

103^D CONGRESS
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H. R. 5227

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

OCTOBER 6, 1994

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

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 1994”.

7 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—100 PERCENT CROSS-GUARANTEES

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

Subtitle B—Cross-Guarantee Process

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 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.
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Subtitle E—Transition to 100 Percent Cross-Guarantee Process

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- Sec. 147. Abolition of the Federal Deposit Insurance Corporation.
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- Sec. 202. Amendments relating to member banks.
- Sec. 203. Amendments relating to savings associations.
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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.

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

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

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

9 (7) COMPANY.—The term “company”—

10 (A) means any corporation, partnership,
11 business trust, association, or similar organiza-
12 tion; and

13 (B) does not include a branch or agency,
14 or a group of branches and agencies, of a for-
15 eign bank.

16 (8) CONTROL.—

17 (A) IN GENERAL.—The term “control”
18 means, with respect to one company’s relation-
19 ship to another company, one company’s owner-
20 ship or power to, directly or indirectly, vote an
21 aggregate of 5 percent or more of any class or
22 classes of the securities which separately or to-
23 gether, taking into account the relative voting
24 weight of different shares, have the power to

1 elect a majority of the members of such other
2 company's board of directors.

3 (B) REGULATION.—The Corporation may
4 prescribe regulations to implement the intent of
5 this paragraph.

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

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

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

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

18 (A) is entered into between—

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

22 (ii) a cross-guarantee syndicate;

23 (B) is approved by the Corporation under
24 section 123;

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).

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

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

16 (15) DEPOSIT.—

17 (A) IN GENERAL.—The term “deposit”
18 means—

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

23 (ii) any other obligation that the Cor-
24 poration determines is a deposit-like obli-
25 gation by general usage.

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

7 (C) EXCLUSION FOR CHECKABLE SUBOR-
8 DINATED DEBT.—The term “deposit” shall not
9 include any obligation which, under section
10 114(a)(2), may not be a guaranteed obligation.

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

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

20 (18) EQUITY CAPITAL.—The term “equity cap-
21 ital” means, with respect to any guaranteed finan-
22 cial group, the amount, as valued pursuant to sec-
23 tion 114(c), which is equal to—

24 (A) the consolidated assets of the guaran-
25 teed financial group; minus

1 (B) the consolidated liabilities, including
2 the estimated liquidation value of contingent li-
3 abilities, of the guaranteed financial group.

4 (19) FAILED DEPOSITORY INSTITUTION.—The
5 term “failed depository institution” means any de-
6 pository institution for which a conservator or re-
7 ceiver has been appointed by the Federal Deposit In-
8 surance Corporation.

9 (20) FOREIGN BANK.—The term “foreign
10 bank” has the same meaning given to such term in
11 section 1(b) of the International Banking Act of
12 1978, except that such term shall not include any
13 bank organized under the laws of Puerto Rico,
14 Guam, American Samoa, the Virgin Islands, or any
15 territory of the United States.

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

19 (A) is entered into between two or more
20 guaranteed financial groups and a cross-guar-
21 antee syndicate;

22 (B) is approved by the Corporation under
23 section 123;

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

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

3 (22) GUARANTEED BANKING OFFICE.—The
4 term “guaranteed banking office” means any branch
5 or agency of a foreign bank where the foreign bank
6 has entered into a cross-guarantee contract with a
7 cross-guarantee syndicate.

8 (23) GUARANTEED COMPANY.—

9 (A) IN GENERAL.—The term “guaranteed
10 company” means any company which has en-
11 tered into a cross-guarantee contract with a
12 cross-guarantee syndicate.

13 (B) FOREIGN BANKS.—

14 (i) IN GENERAL.—Notwithstanding
15 subparagraph (A), a foreign bank shall not
16 be a guaranteed company solely because a
17 branch or agency of such bank is a guar-
18 anteed banking office under a cross-guar-
19 antee contract.

20 (ii) EXCEPTION FOR FOREIGN BANKS
21 WHICH ARE SUBSIDIARIES.—Notwithstand-
22 ing clause (i), a foreign bank may be a
23 guaranteed company, if such bank is guar-
24 anteed under a cross-guarantee contract
25 under section 112(e)(1).

1 (24) GUARANTEED DEPOSITORY INSTITU-
2 TION.—The term “guaranteed depository institu-
3 tion” means a depository institution which is a guar-
4 anteed company.

5 (25) GUARANTEED FINANCIAL GROUP.—The
6 term “guaranteed financial group” means—

7 (A) a depository institution which is the
8 sole guaranteed company under a cross-guaran-
9 tee contract;

10 (B) two or more companies, at least one of
11 which is a depository institution and all of
12 which are guaranteed companies under the
13 same cross-guarantee contract;

14 (C) any guaranteed banking office which—

15 (i) is a branch; and

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

18 (D) any two or more branches and agen-
19 cies, at least one of which is a branch and all
20 of which are guaranteed banking offices under
21 the same cross-guarantee contract.

22 (26) GUARANTEED OBLIGATION.—

23 (A) IN GENERAL.—The term “guaranteed
24 obligation” means an obligation of a guaranteed
25 party the performance of which has been guar-

1 anted by a cross-guarantee or stop-loss syn-
2 dicate.

3 (B) RULE OF CONSTRUCTION.—The term
4 “performance” under subparagraph (A) in-
5 cludes timely payment of any deposit or other
6 obligation, including interest, if failure to pay in
7 a timely manner would constitute a breach of
8 contract.

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

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

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

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

24 (B) does not include any equitable interest
25 or liability which the Corporation determines

1 should not be treated as net worth for purposes
2 of this title; and

3 (C) in the case of any nondepository guar-
4 antor which controls another nondepository
5 guarantor or a guaranteed financial group, does
6 not include the net worth or equity capital of
7 the subsidiary guarantor or group.

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

12 (31) PREMIUM INCOME.—The term “premium
13 income” means any income accrued by a direct guar-
14 antor under any cross-guarantee or stop-loss con-
15 tract.

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

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

22 (A) in the case of a guaranteed company,
23 3 percent of the equity capital of the guaran-
24 teed financial group which is the party guaran-
25 teed under the same cross-guarantee contract

1 under which such company is a guaranteed
2 company; or

3 (B) in the case of a nondepository guaran-
4 tor, 3 percent of the net worth of the
5 nondepository guarantor.

6 (34) PROJECTED ANNUAL PREMIUM LIMIT.—
7 The term “projected annual premium limit” means
8 the amount which is equal to 3 percent of projected
9 annual premium capacity.

10 (35) SECOND-TIER GUARANTOR.—The term
11 “second-tier guarantor” means a direct guarantor of
12 a direct guarantor.

13 (36) STATE DEPOSITORY INSTITUTION.—The
14 term “State depository institution” has the meaning
15 given to such term in section 3(c)(5) of the Federal
16 Deposit Insurance Act.

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

19 (A) is entered into between a person and
20 a stop-loss syndicate;

21 (B) is approved by the Corporation under
22 section 123;

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).

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

7 (39) SUBORDINATED DEBT.—

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

13 (B) GENERAL CREDITOR.—For purposes
14 of this paragraph, the term “general creditor”
15 means—

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

1 (ii) any creditor of the guaranteed
2 company or guaranteed banking office
3 which is—

4 (I) not protected under the con-
5 tract; and

6 (II) not subordinated to the
7 claims of other creditors or treated as
8 a preference in a bankruptcy proceed-
9 ing.

10 (40) SUBSIDIARY.—The term “subsidiary”
11 means, with reference to a company, any company
12 which such company controls.

13 (41) SYNDICATE AGENT.—The term “syndicate
14 agent” means any person which acts as the agent
15 for the direct guarantors under any cross-guarantee
16 or stop-loss contract.

17 **SEC. 102. RULES OF CONSTRUCTION.**

18 (a) GENERAL RULES OF CONSTRUCTION.—

19 (1) IN GENERAL.—This title shall be liberally
20 construed and applied to promote its underlying pur-
21 poses and policies.

22 (2) PURPOSES OF THIS TITLE.—The purposes
23 of this title are—

1 (A) to create a competitive and essentially
2 self-regulating private deposit insurance mar-
3 ketplace;

4 (B) to require each bank and savings asso-
5 ciation which accepts deposits to protect the full
6 amount of such deposits, along with most other
7 nondeposit liabilities, by obtaining cross-guar-
8 antee contracts from syndicates of guarantors;

9 (C) to induce depository institutions to
10 lend and invest wisely by authorizing guaran-
11 tors which issue cross-guarantee contracts to—

12 (i) charge risk-sensitive premiums for
13 the guarantees provided; and

14 (ii) negotiate with the banks and sav-
15 ings associations which enter into such
16 contracts all other terms and conditions, to
17 the extent such terms and conditions are
18 not inconsistent with this Act or other pro-
19 visions of law;

20 (D) to make the cross-guarantee process as
21 self-regulating as possible by establishing nu-
22 merous constructive tensions among the partici-
23 pants in the system;

24 (E) to establish a closed system of guaran-
25 tors with tier after tier of guarantors to stand

1 behind a guarantee and a “stop-loss” mecha-
2 nism to spread large losses as widely as possible
3 to ensure that no guaranteed obligation will
4 ever go unpaid; and

5 (F) to regulate the cross-guarantee mar-
6 ketplace only to the extent necessary to main-
7 tain the safety, soundness, and viability of the
8 entire cross-guarantee process and not the sol-
9 vency of any individual bank or savings associa-
10 tion regardless of its size.

11 (b) SPECIFIC RULES OF CONSTRUCTION.—In this
12 title—

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

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

22 (3) the term “control” in such phrases as “as-
23 sumption of control” or “assumes control” shall not
24 have the meaning given the term under section
25 101(8);

1 (4) “including” shall not be construed more re-
2 strictly than the ordinary usage of such term so
3 as to exclude any other thing not referred to or de-
4 scribed; and

5 (5) the phrases “has entered into a cross-guar-
6 antee contract” and “has entered into a stop-loss
7 contract,” as used in sections 101(22), 101(23), and
8 101(30), shall not be construed to refer to a con-
9 tract which is no longer in effect;

10 **Subtitle B—Cross Guarantee Process**

11 **SEC. 111. DEPOSITORY INSTITUTIONS PROHIBITED FROM**
12 **OPERATING WITHOUT A CROSS-GUARANTEE**
13 **CONTRACT.**

14 After the applicable effective date under section 142,
15 a depository institution shall be a guaranteed depository
16 institution or guaranteed banking office unless the deposi-
17 tory institution—

18 (a) is a Federal branch that is not an insured
19 branch (as the terms “Federal branch” and “in-
20 sured branch” are defined in sections 3(r) and 3(s)
21 of the Federal Deposit Insurance Act); or

22 (b) is a failed depository institution.

23 **SEC. 112. PARTIES TO CROSS-GUARANTEE AND STOP-LOSS**
24 **CONTRACTS.**

25 (a) CROSS-GUARANTEE CONTRACTS.—

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

3 (A) A guaranteed financial group as the
4 party guaranteed under the contract.

5 (B) The direct guarantors of the guaran-
6 teed financial group.

7 (C) A syndicate agent acting on behalf of
8 the direct guarantors.

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

13 (b) STOP-LOSS CONTRACTS.—

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

16 (A) A nondepository guarantor as the
17 party guaranteed under the contract.

18 (B) The direct guarantors of the
19 nondepository guarantor.

20 (C) A syndicate agent acting on behalf of
21 the direct guarantors.

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

1 (c) GROUP CROSS-GUARANTEE CONTRACTS.—

2 (1) IN GENERAL.—

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

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

16 (C) PROPORTIONAL RISK.—Each direct
17 guarantor under a group cross-guarantee con-
18 tract shall have the same proportional rights,
19 privileges, duties, and obligations in each cross-
20 guarantee contract incorporated by reference in
21 the syndicate contract as such guarantor has in
22 the syndicate contract.

23 (2) APPROVAL OF GROUP CROSS-GUARANTEE
24 CONTRACT AND ITS POOL OF CROSS-GUARANTEE
25 CONTRACTS.—The Corporation shall approve or re-

1 ject, as a group, a proposed group cross-guarantee
2 contract and the cross-guarantee contracts pooled
3 under that contract.

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

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

16 (5) INDIVIDUAL TERMS AND RATES.—The
17 terms, conditions, and premium rates of a cross-
18 guarantee contract pooled under a group cross-guar-
19 antee contract may differ from the terms, condi-
20 tions, and premium rates under any other cross-
21 guarantee contract pooled under the syndicate con-
22 tract.

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

1 under this title to any party to a cross-guarantee
2 contract shall be affected by the pooling of the cross-
3 guarantee contract with other contracts covered by
4 a group cross-guarantee contract.

5 (7) ADDITIONAL GUARANTEED PARTIES UNDER
6 A GROUP CROSS-GUARANTEE CONTRACT.—A group
7 cross-guarantee contract may be amended under sec-
8 tion 123 to add a guaranteed financial group or a
9 depository institution with a proposed cross-guaran-
10 tee contract to the existing syndicate contract if—

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

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

20 (8) TERM OF A GROUP CROSS-GUARANTEE CON-
21 TRACT.—A group cross-guarantee contract shall con-
22 tinue in force until each guaranteed party which is
23 guaranteed under the syndicate contract has ceased
24 to be a guaranteed party under a cross-guarantee
25 contract pooled under the syndicate contract.

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

6 (10) RULE OF CONSTRUCTION.—Nothing in
7 this subsection shall be construed as preventing a
8 cross-guarantee or stop-loss syndicate from becom-
9 ing a syndicate under two or more cross-guarantee
10 or stop-loss contracts without including such con-
11 tracts under a group cross-guarantee contract.

12 (d) AFFILIATES AND OTHER PARTIES RELATED TO
13 A DEPOSITORY INSTITUTION WHICH SHALL BE GUARAN-
14 TEED UNDER ONE CONTRACT.—

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

20 (2) CHAIN BANKS.—Subject to paragraph (4),
21 if more than two-thirds of the shares of any deposi-
22 tory institution are directly or indirectly under com-
23 mon ownership with more than two-thirds of the
24 shares of any other depository institution, such de-
25 pository institutions shall be guaranteed depository

1 institutions under the same cross-guarantee con-
2 tract.

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

9 (4) REGULATIONS.—The Corporation shall pre-
10 scribe regulations for determining which cross-guar-
11 antee contract shall guarantee the obligations of a
12 depository institution to which paragraph (1) or (2)
13 applies.

14 (e) SUBSIDIARIES WHICH MAY BE GUARANTEED
15 UNDER ONE CROSS-GUARANTEE CONTRACT.—

16 (1) IN GENERAL.—A company controlled by a
17 guaranteed depository institution may be a guaran-
18 teed company under the same cross-guarantee con-
19 tract under which the guaranteed depository institu-
20 tion is guaranteed.

21 (2) DEFINITION OF CONTROL.—

22 (A) IN GENERAL.—For purposes of this
23 subsection, the term “control” means, with re-
24 spect to one company’s relationship to another
25 company, one company’s ownership or power to,

1 directly or indirectly, vote an aggregate of 50
2 percent or more of any class or classes of the
3 securities which separately or together, taking
4 into account the relative voting weight of dif-
5 ferent shares, have the power to elect a major-
6 ity of the members of such other company's
7 board of directors.

8 (B) REGULATIONS.—The Corporation may
9 prescribe regulations to implement the intent of
10 this paragraph.

11 (f) PROVISIONS RELATING TO SYNDICATE
12 AGENTS.—

13 (1) ANTI-AFFILIATION RULES.—A syndicate
14 agent may not—

15 (A) be an affiliate of any guaranteed party
16 under any cross-guarantee or stop-loss contract;
17 or

18 (B) acquire or retain any ownership inter-
19 est in any guaranteed party under any cross-
20 guarantee or stop-loss contract.

21 (2) NO DEPOSITORY INSTITUTION, FOREIGN
22 BANK OR NON-DEPOSITORY GUARANTOR MAY BE A
23 SYNDICATE AGENT.—No depository institution, for-
24 eign bank, or nondepository guarantor may be a

1 syndicate agent under any cross-guarantee or stop-
2 loss contract.

3 (3) PROHIBITIONS ON INTERLOCKS.—

4 (A) IN GENERAL.—No owner, director, of-
5 ficer, employee, or partner of a syndicate agent
6 may be an owner, director, officer, employee, or
7 partner of any guaranteed party or other syn-
8 dicate agent under any cross-guarantee or stop-
9 loss contract.

10 (B) SUBCONTRACTORS.—

11 (i) IN GENERAL.—A subcontractor of
12 a syndicate agent may be a subcontractor
13 to any guaranteed party or other syndicate
14 agent under any cross-guarantee or stop-
15 loss contract.

16 (ii) PERSONNEL OVERLAPS.—

17 (I) IN GENERAL.—Subject to
18 subclause (II), an owner, director, of-
19 ficer, employee, or partner of a sub-
20 contractor of a syndicate agent may
21 be an owner, director, officer, em-
22 ployee, or partner of any guaranteed
23 party or other syndicate agent under
24 any cross-guarantee or stop-loss con-
25 tract.

1 (II) EXCEPTION FOR GUARAN-
2 TEED PARTY UNDER THE SAME CON-
3 TRACT.—An owner, director, officer,
4 employee, or partner of a subcontrac-
5 tor of a syndicate agent performing
6 monitoring work on a guaranteed
7 party under a cross-guarantee or stop-
8 loss contract may not be an owner, di-
9 rector, officer, employee, or partner of
10 the guaranteed party under the con-
11 tract.

12 (C) DEFINITION OF OWNER.—For pur-
13 poses of this paragraph, the term “owner”
14 means, with respect to any company, a person
15 which controls the company.

16 **SEC. 113. REQUIREMENTS COMMON TO CROSS-GUARANTEE**
17 **AND STOP-LOSS CONTRACTS.**

18 (a) STOP-LOSS LIMIT FOR LOSSES OF A GUARAN-
19 TEED PARTY AS A DIRECT GUARANTOR OF OTHER GUAR-
20 ANTEED PARTIES.—

21 (1) DEFINITIONS.—For purposes of this sub-
22 section:

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

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

4 (C) LEVEL 3 PARTY.—The term “Level 3
5 party” means a direct guarantor of a Level 2
6 party.

7 (D) LOSS.—The term “loss” means the
8 present value, as of the date of a loss event, of
9 the cash outlays, including administrative ex-
10 penses, required to fulfill a Level 2 party’s
11 cross-guarantee obligations to a Level 1 party
12 due to the occurrence of such loss event, using
13 as a discount rate the sum of—

- 14 (i) 2 percent; and
15 (ii) the average annual percentage
16 yield on three-month bills issued by the
17 Secretary of the Treasury under section
18 3104(a) of title 31, United States Code, as
19 determined by the Corporation as of the
20 most recent issue date preceding the date
21 of the loss event.

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

24 (F) STOP-LOSS LIABILITY.—The term
25 “stop-loss liability” means an obligation ac-

1 crued by a Level 3 party to a Level 2 party
2 under paragraph (2).

3 (G) STOP-LOSS RECOVERY.—The term
4 “stop-loss recovery” means the amount accrued
5 by a Level 2 party due to the obligation of a
6 Level 3 party under paragraph (2).

7 (2) STOP-LOSS OBLIGATION OF DIRECT GUAR-
8 ANTORS.—

9 (A) STOP-LOSS RECOVERY.—for any
10 twelve-calendar month period in which a cross-
11 guarantee or stop-loss contract exists between
12 Level 3 parties and a Level 2 party as of the
13 first day of the first-calendar month of such pe-
14 riod, the Level 3 parties shall be obligated to
15 pay to the Level 2 party an amount equal to
16 the total amount of losses accrued by the Level
17 2 party in such party’s capacity as a direct
18 guarantor of Level 1 parties during such
19 twelve-calendar month period, minus the sum
20 of—

21 (i) the greater of—

22 (I) the amount equal to five
23 times the total amount of cross-guar-
24 antee and stop-loss premium income
25 accruing to the Level 2 party in such

1 party's capacity as a direct guarantor
2 of Level 1 parties during such twelve-
3 calendar month period;

4 (II) the amount equal to five
5 times the total amount of cross-guar-
6 antee and stop-loss premium income
7 accruing to the Level 2 party in such
8 party's capacity as a direct guarantor
9 of Level 1 parties during the twelve-
10 calendar month period preceding such
11 twelve-calendar month period;

12 (III) in the case of a twelve-cal-
13 endar month period ending in a
14 month which is among the first eleven
15 calendar months that the Level 2
16 party has ever been a party guaran-
17 teed under a cross-guarantee or stop-
18 loss contract, the amount equal to the
19 average monthly cross-guarantee and
20 stop-loss premium income accruing to
21 the Level 2 party in such party's ca-
22 pacity as a direct guarantor of Level
23 1 parties since first becoming a party
24 guaranteed under a cross-guarantee

1 or stop-loss contract, multiplied by
2 sixty; or

3 (IV) in the case of a twelve-cal-
4 endar month period ending in a
5 month which is among the first twen-
6 ty-three calendar months that the
7 Level 2 party has ever been a party
8 guaranteed under a cross-guarantee
9 or stop-loss contract, the amount
10 equal to five times the total amount of
11 cross-guarantee and stop-loss pre-
12 mium income accruing to the Level 2
13 party in such party's capacity as a di-
14 rect guarantor of Level 1 parties,
15 without taking into account any re-
16 duction in premium income due to the
17 transfer, under section 113(m), of the
18 Level 2 party's interest in any cross-
19 guarantee or stop-loss syndicate; and

20 (ii) recoveries accrued under this
21 paragraph by the Level 2 party for each
22 twelve-calendar month period ending at the
23 end of each of the first eleven calendar
24 months in such twelve-calendar month pe-
25 riod.

1 (B) CARRYOVER FROM PREVIOUS CON-
2 TRACTS.—The amounts calculated in subpara-
3 graph (A) shall include all losses, premium in-
4 come, and stop-loss recoveries of the Level 2
5 party under any cross-guarantee or stop-loss
6 contracts under which the Level 2 party was a
7 party guaranteed during such twelve-calendar
8 month period.

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

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

1 party was a Level 2 party while guaranteed
2 under the same or another cross-guarantee or
3 stop-loss contract.

4 (E) TIMING OF STOP-LOSS RECOVERY.—A
5 stop-loss recovery shall accrue as of the last day
6 of the last calendar month of the twelve-cal-
7 endar month period under which the stop-loss
8 recovery was calculated.

9 (F) ADJUSTMENT FOR CATASTROPHIC
10 LOSSES.—

11 (i) IN GENERAL.—If, for any calendar
12 month, a closed loop exists in which every
13 direct guarantor under the contracts in the
14 closed loop accrues a stop-loss recovery for
15 such month, then the calculation of stop-
16 loss recovery for the twelve-calendar month
17 period ending in such month for all the
18 contracts in the closed loop shall be ad-
19 justed as required under clauses (ii) and
20 (iii).

21 (ii) ADJUSTMENT.—If, for any cal-
22 endar month, a closed loop meets the con-
23 ditions of clause (i), the amounts cal-
24 culated in subparagraph (A) shall, for the
25 twelve-calendar month period in which

1 such calendar month is the last month, be
2 adjusted by increasing from five to six,
3 under clauses (i)(I) and (i)(II) of subpara-
4 graph (A), the amount multiplied by the
5 premium income accruing to a Level 2
6 party and by increasing from sixty to sev-
7 enty-two, under clause (i)(III) of subpara-
8 graph (A), the amount multiplied by the
9 average monthly premium accruing to the
10 Level 2 party.

11 (iii) FURTHER ADJUSTMENT.—If,
12 after making the adjustments to the cal-
13 culation of stop-loss recovery under clause
14 (ii), every contract in the closed loop under
15 clause (i) still accrues a stop-loss recovery,
16 the amounts under clauses (i)(I) and
17 (i)(II) of subparagraph (A) shall be in-
18 creased by one and the amount under
19 clause (i)(III) of subparagraph (A) shall be
20 increased by twelve, until at least one di-
21 rect guarantor under a contract in such
22 closed loop is not accruing a stop-loss re-
23 covery for the calendar month in clause (i).

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

4 (A) the last day of the calendar month in
5 which the Level 1 party accrues a stop-loss re-
6 covery; or

7 (B) the day on which, with respect to a
8 Level 1 party which is a guaranteed company,
9 the earliest of the following occurs:

10 (i) Notice is filed with the Corporation
11 under section 118(d)(2)(D) by the cross-
12 guarantee syndicate of which the Level 2
13 party is a member that the syndicate has
14 assumed control of the Level 1 party.

15 (ii) A transaction is completed which
16 the Corporation, upon request by the syn-
17 dicate agent under the contract and pursu-
18 ant to paragraph (9), determines—

19 (I) involves the acquisition of the
20 Level 1 party or a significant portion
21 of the party's assets, the merger of
22 the Level 1 party with any other
23 party, the liquidation of the Level 1
24 party, or any other similar transaction
25 involving the Level 1 party; and

1 (II) results proximately in a loss
2 for the Level 2 parties in their capac-
3 ity as guarantors under the cross-
4 guarantee contract.

5 (iii) The Level 1 party becomes a
6 debtor in a case under title 11, United
7 States Code.

8 (4) PREPARATION OF ORIGINAL LOSS ESTIMATE
9 BY SYNDICATE AGENT.—The syndicate agent for the
10 cross-guarantee contract under which a Level 2
11 party is a direct guarantor shall, whenever a loss
12 event under subparagraph (3)(B) occurs under such
13 contract—

14 (A) estimate the loss for such loss event;
15 and

16 (B) by the fifteenth day of the calendar
17 month following the calendar month in which
18 such loss event occurs, notify the central elec-
19 tronic repository of the estimate of the loss
20 under subparagraph (A).

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

1 (A) revise the original estimate of the loss
2 for such loss event and notify the central elec-
3 tronic repository of such revised estimate at
4 least as often as the fifteenth day of—

5 (i) the third calendar month following
6 the calendar month in which the loss event
7 took place;

8 (ii) the twelfth calendar month follow-
9 ing the calendar month in which the loss
10 event took place; and

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

13 (B) for each estimate of the loss described
14 in clauses (A)(ii) and (A)(iii), obtain from a
15 third party a confirmation of the reasonableness
16 of the revised estimate of the loss.

17 (6) COMPLETION OF CASH OUTLAYS BECOMES
18 FINAL AMOUNT.—Notwithstanding paragraph (5),
19 once a Level 2 party has made the final cash dis-
20 bursement to fulfill such party’s cross-guarantee ob-
21 ligations due to any loss event under subparagraph
22 (3)(B)—

23 (A) the syndicate agent for the cross-guar-
24 antee contract under which the Level 2 party is
25 a direct guarantor shall calculate the loss from

1 such loss event (subject to the third party con-
2 firmation in subparagraph (5)(B)) and notify
3 the central electronic repository of this calcula-
4 tion; and

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

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

9 (A) CALCULATION OF STOP-LOSS LIABIL-
10 ITY.—After notification under paragraphs (4),
11 (5), and (6), the central electronic repository
12 shall calculate the stop-loss recovery for every
13 Level 2 party for every twelve-month calendar
14 period affected by the initial estimate, revised
15 estimates, and final loss amounts.

16 (B) ADJUSTMENT FOR INTEREST.—Upon
17 completing the calculations under subparagraph
18 (A), the central electronic repository shall then
19 adjust the amounts owed between Level 2 and
20 Level 3 parties as specified in paragraph (8).

21 (C) NETTING CALCULATION.—Upon com-
22 pleting the calculations under subparagraph
23 (B), the central electronic repository shall, for
24 each person that is a direct guarantor or guar-
25 anteed party, net the amounts owed by such

1 person in its capacity as a Level 3 party with
2 the amount such person is entitled to receive in
3 its capacity as a Level 2 party to determine the
4 overall liability or right to payment for such
5 person.

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

13 (E) SETTLEMENT.—

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

21 (ii) DISBURSAL OF PAYMENTS.—Upon
22 receiving all payments under clause (i), the
23 central electronic repository shall promptly
24 disburse to each party which has a right to
25 payment, given the calculations under sub-

1 paragraph (C), the amount owed such
2 party.

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

15 (F) REGULATIONS.—The Corporation may
16 prescribe such regulations as may be necessary
17 to implement this paragraph.

18 (8) CALCULATION OF STOP-LOSS PAYMENTS
19 PLUS INTEREST.—

20 (A) ORIGINAL ESTIMATE.—If a determina-
21 tion under subparagraph (7)(A) is based on the
22 original estimate of loss under paragraph (4)
23 and results in a stop-loss recovery for a Level
24 2 party, each Level 3 party shall owe to the
25 Level 2 party the amount of the stop-loss liabil-

1 ity for such Level 3 party plus interest on the
2 amount of such liability from the last day of the
3 month in which the loss occurred to the date of
4 payment under this subparagraph.

5 (B) REVISION OF ESTIMATES.—If a deter-
6 mination under subparagraph (7)(A) results
7 in—

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

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

1 (C) INTEREST RATE.—The parties to any
2 cross-guarantee or stop-loss contract shall agree
3 to the interest rate to be used for the calcula-
4 tion of interest under subparagraphs (A) and
5 (B).

6 (9) CGRC ADJUDICATION OF TIMING OF LOSS
7 EVENTS.—

8 (A) INFORMAL CGRC ADJUDICATION.—The
9 Corporation shall establish procedures to adju-
10 dicate the timing of loss events under para-
11 graph (3)(B)(ii).

12 (B) JUDICIAL REVIEW.—Any guaranteed
13 party may seek judicial review of any deter-
14 mination under subparagraph (A).

15 (b) DIRECT GUARANTOR'S CROSS-GUARANTEE OBLI-
16 GATIONS UNDER THE CONTRACT ARE INDEPENDENT
17 FROM OTHER PARTIES' OBLIGATIONS.—The cross-guar-
18 antee obligations of a direct guarantor under any cross-
19 guarantee or stop-loss contract shall be independent of
20 any obligation of any other party under the contract.

21 (c) GUARANTEED PARTY CANNOT BE A DIRECT
22 GUARANTOR UNDER THE SAME CONTRACT.—No guaran-
23 teed party may be a direct guarantor under the cross-
24 guarantee or stop-loss contract under which such party is
25 a guaranteed party.

1 (d) DIRECT GUARANTORS PROHIBITED FROM OB-
2 TAINING COLLATERAL FOR CROSS-GUARANTEE OBLIGA-
3 TIONS.—No direct guarantor under any cross-guarantee
4 or stop-loss contract may obtain or retain a lien or security
5 interest in a guaranteed party under the contract, or in
6 any assets of the guaranteed party, in connection with
7 such guarantor’s cross-guarantee obligations under the
8 contract, unless the guaranteed party is a guaranteed
9 banking office.

10 (e) PROVISIONS OF CONTRACT REGARDING DIVISION
11 OF LIABILITY.—

12 (1) SEVERAL LIABILITY.—No direct guarantor
13 under any cross-guarantee or stop-loss contract shall
14 be jointly liable for the cross-guarantee obligations
15 of any other direct guarantor under the contract.

16 (2) DIVISION OF LIABILITY.—

17 (A) DETERMINED BY CONTRACT.—Subject
18 to section 116(d), the terms of a cross-guaran-
19 tee or stop-loss contract shall establish the divi-
20 sion of liability among the direct guarantors
21 under the contract.

22 (B) ADJUSTMENT IN CASE OF ERROR.—If
23 the division of liability under a cross-guarantee
24 or stop-loss contract does not equal 100 per-
25 cent, each direct guarantor’s assigned liability

1 under the contract shall be adjusted proportion-
2 ately so that the division of liability equals 100
3 percent.

4 (3) LIABILITY OF DIRECT GUARANTOR PROPOR-
5 TIONATE TO INTEREST IN SYNDICATE.—The rights,
6 privileges, duties, and obligations of a direct guaran-
7 tor under a cross-guarantee or stop-loss contract
8 shall be proportionate to such guarantor’s interest in
9 the syndicate.

10 (4) SYNDICATES NOT PARTNERSHIPS OR JOINT
11 VENTURES.—Notwithstanding any State law, a
12 cross-guarantee or stop-loss syndicate is not a part-
13 nership or joint venture, except for purposes of sec-
14 tion 117(c)(1).

15 (f) PREMIUM REQUIREMENTS.—Each cross-guaran-
16 tee and stop-loss contract shall describe the method for
17 calculating, and the timing of payment, for any premium
18 payable to the direct guarantors under the contract.

19 (g) MAXIMUM TERM OF CONTRACTS.—

20 (1) TERM OF CONTRACT.—A cross-guarantee or
21 stop-loss contract may not have a term of more than
22 five years.

23 (2) AMENDMENTS.—The parties to any cross-
24 guarantee or stop-loss contract may agree to extend
25 the length of the contract as long as the contract as

1 amended still expires within five years after the
2 original effective date of the contract.

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

9 (4) PENALTIES FOR CONTINUING A CROSS-
10 GUARANTEE CONTRACT AFTER EXPIRATION DATE.—
11 For every day after the thirtieth day following the
12 expiration of a cross-guarantee contract in which—

13 (A) the direct guarantors have not as-
14 sumed control under section 118(a) of all the
15 guaranteed companies guaranteed under the
16 contract;

17 (B) a guaranteed party under such con-
18 tract has not become a guaranteed party under
19 another cross-guarantee contract;

20 (C) a successor contract is not being con-
21 sidered for approval under section 123 or the
22 Corporation has already rejected two successor
23 contracts;

24 (D) the guaranteed party is not appealing
25 the rejection by the Corporation, under section

1 123, of a successor contract or final judgment
2 has been reached on such an appeal; or

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

6 the Corporation may penalize each direct guarantor
7 under such contract up to \$100,000.

8 (h) CANCELLATION OF CONTRACTS BY SYN-
9 DICATES.—

10 (1) RIGHT TO CANCEL.—

11 (A) DEFAULT RULE.—Unless otherwise
12 agreed in a cross-guarantee or stop-loss con-
13 tract, a cross-guarantee or stop-loss syndicate
14 may cancel such contract at any time without
15 cause provided that the syndicate agent under
16 such contract provides notice of such cancella-
17 tion to the Corporation and the guaranteed
18 party or parties under the contract at least
19 ninety days prior to the effective date of can-
20 cellation.

21 (B) MINIMUM NOTICE PERIOD STILL RE-
22 QUIRED FOR ANY CONTRARY AGREEMENT.—If
23 the parties to a cross-guarantee or stop-loss
24 contract agree to cancellation rules different
25 than those provided under subparagraph (A),

1 the contract shall still require the syndicate
2 agent under the contract to give notice of can-
3 cellation to the Corporation and to the guaran-
4 teed party or parties under the contract at least
5 ninety days prior to the effective date of the
6 cancellation.

7 (C) WITHDRAWAL OF CANCELLATION NO-
8 TICE.—A cross-guarantee syndicate may, prior
9 to the cancellation becoming effective, withdraw
10 the cancellation notice issued under this para-
11 graph.

12 (2) CANCELLATION OF ONE GUARANTEED FI-
13 NANCIAL GROUP UNDER A GROUP CONTRACT.—A
14 cross-guarantee syndicate may cancel a cross-guar-
15 antee contract with one guaranteed financial group
16 under a group cross-guarantee contract without af-
17 fecting the rights, privileges, duties, and obligations
18 arising out of the syndicate contract with regard to
19 the other guaranteed financial groups under the syn-
20 dicate contract.

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

1 (A) The period beginning on the date such
2 party receives a notice of cancellation under
3 paragraph (1) or (2) with respect to such con-
4 tract and ending on the date the party becomes
5 a guaranteed party under a successor contract
6 or the cancellation notice is withdrawn under
7 paragraph (1)(C).

8 (B) The period beginning on the date the
9 contract expires and ending on the date the
10 party becomes a guaranteed party under a suc-
11 cessor contract.

12 (4) CONTINUED EFFECTIVENESS OF CROSS-
13 GUARANTEE CONTRACTS UNTIL OTHER COVERAGE IS
14 OBTAINED.—

15 (A) IN GENERAL.—The obligations of any
16 party under a cross-guarantee or stop-loss con-
17 tract shall remain in effect after the effective
18 date of the cancellation of the contract by the
19 direct guarantors or after the expiration of such
20 contract, as the case may be, until—

21 (i) the guaranteed party becomes a
22 guaranteed party under another cross-
23 guarantee or stop-loss contract; or

24 (ii) in the case of a guaranteed party
25 which ceases to exist as a legal entity, the

1 guaranteed obligations of the institution
2 are satisfied or become guaranteed obliga-
3 tions covered under another cross-guaran-
4 tee or stop-loss contract.

5 (B) CANCELLATION WHEN NONDEPOSI-
6 TORY GUARANTOR IS NOT A DIRECT GUARAN-
7 TOR.—Notwithstanding subparagraph (A), a
8 cancellation of a stop-loss contract by a stop-
9 loss syndicate shall take effect immediately if
10 the party guaranteed under the contract—

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

14 (ii) has transferred any remaining
15 risk under any cross-guarantee or stop-loss
16 contract under which such guarantor was
17 formerly a direct guarantor to another di-
18 rect guarantor.

19 (i) CANCELLATION OF CONTRACTS BY GUARANTEED
20 PARTY.—

21 (1) IN GENERAL.—The guaranteed financial
22 group or nondepository guarantor which is the party
23 guaranteed under a cross-guarantee or stop-loss con-
24 tract may notify the syndicate agent for the direct

1 guarantors under the contract at any time of such
2 party's intention to cancel the contract.

3 (2) CANCELLATION NOT EFFECTIVE UNTIL
4 SUBSTITUTE COVERAGE IS OBTAINED.—The can-
5 cellation of any cross-guarantee or stop-loss contract
6 under paragraph (1) shall not take effect until the
7 canceling party becomes a guaranteed financial
8 group or a nondepository guarantor under another
9 cross-guarantee or stop-loss contract.

10 (3) ALLOWING NONDEPOSITORY GUARANTORS
11 TO EXIT THE BUSINESS.—Notwithstanding para-
12 graph (2), a cancellation of a stop-loss contract by
13 a nondepository guarantor shall take effect imme-
14 diately if the nondepository guarantor—

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

18 (B) has transferred any remaining risk
19 under any cross-guarantee or stop-loss contract
20 under which such guarantor was formerly a di-
21 rect guarantor to another direct guarantor.

22 (4) CANCELLATION FEE.—The cross-guarantee
23 or stop-loss syndicate under a cross-guarantee or
24 stop-loss contract which is canceled pursuant to
25 paragraph (1) may impose a cancellation fee in an

1 amount determined in accordance with the terms of
2 the contract.

3 (j) CONTINUED EFFECTIVENESS OF CONTRACTS
4 AFTER CONVERSION OF CHARTER OF DEPOSITORY INSTI-
5 TUTION.—If—

6 (1) any State depository institution becomes a
7 Federal depository institution;

8 (2) any Federal depository institution becomes
9 a State depository institution;

10 (3) any bank becomes a savings association;

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

12 (5) any depository institution in any other way
13 modifies its legal status,

14 through a conversion of the charter of the depository insti-
15 tution, any cross-guarantee contract under which the insti-
16 tution is a guaranteed depository institution and which is
17 in effect immediately before such conversion shall remain
18 in effect after the conversion.

19 (k) CONTINUING APPLICABILITY OF OBLIGATIONS
20 UNDER THE CONTRACTS.—

21 (1) NO VOIDING OR RESCINDING OF CON-
22 TRACTS.—No party to a cross-guarantee or stop-loss
23 contract may void or rescind the contract, regardless
24 of any defense to the existence or enforceability of

1 the contract that might exist under Federal or State
2 law.

3 (2) NO EXCUSES TO PERFORMANCE.—Notwith-
4 standing any provision of Federal or State law, no
5 excuse for the failure to perform any obligation
6 under a cross-guarantee or stop-loss contract shall
7 be effective.

8 (3) NONCOMPLIANCE DOES NOT AFFECT OBLI-
9 GATIONS.—A party to a cross-guarantee or stop-loss
10 contract shall remain obliged under the contract re-
11 gardless of whether—

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

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

16 (I) DISTRIBUTION OF LOSSES BETWEEN PRIOR AND
17 SUCCESSOR SYNDICATES.—

18 (1) CLAIMS-MADE GUARANTEE.—Subject to
19 paragraph (2), as between two or more cross-guar-
20 antee or stop-loss syndicates which have over time
21 guaranteed a particular guaranteed party, a cross-
22 guarantee obligation shall lie with the syndicate
23 which was the cross-guarantee or stop-loss syndicate
24 at the time a cause of action described under section

1 117(f)(1)(A)(i) was filed with respect to the obliga-
2 tion.

3 (2) EXCEPTION FOR STOP-LOSS OBLIGA-
4 TIONS.—The obligation of direct guarantors under
5 section 113(a) shall lie with the cross-guarantee syn-
6 dicate described under paragraph (2)(A) of such
7 subsection.

8 (m) SUBSTITUTION OF DIRECT GUARANTORS.—

9 (1) AUTHORIZATION OF TRANSFERS SUBJECT
10 TO CGRC APPROVAL.—

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

19 (B) TRANSFER OF LONG-TAIL OBLIGA-
20 TIONS.—A person which was formerly a direct
21 guarantor under a cross-guarantee or stop-loss
22 contract which was formerly, but no longer is,
23 in effect may transfer to any person which is a
24 designated direct guarantor under section
25 116(b) any residual rights, privileges, duties

1 and obligations under the contract, subject to
2 the approval of the Corporation (pursuant to
3 section 123 of this title).

4 (2) TRANSFEROR NO LONGER OBLIGED ON
5 CONTRACT.—Notwithstanding any Federal or State
6 law, a transferor of an interest under paragraph (1)
7 shall not be obliged to perform the transferee’s obli-
8 gations under the contract should the transferee fail
9 to perform.

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

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

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

1 (B) LOSSES ON CROSS-GUARANTEE OBLI-
2 GATIONS.—The transferor shall be liable for
3 any losses due to a loss event (as defined in sec-
4 tion 113(a)) occurring prior to a transfer under
5 paragraph (1) and the transferee shall be liable
6 for any losses due to a loss event after the
7 transfer.

8 (n) SYNDICATE VOTING RULES.—

9 (1) PROPORTIONAL VOTING.—Each cross-guar-
10 antee and stop-loss contract shall provide that a di-
11 rect guarantor's voting rights in the cross-guarantee
12 or stop-loss syndicate shall be proportional to such
13 guarantor's interest in the syndicate.

14 (2) VARIATIONS PERMITTED IN VOTING RE-
15 QUIREMENTS.—A cross-guarantee or stop-loss con-
16 tract may provide that the number of votes needed
17 to approve an action by a cross-guarantee or stop-
18 loss syndicate under the contract may differ depend-
19 ing upon the action on which a vote is taken.

20 (o) GUARANTEED PARTY CAN BE COVERED ONLY
21 UNDER ONE CONTRACT.—No guaranteed party under
22 any cross-guarantee or stop-loss contract may be a guar-
23 anteed party under another cross-guarantee or stop-loss
24 contract.

1 (p) AUTHORITY OF THE CGRC TO DIRECT TRANS-
2 FER.—

3 (1) IN GENERAL.—If any merger, acquisition,
4 or other combination of two or more direct guaran-
5 tors within any cross-guarantee or stop-loss syn-
6 dicate occurs which causes the contract to materially
7 exceed the limitations set forth in section 114(b)(1)
8 or paragraph (1) or (2) of section 115(b), the Cor-
9 poration may issue an order directing the merged
10 guarantor to obtain a successor for that part of the
11 guarantor's interest that exceeds the statutory limit.

12 (2) EXTENT OF GUARANTEED PARTY'S ABILITY
13 TO BLOCK TRANSFER.—In the case of any transfer
14 under paragraph (1), a guaranteed party may bar
15 the transfer under the authority of subsection
16 (m)(3) if such party demonstrates that that transfer
17 of the interest to a particular guarantor would raise
18 reasonable competitive concerns.

19 (q) MERGER OF TWO OR MORE GUARANTEED PAR-
20 TIES.—After any merger, acquisition, or other combina-
21 tion of two or more guaranteed parties, the successor par-
22 ty's cross-guarantee or stop-loss contract shall meet the
23 same requirements under section 114(b)(1) or paragraph
24 (1) or (2) of section 115(b), that the successor would have

1 to meet if the successor sought to become a guaranteed
2 party under a new cross-guarantee or stop-loss contract.

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

6 (s) BAR ON REINSURANCE.—Subject to sections
7 112(a)(2) and 112(b)(2), a direct guarantor may not rein-
8 sure such guarantor's interest in a cross-guarantee or
9 stop-loss contract.

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

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

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

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

24 (A) DEPOSITS.—

1 (i) BANKS AND SAVINGS ASSOCIA-
2 TIONS.—In the case of a guaranteed de-
3 pository institution, all deposits.

4 (ii) BRANCHES OF FOREIGN DEPOSI-
5 TORY INSTITUTIONS.—In the case of a
6 guaranteed banking office, all deposits of
7 such office payable at a location within the
8 United States.

9 (B) LOANS AND ADVANCES FROM A DI-
10 RECT GUARANTOR, FEDERAL RESERVE BANK,
11 OR FEDERAL HOME LOAN BANK.—All loans and
12 advances from a direct guarantor, a Federal
13 Reserve Bank, or a Federal home loan bank.

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

18 (D) BALANCES DUE CLEARINGHOUSES,
19 THE FEDERAL RESERVE, AND IN SETTLEMENT
20 OF OTHER TRANSACTIONS.—All obligations
21 owed to clearinghouses, to the Federal Reserve
22 for funds transfers, and to other funds and se-
23 curities clearance and settlement systems.

24 (E) CROSS-GUARANTEE OBLIGATIONS.—
25 Cross-guarantee obligations for which the guar-

1 anted company is liable as a direct guarantor
2 under any other cross-guarantee or stop-loss
3 contract.

4 (F) CERTAIN OTHER OBLIGATIONS.—All
5 direct and contingent liabilities under any con-
6 tract or commitment under—

7 (i) any letter of credit or bankers' ac-
8 ceptance; and

9 (ii) any securities contract, commodity
10 contract, forward contract, repurchase
11 agreement, or swap agreement (as such
12 terms are defined in section 11(e)(8)(D) of
13 the Federal Deposit Insurance Act).

14 (G) LIABILITY UNDER RECOURSE AGREE-
15 MENTS.—Any liability under recourse agree-
16 ments that arises when a guaranteed company
17 or guaranteed banking office sells loans or
18 other assets.

19 (H) CERTAIN LINES OF CREDIT.—Any
20 binding commitment to lend funds.

21 (I) ACCRUED INTEREST.—Any accrued in-
22 terest on an underlying obligation which is a
23 guaranteed obligation.

24 (J) FRAUD RELATED TO SUBORDINATED
25 DEBT.—The liability of any guaranteed party

1 for damages due to fraudulent actions of such
2 party related to marketing subordinated debt.

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

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

15 (A) SUBORDINATED DEBT.—

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

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

1 the debtholder by a check, wire transfer, or
2 other order of the debtholder.

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

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

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

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

1 (C) JUDGMENTS AND SETTLEMENTS.—

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

8 (b) RISK DIVERSIFICATION.—

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

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
Greater than \$1,000,000,000 but less than or equal to \$10,000,000,000	1.5	200
More than \$10,000,000,000	1.0	250

1 (2) ADJUSTMENT OF DOLLAR AMOUNTS FOR
2 INFLATION.—The amounts contained in the table in
3 paragraph (1) relating to the aggregate assets of
4 guaranteed parties under any cross-guarantee con-
5 tract shall be adjusted annually by the Corporation,
6 after the end of the one-year period beginning on the
7 date of the enactment of this Act, based on the
8 change in the deflator for the gross domestic prod-
9 uct.

10 (c) BASIS FOR CALCULATING EQUITY CAPITAL.—
11 Each cross-guarantee contract shall describe the manner
12 in which the equity capital of the guaranteed financial
13 group shall be calculated for purposes of the contract.

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

20 (e) INTERNAL GUARANTEES.—A guaranteed com-
21 pany under any cross-guarantee contract shall be jointly

1 and severally liable to the direct guarantors under such
2 contract for any loss incurred by the guarantors in connec-
3 tion with the cross-guarantee obligations of the guarantors
4 to any other guaranteed company under such contract.

5 (f) DELEGATION OF PERFORMANCE OF GUARAN-
6 TEED OBLIGATIONS.—

7 (1) IN GENERAL.—No guaranteed company or
8 guaranteed banking office may delegate or assign
9 the performance of a guaranteed obligation unless
10 the person to which the performance is delegated or
11 assigned is a guaranteed company or guaranteed
12 banking office.

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

21 **SEC. 115. REQUIREMENTS APPLICABLE ONLY TO STOP-**
22 **LOSS CONTRACTS.**

23 (a) OBLIGATIONS GUARANTEED UNDER A STOP-
24 LOSS CONTRACT.—

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

5 (2) NO OTHER GUARANTEED OBLIGATIONS.—
6 Except for the obligations described in paragraph
7 (1), no obligation of a nondepository guarantor may
8 be a guaranteed obligation.

9 (b) RISK DIVERSIFICATION.—

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

14 (2) SECOND-TIER GUARANTORS.—The direct
15 guarantors under any stop-loss contract shall have,
16 in the aggregate, no fewer than one hundred and
17 fifty direct guarantors.

18 **SEC. 116. ELIGIBILITY AND REQUIREMENTS FOR DIRECT**
19 **GUARANTORS.**

20 (a) ELIGIBILITY.—

21 (1) IN GENERAL.—No person may become a di-
22 rect guarantor unless such person is a guaranteed
23 company or a nondepository guarantor.

24 (2) NONDEPOSITORY GUARANTOR.—

1 (A) IN GENERAL.—Subject to subpara-
2 graphs (B) and (C) of this paragraph and sub-
3 section (c) of this section, any person may be
4 a nondepository guarantor.

5 (B) INELIGIBILITY OF DEPOSITORY INSTI-
6 TUTIONS.—

7 (i) IN GENERAL.—No depository insti-
8 tution, or subsidiary of a depository insti-
9 tution, may be a nondepository guarantor.

10 (ii) RULE OF CONSTRUCTION FOR
11 FOREIGN BANKS.—Clause (i) shall not be
12 construed as prohibiting a foreign bank
13 which has a branch in the United States
14 from being a nondepository guarantor.

15 (C) INELIGIBILITY OF GOVERNMENT ENTI-
16 TIES.—

17 (i) IN GENERAL.—No entity which—

18 (I) has direct or indirect taxing
19 authority;

20 (II) is a government sponsored
21 enterprise; or

22 (III) may issue securities in
23 which the holders of the securities are
24 exempt from taxation under State or
25 Federal law,

1 may be a nondepository guarantor.

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

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

14 (b) DESIGNATED DIRECT GUARANTOR.—

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

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

1 tract shall designate which guaranteed company
2 may, in accordance with paragraph (1), be a direct
3 guarantor.

4 (c) FINANCIAL RESOURCE REQUIREMENTS FOR
5 NONDEPOSITORY GUARANTORS.—

6 (1) NET WORTH.—No person may become a
7 nondepository guarantor unless such person has a
8 net worth of at least \$100,000,000 at the time such
9 person would, but for this paragraph, become a di-
10 rect guarantor under a cross-guarantee or stop-loss
11 contract.

12 (2) ASSET REQUIREMENTS.—Only assets main-
13 tained within the United States and subject to the
14 jurisdiction of a United States court may be taken
15 into account for the purpose of meeting the require-
16 ments of paragraph (1).

17 (d) RISK DIVERSIFICATION REQUIREMENTS FOR DI-
18 RECT GUARANTORS.—

19 (1) PROJECTED ANNUAL PREMIUM CAPACITY
20 AND PROJECTED ANNUAL PREMIUM LIMIT.—A per-
21 son may not become a direct guarantor under a
22 cross-guarantee or stop-loss contract if, upon the
23 contract (but for this paragraph) taking effect—

24 (A) the sum of the estimated annual pre-
25 mium which the person would receive as a di-

1 rect guarantor under the contract and the per-
2 son's projected annual premium income would
3 exceed such person's projected annual premium
4 capacity as of—

5 (i) in the case of a contract which
6 would take effect on or before the fifteenth
7 day of any calendar month, the second cal-
8 endar month preceding such calendar
9 month; or

10 (ii) in the case of a contract which
11 would take effect after the fifteenth day of
12 any calendar month, the end of the cal-
13 endar month preceding such calendar
14 month; or

15 (B) the estimated annual premium which
16 the person would receive as a direct guarantor
17 under the contract would exceed such person's
18 projected annual premium limit as of—

19 (i) in the case of a contract which
20 would take effect on or before the fifteenth
21 day of any calendar month, the second cal-
22 endar month preceding such calendar
23 month; or

24 (ii) in the case of a contract which
25 would take effect after the fifteenth day of

1 any calendar month, the end of the cal-
2 endar month preceding such calendar
3 month.

4 (2) CALCULATION OF PROJECTED ANNUAL PRE-
5 MIUM.—

6 (A) IN GENERAL.—The syndicate agent
7 under any cross-guarantee or stop-loss contract
8 shall determine the projected annual premium
9 earned by any direct guarantor for any calendar
10 month by calculating the amount of such guar-
11 antor’s share of the premium accrued under the
12 contract during such month and then
13 annualizing such amount.

14 (B) FIRST TWO MONTHS.—During the
15 first two calendar months in which any cross-
16 guarantee or stop-loss contract is in effect, the
17 syndicate agent shall determine the projected
18 annual premium under the contract for each of
19 these two calendar months by annualizing the
20 premium rate in effect on the date the contract
21 becomes effective.

22 (3) CALCULATION OF THE ESTIMATED ANNUAL
23 PREMIUM FOR THE APPROVED CONTRACT.—

24 (A) IN GENERAL.—For purposes of para-
25 graph (1), the term “estimated annual pre-

1 mium” means the annualized premium rate
2 likely to be in effect on the date the contract
3 becomes effective.

4 (B) SYNDICATE AGENT ESTIMATE.—The
5 proposed syndicate agent for the contract shall
6 make a reasonable estimate of the amount in
7 paragraph (1) within five days prior to the date
8 on which the contract is to become effective.

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

18 (A) in the case of contract which would be-
19 come effective on or before the fifteenth day of
20 any calendar month, the second calendar month
21 preceding such calendar month; and

22 (B) in the case of a contract which would
23 become effective after the fifteenth day of any
24 calendar month, the calendar month preceding
25 such calendar month.

1 (5) ADJUSTMENT OF PROJECTED ANNUAL PRE-
2 MIUM CAPACITY FOR CHANGED CIRCUMSTANCES.—

3 (A) AUTHORIZATION.—The Corporation
4 may issue rules adjusting the projected annual
5 premium capacity below 3 percent if the Cor-
6 poration determines that the percentage is too
7 high to ensure an adequate capital base for the
8 cross-guarantee system.

9 (B) LIMITS ON ADJUSTMENT.—The Cor-
10 poration may adjust the projected annual pre-
11 mium capacity upward if the Corporation has
12 previously adjusted the capacity percentage
13 downward under subparagraph (A), except that
14 the Corporation may not establish a projected
15 annual premium capacity in excess of 3 percent.

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

23 **SEC. 117. PROVISIONS RELATING TO CROSS-GUARANTEE**
24 **AND STOP-LOSS SYNDICATES.**

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

1 (1) SYNDICATE AGENT IS AGENT OF DIRECT
2 GUARANTORS.—

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

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

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

14 (ii) duties to the Corporation as speci-
15 fied in this title.

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

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

1 (B) COLLECT PREMIUMS.—Collect the pre-
2 miums due to the direct guarantors under such
3 contract.

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

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

15 (B) of the projected annual premium due
16 each direct guarantor, as of the end of the prior
17 calendar month.

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

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

22 (i) determine, at the request of any
23 current or prospective creditor of a guar-
24 anteed company or guaranteed banking of-
25 fice under such contract, whether, assum-

1 ing that the company or office has or will
2 have an obligation to the creditor, such ob-
3 ligation would be a guaranteed obligation
4 under the contract; and

5 (ii) promptly notify the current or
6 prospective creditor of the agent's deter-
7 mination.

8 (B) DETERMINATION BINDING ON SYN-
9 DICATE.—Any notification of determination
10 under subparagraph (A) shall be binding on the
11 cross-guarantee syndicate.

12 (C) FEE.—A syndicate agent may charge
13 a creditor a fee for making the determination
14 and notifying the creditor under subparagraph
15 (A).

16 (5) AGREEMENT GOVERNING THE RELATION-
17 SHIP BETWEEN THE SYNDICATE AND SYNDICATE
18 AGENT.—

19 (A) IN GENERAL.—Any agreement between
20 the direct guarantors and the syndicate agent
21 governing the relationship between such parties
22 must be included in the cross-guarantee or
23 stop-loss contract.

24 (B) LIMITS ON SIDE CONTRACTS.—No di-
25 rect guarantor or group of director guarantors

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

6 (6) AUTHORIZATION OF INFORMATION SHARING
7 AMONG SYNDICATE AGENTS.—The Corporation may
8 prescribe regulations allowing syndicate agents to
9 share information if the Corporation finds that the
10 benefits of such information sharing outweigh the
11 anticompetitive risks of such sharing.

12 (b) EXEMPTION FROM SECURITIES LAWS.—

13 (1) IN GENERAL.—Notwithstanding Federal or
14 State law, interests in any cross-guarantee or stop-
15 loss syndicate are not securities for any purpose.

16 (2) ORGANIZING SYNDICATES.—Any person or
17 group of persons may organize and market the risk
18 of loss represented by the participation of any per-
19 son as a direct guarantor under any cross-guarantee
20 or stop-loss contract.

21 (c) TAXATION OF SYNDICATES.—

22 (1) TREATED AS PARTNERSHIP.—Any cross-
23 guarantee or stop-loss syndicate shall be treated as
24 a partnership for purposes of the Internal Revenue
25 Code of 1986.

1 (2) CONSOLIDATED RETURNS BY SYNDICATE
2 AGENT.—A syndicate agent may file an annual in-
3 formation return with respect to all syndicates for
4 which such agent is an agent, and all distributions
5 with respect to such syndicates, on a consolidated
6 basis.

7 (3) TAX EXEMPT STATUS.—Any syndicate
8 under any cross-guarantee or stop-loss contract any
9 income or gross receipts (including premiums), and
10 any activity of the syndicate shall be exempt from all
11 taxation imposed by any State, county, municipality,
12 or local taxing authority.

13 (d) REPLACEMENT OF SYNDICATE AGENTS.—

14 (1) IN GENERAL.—The cross-guarantee or stop-
15 loss syndicate under any cross-guarantee or stop-loss
16 contract may at any time and without cause replace
17 the syndicate agent under such contract, subject to
18 the guaranteed financial group or nondepository
19 guarantor's approval of the new syndicate agent, by
20 amending the contract and obtaining the Corpora-
21 tion's approval of the new syndicate agent under sec-
22 tion 123.

23 (2) NO EFFECT ON CONTRACT.—The replace-
24 ment of a syndicate agent by the direct guarantors

1 in accordance with paragraph (1) shall not affect the
2 continuing existence or enforceability of the contract.

3 (3) WITHDRAWAL OF SYNDICATE AGENT.—

4 (A) IMMEDIATE SUBMISSION OF AMENDED
5 CONTRACT WITH NEW SYNDICATE AGENT.—If a
6 syndicate agent should resign or otherwise cease
7 providing required services under a cross-guar-
8 antee or stop-loss contract, whether wrongfully,
9 as allowed under such contract, or for any other
10 reason, the cross-guarantee or stop-loss syn-
11 dicate shall immediately submit an amendment
12 to the contract, with a successor syndicate
13 agent named in the amendment, to the Cor-
14 poration for approval.

15 (B) INTERIM CGRC APPOINTMENT.—The
16 Corporation may appoint a successor syndicate
17 agent to serve until a cross-guarantee or stop-
18 loss syndicate has complied with the require-
19 ments under subparagraph (A).

20 (e) CAUSE OF ACTION BY THE SYNDICATE AGAINST
21 THE SYNDICATE AGENT.—

22 (1) STANDARD OF LIABILITY.—Unless other-
23 wise agreed, a cross-guarantee or stop-loss syndicate
24 shall have a cause of action against the syndicate
25 agent for losses accrued by members of the syn-

1 dicate under a cross-guarantee or stop-loss contract
2 only if the syndicate agent consciously disregarded
3 substantial and unjustifiable risks being taken by
4 the guaranteed party under the contract.

5 (2) CAUSE OF ACTION BELONGS TO THE SYN-
6 DICATE.—An action against a syndicate agent under
7 paragraph (1) may be brought solely by the syn-
8 dicate as a whole and no individual member of the
9 syndicate shall have a cause of action against the
10 syndicate agent.

11 (f) CAUSES OF ACTION AGAINST A SYNDICATE OR
12 SYNDICATE AGENT.—

13 (1) PROCEDURAL RULES GOVERNING CAUSES
14 OF ACTION AGAINST A SYNDICATE.—

15 (A) IN GENERAL.—A cross-guarantee or
16 stop-loss syndicate shall be sued as an entity in
17 any cause of action based on—

18 (i) the syndicate's breach of a cross-
19 guarantee or stop-loss contract;

20 (ii) the syndicate's vicarious liability
21 for the acts or omissions of the syndicate
22 agent under the contract; or

23 (iii) an action taken by a cross-guar-
24 antee or stop-loss syndicate after voting
25 approval under section 113(n).

1 (B) SEVERAL LIABILITY.—In the case of
2 any cause of action under subparagraph (A),
3 the liability of any direct guarantor shall be
4 several and proportionate to such guarantor's
5 interest in the cross-guarantee or stop-loss syn-
6 dicate.

7 (C) SERVICE OF PROCESS.—For purposes
8 of any action described under subparagraph
9 (A)—

10 (i) the syndicate agent shall be the
11 agent for all direct guarantors for service
12 of process for actions brought against the
13 syndicate; and

14 (ii) service of process upon a syn-
15 dicate agent shall serve as the exclusive
16 manner of service of process upon any di-
17 rect guarantor under the contract.

18 (2) LIMITS ON LIABILITY.—A cross-guarantee
19 syndicate, stop-loss syndicate, direct guarantor, or
20 syndicate agent shall not be liable under any Federal
21 or State law to any person on a claim which is based
22 on—

23 (A) any change or inaccuracy in the pre-
24 mium rate under a cross-guarantee or stop-loss
25 contract;

1 (B) the inadequacy of a syndicate agent's
2 monitoring of a guaranteed party; or

3 (C) the enforcement or nonenforcement of
4 any provision under a cross-guarantee or stop-
5 loss contract.

6 (3) LIABILITY FOR ACTS OF GUARANTEED
7 PARTY.—A cross-guarantee syndicate, stop-loss syn-
8 dicate, direct guarantor, or syndicate agent shall not
9 be liable for an alleged tortious conduct, breach of
10 contract, or violation of statutory obligation by an
11 guaranteed party under the contract.

12 (4) BAR ON PUNITIVE DAMAGES.—No punitive
13 damages shall be allowed in any action against a
14 cross-guarantee syndicate, stop-loss syndicate, direct
15 guarantor, or syndicate agent in the syndicate's,
16 guarantor's, or agent's capacity as such under a
17 cross-guarantee or stop-loss contract.

18 (g) BAR ON CERTAIN CAUSES OF ACTION BY SYN-
19 DICATES AND SYNDICATE AGENTS.—A cross-guarantee
20 syndicate, stop-loss syndicate, or syndicate agent under a
21 cross-guarantee or stop-loss contract shall have no cause
22 of action against any accountant, attorney, auditor, ap-
23 praiser, or other person based on any such person's activi-
24 ties relating to the guaranteed party under the contract

1 unless the person knowingly and materially misled the
2 syndicate or syndicate agent.

3 (h) RELATIONSHIP AMONG SYNDICATE MEMBERS.—

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

9 (2) SYNDICATE MAY VOTE TO APPOINT A MEM-
10 BER AS AGENT FOR THE SYNDICATE.—A cross-guar-
11 antee or stop-loss syndicate may, consistent with
12 section 113(n), vote to appoint one or more direct
13 guarantors under the contract as an agent for the
14 syndicate.

15 (i) REGISTRATION OF SYNDICATES.—

16 (1) IN GENERAL.—The Corporation shall pre-
17 scribe regulations providing for the registering of
18 cross-guarantee and stop-loss syndicates for the pur-
19 pose solely of allowing persons a reference by which
20 to identify individual syndicates.

21 (2) REGISTRATION UPON SUBMISSION OF THE
22 CONTROL FOR APPROVAL.—The regulations under
23 paragraph (1) shall provide for the automatic reg-
24 istration of a cross-guarantee or stop-loss syndicate

1 upon submission for approval of a cross-guarantee
2 or stop-loss contract under section 123.

3 (3) DISTINGUISHING AMONG SYNDICATES.—
4 The regulations under paragraph (1) shall reference
5 a cross-guarantee or a stop-loss syndicate as a
6 unique syndicate with permanent identification.

7 **SEC. 118. ASSUMPTION OF CONTROL OF A GUARANTEED**
8 **COMPANY BY A CROSS-GUARANTEE SYN-**
9 **DICATE.**

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

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

20 (2) EXPIRATION.—Immediately after the expi-
21 ration of the cross-guarantee contract unless a suc-
22 cessor cross-guarantee contract has taken effect.

23 (b) RIGHT OF GUARANTEED PARTY TO SEEK TO
24 STAY ASSUMPTION OF CONTROL.—

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

4 (2) TIME LIMIT FOR OBJECTING TO ASSUMP-
5 TION OF CONTROL.—

6 (A) IN GENERAL.—Any action under para-
7 graph (1) shall be filed either within thirty days
8 after the notice of cancellation under section
9 113(h)(1) is given or more than sixty days prior
10 to the expiration of the contract, whichever the
11 case may be.

12 (B) EXCEPTION IF SUCCESSOR CONTRACT
13 IS OBTAINED.—Subparagraph (A) shall not
14 apply to a guaranteed company which has, sub-
15 sequent to the notice of cancellation or the date
16 sixty days prior to expiration, become guaran-
17 teed under a successor cross-guarantee con-
18 tract.

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

23 (4) BASIS OF DETERMINATION.—In any action
24 under paragraph (1), the court shall stay the as-
25 sumption of control by a cross-guarantee syndicate

1 only if the conditions for assuming control under
2 subsection (a) have not been met.

3 (c) RIGHTS OF CROSS-GUARANTEE SYNDICATE TO
4 ENJOIN VIOLATIONS OF THE CONTRACT UNTIL ASSUM-
5 ING CONTROL.—

6 (1) INJUNCTIVE REMEDIES.—Upon giving no-
7 tice of cancellation of the cross-guarantee contract
8 under section 113(h)(1) or the expiration of the con-
9 tract, the cross-guarantee syndicate shall be granted
10 injunctive relief to enforce any restrictions imposed
11 under the contract.

12 (2) APPOINTMENT OF A CONSERVATOR.—

13 (A) IN GENERAL.—Upon giving notice of
14 cancellation of the cross-guarantee contract
15 under section 113(h)(1) or the expiration of the
16 contract, the cross-guarantee syndicate may
17 seek the appointment of a conservator to serve
18 until the syndicate can assume control under
19 subsection (a) and a court may appoint such a
20 conservator, but the court may appoint a con-
21 servator only if the remedies under paragraph
22 (1) are not adequate to protect the interests of
23 the cross-guarantee syndicate.

24 (B) COURT SHALL APPOINT A CONSERVA-
25 TOR FROM A LIST SUBMITTED BY CGRC.—The

1 court shall appoint a conservator under sub-
2 paragraph (A) only from a list supplied by the
3 Corporation to the court of five disinterested
4 persons who are qualified and willing to serve
5 as the conservator in the case, and no such per-
6 son may be a regulatory agency or an employee
7 of the regulatory agency.

8 (C) GUARANTEED COMPANY CAN STILL
9 OBTAIN A SUCCESSOR CONTRACT.—

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

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

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

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

3 (1) GENERAL POWERS.—

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

11 (i) conduct all business of the guaran-
12 teed company;

13 (ii) take over the books, records, and
14 assets of the guaranteed company;

15 (iii) collect all obligations and money
16 due the company;

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

24 (v) preserve and conserve the assets
25 and property of such company.

1 (B) DISPOSITION OF COMPANY.—The
2 cross-guarantee syndicate which assumes con-
3 trol of a guaranteed company under subsection
4 (a) may—

5 (i) merge the guaranteed company
6 with another guaranteed company;

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

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

12 (2) DUTIES.—

13 (A) PAYMENT OF OBLIGATIONS.—

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

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

1 of the cross-guarantee syndicate liable for
2 the obligations of the guaranteed company
3 which are not guaranteed obligations.

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

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

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

24 (3) SPECIAL FDIC POWERS DO NOT APPLY.—
25 The rights and obligations of a guaranteed company

1 that a cross-guarantee syndicate has assumed con-
2 trol of under this section shall not be limited by any
3 statutory law or common law which grants, or may
4 be construed as granting, special rights to the Fed-
5 eral Deposit Insurance Corporation to repudiate con-
6 tracts of an insured depository institution for which
7 the Federal Deposit Insurance Corporation has been
8 appointed a conservator or receiver.

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

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

23 (g) SECOND-TIER GUARANTORS CANNOT DISPUTE
24 LOSSES.—A direct guarantor of any direct guarantor
25 which is a member of a cross-guarantee syndicate which

1 assumes control of a guaranteed party under subsection
2 (a) may not bring a cause of action against the cross-guar-
3 antee syndicate based on damage arising out of the syn-
4 dicate's decision to assume control or failure to minimize
5 losses under the cross-guarantee contract.

6 **SEC. 119. JUDICIAL REVIEW OF CONTRACTS AND RELATED**
7 **ACTIONS.**

8 (a) JURISDICTION OF FEDERAL COURTS.—

9 (1) IN GENERAL.—For purposes of section
10 1331 of title 28, United States Code, any action
11 arising under any cross-guarantee or stop-loss con-
12 tract shall be deemed to arise under Federal law.

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

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

23 (b) THIRD-PARTY BENEFICIARY ACTIONS.—

24 (1) RESTRICTIONS ON THIRD-PARTY BENE-
25 FICIARY ACTIONS.—Notwithstanding any State law,

1 no creditor of any guaranteed party under any cross-
2 guarantee contract may bring an action against the
3 cross-guarantee syndicate under such contract for
4 failure to perform any cross-guarantee obligation
5 under the contract without first having obtained a
6 judgment against the guaranteed party for failure to
7 perform such obligation, unless the direct guarantors
8 have assumed control of the guaranteed party under
9 section 118(a).

10 (2) INTERVENTION BY SYNDICATE.—

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

19 (B) RIGHT OF INTERVENTION BELONGS
20 TO THE SYNDICATE AS A WHOLE.—Any inter-
21 vention under subparagraph (A) shall be exer-
22 cised by a cross-guarantee or stop-loss syn-
23 dicate as a whole and no individual member of
24 a cross-guarantee or stop-loss syndicate shall

1 have a right to intervene in any action de-
2 scribed in subparagraph (A).

3 (c) APPLICABLE STATE LAW.—

4 (1) STATE CONTRACT LAW AS INTERSTITIAL
5 LAW.—Unless otherwise indicated in this title, appli-
6 cable State law shall apply under this title to any
7 cross-guarantee or stop-loss contract.

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

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

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

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

16 (a) CREATION.—

17 (1) IN GENERAL.—There is hereby established
18 as a body corporate the “Cross Guarantee Regula-
19 tion Corporation” which shall have succession until
20 dissolved by Act of Congress.

21 (2) CORPORATION NOT AN AGENCY.—The Cor-
22 poration shall not be an agency or establishment of
23 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 of
6 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 and shall
13 be removable by the Secretary without cause at
14 any time.

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

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

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

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

13 (3) CHAIRMAN AND VICE CHAIRMAN.—The
14 President shall designate a chairman and vice chair-
15 man from among those directors appointed under
16 paragraph (2)(B)(iii) of this subsection.

17 (4) TERMS.—

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

22 (B) TRANSITION RULES.—

23 (i) STAGGERED TERMS.—Of the direc-
24 tors first appointed under paragraph
25 (2)(B)—

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

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

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

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

17 (ii) TIMING OF PARTICULAR DIREC-
18 TOR'S TERM.—

19 (I) INDUSTRY APPOINTEES'
20 TERMS WILL END IN DIFFERENT
21 YEARS.—One of the directors ap-
22 pointed under each of the clauses
23 (i)(I), (II), (III), (IV) shall consist of
24 the four directors appointed under
25 paragraphs (2)(B) (i) and (ii).

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

7 (iii) TREASURY DIRECTOR MUST BE
8 APPOINTED SOON AFTER ENACTMENT.—
9 The Secretary of the Treasury shall ap-
10 point the director designated under para-
11 graph (2)(A) within thirty days after en-
12 actment of this Act.

13 (C) VACANCIES.—

14 (i) APPOINTMENT IN SAME MAN-
15 NER.—A vacancy on the board of directors
16 shall be filled in the same manner as the
17 original appointment was made.

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

23 (D) REMAINING A DIRECTOR UNTIL A SUC-
24 CESSOR HAS TAKEN OFFICE.—A director may

1 serve after the expiration of his term until his
2 successor has taken office.

3 (5) COMPENSATION.—

4 (A) CHAIRMAN AND VICE CHAIRMAN.—The
5 compensation of the chairman and vice chair-
6 man shall be as provided in the bylaws of the
7 Corporation.

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

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

17 (7) BOARD OF DIRECTORS TO DETERMINE OF-
18 FICERS.—The officers of the Corporation shall be
19 employed at the will of the board of directors.

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

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

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

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

13 (e) BYLAWS AND RULEMAKING.—

14 (1) BYLAWS.—

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

21 (B) CHANGES BECOME EFFECTIVE UNLESS
22 THE TREASURY DEPARTMENT OBJECTS.—Any
23 bylaws submissions under subparagraph (A)
24 shall become effective thirty days after the fil-

1 ing of such changes with the Secretary of the
2 Treasury, unless—

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

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

15 (2) RULEMAKING.—

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

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

21 (ii) the Corporation demonstrates
22 that)

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

1 (II) improves the efficiency of the
2 cross-guarantee system.

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

8 (C) RULEMAKING PROCEDURES.—

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

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

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

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

12 (D) JUDICIAL REVIEW.—

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

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

22 (iii) FINALITY.—A rule must be final
23 to be reviewable under this subparagraph.

24 (E) INITIAL DEADLINE.—For any rule cov-
25 ered by subparagraph (A)(i), the Corporation

1 shall issue a final rule within one year after
2 passage of this Act.

3 (f) FUNDING.—

4 (1) INITIAL BORROWING.—

5 (A) BIF FINANCING.—The Corporation
6 shall have the power to borrow up to
7 \$20,000,000 from the Bank Insurance Fund.

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

15 (C) REPAYMENT.—The Corporation shall
16 repay any borrowing under subparagraph (A)
17 within five years after the cross-guarantee acti-
18 vation date from income obtained under para-
19 graph (2).

20 (D) INTEREST ON LOAN.—

21 (i) TIMING OF PAYMENTS.—No prin-
22 cipal or interest payments on the loan de-
23 scribed in subparagraph (A) shall be due
24 prior to one year after the cross-guarantee
25 activation date.

1 (ii) INTEREST RATE.—The interest
2 rate on the borrowing under this para-
3 graph shall be equal to .25 percent plus
4 the average annual percentage yield on
5 three-month bills issued by the Secretary
6 of the Treasury under section 3104(a) of
7 title 31, United States Code.

8 (2) FINANCING FROM OPERATIONS.—

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

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

19 (i) submits a cross-guarantee, stop-
20 loss, or group cross-guarantee contract, or
21 amendment thereto, for approval;

22 (ii) requests use of any service pro-
23 vided by the central electronic repository;
24 or

1 (iii) requests a certification under sec-
2 tion 124(b).

3 (g) MISCELLANEOUS PROVISIONS.—

4 (1) INSPECTION OF REPORTS.—

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

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

20 (C) TREASURY ACCESS TO THE CORPORA-
21 TION'S DOCUMENTS.—The Corporation shall
22 provide the Secretary of the Treasury with any
23 document or information which the Secretary in
24 his or her discretion requests.

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

3 (A) WAIVER OF SOVEREIGN IMMUNITY.—

4 The Corporation waives sovereign immunity to
5 the same extent provided for under the Admin-
6 istrative Procedures Act (5 U.S.C. 702).

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

16 (3) EXEMPTION FROM TAXATION.—The Cor-
17 poration, its property, its franchise, capital, reserves,
18 surplus, and its income, shall be exempt from all
19 taxation now or hereafter imposed by the United
20 States or by any State or local taxing authority, ex-
21 cept that any real property or tangible personal
22 property (other than cash and securities) of the Cor-
23 poration shall be subject to State and local taxation
24 to the same extent according to its value as other
25 real and tangible personal property is taxed.

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

3 **SEC. 122. REGULATION OF THE CROSS-GUARANTEE PROC-**
4 **ESS.**

5 (a) CROSS-GUARANTEE REGULATION CORPORATION
6 ENFORCEMENT AUTHORITY.—

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

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

19 (b) LIMITATION ON STATE JURISDICTION.—

20 (1) IN GENERAL.—Notwithstanding any provi-
21 sion of State law, no State may exercise authority
22 over any party to any cross-guarantee or stop-loss
23 contract with respect to—

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

1 (B) the rights, duties, privileges, or obliga-
2 tions of such party under the contract or pursu-
3 ant to this title.

4 (2) RULE OF CONSTRUCTION.—Paragraph (1)
5 shall not be construed as affecting the authority of
6 any State to determine the powers and regulate the
7 activities of State depository institutions.

8 **SEC. 123. APPROVAL PROCESS FOR CROSS-GUARANTEE,**
9 **STOP-LOSS, AND GROUP CROSS-GUARANTEE**
10 **CONTRACTS.**

11 (a) EXPEDITED APPROVAL OF CONTRACTS AND CON-
12 TRACT AMENDMENTS.—

13 (1) NOTICE AND REVIEW AND REQUIRE-
14 MENT.—Except as provided in paragraph (3), no
15 cross-guarantee, stop-loss, or group cross-guarantee
16 contract, and no amendment to any such contract,
17 shall be deemed approved unless—

18 (A) the Corporation has been given fifteen
19 business days to review the contract or amend-
20 ment; and

21 (B) before the end of the fifteen-day period
22 described in subparagraph (A), the Corporation
23 has not issued an order—

24 (i) disapproving the contract or
25 amendment; or

1 (ii) extending the period within which
2 the Corporation may disapprove the con-
3 tract or amendment in accordance with
4 paragraph (6).

5 (2) SUBMISSION OF CONTRACT OR AMENDMENT
6 IN ELECTRONIC FORM.—The Corporation shall pre-
7 scribe regulations requiring that any cross-guaran-
8 tee, stop-loss, or group cross-guarantee contract, and
9 any amendment to such contract, being submitted
10 for review under this subsection shall be submitted
11 in electronic form to the central electronic reposi-
12 tory.

13 (3) NOTICE OF APPROVAL BEFORE END OF DIS-
14 APPROVAL PERIOD.—A cross-guarantee, stop-loss, or
15 group cross-guarantee contract, and any amendment
16 to any such contract, shall be deemed approved be-
17 fore the expiration of the period described in para-
18 graph (1)(A) (or extended in accordance with para-
19 graph (6)) for disapproving such contract if the Cor-
20 poration notifies the parties that the Corporation
21 does not intend to disapprove the contract.

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

24 (A) IN GENERAL.—The syndicate agent
25 under any proposed cross-guarantee, stop-loss,

1 or group cross-guarantee contract, or any
2 amendment to any such contract, submitted to
3 the Corporation for review under paragraph
4 (1), shall also submit to the Corporation with
5 such proposed contract such information and
6 attestations or certifications as the Corporation
7 may require by regulation.

8 (B) LIMITATION ON SCOPE OF INFORMA-
9 TION REQUIRED.—The regulations prescribed
10 by the Corporation under subparagraph (A)
11 may not require the submission of any informa-
12 tion other than information directly necessary
13 for the Corporation to determine whether any
14 proposed cross-guarantee, stop-loss, or group
15 cross-guarantee contract, or amendment there-
16 to, submitted to the Corporation for approval is
17 in compliance with the requirements of this
18 title.

19 (5) ADDITIONAL INFORMATION.—

20 (A) IN GENERAL.—The Corporation may,
21 by specific request in connection with a particu-
22 lar proposed cross-guarantee, stop-loss, or
23 group cross-guarantee contract, or amendment
24 to any contract, submitted to the Corporation,
25 require, on one occasion only, that additional

1 information be submitted with respect to such
2 contract or amendment, except that the Cor-
3 poration may require only such information as
4 may be relevant to—

5 (i) a determination of the extent to
6 which the proposed contract is in compli-
7 ance with the requirements of this title;
8 and

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

11 (B) NOTICE OF EXPLANATION.—For any
12 request for additional information under sub-
13 paragraph (A), the Corporation shall provide a
14 detailed explanation of the specific reasons why
15 such additional information is needed.

16 (6) EXTENSION OF DISAPPROVAL PERIOD.—If,
17 in connection with a particular proposed cross-guar-
18 antee, stop-loss, or group cross-guarantee contract,
19 or any amendment to any such contract, which is
20 submitted to the Corporation, the Corporation re-
21 quests additional information under paragraph (5),
22 the Corporation may by order provide that the Cor-
23 poration shall have any additional period (not to ex-
24 ceed five business days beginning on the date on

1 which the Corporation receives such information)
2 within which to disapprove the proposed contract.

3 (7) REVOCATION OF APPROVAL.—The Corpora-
4 tion may revoke its approval of a contract under this
5 subsection if a court has enjoined the operation of
6 the contract under subsection (e)(2)(B).

7 (b) LIMITED GROUNDS FOR DISAPPROVAL OF PRO-
8 POSED CONTRACT OR AMENDMENT.—The Corporation
9 may disapprove any proposed cross-guarantee, stop-loss or
10 group cross-guarantee contract, or any amendment to any
11 such contract, if and only if—

12 (1) the contract, including any party under the
13 contract, fails to meet the requirements of this title;
14 or

15 (2) the information submitted under subsection
16 (a) was insufficient to determine whether the con-
17 tract and the parties to the contract are in compli-
18 ance with this title.

19 (c) NOTICE OF DISAPPROVAL.—

20 (1) IN GENERAL.—If the Corporation dis-
21 approves any cross-guarantee, stop-loss, or group
22 cross-guarantee contract, or any amendment thereto,
23 the Corporation shall immediately notify the parties
24 to such contract of the disapproval.

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

5 (d) CONDITIONAL APPROVALS.—

6 (1) IN GENERAL.—The Corporation shall pre-
7 scribe regulations which would allow a cross-guaran-
8 tee, stop-loss, or group cross-guarantee contract to
9 be conditionally approved, in a manner otherwise in
10 accordance with this section, if, at the time such
11 conditional approval is granted, all the information
12 required by the Corporation to make a final deter-
13 mination of whether the contract meets the require-
14 ments of this title cannot be known or ascertained.

15 (2) RECONFIRMATION.—The regulations pre-
16 scribed under paragraph (1) shall allow the Corpora-
17 tion, upon receipt of all the information the Cor-
18 poration needs to determine whether the contract
19 meets the requirements of this title, three business
20 days to give the contract a final approval.

21 (3) REPLACEMENT OF GUARANTORS.—The reg-
22 ulations prescribed under paragraph (1) shall allow,
23 without restriction, the replacement of a direct guar-
24 antor with another direct guarantor during the pe-

1 riod between the date of conditional approval and
2 final approval.

3 (e) JUDICIAL REVIEW.—

4 (1) CONTRACTS DISAPPROVED.—

5 (A) IN GENERAL.—Any party to a contract
6 disapproved under this section may seek judicial
7 review of the disapproval of a contract under
8 this section.

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

12 (2) CONTRACTS APPROVED.—

13 (A) IN GENERAL.—Any guaranteed party
14 may seek judicial review of the approval of a
15 contract under this section.

16 (B) INJUNCTIVE RELIEF IF THE CON-
17 TRACT HAS NOT YET TAKEN EFFECT.—If a
18 guaranteed party brings an action under sub-
19 paragraph (A) and the contract approved under
20 this section has not yet become effective accord-
21 ing to the contract's terms, a court may enjoin
22 the operation of the contract if it violates any
23 requirement under this title.

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

1 (i) IN GENERAL.—A cross-guarantee
2 or stop-loss contract may be reviewed only
3 with respect to whether the contract vio-
4 lates section 116(a) or section 125.

5 (ii) REMEDIES.—

6 (I) IN GENERAL.—Any court
7 which holds that a cross-guarantee or
8 stop-loss contract violates section
9 116(a) or section 125 shall order the
10 Corporation to use the remedies avail-
11 able under section 125 to eliminate
12 the violation.

13 (II) INJUNCTIONS DIS-
14 ALLOWED.—No court may enjoin the
15 operation of a cross-guarantee or
16 stop-loss contract.

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

20 (f) REGULATIONS TO AVOID FRAUDULENT SIGNATO-
21 RIES TO CONTRACTS.—

22 (1) IN GENERAL.—The Corporation shall issue
23 regulations which will provide a means, within the
24 time frame of subsection (a), by which, prior to ap-
25 proval of a cross-guarantee, stop-loss, or group

1 cross-guarantee contract, the Corporation can ensure
2 that every party listed as a party to the contract
3 agreed to become a party to the contract.

4 (2) AVOIDING DUPLICATION.—In issuing the
5 regulations under paragraph (1), the Corporation
6 may rely on mechanisms established by the parties
7 to cross-guarantee, stop-loss, or group cross-guaran-
8 tee contracts to ensure that all signatories to the
9 contract agreed to the contract's terms and shall,
10 whenever possible, avoid duplicating such efforts.

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

16 (1) the applicable period for approval under
17 subsection (a)(1) shall be three business days in-
18 stead of fifteen business days;

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

22 (3) the Corporation may disapprove the con-
23 tract amendment under subsection (b) only if the
24 amended contract would violate section 113(m), sec-
25 tion 116, or section 125.

1 **SEC. 124. CENTRAL ELECTRONIC REPOSITORY.**

2 (a) ESTABLISHMENT.—

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

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

18 (3) DIRECT ACCESS FOR ALL GUARANTORS,
19 GUARANTEED PARTIES, AND SYNDICATE AGENTS.—
20 The files in the central electronic repository estab-
21 lished under this section shall be directly and imme-
22 diately accessible by electronic means to any direct
23 guarantor, guaranteed party, and syndicate agent,
24 and any other person who qualifies for access under
25 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) irrefutable 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 regula-
22 tions 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 immediately notify
21 each guaranteed party under each cross-guarantee
22 and stop-loss contract which is part of the closed
23 loop which has the fewest number of contracts that
24 it must obtain a successor cross-guarantee or stop-
25 loss contract; and

1 (2) each guaranteed party under paragraph (1)
2 shall have ten business days upon notification to
3 submit a successor contract to the Corporation for
4 approval.

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.—The Corporation shall appoint itself
10 as receiver for a guaranteed company only if
11 the company has not met the deadline to sub-
12 mit a contract for approval under subsection
13 (b).

14 (B) CGRC IMMEDIATELY FILES A BANK-
15 RUPTCY PETITION.—Immediately upon appoint-
16 ing itself as receiver under paragraph (1), the
17 Corporation shall file a voluntary petition under
18 section 301 of title 11, United States Code, on
19 behalf of the guaranteed company for which the
20 Corporation appointed itself receiver.

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

23 (A) IN GENERAL.—In the case of any
24 guaranteed company for which the Corporation
25 files a bankruptcy petition under paragraph

1 (1)(B), all guaranteed parties shall be liable to
2 cover any loss to the bankruptcy estate arising
3 out of the bankruptcy trustee's duty to perform
4 on all guaranteed obligations of the guaranteed
5 company.

6 (B) LIABILITY PROPORTIONAL TO A PAR-
7 TY'S SHARE OF OVERALL GUARANTEED OBLIGA-
8 TIONS.—A guaranteed party shall be liable
9 under subparagraph (A) in proportion to such
10 party's share of the guaranteed obligations of
11 all guaranteed parties at the time of the filing
12 of the bankruptcy petition by the Corporation.

13 (C) CGRC AUTHORIZATION.—The Cor-
14 poration is authorized to, and shall, assess
15 guaranteed parties for any amounts owed under
16 this paragraph.

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

20 **SEC. 126. TREASURY OVERSIGHT OF THE CROSS-GUARAN-**
21 **TEE REGULATION CORPORATION.**

22 (a) ENFORCEMENT OF THE ACT.—In the event that
23 the Corporation should fail to fulfill any of its duties under
24 this title, the Secretary of the Treasury may apply to the
25 Federal District Court for the District of Columbia for

1 an order requiring the Corporation to discharge its obliga-
2 tions under this title and for such other relief as the court
3 may deem necessary to carry out the purposes of this title.

4 (b) EXAMINATIONS AND REPORTS.—

5 (1) EXAMINATIONS.—The Secretary of the
6 Treasury may make such examinations and inspec-
7 tions of the Corporation and require the Corporation
8 to furnish it with such reports and records or copies
9 thereof as the Secretary may consider necessary to
10 implement the purposes of this title.

11 (2) REPORTS.—

12 (A) ANNUAL REPORT.—Within ninety days
13 after the close of each fiscal year of the Cor-
14 poration, the Corporation shall submit to the
15 Treasury Department a written report relative
16 to the conduct of its business, and the exercise
17 of the other rights and powers granted by this
18 title, during such fiscal year.

19 (B) INFORMATION TO BE INCLUDED IN
20 REPORT.—The report under subparagraph (A)
21 shall include financial statements setting forth
22 the financial position of the Corporation at the
23 end of such fiscal year and the results of its op-
24 erations (including the source and application
25 of its funds) for such fiscal year.

1 (C) REQUIRED AUDIT.—The financial
2 statements required under subparagraph (B)
3 shall be examined by an independent public ac-
4 countant or firm of independent public account-
5 ants, selected by the Corporation and satisfac-
6 tory to the Treasury Department, and shall be
7 accompanied by the report thereon of such ac-
8 countant or firm.

9 (D) SUBMISSION TO THE PRESIDENT AND
10 CONGRESS.—The Secretary of the Treasury
11 shall submit the report under subparagraph (A)
12 to the President and Congress with such com-
13 ment thereon as the Secretary deems appro-
14 priate.

15 **CHAPTER 2—PROTECTION OF INSURED**

16 **DEPOSITS**

17 **SEC. 128. BACKUP INSURANCE FOR DEPOSITS AT GUAR-** 18 **ANTEED DEPOSITORY INSTITUTIONS.**

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

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

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

4 (b) BACKUP DEPOSIT INSURANCE.—

5 (1) FUND LIABILITY.—Deposits in any guaran-
6 teed depository institution shall be insured against
7 loss, to the same extent as deposits are insured
8 against loss under section 11(a) of the Federal De-
9 posit Insurance Act (as in effect on the day before
10 the enactment of this Act), in the event that no ad-
11 justment under section 113(a)(2)(F)(iii) will be suf-
12 ficient to protect all guaranteed obligations of all
13 guaranteed companies against loss.

14 (2) SUBORDINATED DEBT NOT TREATED AS
15 DEPOSIT.—No subordinated debt of any guaranteed
16 depository institution or any guaranteed banking of-
17 fice may be treated as a deposit for purposes of
18 paragraph (1).

19 (c) USE AND DISPOSITION OF FUND.—

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

23 (2) INVESTMENTS.—Amounts on deposit in the
24 cross-guarantee backup fund shall be invested in di-

1 rect obligations of the United States and interest
2 thereon shall accumulate in the fund.

3 **Subtitle D—Miscellaneous Provisions**

4 **SEC. 131. INSTITUTIONS OFFERING UNINSURED DEPOS-**
5 **ITS.**

6 The Corporation shall ensure that any company,
7 other than—

8 (a) a depository institution;

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

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

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

17 (e) an investment company registered under the
18 Investment Company Act of 1940,

19 which accepts deposits or assumes obligations which would
20 be deposits if the institution were a bank or savings asso-
21 ciation (as defined in section 3 of the Federal Deposit In-
22 surance Act) is accepting such deposits and assuming such
23 obligations in accordance with all applicable Federal and
24 State laws which relate to the licensing and regulation of

1 institutions which accept deposits or assume such obliga-
2 tions.

3 **SEC. 132. FEDERAL RESERVE LENDING.**

4 Before February 1 of each calendar year beginning
5 after the cross-guarantee activation date, the Board of
6 Governors of the Federal Reserve System shall submit a
7 report to the Committee on Banking, Finance and Urban
8 Affairs of the House of Representatives and the Commit-
9 tee on Banking, Housing, and Urban Affairs of the Senate
10 containing—

11 (a) a certification that—

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

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

19 (b) the amount of any such loss or anticipated
20 loss.

21 **SEC. 133. ADVERTISING BY GUARANTEED FINANCIAL**
22 **GROUPS.**

23 (a) ADVERTISING DEPOSIT GUARANTEES.—

24 (1) IN GENERAL.—A guaranteed company or
25 guaranteed banking office may advertise that depos-

1 its and certain other liabilities are fully guaranteed
2 against any loss under a cross-guarantee contract
3 approved by the Corporation.

4 (2) CROSS-GUARANTEE LOGO.—Before the end
5 of the one year period beginning on the date of the
6 enactment of this Act, the Corporation—

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

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

17 (3) REGULATIONS GOVERNING MANNER OF AD-
18 VERTISING.—The Corporation shall prescribe regula-
19 tions governing the manner in which a guaranteed
20 company or guaranteed banking office may display
21 any logotype permitted under this subsection.

22 (b) ADVERTISING BACKUP INSURANCE.—A deposi-
23 tory institution which is guaranteed under a cross-guaran-
24 teed contract—

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

4 (2) may advertise that deposits at the institu-
5 tion are insured by the Federal Government to
6 \$100,000.

7 **SEC. 134. GUARANTEED DEPOSITORY INSTITUTIONS RE-**
8 **MAIN FEDERALLY INSURED DEPOSITORIES**
9 **FOR PURPOSES OF STATE LAW.**

10 Unless a State or party to a contract otherwise pro-
11 vides subsequent to the passage of this Act, a guaranteed
12 depository institution shall be deemed to be a federally in-
13 sured depository institution within the meaning of section
14 3(c)(2) of the Federal Deposit Insurance Act for purposes
15 of any State or Federal law or private agreement which
16 determines the legally acceptable institutions in which to
17 deposit funds.

18 **Subtitle E—Transition to 100 Percent Cross-**
19 **Guarantee Process**

20 **SEC. 141. EFFECTIVE DATE OF SYSTEM BASED ON MINI-**
21 **MUM NUMBER OF GUARANTEED DEPOSITORY**
22 **INSTITUTIONS AND AMOUNT OF TOTAL AS-**
23 **SETS.**

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

1 (1) the end of the eighteen-month period begin-
2 ning on the date of the enactment of this Act; or

3 (2) Forty business days after the date on which
4 the Corporation has approved, under subsection (b),
5 a minimum of two hundred and fifty cross-guarantee
6 contracts under which depository institutions which,
7 in the aggregate, have total assets of not less than
8 \$500,000,000,000 are guaranteed companies or
9 guaranteed banking offices.

10 (b) CONTINGENT EFFECT OF CONTRACTS UNTIL EF-
11 FECTIVE DATE.—

12 (1) IN GENERAL.—The Corporation may condi-
13 tionally approve a cross-guarantee or stop-loss con-
14 tract to become effective on the date to be deter-
15 mined under subsection (a) even though not all di-
16 rect guarantors under the contract meet the require-
17 ments under section 116(a)(1).

18 (2) MINIMUM REQUIREMENTS.—No cross-guar-
19 antee or stop-loss contract conditionally approved
20 under paragraph (1) shall receive final approval
21 from the Corporation for purposes of subsection
22 (a)(2) unless—

23 (A) the cross-guarantee or stop-loss con-
24 tract is one of a set of contracts in which each
25 contract—

1 (i) is a contract in the same closed
2 loop; and

3 (ii) becomes effective at the same time
4 every other contract within the set of con-
5 tracts takes effect; and

6 (B) at the time such contract becomes ef-
7 fective, the requirements of section 125(a) are
8 met.

9 (c) PUBLICATION OF CROSS-GUARANTEE ACTIVA-
10 TION DATE.—The Corporation shall immediately publish
11 in the Federal Register the date of the cross-guarantee
12 activation date as soon as such date is ascertained.

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

17 (1) on which such institution first becomes a
18 guaranteed depository institution or guaranteed
19 banking office;

20 (2) on which any depository institution which is
21 affiliated with such depository institution becomes a
22 guaranteed depository institution; or

23 (3) on which any depository institution which is
24 under common ownership with such depository insti-

1 tution under section 112(d)(2) becomes a guaran-
2 teed depository institution.

3 **SEC. 142. MANDATORY PHASE-IN OF CROSS-GUARANTEES**

4 **AFTER EFFECTIVE DATE OF SYSTEM.**

5 (a) DEPOSITORY INSTITUTIONS WITH ASSETS OF
6 \$1,000,000,000 OR MORE.—Section 111 shall apply as of
7 the end of the two-year period beginning on the cross-
8 guarantee activation date with respect to any depository
9 institution which has consolidated assets at book value
10 which are equal to or greater than \$1,000,000,000 as of
11 the end of such two-year period.

12 (b) DEPOSITORY INSTITUTIONS WITH ASSETS OF
13 \$500,000,000 OR MORE.—Section 111 shall apply as of
14 the end of the three-year period beginning on the cross-
15 guarantee activation date with respect to any depository
16 institution which has consolidated assets at book value
17 which are equal to or greater than \$500,000,000 as of
18 the end of such three-year period.

19 (c) DEPOSITORY INSTITUTIONS WITH ASSETS OF
20 \$250,000,000 OR MORE.—Section 111 shall apply as of
21 the end of the four-year period beginning on the cross-
22 guarantee activation date with respect to any depository
23 institution which has consolidated assets at book value
24 which are equal or to greater than \$250,000,000 as of
25 the end of such four-year period.

1 (d) DEPOSITORY INSTITUTIONS WITH ASSETS OF
2 \$100,000,000 OR MORE.—Section 111 shall apply as of
3 the end of the five-year period beginning on the cross-
4 guarantee activation date with respect to any depository
5 institution which has consolidated assets at book value
6 which are equal to or greater than \$100,000,000 as of
7 the end of such five-year period.

8 (e) DEPOSITORY INSTITUTIONS WITH ASSETS OF
9 \$50,000,000 OR MORE.—Section 111 shall apply as of the
10 end of the six-year period beginning on the cross-guaran-
11 tee activation date with respect to any depository institu-
12 tion which has consolidated assets at book value which are
13 equal to or greater than \$50,000,000 as of the end of such
14 six-year period.

15 (f) DEPOSITORY INSTITUTIONS WITH ASSETS OF
16 \$25,000,000 OR MORE.—Section 111 shall apply as of the
17 end of the seven-year period beginning on the cross-guar-
18 antee activation date with respect to any depository insti-
19 tution which has consolidated assets at book value which
20 are equal to or greater than \$25,000,000 as of the end
21 of such seven-year period.

22 (g) ALL OTHER DEPOSITORY INSTITUTIONS.—Sec-
23 tion 111 shall apply as of the end of the eight-year period
24 beginning on the cross-guarantee activation date with re-

1 spect to any depository institution which is not described
2 in subsection (a), (b), (c), (d), (e), or (f).

3 (h) CONSOLIDATED ASSETS AT BOOK VALUE DE-
4 FINED.—The term “consolidated assets at book value”
5 means the total value as determined on a consolidated
6 basis and in accordance with generally accepted account-
7 ing principles, of all tangible and intangible property of
8 any depository institution, all subsidiaries of such institu-
9 tion, all affiliates of such institution which are depository
10 institutions, and all subsidiaries of such affiliates.

11 **SEC. 143. APPOINTMENT OF RECEIVER FOR INSTITUTIONS**
12 **WHICH FAIL TO COMPLY WITH TRANSITION**
13 **REQUIREMENTS.**

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

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

22 (a) SEQUENCE OF ACTIONS TO BE TAKEN ON THE
23 CROSS-GUARANTEE ACTIVATION DATE.—On the cross-
24 guarantee activation date, the Federal Deposit Insurance
25 Corporation shall:

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

10 (2) ADJUST BALANCE IN THE BANK INSURANCE
11 FUND.—

12 (A) ADJUST LOSS RESERVE.—Subsequent
13 to the merger under paragraph (1), adjust the
14 Bank Insurance Fund’s reserve for losses to re-
15 flect the present value of the fund’s expected
16 losses due to depository institutions that did
17 not become guaranteed depository institutions
18 on the cross-guarantee activation date.

19 (B) CREATE SEVERANCE BENEFITS RE-
20 SERVE.—Transfer to a severance benefits re-
21 serve from the unobligated balance in the Bank
22 Insurance Fund the estimated cost of the sever-
23 ance pay and related benefits to be disbursed
24 under section 145.

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

6 (4) ADJUST DESIGNATED RESERVE RATIO FOR
7 THE BANK INSURANCE FUND.—After carrying out
8 the provisions of paragraphs (1) through (3), cal-
9 culate a designated reserve ratio for the Bank Insur-
10 ance Fund that shall be used after the cross-guaran-
11 tee activation date for the purpose of determining
12 deposit insurance assessments in lieu of the des-
13 ignated reserve ratio specified under section
14 7(b)(2)(A)(iv)(I) of the Federal Deposit Insurance
15 Act.

16 (b) ACTIONS SUBSEQUENT TO THE CROSS-GUARAN-
17 TEE ACTIVISION DATE.—Within thirty days after carrying
18 out the provisions of subsection (a), the Federal Deposit
19 Insurance Corporation shall transfer to the cross-guaran-
20 tee backup fund an amount equal to the product of—

21 (1) the estimated insured deposits held by de-
22 pository institutions becoming guaranteed depository
23 institutions on the cross-guarantee activation date;
24 and

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

1 (c) DEFEASE REMAINING INTEREST PAYABLE ON
2 FICO BONDS.—

3 (1) PURCHASE ZERO COUPON INSTRUMENTS.—

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

15 (2) TERMINATE FICO ASSESSMENT AUTHOR-
16 ITY.—Upon purchasing the securities described in
17 paragraph (1), the Financing Corporation shall
18 cease making assessments authorized under section
19 21(f) of the Federal Home Loan Bank Act.

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

23 (1) ADJUST RESERVES FOR LOSSES AND SEV-
24 ERANCE BENEFITS.—On every June 30 and Decem-
25 ber 31 after the cross-guarantee activation date, the

1 Federal Deposit Insurance Corporation shall adjust
2 the reserve for losses and severance benefits in the
3 Bank Insurance Fund to reflect contemporaneous
4 estimates of the present value of future losses and
5 benefits to be paid from the fund.

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

11 (A) the estimated insured deposits, as of
12 the beginning of the six month period ending on
13 June 30 or December 31, for all depository in-
14 stitutions that became guaranteed depository
15 institutions during such a six-month period;
16 and

17 (B) the ratio calculated under subsection
18 (a)(4).

19 (e) ACTIONS TO BE TAKEN AFTER THE TRANSITION
20 PERIOD.—

21 (1) SEQUENCE OF ACTIONS TO BE TAKEN AT
22 THE END OF THE TRANSITION PERIOD.—Imme-
23 diately upon the appointment of all receivers under
24 section 143, the Federal Deposit Insurance Corpora-
25 tion shall—

1 (A) adjust the Bank Insurance Fund's re-
2 serves for losses and severance benefits to re-
3 flect the expenses of winding up each Federal
4 Deposit Insurance Corporation receivership still
5 open after all receivers have been appointed
6 under section 143; and

7 (B) after making the adjustment described
8 in subparagraph (A), transfer all funds remain-
9 ing in the Bank Insurance Fund to the cross-
10 guarantee backup fund.

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

20 (3) FINAL TRANSFER TO THE CROSS-GUARAN-
21 TEE BACKUP FUND.—After closing out the last
22 Bank Insurance Fund receivership, the Federal De-
23 posit Insurance Corporation shall liquidate all of its
24 remaining assets and then transfer all of its remain-
25 ing funds to the cross-guarantee backup fund.

1 **SEC. 145. SEVERANCE PAY AND RELATED BENEFITS FOR**
2 **FORMER FEDERAL AND STATE BANKING**
3 **AGENCY EMPLOYEES.**

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

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

7 (A) who is employed by a Federal banking
8 agency, a State bank supervisor, or the Federal
9 Financial Institutions Examination Council
10 (FFIEC) as of the date of the enactment of
11 this Act, including employees of the Federal
12 Deposit Insurance Corporation on detail to the
13 Resolution Trust Corporation; and

14 (B) whose employment is terminated by
15 the agency or supervisor after such date other
16 than for cause.

17 (2) FEDERAL BANKING AGENCY.—The term
18 “Federal banking agency” has the meaning given to
19 such term in section 3(q) of the Federal Deposit In-
20 surance Act.

21 (3) STATE BANK SUPERVISOR.—The term
22 “State bank supervisor” has the meaning given to
23 such term in section 3(r) of the Federal Deposit In-
24 surance Act.

25 (b) SEVERANCE PAY.—

1 (1) IN GENERAL.—Subject to paragraph (3),
2 any eligible employee shall be entitled to receive in
3 a lump sum, from the Bank Insurance Fund at the
4 time such employee’s employment by a Federal
5 banking agency, State bank supervisor, or the
6 FFIEC, is terminated, severance pay in the amount
7 which is equal to the sum of—

8 (A) the amount equal to two months of
9 compensation at the employee’s average annual
10 rate of base pay for the last twelve calendar
11 months of the employee’s employment by any
12 Federal banking agency, State bank supervisor,
13 or the FFIEC; plus

14 (B) the product of—

15 (i) the amount equal to three weeks of
16 compensation at the employee’s annual
17 rate of base pay (as determined under sub-
18 paragraph (A)); and

19 (ii) the number of years (including
20 any fraction of a year) of full-time service
21 of such employee with any Federal banking
22 agency, State bank supervisor, or the
23 FFIEC, or any predecessor of any such
24 agency or supervisor, where such number
25 of years can include employment for more

1 than one such agency or supervisor and
2 need not be continuous employment.

3 (2) EXCEPTION FOR EMPLOYEES REEMPLOYED
4 BY ANOTHER FEDERAL OR STATE AGENCY.—Para-
5 graph (1) shall not apply with respect to any eligible
6 employee who—

7 (A) in the case of an individual who is an
8 eligible employee by virtue of being separated
9 from service with any Federal agency, transfers
10 to or becomes employed by another Federal de-
11 partment, agency, or government corporation;
12 or

13 (B) in the case of an individual who is an
14 eligible employee by virtue of being separated
15 from service with a State bank supervisor,
16 transfers to or becomes employed by another
17 department, agency, or instrumentality of such
18 State.

19 (3) PROHIBITION ON CERTAIN GOVERNMENT
20 SERVICE AFTER ACCEPTING SEVERANCE PAY.—

21 (A) FEDERAL EMPLOYEE.—No individual
22 who receives severance pay under this sub-
23 section by virtue of being separated from serv-
24 ice with a Federal agency or State bank super-
25 visor may be employed by any Federal officer,

1 department, agency, or government corporation
2 during the five-year period beginning on the
3 date such severance pay is received by such in-
4 dividual.

5 (B) STATE EMPLOYEE.—No individual
6 who is, but for this subparagraph, entitled to
7 receive severance pay under this subsection by
8 virtue of being separated from service with a
9 State bank supervisor may receive such pay un-
10 less such individual has entered into a contract
11 with the Federal Deposit Insurance Corporation
12 under which such individual, in consideration of
13 the payment of such severance pay, is obligated
14 to return such amount in full, plus interest, to
15 the Federal Deposit Insurance Corporation if
16 such employee is employed by an officer, de-
17 partment, or agency of that State during the
18 five-year period beginning on the date such sev-
19 erance pay is received by such individual.

20 (4) PURCHASE OF ADDITIONAL RETIREMENT
21 BENEFITS.—An eligible employee may use any por-
22 tion of the severance pay to which the employee is
23 entitled under this subsection to purchase additional
24 benefits or make additional investments in any Fed-
25 eral retirement plan in which the employee is or was

1 entitled to participate as an employee before becoming an eligible employee.
2

3 (c) RELOCATION EXPENSES AND HEALTH BENEFITS.—
4

5 (1) RELOCATION EXPENSES.—An eligible employee who obtains employment away from the place
6 such employee was employed by an appropriate Federal banking agency, State banking supervisor, or
7 the FFIEC shall be entitled to receive travel, relocation, and moving expenses from the Bank Insurance
8 Fund to the same extent Federal employees who are transferred or reemployed are authorized to receive
9 such expenses under subchapter II of chapter 57 of title 5, United States Code.
10
11
12
13
14

15 (2) HEALTH BENEFITS.—

16 (A) IN GENERAL.—An eligible employee shall be entitled to receive the same health benefits as such employee received as of the date
17 of termination for a time period which shall consist of the shorter of—
18
19
20

21 (i) eighteen months following the date of termination of employment; or
22

23 (ii) until such employee obtains alternative full-time employment.
24

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

11 (C) SEVERANCE FUND COMPENSATION.—
12 The Bank Insurance Fund shall reimburse any
13 agency or government entity for the costs of
14 providing the benefits authorized under sub-
15 paragraph (A).

16 (d) FUNDING BENEFITS FOR ELIGIBLE EMPLOY-
17 EES.—Expenses incurred by the Federal Deposit Insur-
18 ance Corporation in administering the provisions of this
19 section shall be paid from the Bank Insurance Fund.

20 **SEC. 146. ABOLITION OF FEDERAL FINANCIAL INSTITU-**
21 **TIONS EXAMINATION COUNCIL.**

22 The Federal Financial Institutions Examination
23 Council is hereby abolished, effective on the date on which
24 section 142(g) shall become effective.

1 **SEC. 147. ABOLITION OF THE FEDERAL DEPOSIT INSUR-**
2 **ANCE CORPORATION.**

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

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

10 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-
11 TIONS NOT AFFECTED.—Subsection (a) shall not af-
12 fect the validity of any right, duty, or obligation of
13 the United States, the Federal Deposit Insurance
14 Corporation, or any other person, which existed on
15 the day before the date of the enactment of this Act.

16 (2) CONTINUATION OF SUITS.—No action or
17 other proceeding commenced by or against the Fed-
18 eral Deposit Insurance Corporation shall abate by
19 the reason of the enactment of this Act, except that
20 the Secretary of Treasury shall be substituted for
21 the Federal Deposit Insurance Corporation as a
22 party to any such action or proceeding.

23 **SEC. 148. CONTINUATION OF ORDERS, RESOLUTIONS, AND**
24 **DETERMINATIONS.**

25 All orders, resolutions, determinations, and regula-
26 tions which have been issued, made, prescribed, or allowed

1 prior to a depository institution becoming a guaranteed
2 depository institution shall continue in effect according to
3 the terms of such orders, resolutions, and determinations
4 until modified, terminated, set aside, or superseded in ac-
5 cordance with applicable law by the agency which issued
6 the order, resolution, determination, or regulation, by any
7 court of competent jurisdiction, by operation of this Act,
8 or by operation of law.

9 **TITLE II—AMENDMENTS TO OTHER**
10 **BANKING LAWS**

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

12 (a) EXEMPTIONS FROM MINIMUM CAPITAL, STOCK,
13 AND OTHER REQUIREMENTS COVERED BY CROSS-GUAR-
14 ANTEE CONTRACTS.—

15 (1) CAPITAL OF NATIONAL BANKS.—Section
16 5138 of the Revised Statutes of the United States
17 (12 U.S.C. 51) is amended by adding at the end the
18 following new sentence: “This section shall not apply
19 with respect to any national bank which is a guaran-
20 teed depository institution (as defined in section
21 101(a)(7) of the Deposit Insurance Reform, Regu-
22 latory Modernization, and Taxpayer Protection Act
23 of 1993).”.

24 (2) PREFERRED STOCK IN MEMBER BANKS.—
25 Section 345 of the Banking Act of 1935 (12 U.S.C.

1 51B–1) is amended by adding at the end the follow-
2 ing new sentence: “This section shall not apply with
3 respect to any bank which is a guaranteed deposi-
4 tory institution (as defined in section 101(a)(7) of
5 the Deposit Insurance Reform, Regulatory Mod-
6 ernization, and Taxpayer Protection Act of 1993).”.

7 (3) DEFICIENT CAPITAL PROVISION FOR NA-
8 TIONAL BANKS.—Section 5205 of the Revised Stat-
9 utes of the United States (12 U.S.C. 55) is amended
10 by adding at the end the following new sentence:
11 “This section shall not apply with respect to any na-
12 tional bank which is a guaranteed depository institu-
13 tion (as defined in section 101(a)(7) of the Deposit
14 Insurance Reform, Regulatory Modernization, and
15 Taxpayer Protection Act of 1993).”.

16 (4) WITHDRAWAL OF CAPITAL PROVISION FOR
17 NATIONAL BANKS.—Section 5204 of the Revised
18 Statutes of the United States (12 U.S.C. 56) is
19 amended by adding at the end the following new
20 sentence: “This section shall not apply with respect
21 to any national bank which is a guaranteed deposi-
22 tory institution (as defined in section 101(a)(7) of
23 the Depositor Insurance Reform, Regulatory Mod-
24 ernization, and Taxpayer Protection Act of 1993).”.

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

10 (6) DECREASE AND DISTRIBUTION OF CAPITAL
11 PROVISION FOR NATIONAL BANKS.—Section 5143 of
12 the Revised Statutes of the United States (12
13 U.S.C. 59) is amended by adding at the end the fol-
14 lowing new sentence: “‘Notwithstanding the preced-
15 ing sentence, the approval of the Comptroller of the
16 Currency shall not be required for any reduction of
17 capital stock, or any distribution to shareholders by
18 reason of any such reduction, under such sentence
19 by any national bank which is a guaranteed deposit-
20 tory institution (as defined in section 101(a)(7) of
21 the Deposit Insurance Reform, Regulatory Mod-
22 ernization, and Taxpayer Protection Act of 1993).’”.

23 (7) DIVIDEND PROVISIONS.—

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

4 (i) by striking “(a) The directors”
5 and inserting “(a) DECLARATION OF DIVI-
6 DEND.—

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

9 (ii) by striking “expedient; except that
10 until the surplus fund of such association”
11 and inserting “expedient”.

12 “(2) EXCEPTION FOR CERTAIN
13 UNDERCAPITALIZED ASSOCIATIONS.—Until the sur-
14 plus fund of a national bank”; and

15 (iii) by adding at the end of para-
16 graph (2) (as so redesignated by clause (ii)
17 of this subparagraph) the following: “This
18 paragraph shall not apply with respect to
19 any national bank which is a guaranteed
20 depository institution (as defined in section
21 101(a)(7) of the Deposit Insurance Re-
22 form, Regulatory Modernization, and Tax-
23 payer Protection Act of 1993).”.

24 (B) TECHNICAL AND CONFORMING AMEND-
25 MENT.—Section 5199(b) of the Revised Stat-

1 utes of the United States (12 U.S.C. 60(b)) is
2 amended—

3 (i) by striking “(b) The approval of
4 the Comptroller” and inserting “(b) AP-
5 PROVAL OF THE COMPTROLLER.—Except
6 in the case of a national bank which is a
7 guaranteed depository institution (as de-
8 fined in section 101(a)(7) of the Deposit
9 Insurance Reform, Regulatory Moderniza-
10 tion and Taxpayer Protection Act of
11 1993), the approval of the Comptroller”;
12 and

13 (ii) by striking “such association” and
14 inserting “a national bank”.

15 (b) EXEMPTIONS FROM REQUIREMENTS RELATING
16 TO DIRECTORS OF BANKS.—

17 (1) QUALIFICATIONS OF NATIONAL BANK DI-
18 RECTORS.—Section 5146 of the Revised Statutes of
19 the United States (12 U.S.C. 72) is amended by
20 adding at the end the following new sentence: “This
21 section shall not apply with respect to any national
22 bank which is a guaranteed depository institution
23 (as defined in section 101(a)(7) of the Deposit In-
24 surance Reform, Regulatory Modernization, and
25 Taxpayer Protection Act of 1993.”.

1 (2) SERVICE OF PRESIDENT OF NATIONAL
2 BANK AS CHAIRMAN OF THE BANK'S BOARD OF DI-
3 RECTORS.—Section 5150 of the Revised Statutes of
4 the United States (12 U.S.C. 76) is amended by
5 adding at the end the following new sentence: “This
6 section shall not apply with respect to any national
7 bank which is a guaranteed depository institution
8 (as defined in section 101(a)(7) of the Deposit In-
9 surance Reform, Regulatory Modernization, and
10 Taxpayer Protection Act of 1993).”.

11 (3) MEMBER BANK DIRECTOR INTERLOCKS
12 WITH SECURITIES FIRMS.—Section 32 of the Bank-
13 ing Act of 1933 (12 U.S.C. 78) is amended by add-
14 ing at the end the following new sentence: “This sec-
15 tion shall not apply with respect to any member
16 bank which is a guaranteed depository institution
17 (as defined in section 101(a)(7) of the Deposit In-
18 surance Reform, Regulatory Modernization, and
19 Taxpayer Protection Act of 1993).”.

20 (4) LOANS ON OR PURCHASE OF NATIONAL
21 BANK'S OWN STOCK.—Section 5201 of the Revised
22 Statutes of the United States (12 U.S.C. 83) 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 1993).”.

4 (c) EXEMPTION FROM REQUIREMENT RELATING TO
5 LOANS TO ONE BORROWER.—Section 5200 of the Revised
6 Statutes of the United States (12 U.S.C. 84) is amended
7 by adding at the end the following new subsection:

8 “(e) EXEMPTION OF GUARANTEED COMPANIES.—
9 This section shall not apply with respect to any national
10 bank which is a guaranteed depository institution (as de-
11 fined in section 101(a)(7) of the Deposit Insurance Re-
12 form, Regulatory Modernization, and Taxpayer Protection
13 Act of 1993).”.

14 (d) EXEMPTION FROM REQUIREMENTS RELATING
15 TO SECURITY FOR DEPOSITS OF GOVERNMENT AGENCIES
16 AT NATIONAL BANKS.—Section 5153 of the Revised Stat-
17 utes of the United States (12 U.S.C. 90) is amended—

18 (1) in the first undesignated paragraph by
19 striking “All national banking associations” and in-
20 sserting “(a) IN GENERAL.—All national banks”;

21 (2) in the second undesignated paragraph, by
22 striking “Any national banking association” and in-
23 sserting “(b) DEPOSITORY FOR STATE AND LOCAL
24 GOVERNMENTS.—Any national bank”;

1 (3) in the third undesignated paragraph, by
2 striking “Any national banking association” and in-
3 serting “(c) DEPOSITORY FOR INDIAN TRIBES.—
4 Any national bank”; and

5 (4) by adding at the end the following new sub-
6 section:

7 “(d) EXEMPTION FROM SECURITY AND COLLATERAL
8 REQUIREMENTS.—A national bank which is a guaranteed
9 depository institution (as defined in section 101(a)(7) of
10 the Deposit Insurance Reform, Regulatory Modernization,
11 and Taxpayer Protection Act of 1993) shall not be re-
12 quired to give any security which is otherwise required
13 under subsection (a), (b), or (c) for deposits with the bank
14 under this section or for the performance of the bank as
15 financial agent.”.

16 (e) EXEMPTION FROM PROVISION RELATING TO
17 TRANSFERS BY NATIONAL BANKS IN CONTEMPLATION OF
18 INSOLVENCY.—Section 5242 of the Revised Statutes of
19 the United States (12 U.S.C. 91) is amended by adding
20 at the end the following new sentence: “This section shall
21 not apply with respect to any national bank which is a
22 guaranteed depository institution (as defined in section
23 101(a)(7) of the Deposit Insurance Reform, Regulatory
24 Modernization, and Taxpayer Protection Act of 1993.”.

1 (f) EXEMPTION FROM REQUIREMENTS RELATING TO
2 REPORTS OF CONDITION.—Section 5211 of the Revised
3 Statutes of the United States (12 U.S.C. 161) is amended
4 by adding at the end the following new subsection:

5 “(d) EXEMPTION OF GUARANTEED COMPANIES.—
6 This section shall not apply with respect to any national
7 bank which is a guaranteed depository institution (as de-
8 fined in section 101(a)(7) of the Deposit Insurance Re-
9 form, Regulatory Modernization, and Taxpayer Protection
10 Act of 1993.”.

11 (g) CONSENT OF GUARANTORS REQUIRED FOR VOL-
12 UNTARY DISSOLUTION.—

13 (1) IN GENERAL.—Section 5220 of the Revised
14 Statues of the United States (12 U.S.C. 181) is
15 amended—

16 (A) in the first undesignated paragraph, by
17 striking “Any association” and inserting “(a)
18 IN GENERAL.—Any national bank”;

19 (B) in the second undesignated paragraph,
20 by striking “The Shareholders shall designate”
21 and inserting “(b) LIQUIDATING AGENT OR
22 COMMITTEE.—The shareholders shall des-
23 ignate”; and

24 (C) by adding at the end the following new
25 subsection:

1 “(c) CONSENT OF GUARANTORS REQUIRED FOR
2 GUARANTEED COMPANIES.—Int he case of any national
3 bank which is a guaranteed depository institution (as de-
4 fined in section 101(a)(7) of the Deposit Insurance Re-
5 form, Regulatory Modernization, and Taxpayer Protection
6 Act of 1993), the national bank may go into liquidation
7 and be closed in accordance with subsection (a) only with
8 the consent of the direct guarantors of such bank.”.

9 (2) NOTICE TO SYNDICATE AGENT.—Section
10 5221 of the Revised Statutes of the United States
11 (12 U.S.C. 182 is amended by inserting “and, in
12 the case of a national bank which is a guaranteed
13 depository institution (as defined in section
14 101(a)(7) of the Deposit Insurance Reform, Regu-
15 latory Modernization, and Taxpayer Protection Act
16 of 1993), to the syndicate agent of such bank” after
17 “Comptroller of the currency”.

18 (h) COMPTROLLER OF THE CURRENCY NOT AU-
19 THORIZED TO APPOINT RECEIVER.—

20 (1) IN GENERAL.—The Act entitled “An Act
21 authorizing the appointment of receivers of national
22 banking associations, and for other purposes.” and
23 approved June 30, 1876, is amended by inserting
24 after the first section (12 U.S.C. 191) the following
25 new section:

1 **“SEC. 2. EXEMPTION OF GUARANTEED NATIONAL BANKS.**

2 “This Act shall not apply with respect to any national
3 bank which is a guaranteed depository institution (as de-
4 fined in section 101(a)(7) of the Deposit Insurance Re-
5 form, Regulatory Modernization, and Taxpayer Protection
6 Act of 1993).”.

7 (2) EXEMPTION FROM ADDITIONAL GROUND
8 FOR THE APPOINTMENT OF RECEIVERS.—Section
9 5234 of the Revised Statutes (12 U.S.C. 192) is
10 amended by adding at the end the following new
11 sentence: “This sentence shall not apply with respect
12 to any national bank which is a guaranteed deposi-
13 tory institution (as defined in section 101(a)(7) of
14 the Deposit Insurance Reform, Regulatory Mod-
15 ernization, and Taxpayer Protection Act of 1993).”.

16 (i) COMPTROLLER OF THE CURRENCY NOT AUTHOR-
17 IZED TO APPOINT CONSERVATOR.—The Bank Conserva-
18 tion Act is amended by inserting after section 206 the fol-
19 lowing new section:

20 **“SEC. 207. EXEMPTION OF GUARANTEED NATIONAL BANKS.**

21 “This subchapter shall not apply with respect to any
22 national bank which is a guaranteed depository institution
23 (as defined in section 101(a)(7) of the Deposit Insurance
24 Reform, Regulatory Modernization, and Taxpayer Protec-
25 tion Act of 1993).”.

1 (j) COMPTROLLER OF THE CURRENCY NOT AUTHOR-
2 IZED TO EXAMINE GUARANTEED BANKS.—Section 5240
3 of the Revised Statutes of the United States (12 U.S.C.
4 481–485) is amended by adding at the end of the first
5 paragraph of such section the following new sentence:
6 “Notwithstanding any other provision of this section, the
7 authority of the Comptroller of the Currency to examine
8 any national bank or any affiliate of a national bank shall
9 not apply with respect to any national bank which is a
10 guaranteed depository institution (as defined in section
11 101(a)(7) of the Deposit Insurance Reform, Regulatory
12 Modernization, and Taxpayer Protection Act of 1993) or
13 any affiliate of such bank.”.

14 (k) EXEMPTION FROM LIMITATION OR CONDITIONS
15 ON REAL ESTATE LENDING AUTHORITY.—Section 24(a)
16 of the Federal Reserve Act (12 U.S.C. 371(a)) is amended
17 by adding at the end the following new sentence: “Not-
18 withstanding the preceding sentence, a national bank
19 which is a guaranteed depository institution (as defined
20 in section 101(a)(7) of the Deposit Insurance Reform,
21 Regulatory Modernization, and Taxpayer Protection Act
22 of 1993) shall not be subject to section 18(o) of the Fed-
23 eral Deposit Insurance Act or any restriction or require-
24 ment prescribed by the Comptroller of the Currency under
25 the preceding sentence.”.

1 **SEC. 202. AMENDMENTS RELATING TO MEMBER BANKS.**

2 (a) FEDERAL RESERVE BOARD AND FEDERAL RE-
3 SERVE BANKS NOT AUTHORIZED TO EXAMINE GUARAN-
4 TEED MEMBER BANKS.—

5 (1) IN GENERAL.—Section 11(a)(1) of the Fed-
6 eral Reserve Act (12 U.S.C. 248(a)(1)) is amended
7 by adding at the end the following new sentence:
8 “Notwithstanding any other provision of this section,
9 the authority of the Board or any Federal reserve
10 bank to examine any member bank shall not apply
11 with respect to any member bank which is a guaran-
12 teed depository institution (as defined in section
13 101(a)(7) of the Deposit Insurance Reform, Regu-
14 latory Modernization, and Taxpayer Protection Act
15 of 1993).”.

16 (2) SPECIAL EXAMINATIONS.—The first sen-
17 tence of the fifth undesignated paragraph of section
18 5240 of the Revised Statutes of the United States
19 (12 U.S.C. 483) is amended by inserting “which are
20 not guaranteed depository institutions (as defined in
21 section 101(a)(7) of the Deposit Insurance Reform,
22 Regulatory Modernization, and Taxpayer Protection
23 Act of 1993)” after “member banks within its dis-
24 trict”.

25 (3) FOREIGN OPERATION OF STATE MEMBER
26 BANKS.—The last sentence of the sixth undesignated

1 paragraph of section 5240 of the Revised Statutes of
2 the United States (12 U.S.C. 481) is amended by
3 inserting “and are not guaranteed depository institu-
4 tions (as defined in section 101(a)(7) of the Deposit
5 Insurance Reform, Regulatory Modernization, and
6 Taxpayer Protection Act of 1993)” before the pe-
7 riod.

8 (4) EXAMINATIONS IN CONNECTION WITH AD-
9 VANCES OR DISCOUNTS.—Section 11(n) of the Fed-
10 eral Reserve Act (12 U.S.C. 248(n)) is amended by
11 striking “depository institution,” and inserting “de-
12 pository institution (other than a guaranteed deposi-
13 tory institution (as defined in section 101(a)(7) of
14 the Deposit Insurance Reform, Regulatory Mod-
15 ernization, and Taxpayer Protection Act of 1993)),”.

16 (b) EXEMPTION FROM MEMBER BANK LOAN LIM-
17 TATIONS.—Section 11(m) of the Federal Reserve Act (12
18 U.S.C. 248(m)) is amended by adding at the end the fol-
19 lowing new sentence: “This paragraph shall not apply with
20 respect to any member bank which is a guaranteed deposi-
21 tory institution (as defined in section 101(a)(7) of the De-
22 posit Insurance Reform, Regulatory Modernization, and
23 Taxpayer Protection Act of 1993).”.

24 (c) EXEMPTION FROM LIMITATION ON ACCESS TO
25 FED WIRE.—Section 11 of the Federal Reserve Act (12

1 U.S.C. 248) is amended by inserting after paragraph (n)
2 the following new paragraph:

3 “(o) PROHIBITION ON LIMITS ON ACCESS TO PAY-
4 MENT AND CLEARING SYSTEMS BY GUARANTEED MEM-
5 BER BANKS.—Notwithstanding any other provision of law,
6 the Board may not limit or deny access by any member
7 bank which is a guaranteed depository institution (as de-
8 fined in section 101(a)(7) of the Deposit Insurance Re-
9 form, Regulatory Modernization, and Taxpayer Protection
10 Act of 1993) to the payment system or any system in ef-
11 fect for clearing transactions in securities for the purpose
12 of protecting any such system from any risk.”.

13 (d) FEDERAL RESERVE BOARD NOT AUTHORIZED
14 TO APPOINT CONSERVATOR OR RECEIVER.—Section
15 11(p) of the Federal Reserve Act (12 U.S.C. 248(p)) (as
16 added by section 133(f) of the Federal Deposit Insurance
17 Corporation Act of 1991) is amended to read as follows:

18 “(p) AUTHORITY TO APPOINT CONSERVATOR OR RE-
19 CEIVER.—

20 “(A) IN GENERAL.—Except as provided in sub-
21 paragraph (B), the Board may appoint the Federal
22 Deposit Insurance Corporation as conservator or re-
23 ceiver for a State member bank under section
24 11(c)(8) of the Federal Deposit Insurance Act.

1 “(B) EXCEPTION FOR GUARANTEED DEPOSI-
2 TORY INSTITUTIONS.—This paragraph shall not
3 apply with respect to any member bank which is a
4 guaranteed depository institution (as defined in sec-
5 tion 101(a)(7) of the Deposit Insurance Reform,
6 Regulatory Modernization, and Taxpayer Protection
7 Act of 1993).”.

8 (e) QUALIFICATION OF GUARANTEED STATE BANKS
9 FOR MEMBER BANK STATUS WITHOUT APPLICATION.—

10 (1) IN GENERAL.—The first undesignated para-
11 graph of section 9 of the Federal Reserve Act (12
12 U.S.C. 321) is amended by adding at the end the
13 following new sentence: “Notwithstanding the appli-
14 cation requirement contained in the first sentence of
15 this paragraph, any State bank which is a guaran-
16 teed depository institution (as defined in section
17 101(a)(7) of the Deposit Insurance Reform, Regu-
18 latory Modernization, and Taxpayer Protection Act
19 of 1993) may become a member of the Federal Re-
20 serve System without application by agreeing to be
21 subject to all applicable provisions of this Act and by
22 subscribing to stock in the same manner and
23 amount as a national bank under section 2.”.

24 (2) EXEMPTION FROM CAPITAL, RESERVE, AND
25 REPORTING REQUIREMENTS.—The first sentence of

1 the sixth undesignated paragraph of section 9 of the
2 Federal Reserve Act (12 U.S.C. 324) is amended by
3 inserting “, other than a bank which is a guaranteed
4 depository institution (as defined in section
5 101(a)(7) of the Deposit Insurance Reform, Regu-
6 latory Modernization, and Taxpayer Protection Act
7 of 1993),” after “banks admitted to membership
8 under authority of this section”.

9 (3) EXEMPTION FROM EXAMINATION.—The
10 seventh undesignated paragraph of section 9 of the
11 Federal Reserve Act (12 U.S.C. 325) is amended by
12 striking “such banks” and inserting “, any bank ad-
13 mitted to membership under this section, other than
14 a bank which is a guaranteed depository institution
15 (as defined in section 101(a)(7) of the Deposit In-
16 surance Reform, Regulatory Modernization, and
17 Taxpayer Protection Act of 1993),”.

18 (4) EXEMPTION FROM SPECIAL EXAMINA-
19 TIONS.—The eighth undesignated paragraph of sec-
20 tion 9 of the Federal Reserve Act (12 U.S.C. 326)
21 is amended by adding at the end the following new
22 sentence: “Notwithstanding any other provision of
23 this paragraph, the authority of the Board to exam-
24 ine any member bank shall not apply with respect to
25 any member bank which is a guaranteed depository

1 institution (as defined in section 101(a)(7) of the
2 Deposit Insurance Reform, Regulatory Moderniza-
3 tion, and Taxpayer Protection Act of 1993).”.

4 (5) EXEMPTION FROM CERTAIN FORFEITURE
5 PROVISION.—The ninth undesignated paragraph of
6 section 9 of the Federal Reserve Act (12 U.S.C.
7 327) is amended by inserting “, other than a bank
8 which is a guaranteed depository institution (as de-
9 fined in section 101(a)(7) of the Deposit Insurance
10 Reform, Regulatory Modernization, and Taxpayer
11 Protection Act of 1993),” after “a member bank”.

12 (6) EXEMPTION FROM ADDITIONAL CAPITAL
13 REQUIREMENT.—The eleventh undesignated para-
14 graph of section 9 of the Federal Reserve Act (12
15 U.S.C. 329) is amended by adding at the end the
16 following new sentence: “This paragraph shall not
17 apply with respect to any member bank which is a
18 guaranteed depository institution (as defined in sec-
19 tion 101(a)(7) of the Deposit Insurance Reform,
20 Regulatory Modernization, and Taxpayer Protection
21 Act of 1993).”.

22 (7) EXEMPTION FROM SECURITY AND COLLAT-
23 ERAL REQUIREMENT.—The last sentence of the fif-
24 teenth undesignated paragraph of section 9 of the
25 Federal Reserve Act (12 U.S.C. 332) is amended by

1 inserting “, other than a bank which a guaranteed
2 depository institution (as defined in section
3 101(a)(7) of the Deposit Insurance Reform, Regu-
4 latory Modernization, and Taxpayer Protection Act
5 of 1993),” after “the banks and trust companies
6 thus designated”.

7 (8) MEMBERSHIP QUALIFICATION IN THE CASE
8 OF STATE MUTUAL SAVINGS BANKS.—The sixteenth
9 undesignated paragraph of section 9 of the Federal
10 Reserve Act (12 U.S.C. 333) is amended by insert-
11 ing after the first sentence the following new sen-
12 tence: “Notwithstanding the application requirement
13 contained in the preceding sentence, any State mu-
14 tual savings bank which is a guaranteed depository
15 institution (as defined in section 101(a)(7) of the
16 Deposit Insurance Reform, Regulatory Moderniza-
17 tion, and Taxpayer Protection Act of 1993) may be-
18 come a member of the Federal Reserve System with-
19 out application by agreeing to be subject to all appli-
20 cable provisions of this Act and by subscribing to
21 stock in the same manner and amount as provided
22 in this paragraph for State mutual savings banks
23 applying for membership.”

24 (9) EXEMPTION FROM AFFILIATE REPORTING
25 REQUIREMENTS—

1 (A) IN GENERAL.—The first sentence of
2 the seventeenth undesignated paragraph of sec-
3 tion 9 of the Federal Reserve Act (12 U.S.C.
4 334) is amended by inserting “, other than a
5 bank which is a guaranteed depository institu-
6 tion (as defined in section 101(a)(7) of the De-
7 posit Insurance Reform, Regulatory Moderniza-
8 tion, and Taxpayer Protection Act of 1993),”
9 after “bank admitted to membership under this
10 section”.

11 (B) EXEMPTION FROM ADDITIONAL AFFIL-
12 IATE REPORTING REQUIREMENTS.—The eight-
13teenth undesignated paragraph of section 9 of
14 the Federal Reserve Act (12 U.S.C. 334) is
15 amended by inserting “, other than a bank
16 which is a guaranteed depository institution (as
17 defined in section 101(a)(7) of the Deposit In-
18 surance Reform, Regulatory Modernization, and
19 Taxpayer Protection Act of 1993),” after “af-
20 filiated member bank”.

21 (10) EXEMPTION FROM EXAMINATION RE-
22 QUIREMENTS.—The twenty-second undesignated
23 paragraph of section 9 of the Federal Reserve Act
24 (12 U.S.C. 338) is amended by inserting “, other
25 than a bank which is a guaranteed depository insti-

1 tution (as defined in section 101(a)(7) of the De-
2 posit Insurance Reform, Regulatory Modernization,
3 and Taxpayer Protection Act of 1993),” after “State
4 member banks” the first place such term appears.

5 (f) EXEMPTION FROM INTEREST REQUIREMENTS.—
6 Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a)
7 is amended by adding at the end the following new sen-
8 tence: “No provision of this subsection shall apply with
9 respect to a member bank which is a guaranteed deposi-
10 tory institution (as defined in section 101(a)(7) of the De-
11 posit Insurance Reform, Regulatory Modernization, and
12 Taxpayer Protection Act of 1993).”.

13 (g) EXEMPTION FROM REQUIREMENTS RELATING
14 TO INTERBANK LIABILITIES AND TRANSACTIONS WITH
15 AFFILIATES.—

16 (1) INTERBANK LIABILITIES.—Section 23 of
17 the Federal Reserve Act (12 U.S.C. 371(b-2)) is
18 amended by adding at the end the following new
19 subsection:

20 “(f) EXEMPTION FOR GUARANTEED DEPOSITORY IN-
21 STITUTIONS.—A guaranteed depository institution (as de-
22 fined in section 101(a)(7) of the Deposit Insurance Re-
23 form, Regulatory Modernization, and Taxpayer Protection
24 Act of 1993) shall not be subject to any regulation or
25 order issued under this section.”.

1 (2) EXEMPTION FROM RESTRICTIONS ON
2 TRANSACTIONS WITH AFFILIATES.—Sections 23A
3 and 23B of the Federal Reserve Act (12 U.S.C.
4 371c, 371c-1) are each amended by adding at the
5 end of each such section the following new sub-
6 section:

7 “(f) EXEMPTION FOR GUARANTEED DEPOSITORY IN-
8 STITUTIONS.—This section shall not apply to any guaran-
9 teed depository institution (as defined in section 101(a)(7)
10 of the Deposit Insurance Reform, Regulatory Moderniza-
11 tion, and Taxpayer Protection Act of 1993) or any affili-
12 ate of any such institution that is a guaranteed company
13 (as defined in section 101(a)(6) of the Deposit Insurance
14 Reform, Regulatory Modernization, and Taxpayer Protec-
15 tion Act of 1993).”.

16 (h) EXEMPTION FROM LIMITATION ON INVEST-
17 MENTS IN, OR LOANS ON, BANK PREMISES.—Section 24A
18 of the Federal Reserve Act (12 U.S.C. 371d) is amended
19 by adding at the end the following new sentence: “This
20 section shall not apply to any guaranteed depository insti-
21 tution (as defined in section 101(a)(7) of the Deposit In-
22 surance Reform, Regulatory Modernization, and Taxpayer
23 Protection Act of 1993).”.

24 (i) EXEMPTION FROM LIMITATIONS ON BANKERS’
25 ACCEPTANCES.—Section 13(7) of the Federal Reserve Act

1 (12 U.S.C. 372) is amended by adding at the end the fol-
2 lowing new subparagraph:

3 “(I) EXEMPTION FROM LIMITA-
4 TIONS FOR GUARANTEED DEPOSITORY
5 INSTITUTIONS.—Subparagraphs (B),
6 (C), (D), (E), (F), and (H) shall not
7 apply to any guaranteed depository in-
8 stitution (as defined in section
9 101(a)(7) of the Deposit Insurance
10 Reform, Regulatory Modernization,
11 and Taxpayer Protection Act of
12 1993).”.

13 (j) EXEMPTION FROM PURCHASING AND LENDING
14 LIMITS RELATING TO DIRECTORS AND OFFICERS.—Sec-
15 tion 22 of the Federal Reserve Act (12 U.S.C. 375, 376,
16 503, 375a, and 375b) is amended by inserting before sub-
17 section (d) the following new subsection:

18 “(c) EXEMPTION FOR GUARANTEED DEPOSITORY IN-
19 STITUTIONS.—Subsections (d), (e), (g), and (h) shall not
20 apply to any guaranteed depository institution (as defined
21 in section 101(a)(7) of the Deposit Insurance Reform,
22 Regulatory Modernization, and Taxpayer Protection Act
23 of 1993) 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 1993).

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 1993).”.

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 under
3 this subsection or subsection (b) or (c) to examine
4 any savings association or prescribe regulations ap-
5 plicable to savings associations shall not apply with
6 respect to any guaranteed savings association.”.

7 (2) FEDERAL SAVINGS ASSOCIATIONS.—Section
8 5(a) of the Home Owners’ Loan Act (12 U.S.C.
9 1464(a)) is amended by adding at the end the fol-
10 lowing new sentence: “The authority of the Director
11 under the preceding sentence to prescribe regula-
12 tions to provide for the examination and regulation
13 of Federal savings associations shall not apply with
14 respect to the examination or regulation of any
15 guaranteed Federal savings association.”.

16 (3) EXEMPTION FROM EXAMINATION FEE PRO-
17 VISIONS.—Section 9 of the Home Owners’ Loan Act
18 (12 U.S.C. 1467) is amended by adding at the end
19 the following new subsection:

20 “(n) EXEMPTION FOR GUARANTEED SAVINGS ASSO-
21 CIATIONS.—This section and the authority of the Director
22 under this section shall not apply with respect to any guar-
23 anteed savings association.”.

24 (c) EXCEPTIONS TO LIMITATIONS ON DEPOSIT AND
25 RELATED POWERS.—Section 5(b)(1) of the Home Own-

1 ers' Loan Act (12 U.S.C. 1464(b)(1)) is amended by add-
2 ing at the end the following new subparagraph:

3 “(G) SPECIAL RULES APPLICABLE TO
4 GUARANTEED SAVINGS ASSOCIATIONS.—

5 “(i) STATUTORY AUTHORITY.—A
6 guaranteed Federal savings association
7 shall have the powers described in subpara-
8 graphs (C), (E), and (F) without regard to
9 the condition or limitation contained in
10 each such subparagraph relating to regula-
11 tions of the Director.

12 “(ii) LIMITATION ON REGULATORY
13 AUTHORITY.—The exercise by a guaran-
14 teed Federal savings association of powers
15 established under subparagraph (A) or (D)
16 or the last sentence of subparagraph (B)
17 shall not be subject to any regulations pre-
18 scribed by the Director under such provi-
19 sion.

20 “(iii) EXEMPTION.—A guaranteed
21 Federal savings association shall not be
22 subject to the first sentence of subpara-
23 graph (B).”.

24 (d) EXCEPTIONS TO LIMITATIONS ON LOAN AND IN-
25 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: “The preceding sentence shall not apply
9 with respect to any savings association which, at the time
10 the charter is granted, is a guaranteed depository institu-
11 tion (as defined in section 101(a)(7) of the Deposit Insur-
12 ance Reform, Regulatory Modernization, and Taxpayer
13 Protection Act of 1993) or is required to be a guaranteed
14 depository institution before such association accepts any
15 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 “(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 1993).”.

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
18 amended—

19 (1) in clause (i), by inserting "which is not a
20 guaranteed savings association" after "under-
21 capitalized 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 1993.”.

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 of the following new paragraph:

10 “(4) GUARANTEE 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 1993, 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 1993, two hundred and fifty
5 cross-guarantee contracts described in subsection (a)(2) of
6 such section.”.

7 (c) TERMINATION OF DEPOSIT INSURANCE OF GUAR-
8 ANTEED DEPOSITORY INSTITUTION.—Section 8(a) of the
9 Federal Deposit Insurance Act (12 U.S.C. 1818(a)) is
10 amended—

11 (1) by redesignating paragraph (10) as para-
12 graph (11); and

13 (2) by inserting after paragraph (9), the follow-
14 ing new paragraph:

15 “(10) TERMINATION OF INSURANCE OF GUAR-
16 ANTEED DEPOSITORY INSTITUTION.—The status of
17 any insured depository institution as an insured de-
18 pository institution shall cease as of the date the in-
19 stitution becomes a guaranteed depository institu-
20 tion.”.

21 (d) INELIGIBILITY OF GUARANTEED DEPOSITORY
22 INSTITUTION FOR DEPOSIT INSURANCE UNDER THE
23 FEDERAL DEPOSIT INSURANCE ACT.—Section 5(a)(1) of
24 the Federal Deposit Insurance Act (12 U.S.C. 1815(a)(1))
25 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 1993) 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 1993).”.

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 1993)” 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 redesignating subsection (3) as sub-
9 section (29);

10 (b) by redesignating subsections (4)–(7) as sub-
11 sections (3)–(6);

12 (c) by adding new subsection (7)—

13 “(7) ‘company’ means any corporation, partner-
14 ship, business trust, association, or similar organiza-
15 tion, but does not include a governmental unit;”;

16 (d) by adding new subsection (11)—

17 “(11) ‘cross-guarantee contract’ means a con-
18 tract which—

19 “(A) is entered into between—

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

23 “(ii) a cross-guarantee syndicate;

24 “(B) is approved by the regulation cor-
25 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 (e) by adding new subsection (12)—

6 “(12) ‘cross-guarantee obligation’ means an ob-
7 ligation of a direct guarantor arising out of a cross-
8 guarantee or stop-loss contract, and includes the ob-
9 ligations of such guarantor under section 125(c)(2)
10 of title I of this Act and sections 321 and 355 of
11 this title;”;

12 (f) by adding new subsection (13)—

13 “(13) ‘cross-guarantee premium payment’
14 means the payment a guaranteed company periodi-
15 cally makes to the guaranteed company’s direct
16 guarantors under the terms of a cross-guarantee
17 contract;”;

18 (g) by adding new subsection (14)—

19 “(14) ‘cross-guarantee syndicate’ means any
20 group of direct guarantors which has entered into a
21 cross-guarantee contract with one or more guaran-
22 teed companies;”;

23 (h) by redesignating subsections (11), (12), and
24 (13) as subsections (15), (16), and (17);

25 (i) by adding new subsection (18)—

1 “(18) ‘depository institution’ has the meaning
2 given to such term in section 3(c)(1) of the Federal
3 Deposit Insurance Act (12 U.S.C. 1813(c)(1)), how-
4 ever, for the purposes of this title, depository institu-
5 tion shall not mean a Federal branch or an insured
6 branch as those terms are defined in sections (3)(r)
7 and (3)(s) of the Federal Deposit Insurance Act (12
8 U.S.C. 1813 (r) and (s));”;

9 (j) by adding new subsection (19)—

10 “(19) ‘direct guarantor’ means a member of a
11 cross-guarantee or stop-loss syndicate which has en-
12 tered into a cross-guarantee or stop-loss contract
13 with a guaranteed party;”;

14 (k) by redesignating subsections (14)–(21A) as
15 subsection (20)–(28) and by redesignating sub-
16 sections (22)–(27) as subsections (30)–(35);

17 (l) by adding new subsection (36)—

18 “(36) ‘guaranteed company’ means any com-
19 pany which has entered into a cross-guarantee con-
20 tract with a cross-guarantee syndicate and has guar-
21 anteed obligations outstanding as of the date of the
22 filing of the petition;”;

23 (m) by adding new subsection (37)—

1 “(37) ‘guaranteed creditor’ means any entity
2 who owns or is the beneficiary of a guaranteed obli-
3 gation;”;

4 (n) by adding new subsection (38)—

5 “(38) ‘guaranteed obligation’ means an obliga-
6 tion of a guaranteed party of which a cross-guaran-
7 tee or stop-loss syndicate has guaranteed perform-
8 ance, including the timely payment of principal and
9 interest, if a failure to perform in a timely manner
10 constitutes a breach of contract;”;

11 (o) by adding new subsection (39)—

12 “(39) ‘guaranteed party’ means any guaranteed
13 company or nondepository guarantor;”;

14 (p) by redesignating subsections (28)–(35) as
15 subsections (40)–(47) and subsections (36)–(38) as
16 subsections (49)–(51);

17 (q) by adding new subsection (53)—

18 “(53) ‘monitoring fee payment’ means the peri-
19 odic payment made by a guaranteed party to a syn-
20 dicate agent under the terms of the guaranteed par-
21 ty’s cross-guarantee or stop-loss contract;”;

22 (r) by adding new subsection (55)—

23 “(55) ‘nondepository guarantor’ means any per-
24 son or company which has entered into a stop-loss
25 contract with a stop-loss syndicate;”;

1 (s) by redesignating subsection (39) as sub-
2 section (68);

3 (t) by redesignating subsection (40) as sub-
4 section (54);

5 (u) by redesignating subsections (41)–(44) as
6 subsections (56)–(59);

7 (v) by adding new subsection (60)—

8 “(60) ‘regulation corporation’ means the Cross-
9 Guarantee Regulation Corporation;”;

10 (w) by redesignating subsections (45)–(51) as
11 subsections (61)–(67);

12 (x) by redesignating subsections (52) and (53)
13 as subsections (69) and (70), subsection (54) as
14 subsection (79) and subsection (54)¹ as subsection
15 “(71)”;

16 (y) by adding new subsection (72)—

17 “(72) ‘stop-loss contract’ means a contract
18 which—

19 “(A) is entered into between a person or a
20 company and a stop-loss 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 (z) by adding new subsection (73)—

4 “(73) ‘stop-loss premium payment’ means the
5 payment a nondepository guarantor periodically
6 makes to direct guarantors under the nondepository
7 guarantor’s stop-loss contract;”;

8 (aa) by adding new subsection (74)—

9 “(74) ‘stop-loss syndicate’ means any group of
10 direct guarantors which has entered into a stop-loss
11 contract with a nondepository guarantor;”;

12 (bb) by adding new subsection (77)—

13 “(77) ‘syndicate agent’ means any person or
14 company who acts as the agent for the direct guar-
15 antors under any cross-guarantee or stop-loss con-
16 tract;” ; and

17 (cc) by redesignating subsection (55) as sub-
18 section (80), subsection (55)¹ as subsection (75),
19 subsection (56) as subsection (48), subsection (56)¹
20 as subsection (76), subsection (57) as subsection
21 (52), and subsection (57)¹ as subsection (78).

22 **SEC. 302. APPLICABILITY OF CHAPTERS.**

23 Section 103 of title 11, United States Code, is
24 amended—

1 (a) in subsection (a) by striking “section 1161”
2 and adding “sections 1161 and 1181”;

3 (b) by adding new subsection (h)—

4 “(h) Subchapter V of chapter 11 of this title applies
5 only in a case under such chapter in which a guaranteed
6 company is the debtor”; and

7 (c) by redesignating subsections (h) and (i) as
8 (i) and (j).

9 **SEC. 303. PUBLIC ACCESS TO PAPERS.**

10 Section 107 of title 11, United States Code, is
11 amended—

12 (a) in subsection (a) by striking “subsection
13 (b)” and inserting “subsections (b) and (c)”; and

14 (b) by adding new subsection (c)—

15 “(c) Notwithstanding subsection (a) of this section,
16 the identity of a guaranteed creditor and the amount of
17 a guaranteed creditor’s claim in a case under subchapter
18 V of chapter 11 is not a matter of public record and shall
19 be kept confidential.”.

20 **SEC. 304. WHO MAY BE A DEBTOR.**

21 Section 109 of title 11, United States Code, is
22 amended—

23 (a) in subsection (b)(2) by striking “or” from
24 the end of the subsection;

1 (b) in subsection (b)(3) by striking “.” and
2 adding “; or” at the end of the subsection;

3 (c) by adding new paragraph (b)(4)—
4 “(4) a guaranteed company.”;

5 (d) in subsection (d) by striking “and a rail-
6 road” and inserting “a railroad, and a guaranteed
7 company”;

8 (e) by adding new subsection (h)—

9 “(h) A company must be a debtor under subchapter
10 V of chapter 11 if—

11 “(1) the company is a guaranteed company; or

12 “(2) the company would be a guaranteed com-
13 pany but for the requirement that the company has
14 guaranteed obligations outstanding as of the date of
15 the filing of the petition and after the date of the
16 filing of the petition, the company incurs guaranteed
17 obligations”; and

18 (f) by adding new subsection (i)—

19 “(i) Once a guaranteed company has become a debtor
20 under subchapter V of chapter 11, it is not eligible for
21 relief under any other subchapter of chapter 11 or under
22 any other chapter in this title.”

1 “(3) In a case under subchapter V of chapter
2 11, the United States trustee shall consult with the
3 syndicate agent monitoring the debtor as of the date
4 of the filing of the petition and shall consider any
5 existing bonds covering the guaranteed company
6 when determining the amount of the bond required
7 to be filed under subsection (a) of this section.”.

8 **SEC. 313. NOTICE.**

9 Section 342 of title 11, United States Code, is
10 amended by adding new subsection (c)—

11 “(c) Notwithstanding subsection (a) of this section,
12 notice of the entry of an order for relief in a case under
13 subchapter V of chapter 11 shall be given by publication
14 and shall be given in writing to the syndicate agent and
15 to all creditors having claims that are not guaranteed obli-
16 gations. Notice to the syndicate agent shall constitute no-
17 tice to all guaranteed creditors in the case.”.

18 **SEC. 314. MONEY OF ESTATES.**

19 Section 345 of title 11, United States Code, is
20 amended in subsection (b) by inserting after the third
21 usage of “United States” “or is guaranteed under a cross-
22 guarantee contract.”.

23 **SEC. 315. AUTOMATIC STAY.**

24 Section 362 of title 11, United States Code, is
25 amended by adding new paragraph (b)(17)—

1 second usage of “modified,”; and by inserting “,
2 guaranteed obligation,” after the fourth usage of
3 “contract”;

4 (c) in subparagraph (e)(2)(B), by striking
5 “such contract is a” and inserting “such contract is
6 not a guaranteed obligation but is some other”;

7 (d) by adding a new subsection (q)—
8 “(q) Notwithstanding subsection (c)(2) of this sec-
9 tion, the trustee shall be deemed to have assumed as of
10 the date of filing of the petition all cross-guarantee and
11 stop-loss contracts to which the debtor is a party. The
12 trustee shall immediately pay all cross-guarantee premium
13 payments, stop-loss premium payments, and monitoring
14 fee payments due under any cross-guarantee or stop-loss
15 contract so assumed. Any claim for a subsequent breach
16 of the obligations under such contracts shall be entitled
17 to priority under section 507(a)(1). The trustee shall not
18 reject any cross-guarantee or stop-loss contract.”; and

19 (e) in paragraph (f)(1) by inserting after “Ex-
20 cept as provided in subsection (c) of this section”
21 the following to complete the clause, “and excluding
22 those executory contracts described in subsection
23 (q)”.

1 (b) by adding new subparagraph (1)(b)—

2 “(b) in a case under subchapter V of chapter 11 and
3 subject to the requirement of subsection 107(c) of this
4 title, file under seal the list of guaranteed creditors and
5 the amount of the claims of the guaranteed creditors.”.

6 **SEC. 323. EXCEPTIONS TO DISCHARGE.**

7 Section 523 of title 11, United States Code, is
8 amended by adding new paragraph (a)(13)—

9 “(13) which arises as a result of the debtor’s
10 cross-guarantee obligations.”.

11 **SEC. 324. LIMITATION ON AVOIDING POWERS.**

12 Section 546 of title 11, United States Code, is
13 amended by adding new subsection (h)—

14 “(h) Notwithstanding sections 544, 545, 547 and
15 548(a)(2) of this title, the trustee may not avoid a transfer
16 that is a cross-guarantee premium payment, a stop-loss
17 premium payment, or a monitoring fee payment made be-
18 fore the commencement of the case, except under section
19 548(a)(1) of this title.”.

20 **SEC. 325. PREFERENCES.**

21 Section 547 of title 11, United States Code, is
22 amended by adding new subsection (h)—

23 “(h) For the purposes of this section, a payment of
24 a guaranteed obligation is deemed to be a payment of a

1 debt incurred by the debtor in the ordinary course of busi-
2 ness or financial affairs of the debtor and the transferee.”.

3 **SEC. 326. FRAUDULENT TRANSFERS AND OBLIGATIONS.**

4 Section 548 of title 11, United States Code, is
5 amended in paragraph (d)(2) by adding new subparagraph
6 (E)—

7 “(E) A cross-guarantee syndicate or a syndicate
8 agent that receives a cross-guarantee premium
9 payment, a stop-loss premium payment, or a
10 monitoring fee payment takes for value to the
11 extent of such payment.”.

12 **SEC. 327. POST-PETITION TRANSACTIONS.**

13 Section 549 of title 11, United States Code, is
14 amended—

15 (a) in subsection (a) by striking “subsections
16 (b) or (c)” and by inserting “subsections (b), (c), or
17 (d)”;

18 (b) by adding new subsection (d)—

19 “(d) The trustee may not avoid under subsection (a)
20 of this section a transfer of property to a transferee whose
21 claim, in the absence of such transfer, would be guaran-
22 teed under a cross-guarantee or stop-loss contract.”; and

23 (c) by redesignating subsection (d) as sub-
24 section (e).

1 **SEC. 328. CONTRACTUAL RIGHT TO LIQUIDATE A SECURI-**
2 **TIES CONTRACT.**

3 Section 555 of title 11, United States Code, is
4 amended—

5 (a) by inserting “(a)” at the beginning of the
6 section; and

7 (b) by adding new subsection (b)—

8 “(b) Subsection (a) of this section shall not apply in
9 any case under subchapter V of chapter 11.”.

10 **SEC. 329. CONTRACTUAL RIGHT TO LIQUIDATE A COMMOD-**
11 **ITIES CONTRACT OR FORWARD CONTRACT.**

12 Section 556 of title 11, United States Code, is
13 amended—

14 (a) by inserting “(a)” at the beginning of the
15 section; and

16 (b) by adding new subsection (b)—

17 “(b) Subsection (a) of this section shall not apply in
18 any case under subchapter V of chapter 11.”.

19 **SEC. 330. CONTRACTUAL RIGHT TO LIQUIDATE A REPUR-**
20 **CHASE AGREEMENT.**

21 Section 559 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. 331. CONTRACTUAL RIGHT TO TERMINATE A SWAP**
4 **AGREEMENT.**

5 Section 560 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 **Subtitle D—Amendments to Chapter 11 of**
13 **Title 11**

14 **CHAPTER 1—AMENDMENTS TO EXISTING LAW**

15 **SEC. 341. CREDITORS’ AND EQUITY SECURITY HOLDERS’**
16 **COMMITTEES.**

17 Section 1102 of title 11, United States Code, is
18 amended in paragraph (a)(1) by inserting at the end “,
19 provided, however, that only creditors holding claims that
20 are not guaranteed obligations under a cross-guarantee or
21 stop-loss contract and are not direct guarantors may be
22 appointed to such committee in a case under subchapter
23 V of chapter 11”.

1 **SEC. 342. WHO MAY FILE A PLAN.**

2 Section 1121 of title 11, United States Code, is
3 amended—

4 (a) by adding new subsection (d)—

5 “(d) Notwithstanding subsection (c) of this section,
6 a guaranteed creditor may not file a plan in a case under
7 subchapter V of chapter 11”; and

8 (b) by redesignating subsection (d) as sub-
9 section (e).

10 **SEC. 343. IMPAIRMENT OF CLAIMS OR INTERESTS.**

11 Section 1124 of title 11, United States Code, is
12 amended—

13 (a) by inserting “(a)” at the beginning of the
14 section; and

15 (b) by adding new subsection (b)—

16 “(b) Notwithstanding subsection (a) of this section,
17 the claim of a guaranteed creditor is deemed to be
18 unimpaired in a case under subchapter V of chapter 11.”.

19 **SEC. 344. ACCEPTANCE OF PLAN.**

20 Section 1126 of title 11, United States Code, is
21 amended in subsection (a) by inserting at the end of the
22 first sentence “, provided, however, that a guaranteed
23 creditor is not entitled to accept or reject a plan in a case
24 under subchapter V of chapter 11”.

1 **SEC. 345. CONFIRMATION HEARING.**

2 Section 1128 of title 11, United States Code, is
3 amended in subsection (b) by inserting after “A party in
4 interest” “, other than a guaranteed creditor in a case
5 under subchapter V of chapter 11,”.

6 **SEC. 346. CONFIRMATION OF PLAN.**

7 Section 1129 of title 11, United States Code, is
8 amended—

9 (a) in paragraph (a)(4), by inserting at the end
10 “, provided, however, that no such approval of any
11 payment by a cross-guarantee or stop-loss syndicate
12 is required when the cross-guarantee or stop-loss
13 syndicate is the proponent of the plan and the pay-
14 ment is made pursuant to a cross-guarantee or stop-
15 loss contract”; and

16 (b) by adding new subsection (e)—

17 “(e) Notwithstanding subsections (a) and (b) of this
18 section, the court may confirm a plan that otherwise meets
19 the requirements of subsection (a) and (b) of this section
20 even though, in a case under subchapter V of chapter 11,
21 a guaranteed creditor receives or retains no property
22 under the plan.”.

23 **SEC. 347. EFFECT OF CONFIRMATION.**

24 Section 1141 of title 11, United States Code, is
25 amended—

1 (a) in subsection (a) by striking “(d)(2) and
2 (d)(3)” and by inserting “(d)(2), (d)(3), (d)(4), and
3 (d)(5)”;

4 (b) by inserting new paragraph (d)(4)—

5 “(4) Except as provided in subsection 365(k) of
6 this title, the confirmation of a plan does not dis-
7 charge a guaranteed company that is a debtor under
8 subchapter V of chapter 11 of this title from any
9 debt arising out of a guaranteed obligation”;

10 (c) by inserting new paragraph (d)(5)—

11 “(5) Except as provided in section 365(k) of
12 this title, the confirmation of a plan does not dis-
13 charge a debtor of its obligations and liabilities as
14 a direct guarantor under a cross-guarantee or stop-
15 loss contract”; and

16 (d) by redesignating paragraph (d)(4) as (d)(6).

17 **CHAPTER 2—ENACTMENT OF SUBCHAPTER V**

18 **SEC. 351. GUARANTEED COMPANY REORGANIZATION.**

19 Title 11, United States Code, is amended by adding
20 a new subchapter V—

21 **“Subchapter V—Guaranteed Company**
22 **Reorganization”.**

23 **SEC. 352. INAPPLICABILITY OF OTHER SECTIONS.**

24 Title 11, United States Code, is amended by adding
25 new section 1181—

1 **“§ 1181. Inapplicability of other sections**

2 “Sections 341, 343, 1104, 1105, and 1107 do not
3 apply in a case under subchapter V of Chapter 11.”.

4 **SEC. 353. EFFECTIVE DATE OF FILING.**

5 Title 11, United States Code, is amended by adding
6 new section 1182—

7 **§ 1182. Effective date of filing**

8 “The effective date and time of the filing of a petition
9 under this subchapter shall be the close of business on
10 the business day preceding the date on which the petition
11 is actually filed.”.

12 **SEC. 354. APPOINTMENT OF TRUSTEE.**

13 Title 11, United States Code, is amended by adding
14 new section 1183—

15 **“§ 1183. Appointment of trustee**

16 “As soon as practicable after the entry of an order
17 for relief, the regulation corporation shall submit to the
18 United States Trustee a list of five disinterested persons
19 who are qualified and willing to serve as the trustee in
20 the case. The United States Trustee shall appoint one
21 such person to serve as the trustee in the case. Neither
22 the syndicate agent monitoring the debtor as of the date
23 of the filing of the petition nor a governmental unit or
24 the employee of a governmental unit shall be eligible to
25 serve as the trustee.”.

1 **SEC. 355. LIABILITY OF DIRECT GUARANTORS FOR TRANS-**
2 **FERS TO GUARANTEED CREDITORS.**

3 Title 11, United States Code, is amended by adding
4 new section 1184—

5 **“§ 1184. Liability of direct guarantors for transfers to**
6 **guaranteed creditors**

7 “The trustee may recover for the benefit of all guar-
8 anteed creditors from the direct guarantors of the debtor
9 the amount of any transfers of property of the estate to
10 or for the benefit of guaranteed creditors that enable such
11 creditors to receive more than such creditors would receive
12 if the trustee was engaged in a liquidation pursuant to
13 section 1187 of this chapter and such transfers had not
14 been made.”.

15 **SEC. 356. REPLACEMENT OR MODIFICATION OF CROSS-**
16 **GUARANTEE CONTRACT.**

17 Title 11, United States Code, is amended by adding
18 new section 1185—

19 **“§ 1185. Replacement or modification of cross-guaran-**
20 **tee contract**

21 “Prior to the debtor filing any application with the
22 resolution corporation for approval of any replacement
23 cross-guarantee contract or for the approval of any modi-
24 fication of the debtor’s existing cross-guarantee contract,
25 the debtor must obtain the approval of the court to enter

1 into such replacement contract or to modify such existing
2 contract.”.

3 **SEC. 357. EFFECT OF FEDERAL, STATE, AND LOCAL LEGIS-**
4 **LATION AND REGULATIONS.**

5 Title 11, United States Code, is amended by adding
6 new section 1186—

7 **“§ 1186. Effect of Federal, State, and local legislation**
8 **and regulations**

9 “(a) Except with respect to merger, modification of
10 the financial structure of the debtor, or the issuance or
11 sale of securities under a plan, the trustee and the debtor
12 are subject to all Federal, State, and local legislation, reg-
13 ulations and orders to the same extent as the debtor would
14 be if a petition commencing the case under this chapter
15 had not been filed.

16 “(b) Notwithstanding subsection (a) of this section,
17 neither Federal receivership law, State receivership law,
18 nor any laws prohibiting the enforcement of an agreement
19 that is not contained in the records of a debtor under this
20 subchapter, including sections 212(a) and 217(4) of the
21 Financial Institutions Reform, Recovery, and Enforce-
22 ment Act of 1989 (12 U.S.C. 1821(d)(9)(A) and 1823(e)),
23 shall be applicable.

24 “(c) Notwithstanding any State or Federal law, de-
25 positors in a guaranteed company that is a debtor under

1 this subsection shall not receive any preference in distribu-
2 tion under this title over other creditors.”.

3 **SEC. 358. LIQUIDATION.**

4 Title 11, United States Code, is amended by adding
5 new section 1187—

6 **“§ 1187. Liquidation**

7 “On request of a party in interest and after notice
8 and a hearing, the court may order the trustee to cease
9 the debtor’s operation and to collect and reduce to money
10 all of the property of the estate in the same manner as
11 if the case were a case under chapter 7 of this title if
12 such liquidation is in the best interest of creditors”.

13 **TITLE IV—AMENDMENTS TO TITLE 28,**
14 **UNITED STATES CODE**

15 **SEC. 401. VENUE.**

16 Title 28, United States Code, is amended by adding
17 new subsection 1409(f)—

18 “(f) A proceeding arising in or related to a case under
19 subchapter V of chapter 11 of title 11 regarding the debt-
20 or’s satisfaction of a guaranteed obligation, whether aris-
21 ing before or after the commencement of the case, may
22 be commenced in the district court for the district where
23 the State or Federal court sits in which the party com-
24 mencing such proceeding may, under applicable non-bank-
25 ruptcy venue provisions, have brought an action on such

1 claim, or in the district court in which such case is pend-
2 ing. The cross-guarantee syndicate which has entered into
3 a cross-guarantee contract in such a case shall be a party
4 in interest in any proceeding commenced under this sub-
5 section.”.

○

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