

111TH CONGRESS
1ST SESSION

S. 1540

To provide for enhanced authority of the Federal Deposit Insurance Corporation to act as receiver for certain affiliates of depository institutions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 30, 2009

Mr. CORKER (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To provide for enhanced authority of the Federal Deposit Insurance Corporation to act as receiver for certain affiliates of depository institutions, 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.**

4 This Act may be cited as the “Resolution Reform Act
5 of 2009”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to allow the Federal Deposit Insurance Cor-
9 poration (in this Act referred to as the “Corpora-

1 tion”) to resolve the holding companies, affiliates,
2 and subsidiaries of failed or failing insured deposi-
3 tory institutions, consistent with the statutory mis-
4 sion of the Corporation, recognizing that depository
5 institution holding companies serve as a source of
6 strength for their subsidiary institutions, and that
7 their affiliates and subsidiaries may provide critical
8 services for such institutions; and

9 (2) to provide a clear and cohesive set of rules
10 to address the increasingly complex and interreliant
11 business structures in which insured depository in-
12 stitutions operate in order to promote efficient and
13 economical resolution.

14 **SEC. 3. DEFINITIONS.**

15 For purposes of this Act, the following definitions
16 shall apply:

17 (1) **AFFILIATE.**—The term “affiliate” has the
18 same meaning as in section 2(k) of the Bank Hold-
19 ing Company Act of 1956.

20 (2) **BRIDGE DEPOSITORY INSTITUTION HOLD-**
21 **ING COMPANY.**—The term “bridge depository insti-
22 tution holding company” means a new depository in-
23 stitution holding company organized by the Corpora-
24 tion pursuant to section 53(b) of the Federal De-
25 posit Insurance Act.

1 (3) CORPORATION.—The terms “Corporation”
2 and “Board” mean the Federal Deposit Insurance
3 Corporation and the Board of Directors thereof, re-
4 spectively.

5 (4) COVERED AFFILIATE OR SUBSIDIARY.—The
6 term “covered affiliate or subsidiary” means any af-
7 filiate or subsidiary of a depository institution hold-
8 ing company, or any subsidiary of an insured deposi-
9 tory institution that is a subsidiary of that deposi-
10 tory institution holding company, as to which the
11 Corporation is appointed receiver.

12 (5) COVERED DEPOSITORY INSTITUTION HOLD-
13 ING COMPANY.—The term “covered depository insti-
14 tution holding company” means a depository institu-
15 tion holding company with one or more affiliated or
16 subsidiary insured depository institutions for which
17 grounds exist to appoint a receiver pursuant to sec-
18 tion 11(c) of the Federal Deposit Insurance Act.

19 (6) FOREIGN.—The term “foreign” means any
20 country other than the United States and includes
21 any territory, dependency, or possession of any coun-
22 try other than the United States.

23 (7) INSURED DEPOSITORY INSTITUTION.—The
24 term “insured depository institution” has the same

1 meaning as section 3(c)(2) of the Federal Deposit
2 Insurance Act.

3 **SEC. 4. HOLDING COMPANY RESOLUTION AMENDMENTS TO**
4 **THE FEDERAL DEPOSIT INSURANCE ACT.**

5 The Federal Deposit Insurance Act (12 U.S.C. 1811
6 et seq.) is amended by adding at the end the following:

7 **“SEC. 51. RESOLUTION OF COVERED DEPOSITORY INSTITU-**
8 **TION HOLDING COMPANIES, AFFILIATES,**
9 **AND SUBSIDIARIES.**

10 “(a) IN GENERAL.—Notwithstanding any other pro-
11 vision of Federal or State law, except section 52(c), it shall
12 be the responsibility of the Corporation to resolve deposi-
13 tory institution holding companies of failed or failing in-
14 sured depository institutions and the affiliates and sub-
15 sidiaries of a depository institution holding company, in-
16 cluding any subsidiary of an insured depository institution
17 that is a subsidiary of the depository institution holding
18 company, using the powers and authorities conferred upon
19 it by this Act.

20 “(b) DEFINITIONS.—For purposes of this section and
21 sections 52 and 53, the following definitions shall apply:

22 “(1) BRIDGE DEPOSITORY INSTITUTION HOLD-
23 ING COMPANY.—The term ‘bridge depository institu-
24 tion holding company’ means a new depository insti-

1 tution holding company organized by the Corpora-
2 tion pursuant to section 53(b).

3 “(2) COVERED AFFILIATE OR SUBSIDIARY.—

4 The term ‘covered affiliate or subsidiary’ means any
5 affiliate or subsidiary of a depository institution
6 holding company, or any subsidiary of an insured
7 depository institution that is a subsidiary of that de-
8 pository institution holding company, as to which the
9 Corporation is appointed receiver under section 52.

10 “(3) COVERED DEPOSITORY INSTITUTION

11 HOLDING COMPANY.—The term ‘covered depository
12 institution holding company’ means a depository in-
13 stitution holding company with one or more affili-
14 ated or subsidiary insured depository institutions for
15 which grounds exist to appoint a receiver pursuant
16 to section 11(c).

17 “(4) FUNCTIONALLY REGULATED AFFILIATE

18 OR SUBSIDIARY.—The term ‘functionally regulated
19 affiliate or subsidiary’ means any company—

20 “(A) that is not a depository institution

21 holding company or a depository institution;

22 and

23 “(B) that is—

1 “(i) a broker or dealer that is reg-
2 istered under the Securities Exchange Act
3 of 1934;

4 “(ii) a registered investment adviser,
5 properly registered by or on behalf of ei-
6 ther the Securities and Exchange Commis-
7 sion in accordance with the Investment Ad-
8 visers Act of 1940, or any State, with re-
9 spect to the investment advisory activities
10 of such investment adviser and activities
11 incidental to such investment advisory ac-
12 tivities;

13 “(iii) an investment company that is
14 registered under the Investment Company
15 Act of 1940;

16 “(iv) an insurance company that is
17 subject to supervision by a State insurance
18 regulator, with respect to the insurance ac-
19 tivities of the insurance company and ac-
20 tivities incidental to such insurance activi-
21 ties; or

22 “(v) an entity that is subject to regu-
23 lation by the Commodity Futures Trading
24 Commission, with respect to the commod-

1 ities activities of such entity and activities
2 incidental to such commodities activities.

3 “(5) FUNCTIONAL REGULATOR.—The term
4 ‘functional regulator’ means the Federal or State
5 regulator responsible for regulating the types of ac-
6 tivities engaged in by the depository institution hold-
7 ing company, its subsidiary institutions, or other af-
8 filiates and subsidiaries. The ‘functional regulators’
9 are—

10 “(A) the Securities and Exchange Commis-
11 sion, if the depository institution holding com-
12 pany, any subsidiary institution, or other affil-
13 iate thereof, is a broker or dealer registered
14 with the Commission under section 15(b) of the
15 Securities Exchange Act of 1934 (15 U.S.C.
16 78o(b)) in conjunction with the authorities
17 granted to the Securities Investor Protection
18 Corporation, as created by the Securities Inves-
19 tor Protection Act in resolution of brokers or
20 dealers;

21 “(B) the Commodity Futures Trading
22 Commission, if the depository institution hold-
23 ing company, its subsidiary institution, or other
24 affiliate thereof, is a futures commission mer-
25 chant or a commodity pool operator registered

1 with the Commodity Futures Trading Commis-
2 sion under the Commodity Exchange Act; and

3 “(C) a State insurance commission or
4 other board or authority, if the depository insti-
5 tution holding company, or an affiliate or sub-
6 sidiary thereof, is an insurance company.

7 **“SEC. 52. APPOINTMENT OF THE CORPORATION AS RE-**
8 **CEIVER.**

9 “(a) DEPOSITORY INSTITUTION HOLDING COMPA-
10 NIES.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of Federal law, the law of any State, or the
13 constitution of any State, and subject to subsection
14 (c), the Corporation shall accept appointment, and
15 shall act as the receiver of a covered depository in-
16 stitution holding company upon such appointment,
17 in the manner provided in paragraph (2) or (3), if
18 the Corporation determines, in its sole discretion,
19 that such appointment will reduce the cost to the
20 Deposit Insurance Fund, and that grounds specified
21 in subsection (f) exist. If the Corporation determines
22 that such appointment will not reduce the cost to
23 the Deposit Insurance Fund, the Corporation may
24 decline the appointment, as provided in subsection
25 (c).

1 “(2) APPOINTMENT BY THE APPROPRIATE FED-
2 ERAL BANKING AGENCY.—Whenever the appropriate
3 Federal banking agency appoints a receiver for a de-
4 pository institution holding company, the Federal
5 banking agency shall tender the appointment to the
6 Corporation, and the Corporation shall accept such
7 appointment, unless the Corporation declines the ap-
8 pointment, as provided in subsection (c).

9 “(3) APPOINTMENT OF THE CORPORATION BY
10 THE CORPORATION.—The Board of Directors may
11 appoint the Corporation as receiver of a depository
12 institution holding company, after consultation with
13 the appropriate Federal banking agency, if the
14 Board of Directors determines that, notwithstanding
15 the existence of grounds specified in subsection (f),
16 the appropriate Federal banking agency having su-
17 pervision of a covered depository institution holding
18 company has declined to appoint the Corporation as
19 receiver.

20 “(4) FUNCTIONALLY REGULATED DEPOSITORY
21 INSTITUTION HOLDING COMPANIES.—When the ap-
22 propriate Federal banking agency appoints the Cor-
23 poration as receiver of a covered depository institu-
24 tion holding company, or the Board of Directors ap-
25 points the Corporation as receiver of a covered de-

1 pository institution holding company, the appro-
2 priate Federal banking agency or the Corporation
3 shall consult with the covered depository institution
4 holding company’s functional regulator, if any.

5 “(b) AFFILIATES AND SUBSIDIARIES.—

6 “(1) IN GENERAL.—Notwithstanding any other
7 provision of Federal law, the law of any State, or the
8 constitution of any State, and subject to paragraph
9 (2) and subsection (c), in any case in which the Cor-
10 poration is appointed under this section as receiver
11 for a depository institution holding company, the
12 Corporation may appoint itself as the receiver of any
13 affiliate or subsidiary of the insured depository insti-
14 tution or depository institution holding company
15 that is incorporated or organized under the laws of
16 any State, if the Corporation determines that such
17 action would facilitate the orderly resolution of the
18 insured depository institution or depository institu-
19 tion holding company, and is consistent with the
20 purposes of this Act.

21 “(2) FUNCTIONALLY REGULATED SUBSIDI-
22 ARIES.—The Corporation shall consult with the ap-
23 propriate Federal or State functional regulator when
24 the Corporation appoints itself as the receiver of any
25 functionally regulated affiliate or subsidiary.

1 “(c) BANKRUPTCY OR STATE INSURANCE RESOLU-
2 TION OPTION.—

3 “(1) BANKRUPTCY GROUNDS FOR DECLINING
4 APPOINTMENT.—The Corporation may decline to ac-
5 cept appointment for a covered depository institution
6 holding company, when, in its sole discretion, the
7 Corporation determines that the resolution of that
8 holding company would be better accomplished
9 under title 11, of the United States Code, or under
10 applicable State insurance law.

11 “(2) RULEMAKING REQUIRED.—The Corpora-
12 tion shall, not later than 180 days after the date of
13 enactment of this section, adopt regulations that es-
14 tablish criteria pursuant to which the Corporation
15 will make the determination described in paragraph
16 (1).

17 “(d) SEPARATE ENTITIES.—

18 “(1) IN GENERAL.—Subject to paragraph (2),
19 each separate legal entity for which the Corporation
20 is appointed receiver shall constitute a separate re-
21 ceivership.

22 “(2) APPLICABILITY.—Paragraph (1) shall not
23 apply to any insured depository institution sub-
24 sidiary for which the Corporation has appointed
25 itself as receiver.

1 “(e) CORPORATION NOT SUBJECT TO ANY OTHER
2 AGENCY.—When acting as the receiver pursuant to an ap-
3 pointment described in subsection (a) or (b), the Corpora-
4 tion shall not be subject to the direction or supervision
5 of any other agency or department of the United States
6 or any State in the exercise of its rights, powers, and privi-
7 leges.

8 “(f) GROUNDS FOR APPOINTMENT.—The grounds for
9 appointing the Corporation as receiver of a depository in-
10 stitution holding company, affiliate, or subsidiary are that
11 one or more grounds exist under section 11(c) to appoint
12 a receiver for one or more affiliated insured depository in-
13 stitutions.

14 “(g) TERMINATION AND EXCLUSION OF OTHER AC-
15 TIONS.—The appointment of the Corporation as receiver
16 for a depository institution holding company or an insured
17 depository institution that is an affiliate or subsidiary of
18 a depository institution holding company shall imme-
19 diately, and by operation of law, terminate any case com-
20 menced with respect to the depository institution holding
21 company or any affiliate or subsidiary under title 11,
22 United States Code, or any proceeding under any State
23 insolvency law with respect to the depository institution
24 holding company or affiliate or subsidiary. No such case
25 or proceeding may be commenced with respect to the de-

1 pository institution holding company or any affiliate or
2 subsidiary of the insured depository institution at any time
3 while the Corporation acts as receiver of the depository
4 institution holding company or any affiliate or subsidiary,
5 without the written agreement of the Corporation.

6 “(h) JUDICIAL REVIEW.—

7 “(1) IN GENERAL.—If the Corporation is ap-
8 pointed (including the appointment of the Corpora-
9 tion by itself) as receiver of a depository institution
10 holding company under subsection (a), the depository
11 institution holding company may, not later than
12 30 days thereafter, bring an action in the United
13 States district court for the judicial district in which
14 the home office of such depository institution hold-
15 ing company is located, or in the United States Dis-
16 trict Court for the District of Columbia, for an order
17 requiring the Corporation to be removed as the re-
18 ceiver (regardless of how such appointment was
19 made), and the court shall, upon the merits, dismiss
20 such action or direct the Corporation to be removed
21 as the receiver.

22 “(2) OTHER APPOINTMENT.—If the Corpora-
23 tion appoints itself as receiver of any affiliate or
24 subsidiary of the insured depository institution or
25 depository institution holding company under sub-

1 section (b), the affiliate or subsidiary of the insured
2 depository institution or depository institution hold-
3 ing company may, not later than 30 days thereafter,
4 bring an action in the United States district court
5 for the judicial district in which the home office of
6 such any affiliate or subsidiary of the insured depos-
7 itory institution or depository institution holding
8 company is located, or in the United States District
9 Court for the District of Columbia, for an order re-
10 quiring the Corporation to be removed as the re-
11 ceiver, and the court shall, upon the merits, dismiss
12 such action or direct the Corporation to be removed
13 as the receiver.

14 **“SEC. 53. POWERS AND DUTIES OF CORPORATION AS RE-**
15 **CEIVER.**

16 “(a) RULEMAKING AUTHORITY OF CORPORATION.—
17 The Corporation may prescribe such regulations as the
18 Corporation determines appropriate regarding the orderly
19 resolution and conduct of receiverships of covered deposi-
20 tory institution holding companies or any affiliate or sub-
21 sidiary, in accordance with section 52.

22 “(b) RECEIVERSHIP, BACK-UP EXAMINATION, AND
23 ENFORCEMENT POWERS.—Except as provided in sub-
24 sections (c) and (e), the Corporation shall have the same
25 powers and rights to carry out its duties with respect to

1 depository institution holding companies, or affiliates and
2 subsidiaries, as the Corporation has under sections 8(t),
3 10(b), 11, 12, 13(d), 13(e), 15, and 38, with adaptations
4 made, in the sole discretion of the Corporation, that are
5 appropriate to the differences in form and function among
6 depository institution holding companies, insured depository
7 institutions, and their affiliates and subsidiaries.

8 “(c) AUTHORITY TO OBTAIN CREDIT.—

9 “(1) IN GENERAL.—A bridge depository institution
10 holding company with respect to which the Corporation
11 is the receiver may obtain unsecured credit
12 and issue unsecured debt.

13 “(2) INABILITY TO OBTAIN CREDIT.—If a
14 bridge depository institution holding company is un-
15 able to obtain unsecured credit or issue unsecured
16 debt, the Corporation may authorize the obtaining of
17 credit or the issuance of debt by the bridge depository
18 holding company—

19 “(A) with priority over any or all of the
20 obligations of the bridge depository holding
21 company;

22 “(B) secured by a lien on property of the
23 bridge depository holding company that is not
24 otherwise subject to a lien; or

1 “(C) secured by a junior lien on property
2 of the bridge depository holding company that
3 is subject to a lien.

4 “(3) LIMITATION.—The Corporation may au-
5 thorize the obtaining of credit or the issuance of
6 debt by a bridge depository holding company that is
7 secured by a senior or equal lien on property of the
8 bridge depository holding company that is subject to
9 a lien, only if—

10 “(A) the bridge depository holding com-
11 pany is unable to otherwise obtain such credit
12 or issue such debt; and

13 “(B) there is adequate protection of the in-
14 terest of the holder of the lien on the property
15 with respect to which such senior or equal lien
16 is proposed to be granted.

17 “(d) DISPOSITION OF CERTAIN DEPOSITORY INSTI-
18 TUTION HOLDING COMPANIES, AFFILIATES, AND SUB-
19 SIDIARIES.—Notwithstanding any other provision of law
20 (other than a conflicting provision of this Act), the Cor-
21 poration, in connection with the resolution of any insured
22 depository institution with respect to which the Corpora-
23 tion has been appointed as receiver, shall—

24 “(1) in the case of any depository institution
25 holding company, or a covered affiliate or subsidiary

1 for which the Corporation is appointed receiver, that
2 is a member of the Securities Investor Protection
3 Corporation (in this section referred to as ‘SIPC’),
4 coordinate with SIPC in the liquidation, if any, of
5 the company, to facilitate the orderly and timely
6 payment of claims under the Securities Investor Pro-
7 tection Act; and

8 “(2) in the case of any other depository institu-
9 tion holding company, or covered affiliate or sub-
10 sidiary, that is functionally regulated, coordinate
11 with the appropriate Federal or State functional reg-
12 ulator in the disposition of the company, to facilitate
13 the orderly and timely payment of claims under ap-
14 plicable guaranty plans, including State insurance
15 guaranty plans.

16 “(e) PRIORITY OF EXPENSES AND UNSECURED
17 CLAIMS.—

18 “(1) IN GENERAL.—Allowed claims (other than
19 secured claims to the extent of any such security)
20 against a covered depository institution holding com-
21 pany or any covered affiliate or subsidiary that are
22 proven to the satisfaction of the receiver for such
23 covered depository institution holding company, affil-
24 iate, or subsidiary shall have priority in the following
25 order:

1 “(A) Administrative expenses of the re-
2 ceiver.

3 “(B) Any obligation of the covered deposi-
4 tory institution holding company, or covered af-
5 filiate or subsidiary, to the Corporation.

6 “(C) Any general or senior liability of the
7 covered depository institution holding company,
8 or covered affiliate or subsidiary (which is not
9 a liability described in subparagraph (D) or
10 (E)).

11 “(D) Any obligation subordinated to gen-
12 eral creditors which is not an obligation de-
13 scribed in subparagraph (E).

14 “(E) Any obligation to shareholders, mem-
15 bers, general partners, limited partners, or
16 other persons with interests in the equity of the
17 covered depository institution holding company,
18 or covered affiliate or subsidiary, arising as a
19 result of their status as shareholders, members,
20 general partners, limited partners, or other per-
21 sons with interests in the equity of the covered
22 depository institution holding company, or cov-
23 ered affiliate or subsidiary.

24 “(2) CREDITORS SIMILARLY SITUATED.—All
25 claimants of a covered depository institution holding

1 company, or covered affiliate or subsidiary, that are
2 similarly situated under paragraph (1) shall be
3 treated in a similar manner, except that the receiver
4 may take any action (including making payments)
5 that does not comply with this subsection, if—

6 “(A) the Corporation determines that such
7 action is necessary to maximize the value of the
8 assets of the covered depository institution
9 holding company, or covered affiliate or sub-
10 sidiary, to maximize the present value return
11 from the sale or other disposition of the assets
12 of the covered depository institution holding
13 company, or to minimize the amount of any loss
14 realized upon the sale or other disposition of
15 the assets of the covered depository holding
16 company, or covered affiliate or subsidiary; and

17 “(B) all claimants that are similarly situ-
18 ated under paragraph (1) receive not less than
19 the amount provided in section 11(i)(2).

20 “(f) RULE OF CONSTRUCTION.—Nothing in the Res-
21 olution Reform Act is intended to supersede the adminis-
22 tration of claims under applicable State laws governing in-
23 surance guaranty funds or the Securities Investor Protec-
24 tion Act of 1970.

1 “(g) RULEMAKING.—The Federal Deposit Insurance
 2 Corporation shall conduct a rulemaking to be completed
 3 within 180 days of enactment that will lay out specific
 4 guidelines and priority of all secured and unsecured claims
 5 as well as where the resources to satisfy those that will
 6 be satisfied will be derived.”.

7 **SEC. 5. OTHER SPECIFIC MODIFICATIONS TO FEDERAL DE-**
 8 **POSIT INSURANCE CORPORATION AUTHOR-**
 9 **ITY.**

10 (a) RECORDKEEPING.—Section 11(e)(8)(H) of the
 11 Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(H))
 12 is amended to read as follows:

13 “(H) RECORDKEEPING.—The Corporation,
 14 after consultation with the appropriate Federal
 15 banking agencies, may prescribe regulations re-
 16 quiring that any insured depository institution
 17 or depository institution holding company main-
 18 tain such records with respect to qualified fi-
 19 nancial contracts (including market valuations)
 20 as the Corporation determines to be necessary
 21 or appropriate to enable it to exercise its rights
 22 and fulfill its obligations under this Act.”.

23 (b) GOLDEN PARACHUTE PAYMENTS.—Section
 24 18(k)(4)(A)(ii)(III) of the Federal Deposit Insurance Act
 25 (12 U.S.C. 1828(k)(4)(A)(ii)(III)) is amended—

1 (1) by striking “institution’s”;

2 (2) by inserting “or covered company” after
3 “insured depository institution”; and

4 (3) by inserting before the semicolon: “, except
5 that the Corporation may define and make a deter-
6 mination of troubled condition for any covered com-
7 pany that does not have an appropriate Federal
8 banking agency”.

9 **SEC. 6. CROSS-BORDER CLAIMS.**

10 (a) PURPOSE AND SCOPE.—

11 (1) PURPOSE.—The purpose of this section is
12 to provide effective mechanisms for dealing with
13 cases of cross-border insolvency, with the objectives
14 of—

15 (A) facilitating cooperation between the
16 Corporation, acting in its capacity as receiver of
17 a covered depository institution holding com-
18 pany or covered affiliate or subsidiary of an in-
19 sured depository institution and the courts and
20 other authorities of foreign countries involved in
21 cross-border insolvency cases; and

22 (B) facilitating the orderly resolution of in-
23 sured depository institutions, covered depository
24 institution holding companies, or covered affli-
25 ates or subsidiaries, in receivership.

1 (2) SCOPE.—This section applies in any case in
2 which—

3 (A) the Corporation seeks assistance from
4 a foreign court, foreign representative, or for-
5 eign regulatory or supervisory authority in con-
6 nection with the resolution of a depository insti-
7 tution holding company, or covered affiliate or
8 subsidiary thereof;

9 (B) the assistance of the Corporation is
10 sought by a foreign court, foreign representa-
11 tive, or foreign regulatory or supervisory au-
12 thority in connection with a foreign proceeding
13 or with a resolution under this Act; or

14 (C) a foreign proceeding and a case under
15 this Act with respect to the same covered de-
16 pository institution holding company, or covered
17 affiliate or subsidiary, are pending concurrently.

18 (b) COORDINATION AND COOPERATION.—In regard
19 to matters of insolvency and insolvency proceedings, the
20 Corporation may—

21 (1) cooperate and coordinate with foreign
22 courts, foreign representatives, and foreign regu-
23 latory or supervisory authorities, either directly or
24 through a designated representative, as the Corpora-
25 tion deems appropriate; and

1 (2) communicate directly with, or to request in-
2 formation or assistance directly from, foreign courts,
3 foreign representatives, and foreign regulatory or su-
4 pervisory authorities.

5 (c) CLAIMS BY FOREIGN REPRESENTATIVES.—The
6 Corporation, in its capacity as receiver of a covered deposi-
7 tory institution holding company, or covered affiliate or
8 subsidiary, may allow a foreign administrator or rep-
9 resentative to file claims.

10 (d) COORDINATION OF PAYMENTS.—

11 (1) LIMITATION.—Notwithstanding any other
12 provision of Federal law, a creditor who has received
13 payment with respect to a claim in a foreign insol-
14 vency proceeding may not receive a payment for the
15 same claim brought in a United States insolvency
16 proceeding under this Act against the same deposi-
17 tory institution, depository institution holding com-
18 pany, or covered affiliate or subsidiary.

19 (2) SUBROGATION.—A claimant in an insol-
20 vency proceeding under this Act that has received
21 payment on its claim shall agree to the subrogation
22 of the Corporation, to the extent of such payment,
23 to any claim or right of claim, arising from the same
24 loss.

1 (e) PUBLIC POLICY EXEMPTION.—Nothing in this
 2 section prevents the Corporation from refusing to take an
 3 action governed by this section if the action would be con-
 4 trary to the public policy of the United States or if it
 5 would increase losses to the Deposit Insurance Fund.

6 **SEC. 7. MISCELLANEOUS PROVISIONS.**

7 (a) BANKRUPTCY CODE AMENDMENTS.—Section
 8 109(b)(2) of title 11, United States Code, is amended by
 9 inserting before “homestead association” the following:
 10 “covered depository institution holding company and cov-
 11 ered affiliate or subsidiary, as those terms are defined in
 12 section 51(b) of the Federal Deposit Insurance Act (except
 13 if the Federal Deposit Insurance Corporation exercises its
 14 authority under section 52(c) of that Act),”.

15 (b) AUTHORITY TO APPOINT RECEIVER.—

16 (1) FEDERAL RESERVE ACT.—Section 11(o) of
 17 the Federal Reserve Act (12 U.S.C. 248(o)) is
 18 amended—

19 (A) by striking “The Board” and inserting
 20 the following:

21 “(1) STATE MEMBER BANKS.—The Board”;

22 and

23 (B) by adding at the end the following:

24 “(2) COVERED DEPOSITORY INSTITUTION
 25 HOLDING COMPANIES.—The Board may appoint the

1 Federal Deposit Insurance Corporation as receiver
2 for a covered depository institution holding company
3 (as those terms are defined in section 51(b) of the
4 Federal Deposit Insurance Act) under section 52 of
5 the Federal Deposit Insurance Act.”.

6 (2) HOME OWNERS’ LOAN ACT.—Section 10 of
7 the Home Owners’ Loan Act (12 U.S.C. 1467a) is
8 amended—

9 (A) by redesignating subsection (t) as sub-
10 section (u); and

11 (B) by inserting after subsection (s) the
12 following:

13 “(t) APPOINTMENT OF FDIC AS RECEIVER.—The
14 Director may appoint the Federal Deposit Insurance Cor-
15 poration as receiver for a covered depository institution
16 holding company (as those terms are defined in section
17 51(b) of the Federal Deposit Insurance Act) under section
18 52 of the Federal Deposit Insurance Act.”.

○