result of the debtor’s
2 cross-guarantee obligations.”.

3 **SEC. 324. LIMITATION ON AVOIDING POWERS.**

4 Section 546 of title 11, United States Code, is
5 amended—

6 (a) by redesignating the second subsection (g)
7 as subsection (h); and

8 (b) by adding new subsection (i):

9 “(i) Notwithstanding sections 544, 545, 547, and
10 548(a)(2) of this title, the trustee may not avoid a transfer
11 that is a cross-guarantee premium payment, a stop-loss
12 premium payment, or a monitoring fee payment made be-
13 fore the commencement of the case, except under section
14 548(a)(1) of this title.”.

15 **SEC. 325. PREFERENCES.**

16 Section 547 of title 11, United States Code, is
17 amended by adding new subsection (h):

18 “(h) For the purposes of this section, a payment of
19 a guaranteed obligation is deemed to be a payment of a
20 debt incurred by the debtor in the ordinary course of busi-
21 ness or financial affairs of the debtor and the transferee.”.

22 **SEC. 326. FRAUDULENT TRANSFERS AND OBLIGATIONS.**

23 Section 548 of title 11, United States Code, is
24 amended in paragraph (d)(2) by adding new subparagraph
25 (E):

1 “(E) A cross-guarantee syndicate or a syn-
2 dicate agent that receives a cross-guarantee
3 premium payment, a stop-loss premium pay-
4 ment, or a monitoring fee payment takes for
5 value to the extent of such payment.”.

6 **SEC. 327. POST-PETITION TRANSACTIONS.**

7 Section 549 of title 11, United States Code, is
8 amended—

9 (a) in subsection (a) by striking “subsections
10 (b) or (c)” and by inserting “subsections (b), (c), or
11 (d)”;

12 (b) by adding new subsection (d)—

13 “(d) The trustee may not avoid under subsection (a)
14 of this section a transfer of property to a transferee whose
15 claim, in the absence of such transfer, would be guaran-
16 teed under a cross-guarantee or stop-loss contract”; and

17 (c) by redesignating subsection (d) as sub-
18 section (e).

19 **SEC. 328. CONTRACTUAL RIGHT TO LIQUIDATE A SECURI-**
20 **TIES CONTRACT.**

21 Section 555 of title 11, United States Code, is
22 amended—

23 (a) by inserting “(a)” at the beginning of the
24 section; and

25 (b) by adding new subsection (b)—

1 “(b) Subsection (a) of this section shall not apply in
2 any case under subchapter V of chapter 11.”

3 **SEC. 329. CONTRACTUAL RIGHT TO LIQUIDATE A COMMOD-**
4 **ITIES CONTRACT OR FORWARD CONTRACT.**

5 Section 556 of title 11, United States Code, is
6 amended—

7 (a) by inserting “(a)” at the beginning of the
8 section; and

9 (b) by adding new subsection (b)—

10 “(b) Subsection (a) of this section shall not apply in
11 any case under subchapter V of chapter 11.”

12 **SEC. 330. CONTRACTUAL RIGHT TO LIQUIDATE A REPUR-**
13 **CHASE AGREEMENT.**

14 Section 559 of title 11, United States Code, is
15 amended—

16 (a) by inserting “(a)” at the beginning of the
17 section; and

18 (b) by adding new subsection (b)—

19 “(b) Subsection (a) of this section shall not apply in
20 any case under subchapter V of chapter 11.”

21 **SEC. 331. CONTRACTUAL RIGHT TO TERMINATE A SWAP**
22 **AGREEMENT.**

23 Section 560 of title 11, United States Code, is
24 amended—

1 (a) by inserting “(a)” at the beginning of the
2 section; and

3 (b) by adding new subsection (b)—

4 “(b) Subsection (a) of this section shall not apply in
5 any case under subchapter V of chapter 11.”.

6 **Subtitle D—Amendments to Chapter 11 of**

7 **Title 11**

8 **CHAPTER 1—AMENDMENTS TO EXISTING LAW**

9 **SEC. 341. CREDITORS’ AND EQUITY SECURITY HOLDERS’**
10 **COMMITTEES.**

11 Section 1102 of title 11, United States Code, is
12 amended in paragraph (a)(1) by inserting at the end “:
13 *Provided, however,* That only creditors holding claims that
14 are not guaranteed obligations under a cross-guarantee or
15 stop-loss contract and are not direct guarantors may be
16 appointed to such committee in a case under subchapter
17 V of chapter 11”.

18 **SEC. 342. WHO MAY FILE A PLAN.**

19 Section 1121 of title 11, United States Code, is
20 amended by adding new subsection (f):

21 “(f) Notwithstanding subsection (c) of this section,
22 a guaranteed creditor may not file a plan in a case under
23 subchapter V of chapter 11.”.

1 **SEC. 343. IMPAIRMENT OF CLAIMS OR INTERESTS.**

2 Section 1124 of title 11, United States Code, is
3 amended—

4 (a) by inserting “(a)” at the beginning of the
5 section; and

6 (b) by adding new subsection (b)—

7 “(b) Notwithstanding subsection (a) of this section,
8 the claim of a guaranteed creditor is deemed to be
9 unimpaired in a case under subchapter V of chapter 11.”.

10 **SEC. 344. ACCEPTANCE OF PLAN.**

11 Section 1126 of title 11, United States Code, is
12 amended in subsection (a) by inserting at the end of the
13 first sentence:”, “provided, however, that a guaranteed
14 creditor is not entitled to accept or reject a plan in a case
15 under subchapter V of chapter 11”.

16 **SEC. 345. CONFIRMATION HEARING.**

17 Section 1128 of title 11, United States Code, is
18 amended in subsection (b) by inserting after “A party in
19 interest”:”, “other than a guaranteed creditor in a case
20 under subchapter V of chapter 11,”.

21 **SEC. 346. CONFIRMATION OF PLAN.**

22 Section 1129 of title 11, United States Code, is
23 amended—

24 (a) in paragraph (a)(4), by inserting at the
25 end:”, “*Provided, however,* That no such approval of
26 any payment by a cross-guarantee or stop-loss syn-

1 dicade is required when the cross-guarantee or stop-
2 loss syndicate is the proponent of the plan and the
3 payment is made pursuant to a cross-guarantee or
4 stop-loss contract”; and

5 (b) by adding new subsection (e)—

6 “(e) Notwithstanding subsections (a) and (b) of this
7 section, the court may confirm a plan that otherwise meets
8 the requirements of subsection (a) and (b) of this section
9 even though, in a case under subchapter V of chapter 11,
10 a guaranteed creditor receives or retains no property
11 under the plan.”.

12 **SEC. 347. EFFECT OF CONFIRMATION.**

13 Section 1141 of title 11, United States Code, is
14 amended—

15 (a) in subsection (a) by striking “(d)(2) and
16 (d)(3)” and by inserting “(d)(2), (d)(3), (d)(4), and
17 (d)(5)”;

18 (b) by inserting new paragraph (d)(4)—

19 “(4) Except as provided in subsection 365(k) of
20 this title, the confirmation of a plan does not dis-
21 charge a guaranteed company that is a debtor under
22 subchapter V of chapter 11 of this title from any
23 debt arising out of a guaranteed obligation”;

24 (c) by inserting new paragraph (d)(5)—

1 “(5) Except as provided in section 365(k) of
2 this title, the confirmation of a plan does not dis-
3 charge a debtor of its obligations and liabilities as
4 a direct guarantor under a cross-guarantee or stop-
5 loss contract”; and

6 (d) by redesignating paragraph (d)(4) as (d)(6).

7 **CHAPTER 2—ENACTMENT OF SUBCHAPTER V**

8 **SEC. 351. GUARANTEED COMPANY REORGANIZATION.**

9 Title 11, United States Code, is amended by adding
10 a new subchapter V:

11 **“Subchapter V—Guaranteed Company**
12 **Reorganization”.**

13 **SEC. 352. INAPPLICABILITY OF OTHER SECTIONS.**

14 Title 11, United States Code, is amended by adding
15 new section 1181:

16 **“§ 1181. Inapplicability of other sections**

17 “Sections 341, 343, 1104, 1105, and 1107 do not
18 apply in a case under subchapter V of chapter 11.”.

19 **SEC. 353. EFFECTIVE DATE OF FILING.**

20 Title 11, United States Code, is amended by adding
21 new section 1182:

22 **“§ 1182. Effective date of filing**

23 “The effective date and time of the filing of a petition
24 under this subchapter shall be the close of business on

1 the business day preceding the date on which the petition
2 is actually filed.”.

3 **SEC. 354. APPOINTMENT OF TRUSTEE.**

4 Title 11, United States Code, is amended by adding
5 new section 1183:

6 **“§ 1183. Appointment of trustee**

7 “As soon as practicable after the entry of an order
8 for relief, the regulation corporation shall submit to the
9 United States Trustee a list of five disinterested persons
10 who are qualified and willing to serve as the trustee in
11 the case. The United States Trustee shall appoint one
12 such person to serve as the trustee in the case. Neither
13 the syndicate agent monitoring the debtor as of the date
14 of the filing of the petition nor a governmental unit or
15 the employee of a governmental unit shall be eligible to
16 serve as the trustee.”.

17 **SEC. 355. LIABILITY OF DIRECT GUARANTORS FOR TRANS-**
18 **FERS TO GUARANTEED CREDITORS.**

19 Title 11, United States Code, is amended by adding
20 new section 1184:

21 **“§ 1184. Liability of direct guarantors for transfers to**
22 **guaranteed creditors**

23 “The trustee may recover for the benefit of all guar-
24 anteed creditors from the direct guarantors of the debtor
25 the amount of any transfers of property of the estate to

1 or for the benefit of guaranteed creditors that enable such
2 creditors to receive more than such creditors would receive
3 if the trustee was engaged in a liquidation pursuant to
4 section 1187 of this chapter and such transfers had not
5 been made.”.

6 **SEC. 356. REPLACEMENT OR MODIFICATION OF CROSS-**
7 **GUARANTEE CONTRACT.**

8 Title 11, United States Code, is amended by adding
9 new section 1185:

10 **“§ 1185. Replacement or modification of cross-guaran-**
11 **tee contract**

12 “Prior to the debtor filing any application with the
13 regulation corporation for approval of any replacement
14 cross-guarantee contract or for the approval of any modi-
15 fication of the debtor’s existing cross-guarantee contract,
16 the debtor must obtain the approval of the court to enter
17 into such replacement contract or to modify such existing
18 contract.”.

19 **SEC. 357. EFFECT OF FEDERAL, STATE, AND LOCAL LEGIS-**
20 **LATION AND REGULATIONS.**

21 Title 11, United States Code, is amended by adding
22 new section 1186:

1 **“§ 1186. Effect of Federal, State, and local legislation**
2 **and regulations**

3 “(a) Except with respect to merger, modification of
4 the financial structure of the debtor, or the issuance or
5 sale of securities under a plan, the trustee and the debtor
6 are subject to all Federal, State, and local legislation, reg-
7 ulations and orders to the same extent as the debtor would
8 be if a petition commencing the case under this chapter
9 had not been filed.

10 “(b) Notwithstanding subsection (a) of this section,
11 neither Federal receivership law, State receivership law,
12 nor any laws prohibiting the enforcement of an agreement
13 that is not contained in the records of a debtor under this
14 subchapter, including sections 212(a) and 217(4) of the
15 Financial Institutions Reform, Recovery, and Enforce-
16 ment Act of 1989 (12 U.S.C. 1821(d)(9)(A) and 1823(e)),
17 shall be applicable.

18 “(c) Notwithstanding any State or Federal law, de-
19 positors in a guaranteed company that is a debtor under
20 this subsection shall not receive any preference in distribu-
21 tion under this title over other creditors.”.

22 **SEC. 358. LIQUIDATION.**

23 Title 11, United States Code, is amended by adding
24 new section 1187:

1 **“§ 1187. Liquidation**

2 “On request of a party in interest and after notice
3 and a hearing, the court may order the trustee to cease
4 the debtor’s operation and to collect and reduce to money
5 all of the property of the estate in the same manner as
6 if the case were a case under chapter 7 of this title if
7 such liquidation is in the best interest of creditors.”.

8 **TITLE IV—AMENDMENT TO TITLE 28,**
9 **UNITED STATES CODE**

10 **SEC. 401. VENUE.**

11 Title 28, United States Code, is amended by adding
12 new subsection 1409(f):

13 “(f) A proceeding arising in or related to a case under
14 subchapter V of chapter 11 of title 11 regarding the debt-
15 or’s satisfaction of a guaranteed obligation, whether aris-
16 ing before or after the commencement of the case, may
17 be commenced in the district court for the district where
18 the State or Federal court sits in which the party com-
19 mencing such proceeding may, under applicable non-bank-
20 ruptcy venue provisions, have brought an action on such
21 claim, or in the district court in which such case is pend-
22 ing. The cross-guarantee syndicate which has entered into
23 a cross-guarantee contract in such a case shall be a party
24 in interest in any proceeding commenced under this sub-
25 section.”.

