

TITLE 12 - BANKS AND BANKING
CHAPTER 53 - WALL STREET REFORM AND CONSUMER PROTECTION
SUBCHAPTER II - ORDERLY LIQUIDATION AUTHORITY

§ 5384. Orderly liquidation of covered financial companies

(a) Purpose of orderly liquidation authority

It is the purpose of this subchapter to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard. The authority provided in this subchapter shall be exercised in the manner that best fulfills such purpose, so that—

- (1) creditors and shareholders will bear the losses of the financial company;
- (2) management responsible for the condition of the financial company will not be retained; and
- (3) the Corporation and other appropriate agencies will take all steps necessary and appropriate to assure that all parties, including management, directors, and third parties, having responsibility for the condition of the financial company bear losses consistent with their responsibility, including actions for damages, restitution, and recoupment of compensation and other gains not compatible with such responsibility.

(b) Corporation as receiver

Upon the appointment of the Corporation under section 5382 of this title, the Corporation shall act as the receiver for the covered financial company, with all of the rights and obligations set forth in this subchapter.

(c) Consultation

The Corporation, as receiver—

- (1) shall consult with the primary financial regulatory agency or agencies of the covered financial company and its covered subsidiaries for purposes of ensuring an orderly liquidation of the covered financial company;
- (2) may consult with, or under subsection (a)(1)(B)(v) or (a)(1)(L) of section 5390 of this title, acquire the services of, any outside experts, as appropriate to inform and aid the Corporation in the orderly liquidation process;
- (3) shall consult with the primary financial regulatory agency or agencies of any subsidiaries of the covered financial company that are not covered subsidiaries, and coordinate with such regulators regarding the treatment of such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate; and
- (4) shall consult with the Commission and the Securities Investor Protection Corporation in the case of any covered financial company for which the Corporation has been appointed as receiver that is a broker or dealer registered with the Commission under section 78o (b) of title 15 and is a member of the Securities Investor Protection Corporation, for the purpose of determining whether to transfer to a bridge financial company organized by the Corporation as receiver, without consent of any customer, customer accounts of the covered financial company.

(d) Funding for orderly liquidation

Upon its appointment as receiver for a covered financial company, and thereafter as the Corporation may, in its discretion, determine to be necessary or appropriate, the Corporation may make available to the receivership, subject to the conditions set forth in section 5386 of this title and subject to the plan described in section 5390 (n)(9) of this title, funds for the orderly liquidation of the covered financial company. All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 5390 (b)(1) of this title, as applicable, including funds used for—

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

- (1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;
- (2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;
- (3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;
- (4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection;
- (5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary; and
- (6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 5390 of this title.

(Pub. L. 111–203, title II, § 204, July 21, 2010, 124 Stat. 1454.)

References in Text

This subchapter, referred to in subsecs. (a) and (b), was in the original “this title”, meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to this subchapter. For complete classification of title II to the Code, see Tables.