

(C) Government-wide list.—Not later than 10 days after receiving a final determination under subparagraph (A) or (B), the Administrator shall add the covered entity to the list maintained under paragraph (2). Not later than 10 days after the applicable ineligibility period ends, the Administrator shall remove the covered entity from the list unless another ineligibility period remains in effect.

(4) Referral.—The head of an executive agency that has credible information that a covered entity has committed a covered violation or has made a false certification under subsection (d) shall refer such information to the Attorney General.

(g) Waiver.—

(1) In general.—The head of an executive agency may waive the application of subsection (b) with respect to a specific Federal award for a period of 6 months if the head of the executive agency—

(A) determines, in writing, that—

(i) the waiver is necessary to avoid—

(I) an imminent threat to public health or safety;

(II) an articulable threat to national security; or

(III) an imminent threat to the continuity of essential government operations; and

(ii) no practicable alternative source is reasonably available; and

(B) submits to the Committees on Oversight and Accountability and Judiciary of the House of Representatives and the Committees on Homeland Security and Governmental Affairs and Judiciary of the Senate a report describing the waiver and the reasons for the waiver.

(2) Renewal.—A waiver under this subsection may be renewed for additional 6-month periods if the requirements of paragraph (1) are satisfied with respect to each renewal.

Subtitle E—Financial Market Integrity and Corporate Accountability

SEC. 251. PROHIBITION ON STOCK BUYBACKS.

(a) Definitions.—In this section—

(1) Equity security.—The term "equity security" has the meaning given such term in section 3 of the Securities Exchange Act of 1934 ([15 U.S.C. 78c](#)).

(2) Exchange.—The term "exchange" has the meaning given such term in section 3 of the Securities Exchange Act of 1934 ([15 U.S.C. 78c](#)).

(3) Issuer.—The term "issuer" has the meaning given such term in section 3 of the Securities Exchange Act of 1934 ([15 U.S.C. 78c](#)).

(4) National securities exchange.—The term "national securities exchange" means an exchange registered under section 6 of the Securities Exchange Act of 1934 ([15 U.S.C. 78f](#)).

(b) Prohibition.—Notwithstanding any other provision of law, no issuer may purchase an equity security of the issuer on a national securities exchange.

(c) Elimination of safe harbor.—[Section 240.10b–18 of title 17](#), Code of Federal Regulations, shall have no force or effect.

(d) Rule of construction.—Nothing in this section shall be construed to affect tender offers conducted pursuant to [section 240.13e–4](#) or [sections 240.14e–1 through 240.14f–1](#) of title 17, Code of Federal Regulations.

SEC. 252. FAILED BANK EXECUTIVES CLAWBACK AND HOLDING COMPANY LIABILITY.

(a) Clawback authority for insured depository institutions.—Section 8(b) of the Federal Deposit Insurance Act ([12 U.S.C. 1818\(b\)](#)) is amended by inserting after paragraph (8) the following:

"(9) Clawback.—

"(A) Definition.—In this paragraph, the term 'covered compensation' means—

"(i) salary;

"(ii) bonuses;

"(iii) any compensation that is granted, earned, or vested based wholly or in part upon the attainment of any financial reporting measure or other performance metric;

"(iv) equity-based compensation;

"(v) time- or service-based awards;

"(vi) awards based on nonfinancial metrics; and

"(vii) any profits realized from the buying or selling of securities.

"(B) Liability of institution-affiliated party.—An institution-affiliated party that is substantially responsible for the condition of an insured depository institution is liable to the Corporation for any covered compensation clawed back under subparagraph (C).

"(C) Required clawbacks.—In the case of insolvency or resolution of any insured depository institution, the Corporation shall claw back all or part of the covered compensation received by an institution-affiliated party during the preceding 5 years as is necessary to prevent unjust enrichment and assure that the party bears losses consistent with the responsibility of the party.

"(D) Deposit.—Any covered compensation clawed back under this paragraph shall be deposited into the Deposit Insurance Fund or into the general fund of the Treasury."

(b) Clawback authority for covered financial companies.—Section 204 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ([12 U.S.C. 5384](#)) is amended by adding at the end the following:

"(e) Clawback.—

"(1) Definition.—In this subsection, the term 'covered compensation' means—

"(A) salary;

"(B) bonuses;

"(C) any compensation that is granted, earned, or vested based wholly or in part upon the attainment of any financial reporting measure or other performance metric;

"(D) equity-based compensation;

"(E) time- or service-based awards;

"(F) awards based on nonfinancial metrics; and

"(G) any profits realized from the buying or selling of securities.

"(2) Liability of institution-affiliated party.—An institution-affiliated party that is substantially responsible for the condition of a covered financial company is liable to the Corporation for any covered compensation clawed back under paragraph (3).

"(3) Required clawbacks.—In the case of insolvency or resolution of any covered financial company, the Corporation shall claw back all or part of the covered compensation received by an institution-affiliated party during the preceding 5 years as is necessary to prevent unjust enrichment and assure that the party bears losses consistent with the responsibility of the party.

"(4) Deposit.—Any covered compensation clawed back under this subsection shall be deposited into the Deposit Insurance Fund or into the general fund of the Treasury."

(c) Bank holding company liability.—The Bank Holding Company Act ([12 U.S.C. 1841 et seq.](#)) is amended by adding at the end the following:

"Sec. 15. Liability to the Federal Deposit Insurance Corporation.

"(a) Definitions.—In this section:

"(1) Insured depository institution.—The term 'insured depository institution' has the meaning given the term in section 3 of the Federal Deposit Insurance Act.

"(2) Corporation.—The term 'Corporation' means the Federal Deposit Insurance Corporation.

"(b) In general.—Any bank holding company that has control over an insured depository institution for which the Corporation is appointed and acts as receiver under section 11 of the Federal Deposit Insurance Act shall be liable to the Corporation for—

"(1) any payments from the Deposit Insurance Fund to insured depositors of such insured depository institution;

"(2) any costs incurred by the Corporation as receiver of such insured depository institution; and

"(3) interest on each amount described in paragraph (1) or (2), accruing from the date the amount is paid or incurred by the Corporation, at the underpayment rate determined under [section 6621\(a\)\(2\)](#) of the Internal Revenue Code of 1986 and compounded daily under [section 6622\(a\)](#) of such Code.

"(c) Lien against all assets.—

"(1) In general.—Any liability of a bank holding company to the Corporation under subsection (b) shall be secured by a lien on all assets of such bank holding company.

"(2) Specifications.—Any lien arising under this subsection—

"(A) shall be deemed to be automatically perfected;

"(B) shall have priority over all other liens, irrespective of their date of creation or perfection; and

"(C) may not be avoided in a proceeding under [title 11, United States Code](#).

"(d) Priority of liability.—

"(1) In general.—Any liability of a bank holding company to the Corporation under subsection (b) shall have payment priority over all other liabilities of and interests in the bank holding company.

"(2) Clarifying rule.—No payment shall be made to any other creditor or shareholder of the bank holding company until the liability to the Corporation under this section has been paid in full.

"(e) Treatment under systemic solvency rule.—

"(1) Separate entity determination.—For purposes of section 254 of the POPULIST Act, the liability of a bank holding company under this section shall be included in the separate entity determination of the bank holding company at an amount equal to the aggregate amount of the insured deposits of all insured depository institutions controlled by the bank holding company, determined as of the date of the systemic solvency determination, plus a standardized allowance for receivership costs and interest determined under paragraph (4). An equity or other ownership interest of the bank holding company in an insured depository institution shall not reduce the amount of the liability recognized under this paragraph.

"(2) Enterprise-group determination.—In a determination required under section 254(e)(2) of the POPULIST Act, the same underlying insured deposit liability may not be counted more than once solely because the liability is reflected both as a liability of the insured depository institution and as a liability of the bank holding company under this section. A receivership cost, interest obligation, or other amount included in the liability under this section that is not otherwise reflected in the enterprise-group determination shall be recognized separately.

"(3) Actual liability unaffected.—Nothing in paragraph (2)—

"(A) limits the liability of a bank holding company to the Corporation under this section;

"(B) affects the lien or priority established under subsections (c) and (d); or

"(C) limits the separate entity requirements of section 254(e)(1) of the POPULIST Act.

"(4) Rules.—The Office of Systemic Solvency established under section 254(h) of the POPULIST Act, in consultation with the Corporation, shall prescribe rules for determining and reporting liabilities under this subsection for purposes of section 254 of the POPULIST Act, including a conservative percentage of aggregate insured deposits to be used as the standardized allowance under paragraph (1), based on historical receivership costs and interest."

SEC. 253. PROHIBITION ON PRIVATE EQUITY INVESTMENTS IN EMPLOYEE BENEFIT PLANS.

Section 404(a) of the Employee Retirement Income Security Act of 1974 ([29 U.S.C. 1104\(a\)](#)) is amended by adding at the end the following:

"(3) Prohibition on private equity and alternative investments.—

"(A) In general.—A fiduciary shall not cause the assets of an employee benefit plan to be invested, directly or indirectly, in—

"(i) a private equity fund;

"(ii) a hedge fund;

"(iii) a private credit fund;

"(iv) a venture capital fund; or

"(v) any other pooled investment vehicle or investment arrangement that is not publicly traded on a national securities exchange and that is characterized by illiquidity, a limited ability to redeem, or the absence of transparent market pricing.

"(B) Indirect investments prohibited.—The prohibition under subparagraph (A) applies regardless of whether the investment is made—

"(i) directly by the plan;

"(ii) through a fund of funds;

"(iii) through a target date fund or similar asset allocation vehicle; or

"(iv) through any other intermediary, special purpose vehicle, or structured product.

"(C) No waiver or exemption.—Any agreement, plan term, regulation, guidance, or other action that purports to permit an investment prohibited under this paragraph shall have no force or effect.

"(D) Fiduciary breach.—A violation of this paragraph shall constitute a breach of fiduciary duty under this title.

"(E) Effective date and transition.—

"(i) Effective date.—Subparagraphs (A) through (D) shall apply beginning on January 1, 2027.

"(ii) No additional plan assets.—Beginning on January 1, 2027, a fiduciary may not cause plan assets to be contributed, committed, invested, reinvested, recycled, or otherwise added, directly or indirectly, to an investment described in subparagraph (A), including pursuant to an agreement entered into before that date.

"(iii) Contract override.—Notwithstanding any other provision of law or the terms of any agreement, any provision requiring or permitting a contribution, investment, reinvestment, recycling, or other addition of plan assets prohibited under clause (ii) shall be void and unenforceable with respect to the plan and its fiduciaries. No person may impose a default, forfeiture, dilution, penalty, acceleration, fee, reduction in value or ownership, termination of rights, or other adverse consequence because a plan or fiduciary declines to provide plan assets in accordance with clause (ii).

"(iv) Existing funded interests.—A fiduciary may retain through June 30, 2028, an interest acquired before January 1, 2027, that would otherwise be prohibited under subparagraph (A), only while promptly and diligently pursuing the sale, transfer, redemption, or other disposition of the interest. The fiduciary shall complete the disposition of each such interest not later than June 30, 2028.

"(v) Automatic statutory redemption.—

"(I) In general.—Any interest described in clause (iv) held by a plan as of July 1, 2028, shall, by operation of law, be deemed redeemed as of that date. The plan shall cease to hold an interest in the applicable investment vehicle and shall instead hold a claim for the statutory redemption value determined under subclause (III).

"(II) Liability.—The applicable investment vehicle and each general partner, managing member, sponsor, investment adviser, or investment manager that controls or has authority over the management, redemption, or disposition of the interest shall be jointly and severally liable to the plan for payment of the statutory redemption value.

"(III) Statutory redemption value.—The statutory redemption value shall be the fair value of the plan's direct or indirect economic interest as of July 1, 2028, determined in accordance with rules issued under subparagraph (F), without reduction by reason of—

"(aa) a transfer restriction, consent requirement, right of first refusal, lockup, redemption limitation, or similar contractual restriction;

"(bb) an exit fee, default charge, penalty, forfeiture, dilution, or other consequence arising from compliance with this paragraph; or

"(cc) the fact that the redemption is required by this paragraph.

"(IV) Economic position fixed.—Except for interest on an unpaid statutory redemption obligation, no capital call, contribution obligation, management fee, exit fee, penalty, gain, loss, distribution entitlement, or other change associated with the

investment shall accrue to or against the plan after July 1, 2028. A payment or distribution received by the plan after that date with respect to the redeemed interest shall be credited against the unpaid statutory redemption obligation.

"(V) Interest.—An unpaid statutory redemption obligation shall bear interest beginning on July 1, 2028, at the rate determined under [section 1961\(a\)](#) of title 28, United States Code, except that, for purposes of determining such rate, July 1, 2028, shall be treated as the date of the judgment. Interest shall be computed daily and compounded annually in accordance with [section 1961\(b\)](#) of such title.

"(VI) Enforcement.—The Secretary or the plan may bring a civil action in an appropriate district court of the United States to enforce this clause. In a successful action brought by a plan, the court shall award the unpaid statutory redemption value, accrued interest, and reasonable attorney's fees and costs.

"(F) Rulemaking.—

"(i) Interim final rules.—Not later than July 1, 2027, the Secretary, in consultation with the Securities and Exchange Commission, the Secretary of the Treasury, and the Pension Benefit Guaranty Corporation, shall issue interim final rules to carry out subparagraph (E). The Secretary shall issue the interim final rules without regard to [section 553 of title 5](#), United States Code. The rules shall have the force and effect of law immediately upon publication.

"(ii) Public comment.—The Secretary shall provide a period of not less than 90 days for public comment after publication of the interim final rules.

"(iii) Final rules.—Not later than January 1, 2028, the Secretary shall issue final rules to carry out subparagraph (E).

"(iv) Subjects.—The rules issued under this subparagraph shall establish procedures and standards governing—

"(I) notice, documentation, reporting, and recordkeeping;

"(II) orderly sale, transfer, redemption, and other disposition of direct and indirect interests;

"(III) treatment of funds of funds, target date funds, pooled investment vehicles, intermediaries, special purpose vehicles, structured products, and distributions in kind;

"(IV) independent valuation and determination of statutory redemption value;

"(V) allocation of responsibility among investment vehicles, general partners, managing members, sponsors, investment advisers, investment managers, fiduciaries, custodians, and intermediaries;

"(VI) payment, distributions, valuation disputes, and enforcement of statutory redemption obligations; and

"(VII) prevention of evasion, artificial reductions in value, asset transfers, preferential payments, fees, penalties, or other actions inconsistent with this paragraph.

"(v) Limitations on authority.—The Secretary may not—

"(I) extend or waive the January 1, 2027, or July 1, 2028, dates established under subparagraph (E);

"(II) permit a contribution, investment, reinvestment, recycling, commitment, or other addition of plan assets prohibited under subparagraph (E);

"(III) exempt a person, plan, investment vehicle, investment arrangement, or class thereof from subparagraph (E); or

"(IV) authorize a contractual restriction, fee, penalty, forfeiture, dilution, reduction in value, or other adverse consequence prohibited under subparagraph (E).".

SEC. 254. SYSTEMIC SOLVENCY RULE.

(a) Definitions.—In this section:

(1) Affiliate.—The term "affiliate", with respect to a person, means any other person that directly or indirectly controls, is controlled by, or is under common control with that person. For purposes of this paragraph, the term "control" means the direct or indirect power to direct the management or policies of a person, whether through ownership, contract, guarantee, financing arrangement, or otherwise.

(2) Appropriate functional regulator.—The term "appropriate functional regulator" means—

(A) each Federal or State agency that has primary supervisory, regulatory, examination, or enforcement authority over a limited liability entity or a material activity of the entity, including—

(i) the Board;

(ii) the Office of the Comptroller of the Currency;

(iii) the Federal Deposit Insurance Corporation;

(iv) the National Credit Union Administration;

(v) the Securities and Exchange Commission;

(vi) the Commodity Futures Trading Commission;

(vii) the Federal Housing Finance Agency;

(viii) a State insurance, banking, credit union, securities, or other financial regulator; and

(ix) any other Federal or State agency designated by the Office based on the legal authority and responsibilities of the agency; and

(B) the Office, with respect to a limited liability entity or activity for which no other agency has primary supervisory, regulatory, examination, or enforcement authority.

(3) Board.—The term "Board" means the Board of Governors of the Federal Reserve System.

(4) Compliance ratio.—The term "compliance ratio" means the value of the real assets of a limited liability entity divided by the value of the liabilities of the entity in the worst financial state, after application of subsections (c) through (e). If the value of the liabilities is zero, the compliance ratio shall be deemed to be 1.

(5) Director.—The term "Director" means the Director of the Office of Systemic Solvency.

(6) Enforcing authority.—The term "enforcing authority" means—

(A) an appropriate functional regulator acting within its jurisdiction; or

(B) the Office acting pursuant to subsection (i)(4),

except that a State agency may exercise an authority provided under this section only to the extent permitted under Federal or State law.

(7) Enterprise group.—The term "enterprise group" means a limited liability entity and each affiliate or other person that is under common control with, economically integrated with, or materially linked to that entity through a guarantee, liquidity commitment, loss-sharing arrangement, financial support arrangement, transfer of risk, or other arrangement under which the assets, liabilities, or financial condition of one may materially affect the assets, liabilities, or financial condition of another.

(8) Financial asset.—

(A) In general.—The term "financial asset" means an asset the value of which consists principally of—

(i) a claim against, ownership interest in, or financial obligation of another person; or

(ii) an amount determined by reference to a financial event.

(B) Inclusions.—The term includes a deposit, loan, debt security, equity security, derivative, repurchase claim, securities lending claim, guarantee, insurance claim, liquidity commitment, participation interest, or similar financial instrument or contractual claim, whether recorded on or off the balance sheet.

(C) Exclusions.—The term does not include—

(i) an amount of Treasury Dollar Bills;

(ii) United States coins or currency; or

(iii) a bona fide commercial receivable described in paragraph (15)(B)(iii).

(9) Financial contract.—The term "financial contract" means any agreement, instrument, arrangement, or transaction that—

(A) creates a financial asset or liability;

(B) provides financing, liquidity, payment, settlement, redemption, repurchase, value support, or financial risk transfer; or

(C) provides for the payment or transfer of money, a financial asset, or another thing of value upon the occurrence of an event.

(10) Financial event.—The term "financial event" means—

(A) a change in the price, value, rate, yield, volatility, liquidity, creditworthiness, default status, or performance of an asset, liability, contract, instrument, currency, commodity, market, index, or benchmark, if that change determines the amount or existence of an obligation under a financial contract; or

(B) any other event or condition determined principally by reference to a financial instrument, financial market, market price, rate, index, or benchmark.

(11) Independently realizable value.—The term "independently realizable value" means the amount reasonably expected to be received, as of the date of determination, from an arm's-length sale, lease, license, collection, or other disposition of an asset within a commercially reasonable period, less direct disposition costs and any legally superior interest in the asset that is not otherwise included as a liability under this section, determined without regard to goodwill, going concern value, anticipated synergies, or anticipated governmental assistance.

(12) Liability.—The term "liability" means a present legal obligation arising from a past transaction or event, whether fixed or contingent, direct or indirect, and whether or not recorded on a balance sheet, under which a limited liability entity may be required to pay money, transfer property, redeem or support a financial claim, or perform under a guarantee, indemnity, insurance contract, liquidity commitment, or other financial contract. The term does not include an executory obligation to the extent that the entity has not received the corresponding property, goods, or nonfinancial services and may terminate the obligation without a material payment or penalty.

(13) Limited liability entity.—

(A) In general.—The term "limited liability entity" means any corporation, company, limited liability company, limited partnership, limited liability partnership, business trust, statutory trust, fund, cooperative, association, Government corporation, or other legal organization engaged in or affecting interstate or foreign commerce in which no natural person bears unlimited personal liability for all obligations of the organization.

(B) Exclusions.—The term does not include—

(i) a natural person;

(ii) a sole proprietorship;

(iii) a general partnership in which each partner is a natural person who bears unlimited personal liability for all obligations of the partnership;

(iv) a trust established solely for personal, family, charitable, or testamentary purposes that is not engaged in commercial or financial activity;

(v) the United States;

(vi) a State, Indian Tribe, or political subdivision of a State or Indian Tribe; or

(vii) a foreign sovereign.

(C) Separate governmental entities.—Subparagraph (B) does not exclude a corporation or other separate legal entity established, owned, or controlled by a government.

(14) Office.—The term "Office" means the Office of Systemic Solvency established under subsection (h).

(15) Real asset.—

(A) In general.—The term "real asset" means an asset whose value arises directly from—

(i) ownership of, or an enforceable entitlement to, tangible property;

(ii) ownership of, or an enforceable entitlement to, independently transferable intangible property;

(iii) an enforceable entitlement to labor, goods, nonfinancial services, productive capacity, or other activity in the real economy; or

(iv) its status as money issued directly by the United States, including an amount of Treasury Dollar Bills and United States coins or currency.

(B) Inclusions.—The term includes—

(i) land, structures, equipment, machinery, inventory, commodities, and other tangible property;

(ii) patents, copyrights, trade secrets, licenses, and other intangible property to the extent independently transferable and realizable apart from the continued operation or reputation of the limited liability entity; and

(iii) a bona fide account receivable arising in the ordinary course from the sale or lease of goods or the provision of nonfinancial services, to the extent that the goods have been delivered or made available or the services have been performed.

(C) Exclusions.—The term does not include—

(i) a financial asset;

(ii) goodwill, going concern value, brand value, organizational value, or another accounting intangible that is not independently transferable and realizable;

(iii) a deferred tax asset or other asset consisting solely of an anticipated accounting or tax benefit;

(iv) an internally generated accounting entry that does not represent an independently realizable asset; or

(v) a loan, extension of credit, or financing arrangement characterized as a commercial receivable for the purpose or effect of avoiding this section.

(16) Real event.—The term "real event" means an event or condition that is not a financial event and that arises principally from—

(A) death, illness, injury, disability, or another biological condition;

(B) physical damage, loss, destruction, theft, weather, natural disaster, or another physical or environmental condition;

(C) the production, supply, demand, delivery, condition, availability, or physical loss of a real asset, commodity, good, or nonfinancial service;

(D) the performance or nonperformance of an obligation to provide labor, goods, or nonfinancial services; or

(E) another event or condition arising principally from activity in the real economy.

(17) Responsible officer.—The term "responsible officer" means—

(A) the chief executive officer and chief financial officer of a limited liability entity;

(B) if the entity does not have an officer described in subparagraph (A), each officer or other person performing substantially equivalent functions; or

(C) such other officer or person with primary responsibility for the financial statements, financial condition, or risk management of the entity as the Office may designate by rule.

(18) Systemic solvency; systemically solvent.—The terms "systemic solvency" and "systemically solvent" mean the condition in which, after application of subsections (c) through (e), the value of the real assets of a limited liability entity is not less than the value of the liabilities of the entity in the worst financial state.

(19) Systemic solvency shortfall.—The term "systemic solvency shortfall" means the amount, if any, by which the value of the liabilities of a limited liability entity in the worst financial state exceeds the value of the real assets of the entity.

(20) Worst financial state.—The term "worst financial state" means the single internally consistent state of the world, permitted by the legal terms of the financial contracts and liabilities of a limited liability entity, in which all relevant financial events occur in the combination that produces the most adverse net financial position for the entity, determined—

(A) without regard to probability, expected value, historical correlation, regulatory risk weighting, or anticipated governmental assistance;

(B) by reference to the maximum legally enforceable obligations and valuation consequences that may arise in that state; and

(C) after recognizing only offsets, hedges, collateral, netting rights, and other protections permitted under subsection (c).

(b) Systemic solvency requirement.—

(1) General rule.—Except as provided in subsection (f), each limited liability entity shall maintain systemic solvency.

(2) Prohibited actions.—Subject to subsection (f), a limited liability entity may not take any action if, immediately after giving effect to the action, the entity would not be systemically solvent, including—

(A) issuing, assuming, renewing, extending, or materially modifying a liability or financial contract;

(B) providing a guarantee, indemnity, liquidity commitment, repurchase commitment, value support arrangement, or other financial support;

(C) making a dividend, distribution, redemption, repurchase, return of capital, or other transfer to an owner or holder of an equity interest;

(D) selling, transferring, pledging, encumbering, or otherwise disposing of a real asset;

(E) merging, consolidating, dividing, reorganizing, or transferring assets or liabilities; or

(F) entering into any other transaction or arrangement that creates, increases, transfers, or materially changes a liability or financial exposure.

(3) Effects to be included.—In applying paragraph (2), the limited liability entity shall take into account all direct, indirect, fixed, contingent, on-balance-sheet, and off-balance-sheet effects that may arise under the legal terms of the action, without regard to the accounting characterization, form, label, or expected probability of those effects.

(4) No reliance on future relief.—A determination of systemic solvency may not rely on—

(A) expected future earnings;

(B) an anticipated refinancing, rollover, renewal, capital contribution, or asset sale that is not legally binding and fully funded;

(C) anticipated governmental assistance, emergency lending, regulatory forbearance, or public loss absorption; or

(D) discretionary support from an affiliate or other person that is not recognized under subsection (c)(8).

(5) Ordinary equity financing preserved.—Nothing in this section shall prohibit a limited liability entity from issuing an equity interest that does not require redemption, repurchase, a fixed or guaranteed return, value support, or any other payment or performance that constitutes a liability under this section, if the issuance does not otherwise cause or increase a systemic solvency shortfall.

(c) Valuation of liabilities in the worst financial state.—

(1) General rule.—For purposes of determining systemic solvency, each liability of a limited liability entity shall be identified and valued as of the same date in accordance with this subsection, whether or not the liability is recognized, disclosed, reserved against, or recorded under generally accepted accounting principles or another accounting, regulatory, or reporting standard.

(2) Fixed and noncontingent liabilities.—A fixed or noncontingent liability shall be valued at the amount required, as of the date of determination, to satisfy or extinguish the liability in accordance with its legal terms, including outstanding principal, accrued interest, mandatory fees, and any then applicable termination or prepayment amount.

(3) Liabilities contingent on real events.—

(A) In general.—A liability contingent solely on 1 or more real events shall be valued at the greater of—

(i) the amount required to be maintained or recognized as a reserve under applicable law; or

(ii) the amount determined under generally accepted actuarial principles or another sound and consistently applied method prescribed by the Office.

(B) Probability permitted.—A valuation under this paragraph may take into account probability, expected value, historical experience, diversification of independent real risks, and the expected timing of payment.

(C) Financial component.—To the extent that the amount or existence of a liability described in subparagraph (A) also depends on a financial event, that portion of the liability shall be valued under paragraph (4).

(4) Liabilities contingent on financial events.—A liability contingent in whole or in part on a financial event shall be valued at the maximum amount that the limited liability entity may be legally obligated to pay, transfer, deliver, or perform in the worst financial state, without discount for probability, expected value, historical correlation, diversification, regulatory risk weighting, or anticipated governmental or private assistance.

(5) Financial contracts recorded as assets.—If a financial contract recorded or treated as an asset may require the limited liability entity to make a payment, transfer property, deliver a financial asset, or otherwise perform in the worst financial state—

(A) the contract shall be treated as a liability to the extent of the maximum net obligation arising in that state; and

(B) no positive accounting or market value assigned to the contract shall be treated as a real asset.

(6) Unbounded or indeterminate exposure.—

(A) In general.—If the maximum obligation arising from a liability contingent in whole or in part on a financial event, or from a financial contract, is unbounded, indeterminate, or

incapable of being reduced to a finite amount under its legal terms, the resulting liability shall be treated as unlimited.

(B) Effect.—A limited liability entity with a liability described in subparagraph (A) shall be deemed not systemically solvent unless the exposure is completely and legally eliminated by an offset recognized under paragraph (8).

(C) No statistical cap.—A confidence interval, value-at-risk measure, stress-test percentile, historical maximum, or other statistical estimate may not be used to establish a finite value for an obligation that is legally unbounded.

(7) Single internally consistent state.—

(A) Portfolio-wide determination.—The worst financial state shall be determined across all liabilities, financial contracts, financial assets, offsets, hedges, and collateral of the limited liability entity using a single internally consistent combination of financial events.

(B) Consistent variables.—The same price, rate, index, default status, market condition, or other financial variable may not be assigned inconsistent values for different positions in the same determination.

(C) No selective scenarios.—A limited liability entity may not select different adverse states for different positions for the purpose or effect of reducing the aggregate value of its liabilities.

(8) Offsets, hedges, collateral, and netting.—

(A) General requirements.—An offset, hedge, collateral position, netting right, guarantee, or other protection may be recognized only to the extent that—

(i) it is valid and legally enforceable in the worst financial state, including during insolvency, bankruptcy, receivership, or resolution;

(ii) it is legally and operationally available to satisfy the relevant liability and is not subject to a conflicting claim, transfer restriction, or discretionary refusal that would prevent performance in that state;

(iii) its value, availability, and performance are determined in the same internally consistent state used to value the liability;

(iv) any obligation of another person relied upon as protection is supported, in that same state, by real assets sufficient to permit performance after satisfaction of the other liabilities of that person, or is fully collateralized by assets available under clauses (i) through (iii); and

(v) the same asset, contract, payment claim, collateral, or other protection is not counted more than once.

(B) Matched financial positions.—A financial asset or financial contract may offset a liability to the extent that—

(i) the asset or contract is legally deliverable in satisfaction of the liability; or

(ii) its value necessarily changes in a manner that offsets the liability in the same worst financial state.

(C) Netting.—A right of setoff, close-out netting, payment netting, or termination netting may be recognized only to the extent that the right—

(i) applies between the same legally obligated parties or pursuant to a legally enforceable multilateral arrangement;

(ii) remains enforceable notwithstanding insolvency, bankruptcy, receivership, resolution, or the imposition of a stay; and

(iii) does not depend on discretionary performance by the limited liability entity or another person.

(D) Collateral.—

(i) General rule.—Collateral shall be valued in the same worst financial state as the liability it supports.

(ii) Financial collateral.—Financial collateral may reduce the value of a liability to the extent permitted under subparagraph (A), but shall not be treated as a real asset.

(iii) Interest in real collateral owned by another person.—A perfected and legally enforceable interest in identifiable real collateral owned by another person may be recognized as a collateral position, but not as a real asset of the limited liability entity, only to the extent of the lesser of—

(I) the unpaid amount of the obligation secured by the collateral; or

(II) the net amount reasonably expected to be realized by the limited liability entity through enforcement of its interest within a commercially reasonable period in the same worst financial state, after deducting legally superior interests, taxes, carrying costs, enforcement costs, disposition costs, completion or stabilization costs, and adjustments for physical condition, incomplete construction, legal or operational delay, transfer restrictions, market depth, and uncertainty.

(iv) Aggregate recognition.—Collateral positions described in clause (iii) may be recognized on an aggregate basis across one or more liabilities, except that—

(I) the aggregate amount by which liabilities are reduced may not exceed the aggregate amount recognized under clause (iii);

(II) the aggregate amount shall be further reduced as necessary to reflect concentration or correlation among collateral, obligors, markets, geographic areas, purchasers, or uses, simultaneous enforcement or disposition, limited market capacity, or another condition that would reduce aggregate recovery;

(III) pooling, diversification, securitization, tranching, or a credit rating may not, by itself, increase the amount recognized; and

(IV) no collateral, interest, or value may be counted more than once.

(v) No duplicate treatment.—A real asset recognized under subsection (d) may not also be used to reduce the value of a liability under this paragraph.

(E) No assumed transactions.—An offset may not be based on an assumed refinancing, rollover, future purchase or sale, discretionary margin payment, voluntary capital contribution, or other transaction that is not legally binding and fully funded as of the date of determination.

(9) Guarantees, indemnities, and financial support.—

(A) Provider.—A guarantee, indemnity, liquidity commitment, repurchase commitment, value support arrangement, or similar financial support shall be valued as a liability of the provider at the maximum amount for which the provider may be responsible in the worst financial state.

(B) Beneficiary.—A beneficiary may recognize an arrangement described in subparagraph (A) as an offset only to the extent permitted under paragraph (8), and may not assume that the provider will receive governmental assistance, affiliate support, refinancing, or other relief in order to perform.

(10) Regulatory methodologies.—The Office shall prescribe standardized methodologies for applying this subsection, including methodologies for evaluating linked, circular, or recursive obligations of multiple persons, but no methodology may—

(A) substitute statistical probability, expected loss, historical correlation, or regulatory risk weighting for maximum legal exposure to a financial event;

(B) treat an unenforceable, unavailable, or unfunded protection as an offset; or

(C) permit inconsistent assumptions concerning the same financial event.

(d) Valuation of real assets.—

(1) General rule.—For purposes of determining systemic solvency, a real asset shall be valued at its independently realizable value as of the same date used to value liabilities under subsection (c), using conservative, verifiable, and consistently applied methods.

(2) Tangible property.—The value of land, structures, equipment, machinery, inventory, commodities, and other tangible property shall—

(A) reflect the amount reasonably obtainable in an arm's-length transaction within a commercially reasonable period;

(B) account for physical condition, depreciation, obsolescence, location, legal restrictions, disposition costs, and the depth and reliability of the relevant market; and

(C) exclude any value attributable solely to the continued operation, reputation, organization, or expected future profitability of the limited liability entity.

(3) Productive assets in use.—A real asset need not be sold or removed from productive use in order to be recognized, but its value shall be based on the independently realizable

value of the asset itself and not on goodwill, going concern value, anticipated synergies, or projected earnings of the enterprise.

(4) Intangible property.—A patent, copyright, trade secret, license, or other intangible property may be recognized as a real asset only to the extent that—

- (A) the property is legally enforceable;
- (B) the property is separately transferable or licensable apart from the continued operation or reputation of the limited liability entity;
- (C) the limited liability entity possesses the legal authority necessary to transfer or license the property; and
- (D) the assigned value is supported by verifiable arm's-length transactions, enforceable licensing arrangements, or another conservative valuation method prescribed by the Office.

(5) Commercial receivables.—

(A) In general.—A bona fide commercial receivable described in subsection (a)(15)(B)(iii) shall be valued at the amount reasonably expected to be collected, reduced by allowances for nonpayment, dispute, return, offset, warranty obligation, collection cost, and delay.

(B) Performance required.—A receivable may not be recognized as a real asset unless the goods have been delivered or made available under the sale or lease, or the nonfinancial services have been performed, to the extent giving rise to the receivable.

(C) Financing excluded.—A receivable arising principally from an extension of credit, financing arrangement, deferred payment investment, or transaction structured for the purpose or effect of creating a financial asset shall not be treated as a real asset.

(6) Money of the United States.—

- (A) An amount of Treasury Dollar Bills shall be valued at par.
- (B) United States coins and currency shall be valued at face value.
- (C) No amount may be added for anticipated interest, appreciation, exchange value, scarcity, or resale value.

(7) Encumbrances and interests of other persons.—

(A) A lien or security interest securing a liability fully included under subsection (c) shall not, solely by reason of securing that liability, reduce the value of the real asset.

(B) The value of a real asset shall be reduced by the value of any ownership interest, beneficial interest, superior claim, use restriction, or other interest of another person that—

- (i) limits the amount the limited liability entity may realize from the asset; and
- (ii) is not otherwise included as a liability under subsection (c).

(C) A fractional or partial interest shall be recognized only to the extent of the limited liability entity's legally enforceable interest.

(8) Financial assets and offsets.—

(A) A financial asset shall not be valued as a real asset.

(B) A financial asset may be recognized only as an offset under subsection (c)(8).

(C) No asset, value, contractual claim, collateral position, or other protection may be counted both—

(i) as a real asset under this subsection; and

(ii) as an offset reducing a liability under subsection (c).

(9) Impairment and uncertainty.—The value of a real asset shall be reduced as necessary to reflect—

(A) illiquidity or the absence of a reliable market;

(B) technological, legal, physical, or economic obsolescence;

(C) pending litigation, contamination, remediation duties, title defects, or transfer restrictions;

(D) concentration or correlation among assets, obligors, markets, geographic areas, purchasers, or uses, including impairment arising from simultaneous enforcement or disposition;

(E) uncertainty concerning ownership, enforceability, condition, collectability, or transferability; and

(F) any other factor that materially reduces independently realizable value.

(10) No double counting.—A real asset or portion of a real asset may not be counted more than once by the same limited liability entity, by different members of an enterprise group, or through direct ownership, beneficial ownership, a participation interest, a trust, a special purpose vehicle, or another arrangement.

(11) Documentation, appraisal, and valuation independence.—

(A) Records.—A limited liability entity shall maintain records sufficient to establish the existence, ownership, condition, valuation method, and independently realizable value of each material real asset and each material collateral position.

(B) Independent review.—The Office may require an independent appraisal or valuation for a class of assets or collateral positions or for an asset or collateral position exceeding a threshold established by rule.

(C) Independence.—An appraisal or valuation relied upon under this section may not be prepared, directed, or compensated under an arrangement in which compensation, continued engagement, or another benefit depends on—

(i) the amount of the valuation;

(ii) completion of a loan, financing, securitization, acquisition, disposition, or other transaction; or

(iii) attainment of a requested or predetermined result.

(D) Prohibited influence.—A person engaged in origination, sales, underwriting, or transaction structuring may not direct or control the conclusion of an appraisal or valuation, and no interested person may coerce, influence, or attempt to influence such a conclusion.

(E) Office authority.—An appraisal or valuation shall not bind the Office. The Office may reject an appraisal or valuation, require an additional appraisal or valuation, apply a standardized benchmark or conservative adjustment, or recognize an amount less than the appraised or stated value if necessary to carry out this section.

(12) Valuation rules.—The Office shall prescribe standardized rules, valuation intervals, documentation requirements, impairment standards, and conservative valuation adjustments necessary to carry out this subsection, including rules governing aggregation of collateral positions, correlated stress, simultaneous enforcement or disposition, market capacity, and the independence of appraisals and valuations.

(e) Standalone and consolidated application.—

(1) Standalone compliance.—Each limited liability entity shall determine and maintain systemic solvency on a separate entity basis without regard to the systemic solvency of an affiliate, owner, parent, subsidiary, or other member of an enterprise group.

(2) Enterprise group compliance.—In addition to the requirement under paragraph (1), each enterprise group shall be systemically solvent on a consolidated basis.

(3) Scope of consolidation.—A consolidated determination under paragraph (2) shall include—

(A) each limited liability entity in the enterprise group;

(B) each special purpose vehicle, trust, partnership, fund, contractual arrangement, or other person through which a member of the enterprise group owns or controls assets, incurs or supports liabilities, transfers financial risk, or conducts financial activity;

(C) each domestic or foreign affiliate to the extent that—

(i) a member of the enterprise group directly or indirectly bears the risk of loss or obligation of performance of the affiliate;

(ii) the affiliate directly or indirectly guarantees, supports, or provides liquidity for a member of the enterprise group;

(iii) assets or liabilities have been transferred between the affiliate and a member of the enterprise group under circumstances indicating continuing economic integration or risk sharing; or

(iv) exclusion of the affiliate would materially understate the assets, liabilities, financial exposure, or systemic solvency shortfall of the enterprise group; and

(D) any other person or arrangement that the Office determines, based on economic substance, is used to hold, transfer, guarantee, insure, conceal, or allocate assets, liabilities, or financial exposure of the enterprise group.

(4) Natural persons and governments.—A natural person or governmental entity excluded under subsection (a)(13)(B) shall not be included in an enterprise group, except to the extent that—

(A) property of the person or governmental entity is legally pledged and available to satisfy a liability of the enterprise group; or

(B) a member of the enterprise group is legally obligated with respect to a liability, guarantee, or commitment of the person or governmental entity.

(5) Economic substance.—The Office shall determine the scope of an enterprise group and the treatment of assets and liabilities based on control, economic integration, allocation of risk, legally enforceable support arrangements, and the person that ultimately bears the risk of loss or obligation of performance, without regard to—

(A) formal ownership;

(B) accounting consolidation or nonconsolidation;

(C) corporate, contractual, trust, or partnership form;

(D) the location or jurisdiction of organization of a person; or

(E) whether an asset, liability, or arrangement is recorded on a balance sheet.

(6) Intercompany items.—

(A) In general.—In a consolidated determination under paragraph (2), an obligation and corresponding claim between members of the same enterprise group may be eliminated only to the extent that—

(i) the obligation and claim represent the same legally enforceable amount;

(ii) no person outside the enterprise group bears any portion of the associated risk of loss or obligation of performance; and

(iii) the elimination does not conceal or reduce an external liability, guarantee, support arrangement, or financial exposure.

(B) Standalone treatment preserved.—An elimination under subparagraph (A) shall not affect the separate entity determination required under paragraph (1).

(7) No double counting.—

(A) A real asset, financial asset, equity interest, offset, hedge, collateral position, guarantee, or other protection may not be counted more than once within an enterprise group.

(B) Ownership of an equity interest in a member of an enterprise group shall not be treated as a real asset of another member of the enterprise group in a consolidated determination.

(C) A transfer of a real asset within an enterprise group shall not increase the aggregate value of real assets recognized for the enterprise group.

(8) Deficiencies at either level.—A limited liability entity is not systemically solvent if—

(A) the entity fails the separate entity requirement under paragraph (1); or

(B) the enterprise group of which the entity is a member fails the consolidated requirement under paragraph (2).

(9) Rules.—The Office shall prescribe rules governing consolidation, allocation of assets and liabilities, intercompany eliminations, foreign affiliates, jointly controlled entities, minority interests, special purpose vehicles, and other matters necessary to carry out this subsection.

(f) Transition to systemic solvency.—

(1) New entities.—A limited liability entity organized after the date of enactment of this Act shall be systemically solvent before commencing operations, issuing a financial instrument, incurring a liability, or entering into a financial contract.

(2) Existing entities without a shortfall.—A limited liability entity in existence on the date of enactment of this Act that does not have a systemic solvency shortfall on the initial measurement date under paragraph (4) shall comply with subsection (b) beginning on that date and may not thereafter rely on the transition provided under this subsection to create or increase a systemic solvency shortfall.

(3) Existing entities with a shortfall.—A limited liability entity in existence on the date of enactment of this Act that has a systemic solvency shortfall on the initial measurement date shall achieve full systemic solvency not later than January 1, 2035, in accordance with this subsection.

(4) Initial measurement and remediation plan.—

(A) Initial measurement date.—The initial measurement date shall be June 1, 2027.

(B) Initial determination and submission.—

(i) Determination required.—Not later than July 1, 2027, each limited liability entity in existence on the date of enactment of this Act shall determine its systemic solvency shortfall and compliance ratio as of the initial measurement date.

(ii) Complete filing.—Not later than July 1, 2027, a limited liability entity shall file the determination under clause (i) with the Office and each appropriate functional regulator if the entity—

(I) is required to file under subsection (g)(2)(A);

(II) determines that it has a systemic solvency shortfall; or

(III) is not eligible to use the simplified compliance method under subsection (g)(11).

(iii) Simplified electronic certification.—A limited liability entity not required to file under clause (ii) shall submit the electronic certification required under subsection (g)(11)(C) according to the last digit of the Federal taxpayer identification number assigned to or used by the entity, as follows:

(I) For a number ending in 0 or 1, not later than July 31, 2027.

(II) For a number ending in 2 or 3, not later than August 31, 2027.

(III) For a number ending in 4 or 5, not later than September 30, 2027.

(IV) For a number ending in 6 or 7, not later than October 31, 2027.

(V) For a number ending in 8 or 9, not later than November 30, 2027.

(iv) Retention and production.—An entity submitting a certification under clause (iii) shall retain the complete determination and supporting records and shall provide them to the Office or an appropriate functional regulator upon request.

(C) Remediation plan.—Each limited liability entity described in paragraph (3) shall, not later than January 1, 2028, submit to the Office and each appropriate functional regulator a remediation plan for achieving systemic solvency not later than January 1, 2035.

(D) Requirements.—A remediation plan shall—

(i) identify each action the entity expects to take to reduce liabilities, acquire or retain real assets, raise equity, cap or terminate financial exposure, or otherwise achieve compliance;

(ii) include annual and quarterly milestones consistent with paragraphs (5) and (6); and

(iii) not depend on anticipated governmental assistance, regulatory forbearance, or public loss absorption.

(E) Annual updates.—A limited liability entity that has a systemic solvency shortfall shall update and resubmit its remediation plan with each annual determination required under subsection (g)(1) until the entity achieves systemic solvency.

(F) Preservation of records.—Beginning on the date of enactment of this Act, each limited liability entity shall preserve records reasonably necessary to determine its financial condition and systemic solvency on the initial measurement date.

(G) Use of fiscal year records.—For its initial determination, a limited liability entity may use records prepared as of the end of its most recently completed fiscal year to the extent

that the entity identifies and accounts for each material change occurring between the end of that fiscal year and the initial measurement date.

(H) Initial valuation safe harbor.—A civil penalty may not be imposed solely because of an error in an initial classification or valuation that was made using reasonable, documented, and consistently applied methods and corrected not later than 90 days after notice from an enforcing authority. This subparagraph shall not apply to knowing or reckless falsification, concealment, evasion, double counting, or omission of material information.

(5) Minimum progress.—

(A) Cumulative annual reduction.—By the beginning of each calendar year, a limited liability entity shall have eliminated, in the aggregate, not less than the percentage of the systemic solvency shortfall existing on the initial measurement date specified in the following table:

- (i) On January 1, 2028, 4 percent.
- (ii) On January 1, 2029, 14 percent.
- (iii) On January 1, 2030, 26 percent.
- (iv) On January 1, 2031, 38 percent.
- (v) On January 1, 2032, 52 percent.
- (vi) On January 1, 2033, 66 percent.
- (vii) On January 1, 2034, 82 percent.
- (viii) On January 1, 2035, 100 percent.

(B) Compliance ratio.—The compliance ratio of a limited liability entity may not be less than—

- (i) the compliance ratio of the entity on the initial measurement date; or
- (ii) the minimum ratio required under the progressively increasing schedule prescribed under paragraph (6),

whichever is greater.

(C) No nominal expansion of shortfall.—The systemic solvency shortfall of a limited liability entity may not exceed the maximum shortfall permitted under subparagraph (A), subject only to an adjustment for inflation prescribed by the Office using a broad measure of prices in the United States.

(D) Earlier compliance.—Nothing in this subsection prohibits the Office or another regulator acting within its jurisdiction from requiring more rapid remediation when necessary to address concealment, evasion, unsafe expansion of financial exposure, or a material threat to creditors, counterparties, or the public.

(6) Progressive compliance schedule.—

(A) Initial schedule.—Not later than October 30, 2027, the Board, in consultation with the Director, shall prescribe a schedule of progressively increasing minimum compliance ratios applicable during the transition period. The schedule shall take effect on January 1, 2028.

(B) The schedule shall—

- (i) establish thresholds not less frequently than quarterly;
- (ii) require continuous and reasonably even progress toward full systemic solvency;
- (iii) prohibit backloading of material remediation to the final portion of the transition period; and
- (iv) require a compliance ratio of not less than 1 on January 1, 2035.

(C) Once a threshold takes effect, the Board may not reduce, waive, suspend, or delay that threshold.

(7) Actions during transition.—On and after January 1, 2028, a limited liability entity described in paragraph (3) may take an action described in subsection (b)(2) only if, immediately after giving effect to the action—

- (A) the entity satisfies each applicable threshold and milestone under this subsection;
- (B) except as provided in paragraph (12), the action does not increase the systemic solvency shortfall of the entity or reduce its compliance ratio;
- (C) the action is consistent with the remediation plan required under paragraph (4); and
- (D) the action does not create an unbounded or indeterminate exposure prohibited under paragraph (8).

(8) Unbounded or indeterminate exposures.—

(A) New exposures prohibited.—On and after the date of enactment of this Act, no limited liability entity may issue, assume, renew, extend, or materially modify a liability or financial contract for which the maximum obligation is unbounded, indeterminate, or incapable of being reduced to a finite amount under its legal terms.

(B) Existing exposures.—Not later than 1 year after the date of enactment of this Act, a limited liability entity shall terminate, novate, cap, restructure, fully offset, or otherwise remediate each outstanding liability or financial contract described in subparagraph (A).

(C) No grandfathering.—A liability or financial contract shall not be permissible solely because it was entered into before the date of enactment of this Act.

(9) Distributions and asset transfers.—During any period in which a limited liability entity has a systemic solvency shortfall, the entity may not make a dividend, equity redemption, stock repurchase, return of capital, transfer to an owner or affiliate, or other discretionary distribution of value unless—

- (A) the distribution is expressly included in the remediation plan;

(B) the entity remains in compliance with paragraph (5) after the distribution; and

(C) the distribution does not increase the systemic solvency shortfall or reduce the compliance ratio of the entity or its enterprise group.

(10) Failure to satisfy transition requirements.—A failure to satisfy a threshold, milestone, or requirement under this subsection constitutes a violation of this section and is subject to enforcement under subsection (j). A limited liability entity that has such a failure shall—

(A) notify the Office and each appropriate functional regulator without delay;

(B) cease any action prohibited under subsection (b)(2) unless expressly authorized as part of a remediation order; and

(C) submit a revised remediation plan not later than 30 days after the failure.

(11) Rule of construction.—Nothing in this subsection shall be construed to—

(A) require the liquidation of a particular real asset;

(B) prohibit the raising of ordinary equity; or

(C) prohibit a nonfinancial business activity otherwise permitted by law.

(12) Successors, restructurings, and required divestitures.—

(A) Definitions.—In this paragraph:

(i) Covered transaction.—The term "covered transaction" means a merger, consolidation, division, spin-off, sale, transfer, assignment, reorganization, bankruptcy restructuring, or other transaction or series of related transactions that materially transfers, divides, or reallocates a business, operation, asset, liability, financial exposure, or systemic solvency obligation of a limited liability entity.

(ii) Required divestiture.—The term "required divestiture" means a divestiture required by an Act of Congress or by a final order of a Federal agency or court.

(iii) Reviewing authority.—The term "reviewing authority" means each Federal agency or court responsible for ordering, reviewing, or approving a required divestiture, including an appropriate functional regulator, the Federal Trade Commission, or the Antitrust Division of the Department of Justice, as applicable.

(iv) Transaction party.—The term "transaction party" means a limited liability entity that transfers, receives, retains, or assumes a material business, operation, asset, liability, financial exposure, or systemic solvency obligation in a covered transaction.

(B) General rule.—A covered transaction may allocate a systemic solvency position among resulting entities but may not erase, conceal, reset, postpone, or double count a systemic solvency shortfall or remediation obligation.

(C) Pretransaction determination.—Immediately before a covered transaction, each transaction party shall determine, in accordance with this section—

- (i) its real assets;
- (ii) its liabilities in the worst financial state;
- (iii) its systemic solvency shortfall and compliance ratio;
- (iv) the cumulative reduction in shortfall required as of the transaction date;
- (v) its remaining milestones and remediation obligations; and
- (vi) its position within any enterprise group.

(D) Allocation according to economic substance.—

(i) Each asset, liability, guarantee, liquidity commitment, financial support arrangement, contingent exposure, collateral position, customer obligation, and other protection shall be allocated among the resulting entities according to legal responsibility and economic substance.

(ii) In making an allocation under clause (i), the transaction parties and the Office shall consider—

- (I) the entity that receives or retains an asset;
- (II) the entity that assumes, retains, or remains legally obligated for a liability;
- (III) the entity that conducts the activity or receives the economic benefit;
- (IV) the entity that bears the risk of loss or obligation of performance;
- (V) each guarantee, indemnity, support arrangement, and contingent exposure;
- (VI) each legally enforceable collateral position and priority interest;
- (VII) each customer, policyholder, depositor, investor, employee, and contractual obligation associated with the transferred business; and
- (VIII) the personnel, systems, licenses, facilities, contracts, and operating capacity necessary to conduct the transferred business.

(E) Preservation of aggregate position.—Except to the extent of an approved transaction adjustment under subparagraph (H), immediately after a covered transaction—

- (i) the aggregate systemic solvency shortfall of the resulting entities may not exceed the aggregate systemic solvency shortfall of the transaction parties immediately before the transaction;
- (ii) the aggregate amount of shortfall required to have been eliminated as of the transaction date may not be reduced;
- (iii) the aggregate remaining remediation obligation may not be reduced or postponed;

(iv) no liability, financial exposure, or adverse obligation may be treated as extinguished solely because it was transferred or reallocated;

(v) no real asset, collateral position, offset, guarantee, or other protection may be counted by more than 1 person; and

(vi) new equity or other qualifying real resources contributed in connection with the transaction shall be recognized in accordance with this section.

(F) Successor treatment.—

(i) Each resulting entity shall inherit the portion of the initial systemic solvency shortfall, cumulative reduction requirement, and remaining remediation obligation allocated to it under this paragraph.

(ii) Each inherited portion shall remain subject to the transition schedule and final deadline that applied to the applicable transaction party immediately before the covered transaction.

(iii) A limited liability entity organized to receive a business, operation, asset, or liability in a covered transaction shall not be treated as a new entity under paragraph (1) with respect to an inherited shortfall allocated under this paragraph.

(iv) No resulting entity may receive a new transition period or a deadline extending beyond January 1, 2035.

(G) Allocation plan and systemic solvency impact determination.—

(i) Submission required.—Before consummating a covered transaction, the transaction parties shall submit a systemic solvency allocation plan to the Office and each appropriate functional regulator if—

(I) the transaction is a required divestiture;

(II) any transaction party has a systemic solvency shortfall; or

(III) the transaction exceeds a materiality threshold prescribed by the Office.

(ii) Contents.—The allocation plan shall include—

(I) the determinations required under subparagraph (C);

(II) the proposed allocation under subparagraph (D);

(III) the projected systemic solvency shortfall and compliance ratio of each resulting entity;

(IV) each proposed transfer of real assets, liabilities, collateral, guarantees, support arrangements, or financial exposure;

(V) each proposed capital contribution, reserve, escrow, financing arrangement, or transitional service; and

(VI) any proposed transaction adjustment under subparagraph (H).

(iii) Office determination.—The Office shall issue a written systemic solvency impact determination that—

(I) determines whether the proposed allocation complies with this section;

(II) identifies the systemic solvency effect of the transaction on each transaction party and resulting entity;

(III) determines the amount and cause of any proposed transaction adjustment;

(IV) identifies any double counting, concealed exposure, unsupported valuation, or other inconsistency; and

(V) specifies any correction necessary to calculate compliance accurately.

(iv) Effect.—The determination under clause (iii) shall be binding for purposes of calculating compliance with this section but shall not independently authorize, prohibit, delay, or condition the covered transaction.

(v) Required divestiture.—For a required divestiture, the Office shall provide the determination to each reviewing authority in sufficient time for consideration before the reviewing authority issues its final decision.

(H) Approved transaction adjustment.—

(i) In general.—Notwithstanding subparagraph (E) and paragraphs (5)(B), (5)(C), and (7)(B), a reviewing authority may approve a temporary increase in systemic solvency shortfall or reduction in compliance ratio directly and reasonably necessary to complete a required divestiture.

(ii) Permissible causes.—An adjustment under clause (i) may include an amount directly attributable to—

(I) establishing separate facilities or operating locations;

(II) separating or duplicating information, accounting, compliance, payroll, recordkeeping, risk management, cybersecurity, or other operational systems;

(III) obtaining separate personnel, licenses, permits, insurance, contracts, or professional services;

(IV) providing necessary working capital;

(V) reasonable separation and transaction costs; or

(VI) acquisition financing reasonably necessary to transfer the divested business to an operationally independent person.

(iii) Exclusions.—An approved transaction adjustment may not include an amount attributable to—

(I) a dividend, stock repurchase, equity redemption, return of capital, or other discretionary distribution;

(II) an insider payment or compensation enhancement;

(III) asset stripping or dissipation of real assets;

(IV) a transaction premium or financing cost that is not reasonably necessary to complete the required divestiture;

(V) a payment or obligation incurred primarily to transfer value to an owner, affiliate, officer, or director; or

(VI) evasion, concealment, false valuation, double counting, or another violation of this section.

(iv) Required findings.—A reviewing authority may approve an adjustment only after considering the Office determination and finding in writing that—

(I) the adjustment is necessary to complete the required divestiture;

(II) the adjustment is no greater than reasonably necessary;

(III) no reasonably practicable alternative structure would materially reduce the adjustment;

(IV) each resulting entity will be operationally viable and capable of satisfying its remediation obligations;

(V) the transaction does not create an unbounded or indeterminate exposure;

(VI) the transaction does not depend on anticipated governmental assistance, public loss absorption, or regulatory forbearance; and

(VII) the adjustment will be eliminated under the supplemental remediation plan required under subparagraph (I).

(I) Supplemental remediation plan.—

(i) An entity receiving an approved transaction adjustment shall submit a supplemental remediation plan to the Office and each appropriate functional regulator before consummation or at such earlier time as the reviewing authority requires.

(ii) The plan shall—

(I) identify the approved adjustment separately from each inherited shortfall;

(II) specify the real assets, equity, liability reductions, retained earnings, or other measures by which the adjustment will be eliminated;

(III) establish annual and quarterly milestones requiring continuous and reasonably even progress;

(IV) prohibit backloading of material remediation;

(V) eliminate the adjustment as soon as reasonably practicable; and

(VI) eliminate the adjustment in full not later than January 1, 2035.

(iii) The supplemental remediation plan shall be updated with each annual determination until the adjustment is eliminated.

(J) Effect on violations and penalties.—

(i) The creation of an approved transaction adjustment in accordance with this paragraph shall not, solely by reason of the adjustment, constitute a violation of this section or give rise to a civil penalty.

(ii) Clause (i) does not waive, limit, suspend, or delay—

(I) any other substantive requirement or restriction under this section;

(II) any inherited milestone or remediation obligation;

(III) the distribution restrictions under paragraph (9);

(IV) any remediation order or restriction otherwise applicable to a transaction party or resulting entity; or

(V) any penalty or remedy for conduct other than creation of the approved adjustment.

(iii) An entity violates this section if the entity—

(I) exceeds the amount of the approved adjustment;

(II) uses the adjustment for a purpose not approved under this paragraph;

(III) fails to satisfy a milestone or requirement of the supplemental remediation plan;

(IV) conceals or materially misstates an asset, liability, exposure, cost, or transaction term; or

(V) otherwise fails to comply with this section.

(iv) No transaction adjustment may remain outstanding on or after January 1, 2035.

(K) Restrictions on transaction parties.—

(i) Each resulting entity that has an inherited systemic solvency shortfall or an approved transaction adjustment remains subject to paragraph (9) and every other applicable restriction under this section until the shortfall or adjustment is eliminated.

(ii) A divesting entity remains subject to the allocation plan until each capital contribution, transfer of real assets, assumption or retention of liabilities, reserve, escrow, or other obligation assigned to that entity has been completed.

(iii) Until the Office confirms completion of the obligations described in clause (ii), no transaction party may—

(I) make a discretionary distribution of transaction proceeds; or

(II) transfer transaction proceeds or other transaction value to an owner, affiliate, officer, or director,

except for ordinary compensation or a bona fide payment for goods or services provided in the ordinary course on arm's-length terms.

(iv) After the obligations assigned to a divesting entity have been completed, that entity shall not remain responsible solely by reason of the covered transaction for a subsequent failure by an operationally independent resulting entity, unless the divesting entity remains legally obligated through a guarantee, support arrangement, retained liability, or other obligation.

(L) Operational independence.—

(i) A covered transaction may not preserve or create a continuing guarantee, liquidity commitment, shared capital arrangement, loss-sharing arrangement, or financial support arrangement that recreates common control, economic integration, or common financial risk inconsistent with the purpose of the transaction.

(ii) Clause (i) does not prohibit—

(I) a finite and fully disclosed transitional service provided on arm's-length terms;

(II) a legally enforceable obligation that is fully recognized and valued under this section; or

(III) another temporary arrangement approved by the applicable reviewing authority that does not recreate common control or permit double counting.

(M) Proportional administration.—The Office shall prescribe rules to carry out this paragraph, including—

(i) materiality thresholds;

(ii) forms and procedures for allocation plans and impact determinations;

(iii) standards for transaction adjustments and supplemental remediation plans;

(iv) procedures coordinated with review under section 256 and other Federal divestiture provisions; and

(v) a simplified electronic certification for a covered transaction below the applicable materiality threshold if every transaction party and resulting entity is systemically solvent.

Nothing in this subparagraph authorizes an exemption from the substantive allocation, no-double-counting, anti-evasion, or final compliance requirements of this section.

(g) Certification, reporting, and auditing.—

(1) Annual determination.—Each limited liability entity shall, not less frequently than annually—

(A) determine its systemic solvency, systemic solvency shortfall, and compliance ratio on a standalone basis and, if applicable, on a consolidated enterprise group basis;

(B) maintain records sufficient to reproduce each material assumption, valuation, classification, scenario, offset, and calculation used in the determination; and

(C) obtain a certification from each responsible officer that the determination is complete and accurate after reasonable inquiry.

(2) Filing requirement.—

(A) In general.—A limited liability entity shall file the determination and certification required under paragraph (1) with the Office and each appropriate functional regulator if the entity—

(i) is required to file reports under section 13 or 15(d) of the Securities Exchange Act of 1934;

(ii) is a financial institution, insurance company, investment bank, Government corporation, or issuer of securities offered to the public;

(iii) is a parent or material member of an enterprise group described in clause (i) or (ii);

(iv) has assets, liabilities, financial exposure, or annual revenues exceeding a threshold prescribed by the Office; or

(v) is designated by the Office based on complexity, leverage, contingent exposure, interconnectedness, use of off-balance-sheet arrangements, or a material risk of noncompliance.

(B) Other entities.—A limited liability entity not required to file under subparagraph (A) shall retain the determination and certification required under paragraph (1) and provide them to the Office or an appropriate functional regulator upon request.

(C) Filing frequency.—A filing under this paragraph shall be made not later than 90 days after the end of the fiscal year of the entity, or at such earlier time as the Office may prescribe for a class of entities.

(3) Quarterly reporting.—The Office may require quarterly reporting from a limited liability entity or class of limited liability entities described in paragraph (2)(A) based on size, financial activity, leverage, contingent exposure, systemic importance, prior noncompliance, or another risk factor established by rule.

(4) Material-change notice.—A limited liability entity required to file under paragraph (2)(A) shall notify the Office and each appropriate functional regulator not later than 5 business days after the entity knows or reasonably should know of—

- (A) a systemic solvency shortfall;
- (B) a material reduction in its compliance ratio;
- (C) a material increase in a liability contingent on a financial event;
- (D) the creation or discovery of an unbounded or indeterminate exposure;
- (E) the loss, impairment, unavailability, or unenforceability of a material real asset, hedge, offset, guarantee, netting right, or collateral position relied upon for compliance; or
- (F) another material event that would reasonably be expected to affect systemic solvency.

(5) Independent audit.—

(A) Audit required.—A limited liability entity required to file under paragraph (2)(A) shall obtain an annual examination of its systemic solvency determination by an independent public accountant or other qualified independent auditor meeting standards prescribed by the Office.

(B) Scope.—The examination shall evaluate—

- (i) the existence and valuation of material real assets;
- (ii) the completeness and valuation of liabilities;
- (iii) the determination of the worst financial state;
- (iv) the legal enforceability and operational availability of material offsets, hedges, collateral, netting rights, guarantees, and other protections;
- (v) standalone and consolidated treatment under subsection (e);
- (vi) compliance with subsection (f), if applicable; and
- (vii) the adequacy of internal controls supporting the determination.

(C) Opinion.—The auditor shall issue an opinion stating whether the determination is fairly presented, in all material respects, in accordance with this section and rules prescribed under this section.

(D) Reliance on legal expertise.—An auditor may rely on an opinion of qualified legal counsel concerning whether a contract, netting arrangement, collateral interest, guarantee, or other legal protection is enforceable, but such reliance shall not excuse an unreasonable or knowing failure to identify a material inconsistency or omission.

(6) Auditor reporting duty.—

(A) An auditor that identifies a material violation, material misstatement, unbounded exposure, or substantial doubt concerning systemic solvency shall notify the responsible officers and governing body of the limited liability entity without delay.

(B) If the entity does not provide satisfactory evidence of correction or notification to the Office and each appropriate functional regulator not later than 10 business days after receiving notice under subparagraph (A), the auditor shall notify the Office and each appropriate functional regulator directly.

(C) A contractual or professional duty of confidentiality may not prohibit a notification required under this paragraph.

(7) Record retention.—A limited liability entity shall retain the records required under this subsection for not less than 7 years after the date of the applicable determination, or for such longer period as the Office may prescribe for a material contract, asset, liability, investigation, or enforcement matter.

(8) Standardized reporting and use of existing information.—

(A) The Office shall prescribe standardized forms, data definitions, electronic filing methods, and audit standards necessary to carry out this subsection.

(B) In administering this subsection, the Office and appropriate functional regulators shall comply with subsection (i)(11) and, to the maximum extent practicable, permit incorporation by reference of reliable information contained in an existing regulatory filing.

(9) Proportional administration.—In prescribing thresholds and reporting requirements under this subsection, the Office shall minimize unnecessary burden on smaller and nonfinancial entities, but may not exempt any limited liability entity from the substantive systemic solvency requirement or from maintaining records sufficient to demonstrate compliance.

(10) Confidentiality and public reporting.—

(A) Information filed under this subsection that constitutes trade secrets, confidential commercial or financial information, personal information, or supervisory information shall be exempt from disclosure under [section 552 of title 5, United States Code](#).

(B) The Office shall publish aggregate and anonymized information sufficient to describe trends in systemic solvency, financial exposure, real assets, and compliance without identifying confidential information of a particular limited liability entity.

(11) Simplified compliance and electronic certification.—

(A) Eligible entity.—This paragraph applies to a limited liability entity that—

- (i) is not required to file under paragraph (2)(A);
- (ii) has no unbounded or indeterminate exposure; and
- (iii) has no material liability contingent on a financial event.

(B) Simplified method.—The Office shall prescribe a simplified method for an eligible entity. The method may rely on ordinary course financial statements, tax records, appraisals, and officer certifications and may not require scenario modeling beyond that necessary to identify and value a material financial event exposure.

(C) Initial electronic certification.—The Office shall establish a secure electronic system through which an eligible entity that determines it has no systemic solvency shortfall may submit a brief certification stating that—

- (i) the entity completed the determination required under subsection (f)(4);
- (ii) the entity determined that it had no systemic solvency shortfall as of the initial measurement date;
- (iii) the entity is eligible to use the simplified method under subparagraph (A);
- (iv) the certification is complete and accurate after reasonable inquiry; and
- (v) the entity will retain and, upon request, provide the determination and supporting records.

(D) Authentication and existing information.—The electronic system under subparagraph (C) shall, to the maximum extent practicable—

- (i) authenticate an entity using the Federal taxpayer identification number assigned to or used by the entity or another existing Federal identification number associated with the entity;
- (ii) permit use of credentials already issued by the Internal Revenue Service or another Federal agency;
- (iii) permit incorporation by reference or automatic population of reliable information contained in an existing Federal filing; and
- (iv) provide an electronic confirmation of submission.

(E) No exemption or limitation on review.—Submission of a certification under this paragraph does not—

- (i) exempt an entity from the substantive requirements of this section;
- (ii) constitute approval of the determination by the Office or an appropriate functional regulator;
- (iii) limit the authority to require production of the determination or supporting records; or
- (iv) limit correction, examination, audit, or enforcement relating to an inaccurate, incomplete, or false certification.

(h) Office of Systemic Solvency.—

(1) Establishment.—There is established within the Board an office to be known as the Office of Systemic Solvency.

(2) Director.—

(A) Appointment.—The Office shall be headed by a Director appointed by a majority of the Board. Not later than 30 days after the date of enactment of this Act, the Board shall appoint the initial Director or designate an acting Director under subparagraph (E).

(B) Qualifications.—The Director shall be appointed on the basis of demonstrated expertise in accounting, auditing, financial contracts, actuarial science, financial regulation, corporate finance, insolvency, risk management, or another field directly relevant to the administration of this section.

(C) Term.—The Director shall serve for a term of 6 years and may be reappointed.

(D) Removal.—The Director may be removed by a majority of the Board. The Board shall publish a written statement of the reasons for removal not later than 7 days after the removal.

(E) Vacancy.—A vacancy in the position of Director shall not affect the authority of the Office. The Board may designate an acting Director until a successor is appointed.

(3) Independence and reporting.—

(A) The Director shall report directly to the Board.

(B) In carrying out the duties of the Office, the Director shall not be subject to the supervision or direction of an individual member, officer, employee, or component of the Federal Reserve System except through an action of the Board or as expressly provided by law.

(C) No officer or employee of the Federal Reserve System may prevent or prohibit the Director from communicating directly with Congress concerning the administration or enforcement of this section.

(4) Duties.—The Office shall—

(A) administer and implement this section;

(B) develop and maintain uniform methodologies and reporting standards for determining the worst financial state, valuing real assets and liabilities, recognizing protections, applying standalone and consolidated requirements, and calculating systemic solvency shortfalls and compliance ratios;

(C) recommend rules to the Board and issue forms, instructions, interpretations, and supervisory guidance consistent with those rules;

(D) receive, analyze, and verify reports, certifications, audits, and remediation plans and conduct examinations, reviews, and investigations authorized under this section;

(E) coordinate appropriate functional regulators and identify and address evasion, concealment, double counting, inconsistent valuation, and transfers of financial exposure; and

(F) maintain the personnel, data systems, technical capacity, and proportional procedures necessary to carry out this section.

(5) Powers.—In carrying out this section, the Office may—

(A) require the production of records, contracts, valuations, models, legal opinions, audit workpapers, data, and other information reasonably necessary to determine compliance;

(B) conduct or direct examinations and require an independent appraisal, audit, legal analysis, actuarial analysis, or other expert review when reasonably necessary;

(C) require a limited liability entity to conduct or submit, or permit the Office to conduct, a supervisory stress evaluation, reclassification of assets or liabilities, or consolidated analysis reasonably necessary to verify compliance, except that no stress evaluation may substitute for the worst financial state determination required under subsection (c);

(D) enter into information sharing, coordinated supervision, joint examination, and enforcement arrangements with appropriate functional regulators and obtain details of Federal personnel on a reimbursable basis;

(E) contract for professional and technical services; and

(F) exercise such other lawful powers as are necessary and appropriate to carry out this section.

(6) Availability of Federal Reserve information.—The Board and each Federal Reserve Bank shall make available to the Office, without reimbursement, any supervisory, regulatory, examination, market, or other data or information that the Director determines is reasonably necessary to carry out this section, subject to applicable confidentiality and information security requirements. The sharing of information under this paragraph shall not waive any privilege or protection from public disclosure.

(7) Personnel.—The Director may appoint and fix the compensation of such officers and employees as are necessary to carry out this section and shall establish qualifications for personnel performing accounting, auditing, actuarial, legal, valuation, data, financial contract, examination, and enforcement functions.

(8) Annual report.—

(A) Not later than April 1 of each year, the Director shall submit to Congress and make available to the public a report on the administration of this section during the preceding calendar year.

(B) Each report shall include—

(i) aggregate trends in systemic solvency, systemic solvency shortfalls, compliance ratios, real assets, liabilities, and financial event exposure;

(ii) the number and general categories of limited liability entities subject to filing, audit, remediation, examination, and enforcement requirements;

(iii) material forms of evasion, concealment, valuation abuse, or unbounded exposure identified by the Office;

(iv) progress toward compliance during the transition period;

- (v) coordination activities with appropriate functional regulators;
- (vi) an accounting of the expenses, assessments, staffing, and contracts of the Office; and
- (vii) recommendations for legislative or administrative action.

(C) A report under this paragraph may not disclose trade secrets, confidential commercial or financial information, personal information, or protected supervisory information concerning a particular limited liability entity.

(9) Funding.—

(A) Startup advance.—During the first 3 fiscal years beginning after the date of enactment of this Act, the Board shall make available to the Office, from amounts otherwise available to the Board and without further appropriation, not more than \$500,000,000 in aggregate for the organization, staffing, rulemaking, data infrastructure, and initial operations of the Office.

(B) Annual assessments.—Beginning not later than the second fiscal year beginning after the date of enactment of this Act, the Board shall, on the recommendation of the Director, collect annual assessments from limited liability entities required to file under subsection (g)(2)(A) in amounts sufficient to recover the reasonable expenses of administering this section.

(C) Allocation.—An assessment under subparagraph (B) shall be allocated among assessed entities based on—

- (i) total assets;
- (ii) the value of liabilities in the worst financial state;
- (iii) the amount and complexity of financial event exposure;
- (iv) membership in and complexity of an enterprise group;
- (v) the reporting, examination, and supervisory resources reasonably attributable to the entity; and
- (vi) the ability of the entity to pay the assessment without materially impairing compliance with this section.

(D) Minimum thresholds and exemptions.—The Board may establish minimum thresholds and exempt a class of smaller entities from assessments if the cost of collection would be disproportionate to the amount collected, but no exemption under this subparagraph shall affect substantive compliance, recordkeeping, reporting, examination, or enforcement under this section.

(E) Repayment of startup advance.—Amounts collected under subparagraph (B) shall first be used, in such proportions as the Board determines appropriate, to reimburse the amounts advanced under subparagraph (A). The advance shall be fully reimbursed not later than 7 years after the date of enactment of this Act.

(F) Separate accounting.—Amounts collected under this paragraph shall—

(i) be maintained in a separate account;

(ii) remain available until expended;

(iii) be used only to administer and enforce this section; and

(iv) not be used for monetary policy operations, assistance to a limited liability entity, or another activity of the Board unrelated to this section.

(i) Coordination with functional regulators.—

(1) Administration within existing jurisdiction.—

(A) Federal regulators.—Except as provided in this subsection, each appropriate functional regulator that is a Federal agency shall administer, examine, supervise, and enforce compliance with this section with respect to each limited liability entity and activity within the existing jurisdiction of that regulator.

(B) State regulators.—A State appropriate functional regulator may administer, examine, supervise, or enforce compliance with this section pursuant to State law or a memorandum of understanding under paragraph (8). Nothing in this section shall be construed to require a State or an officer or agency of a State to administer or enforce Federal law.

(2) Uniform Federal standard.—

(A) The substantive requirements, definitions, valuation rules, methodologies, and minimum reporting standards prescribed under this section shall apply uniformly without regard to which appropriate functional regulator supervises a limited liability entity.

(B) An appropriate functional regulator may prescribe additional procedures, reporting requirements, examination standards, or remedial measures that are consistent with and not less protective than this section.

(C) An appropriate functional regulator may not authorize, approve, waive, or tolerate conduct that would cause or increase a systemic solvency shortfall in violation of this section.

(3) Office coordination authority.—The Office shall—

(A) establish uniform supervisory and examination manuals for implementation of this section;

(B) coordinate examinations and information requests involving more than 1 appropriate functional regulator;

(C) provide technical assistance and interpretations to appropriate functional regulators;

(D) identify inconsistent applications of this section and recommend corrective action;

(E) maintain a secure system through which appropriate functional regulators may exchange information necessary to carry out this section; and

(F) convene appropriate functional regulators as necessary to address enterprise groups, cross-market exposures, financial contracts, or transactions that cross jurisdictional boundaries.

(4) Backstop authority.—The Office may directly examine, supervise, investigate, or enforce compliance with this section if—

(A) no other appropriate functional regulator has jurisdiction over the limited liability entity or material activity;

(B) an enterprise group, transaction, or financial exposure crosses the jurisdiction of multiple regulators and no single regulator can effectively address the matter;

(C) an appropriate functional regulator has failed to take timely and effective action after receiving written notice from the Office of a material violation or risk of violation;

(D) the Office reasonably determines that an entity, affiliate, special purpose vehicle, contractual arrangement, or other person is being used to evade, conceal, delay, or obscure compliance; or

(E) immediate action is necessary to prevent the creation or material increase of an unbounded exposure, systemic solvency shortfall, fraudulent transfer, concealment of liabilities, or dissipation of real assets.

(5) Notice before backstop action.—

(A) Except as provided in subparagraph (B), before exercising authority under paragraph (4)(C), the Office shall—

(i) provide the appropriate functional regulator with written notice describing the apparent violation and the action the Office considers necessary; and

(ii) allow the regulator not fewer than 30 days to take or commit to effective corrective action.

(B) The Office may act without prior notice or before expiration of the period under subparagraph (A)(ii) if delay would materially increase the likelihood of loss, concealment, dissipation of assets, unbounded exposure, or evasion.

(C) The Office shall notify the appropriate functional regulator promptly after taking an action under subparagraph (B).

(6) Lead regulator for enterprise groups.—

(A) If an enterprise group is subject to the jurisdiction of more than 1 appropriate functional regulator, the Office shall designate a lead functional regulator that is a Federal agency or a consenting State agency for purposes of coordinated examination and supervision under this section.

(B) In making a designation under subparagraph (A), the Office shall consider—

(i) the nature and location of the principal activities of the enterprise group;

- (ii) the regulator with authority over the parent or principal operating entity;
- (iii) the amount and location of financial event exposure;
- (iv) the distribution of real assets and liabilities among members of the enterprise group; and
- (v) the ability of the regulator to conduct effective consolidated supervision.

(C) Designation of a lead functional regulator shall not eliminate the jurisdiction of another appropriate functional regulator or the backstop authority of the Office.

(7) Information sharing.—

(A) The Office and each appropriate functional regulator shall share information reasonably necessary to administer and enforce this section.

(B) The sharing of information under subparagraph (A) shall not constitute a waiver of any privilege, confidentiality protection, or limitation on public disclosure.

(C) The Office and appropriate functional regulators shall establish safeguards against unauthorized use or disclosure of confidential information.

(D) An appropriate functional regulator may rely on information, examination findings, audit work, or analysis produced by the Office or another appropriate functional regulator if the regulator determines that such reliance is reasonable.

(8) Memoranda of understanding.—Not later than 1 year after the date of enactment of this Act, the Office shall enter into memoranda of understanding with appropriate Federal functional regulators and shall offer substantially similar agreements to State functional regulators concerning—

- (A) allocation of examination and supervisory responsibilities;
- (B) coordinated reporting and data standards;
- (C) information sharing and confidentiality;
- (D) designation of lead regulators;
- (E) referral and coordination of enforcement matters;
- (F) avoidance of duplicative examinations and information requests; and
- (G) resolution of interpretive and jurisdictional disagreements.

(9) Resolution of inconsistent interpretations.—

(A) The Board, acting through rules prescribed under this section, shall have final authority concerning the interpretation of—

- (i) systemic solvency;
- (ii) the worst financial state;

(iii) the classification and valuation of real assets and liabilities;

(iv) recognition of offsets, hedges, collateral, netting rights, guarantees, and other protections;

(v) standalone and consolidated compliance; and

(vi) the calculation of systemic solvency shortfalls and compliance ratios.

(B) Nothing in subparagraph (A) shall limit the authority of an appropriate functional regulator to interpret or enforce another law within the jurisdiction of that regulator.

(10) Preservation of State authority.—

(A) Nothing in this section shall preempt or limit a State law, regulation, order, reserve requirement, capital requirement, solvency requirement, insurance requirement, corporate law restriction, or other protection that is consistent with and more stringent than this section.

(B) A State law or regulatory action may not authorize a limited liability entity to engage in conduct prohibited by this section.

(C) Nothing in this section shall displace the authority of a State insurance regulator over insurance contracts, reserves, rates, market conduct, receivership, or insurer solvency, except that the valuation and systemic solvency requirements of this section shall constitute a Federal minimum.

(11) Nonduplication.—The Office and appropriate functional regulators shall, to the maximum extent practicable—

(A) use information already collected under other Federal or State law;

(B) coordinate examinations and information requests;

(C) accept joint or common filings;

(D) avoid imposing inconsistent reporting formats or valuation dates; and

(E) avoid duplicative supervisory or enforcement actions that do not materially improve compliance.

(12) Other authority preserved.—Nothing in this subsection shall limit an authority, duty, remedy, enforcement power, capital standard, reserve requirement, or solvency requirement otherwise available to the Office, the Board, or an appropriate functional regulator under another provision of Federal or State law.

(j) Enforcement and remediation.—

(1) Authority.—

(A) In general.—An enforcing authority may administer, examine, investigate, and enforce compliance with this section with respect to a limited liability entity within the jurisdiction of the enforcing authority.

(B) Existing and additional powers.—In carrying out this subsection, an enforcing authority may—

(i) exercise any examination, investigative, supervisory, administrative, or enforcement authority otherwise available to the enforcing authority;

(ii) require the production of books, records, contracts, financial statements, audit workpapers, valuations, models, legal opinions, data, and other information reasonably necessary to determine compliance;

(iii) issue a subpoena for testimony or documentary evidence, if the enforcing authority is otherwise authorized by Federal or State law to issue a subpoena;

(iv) issue an order requiring compliance, remediation, restitution, correction of records, preservation of assets, or cessation of an unlawful practice;

(v) impose a civil penalty authorized under this subsection; and

(vi) commence a civil action in a court of competent jurisdiction to enforce this section or an order issued under this section.

(2) Determination of noncompliance.—

(A) Written determination.—If an enforcing authority determines that a limited liability entity has violated, is violating, or is reasonably likely to violate this section, the enforcing authority shall issue a written determination that—

(i) identifies the conduct, transaction, condition, calculation, valuation, omission, or exposure giving rise to the determination;

(ii) states the factual and legal basis for the determination;

(iii) identifies any systemic solvency shortfall, unbounded exposure, reporting deficiency, or other material condition requiring correction; and

(iv) specifies the corrective action or further proceeding required.

(B) Opportunity to respond.—Except as provided in paragraph (3), before issuing a final order, the enforcing authority shall provide the limited liability entity with notice and a reasonable opportunity to submit evidence and argument.

(C) No delay from disputed accounting treatment.—A disagreement concerning accounting characterization, regulatory classification, reporting treatment, or corporate form shall not delay enforcement if the economic substance and legal exposure are sufficient to establish noncompliance.

(3) Temporary and emergency orders.—

(A) Authority.—An enforcing authority may issue a temporary order taking immediate effect if the enforcing authority reasonably determines that delay would create a material risk of—

(i) an increase in a systemic solvency shortfall;

(ii) the creation, renewal, concealment, or transfer of an unbounded or indeterminate exposure;

(iii) dissipation, transfer, concealment, encumbrance, or material impairment of a real asset;

(iv) payment of a dividend, redemption, repurchase, affiliate transfer, or other distribution prohibited under this section;

(v) destruction, alteration, concealment, or removal of material records; or

(vi) evasion of this section.

(B) Contents.—A temporary order may prohibit or condition a transaction, preserve or restrict the transfer of an asset, require retention of records, suspend a distribution, or impose another temporary restriction reasonably necessary to prevent the harm described in subparagraph (A).

(C) Review.—A limited liability entity subject to a temporary order may request an expedited hearing. The enforcing authority shall commence such hearing not later than 10 business days after receiving the request unless the entity agrees to a later date.

(D) Duration.—A temporary order shall remain in effect until modified, terminated, or replaced by a final order, except that, unless the limited liability entity consents to a longer period or a court grants an extension for good cause, the order shall expire 60 days after commencement of the hearing under subparagraph (C) if no final order has been issued.

(4) Remediation order.—

(A) Order required.—Upon a final determination of material noncompliance, the enforcing authority shall issue an order requiring the limited liability entity to restore compliance within a specified period.

(B) Required measures.—A remediation order may require the limited liability entity to—

(i) cease issuing, assuming, renewing, extending, guaranteeing, or materially modifying liabilities or financial contracts;

(ii) terminate, novate, cap, restructure, collateralize, or fully offset a financial exposure;

(iii) retain earnings, raise ordinary equity, reduce liabilities, or acquire or preserve real assets;

(iv) suspend discretionary distributions or compensation;

(v) correct a valuation, classification, report, certification, financial statement, or public disclosure;

(vi) revise and implement a remediation plan;

(vii) obtain an independent audit, appraisal, actuarial analysis, legal opinion, valuation, or review;

(viii) establish or improve internal controls, data systems, governance procedures, and risk management systems;

(ix) retain an independent monitor approved by the enforcing authority; and

(x) take such other lawful action as is necessary to restore and maintain compliance.

(C) Terms.—A remediation order shall establish measurable milestones, reporting requirements, responsible officers, and a final compliance date.

(D) No dependence on public assistance.—A remediation order may not depend on public funds, governmental guarantees, emergency lending, regulatory forbearance, or public absorption of losses.

(5) Restrictions during noncompliance.—Until a limited liability entity has corrected a material violation and complied with each applicable remediation order, the entity may not—

(A) take an action prohibited under subsection (b)(2), except as expressly authorized by the enforcing authority as necessary to restore compliance or prevent a greater loss;

(B) make a discretionary distribution of value to an owner, officer, director, affiliate, or holder of an equity interest;

(C) increase the amount of its systemic solvency shortfall;

(D) reduce its compliance ratio; or

(E) transfer a real asset outside the ordinary course of business unless the transfer is approved under the remediation order and the proceeds remain available to satisfy liabilities.

(6) Civil penalties.—

(A) General violation.—A limited liability entity that violates this section, a rule prescribed under this section, or an order issued under this section may be subject to a civil penalty of not more than \$100,000 for each violation.

(B) Aggravated violation.—For a violation that is knowing, reckless, fraudulent, concealed, repeated, or undertaken for the purpose or effect of evading this section, the civil penalty may not exceed the greater of—

(i) \$1,000,000;

(ii) 3 times the financial gain obtained or loss avoided as a result of the violation;

(iii) 3 times the amount by which the violation created or increased a systemic solvency shortfall; or

(iv) 3 times the greatest reasonably ascertainable amount of the obligation, transaction, assets, or consideration involved in the violation.

(C) Continuing violation.—Each day that a violation continues after the limited liability entity receives written notice of the violation shall constitute a separate violation.

(D) Factors.—In determining the amount of a civil penalty, the enforcing authority shall consider—

- (i) the gravity and duration of the violation;
- (ii) the amount of financial exposure or systemic solvency shortfall involved;
- (iii) the degree of knowledge, recklessness, concealment, or cooperation;
- (iv) the financial resources and ability to pay of the person subject to the penalty;
- (v) any history of prior violations;
- (vi) any loss or risk imposed on creditors, counterparties, employees, consumers, or the public; and
- (vii) such other matters as justice may require.

(E) Use of penalties.—A civil penalty collected by a Federal enforcing authority under this paragraph shall be deposited into the general fund of the Treasury.

(7) Individual accountability.—

(A) Prohibited conduct.—An officer, director, manager, responsible officer, auditor, attorney, appraiser, actuary, or other person may not knowingly or recklessly—

- (i) cause or participate in a material violation of this section;
- (ii) certify, approve, prepare, or submit a materially false or misleading determination, report, valuation, audit, legal opinion, or record required under this section;
- (iii) conceal, destroy, alter, falsify, or withhold material information;
- (iv) authorize a prohibited distribution, transfer, financial contract, or liability;
- (v) obstruct an examination, investigation, audit, or remediation required under this section; or
- (vi) aid or abet another person in conduct described in clauses (i) through (v).

(B) Remedies.—A person that violates subparagraph (A) may be subject to—

- (i) a civil penalty under paragraph (6);
- (ii) restitution or disgorgement;
- (iii) removal from the position held with the limited liability entity;

(iv) an order prohibiting the person, for a period not exceeding 10 years, from serving as an officer, director, manager, responsible officer, auditor, or other controlling person of an entity subject to the jurisdiction of the enforcing authority; and

(v) any other remedy available under applicable law.

(C) Professional duties preserved.—Nothing in this paragraph shall limit a professional, fiduciary, ethical, or reporting duty otherwise imposed by law.

(8) Referrals and resolution.—

(A) Criminal and professional referrals.—An enforcing authority shall refer evidence of a possible criminal violation, professional misconduct, fraud, obstruction, or knowing false statement to the Department of Justice, an appropriate licensing authority, or another agency with jurisdiction.

(B) Failure to remediate.—If a limited liability entity fails to restore systemic solvency within the period required by a final remediation order, or if the enforcing authority determines that restoration is no longer reasonably achievable without an orderly insolvency proceeding, the enforcing authority shall take any action within its authority, and make any referral authorized by law, to commence or facilitate conservatorship, receivership, resolution, liquidation, bankruptcy, or another applicable insolvency proceeding.

(C) Applicable proceeding.—A referral under subparagraph (B) shall be made—

(i) for an investment bank, in accordance with section 255;

(ii) for an insured depository institution or credit union, in accordance with applicable Federal or State resolution law;

(iii) for an insurance company, to the appropriate State insurance regulator or receivership authority;

(iv) for a Government corporation, in accordance with the law governing that corporation; and

(v) for another limited liability entity, in accordance with [title 11](#), United States Code, or other applicable insolvency law.

(D) No rescue authority.—Nothing in this paragraph authorizes an enforcing authority to provide or arrange public funds, guarantees, capital support, asset purchases, loss sharing, or other financial assistance to prevent or delay an applicable insolvency proceeding.

(9) Judicial enforcement and review.—

(A) Enforcement.—Upon application by a Federal enforcing authority, a district court of the United States may issue an injunction, order compliance, enforce a subpoena or administrative order, preserve assets or records, appoint a receiver if otherwise authorized by law, or grant such other equitable relief as may be appropriate.

(B) Review.—A final order issued by a Federal enforcing authority shall be subject to judicial review under [chapter 7 of title 5](#), United States Code.

(C) No automatic stay.—The commencement of judicial review shall not automatically stay a temporary order, final order, restriction, or remediation requirement issued under this subsection.

(D) Stay standard.—A court may stay an action described in subparagraph (C) only upon a clear and convincing showing that—

(i) the applicant is likely to prevail on the merits;

(ii) the applicant will suffer irreparable harm absent a stay;

(iii) the stay will not materially increase a systemic solvency shortfall, unbounded exposure, dissipation of real assets, or risk of evasion; and

(iv) the public interest favors the stay.

(10) No discretionary forbearance based on consequences.—An enforcing authority may not waive, suspend, delay, or decline enforcement of a material requirement of this section on the basis that enforcement may—

(A) reduce the market value of a financial asset;

(B) impose losses on an owner, creditor, counterparty, or holder of a financial instrument;

(C) adversely affect a particular market or institution;

(D) reveal that an entity is large, interconnected, systemically important, or difficult to resolve; or

(E) create political, economic, or administrative inconvenience.

(k) Anti-evasion.—

(1) General rule.—No person may, directly or indirectly, use an entity, transaction, instrument, relationship, or course of conduct for the purpose or effect of evading, concealing, delaying, or materially reducing compliance with this section.

(2) Substance over form.—Compliance with this section shall be determined according to economic substance, legal exposure, control, allocation of risk, and the person that ultimately bears the obligation of performance or risk of loss, without regard to form, label, accounting treatment, jurisdiction, balance sheet presentation, or the use of multiple persons or transactions.

(3) Corrective treatment.—If an enforcing authority determines that an arrangement violates this subsection, the enforcing authority may—

(A) disregard, recharacterize, or aggregate related persons, transactions, assets, liabilities, or financial contracts;

(B) attribute an asset, liability, obligation, guarantee, or financial exposure to the person that bears the economic benefit, risk of loss, or obligation of performance;

(C) require consolidation or disallow a valuation, offset, hedge, collateral position, netting right, guarantee, or other protection; and

(D) restate a systemic solvency shortfall or compliance ratio and order such corrective treatment as is necessary to apply this section according to economic substance.

(4) Records.—A limited liability entity shall maintain and, upon request, provide records sufficient to establish the economic substance, lawful business purpose, legal enforceability, funding, risk allocation, and systemic solvency treatment of each material arrangement.

(5) Lawful transactions preserved.—Nothing in this subsection prohibits a transaction having independent economic substance and a bona fide commercial purpose merely because the transaction affects systemic solvency, if the transaction is fully and accurately accounted for and does not violate another provision of this section.

(I) Rulemaking, implementation, and construction.—

(1) Temporary guidance.—Not later than 90 days after the date of enactment of this Act, the Office shall publish temporary guidance addressing the initial identification of limited liability entities, liabilities, real assets, financial event exposures, unbounded exposures, enterprise groups, and reporting obligations.

(2) Interim and final rules.—

(A) Interim final rules.—Not later than 180 days after the date of enactment of this Act, the Board, acting on the recommendation of the Director, shall issue interim final rules sufficient to implement this section, including the transition schedule required under subsection (f)(6).

(B) Effect.—The interim final rules shall take effect upon publication in the Federal Register, shall have the force and effect of law, and may be issued without regard to [section 553 of title 5, United States Code](#).

(C) Public comment and final rules.—The Board shall provide a public comment period of not less than 90 days after publication of the interim final rules and shall issue final rules not later than 18 months after the date of enactment of this Act.

(D) Consultation.—Before prescribing a rule of general applicability, the Board and the Office shall consult with appropriate functional regulators, accountants, auditors, actuaries, valuation professionals, representatives of nonfinancial businesses, labor organizations, consumer and public interest organizations, and other persons with relevant expertise.

(3) Failure to issue rules.—

(A) No delay.—A failure to issue guidance or rules by a deadline under this subsection shall not delay a prohibition, duty, or authority expressly applicable before issuance of the guidance or rules.

(B) New entities.—Before applicable rules take effect, a limited liability entity described in subsection (f)(1) shall determine and maintain systemic solvency using reasonable, documented, and consistently applied methods that conform as closely as practicable to the text and purposes of this section.

(C) Enforcement before rules.—The absence of a rule may not be asserted as a defense to—

(i) failure of a new entity to comply with subsection (f)(1);

(ii) the issuance, assumption, renewal, extension, or material modification of an unbounded or indeterminate exposure prohibited under subsection (f)(8);

(iii) failure to preserve records required under subsection (f)(4)(F); or

(iv) a violation of subsection (k).

(4) Reporting, audits, and existing obligations.—

(A) Reporting and audit requirements.—A reporting, filing, or independent audit requirement under subsection (g) shall first apply on the date specified in the applicable interim final or final rule, except that such date may not be later than 18 months after the date of enactment of this Act.

(B) Existing obligations.—Except as provided in subsection (f), this section does not require an existing liability or financial contract to be terminated solely because the liability or contract existed before the date of enactment of this Act.

(5) Relation to other law.—

(A) Federal minimum.—This section establishes a Federal minimum and shall not be construed to limit a capital, reserve, solvency, fiduciary, disclosure, corporate governance, insurance, securities, banking, consumer protection, or other requirement imposed under another provision of Federal or State law.

(B) Stricter protections preserved.—A person shall comply with any other applicable law that provides stricter protection against insolvency, leverage, financial exposure, concealment, asset dissipation, or risk transfer.

(C) Insolvency law preserved.—Except as expressly provided in this section, nothing in this section shall alter the priority, avoidance, setoff, netting, receivership, conservatorship, resolution, liquidation, or bankruptcy rules otherwise applicable to a limited liability entity.

(6) Protection of innocent contracting parties.—

(A) No automatic invalidation.—Except as expressly provided by this section or another provision of law, a violation of this section shall not automatically render a financial contract or other agreement void or unenforceable against a person that—

(i) did not know and had no reasonable cause to know of the violation; and

(ii) did not cause, participate in, or materially benefit from the violation.

(B) Enforcement preserved.—Subparagraph (A) shall not limit—

(i) an order terminating, capping, restructuring, transferring, or otherwise remediating a financial exposure;

(ii) avoidance, restitution, disgorgement, rescission, or other relief available under applicable law;

(iii) enforcement against a person that caused, participated in, knew of, or knowingly benefited from the violation; or

(iv) the authority to disregard or recharacterize an arrangement under subsection (k).

(7) No governmental guarantee or public loss absorption.—

(A) No governmental guarantee.—Compliance with this section, approval of a remediation plan, acceptance of a filing, completion of an audit, or action or inaction by an enforcing authority shall not constitute—

(i) a determination that a limited liability entity or financial instrument is safe or free from risk;

(ii) an obligation or guarantee of the United States, a State, an Indian Tribe, or any agency or instrumentality thereof;

(iii) a commitment to provide liquidity, capital, insurance, loss absorption, or financial assistance; or

(iv) a defense to a claim under another provision of law.

(B) No rescue authority.—Nothing in this section shall be construed to authorize—

(i) an appropriation, expenditure, loan, guarantee, asset purchase, capital contribution, insurance payment, or other use of public funds to satisfy or support a liability of a limited liability entity;

(ii) the creation or issuance of Treasury Dollar Bills for the benefit of a limited liability entity;

(iii) Federal Reserve credit, emergency lending, or monetary support for the purpose of preventing losses on a financial instrument; or

(iv) regulatory forbearance based on the anticipated consequences of enforcing this section.

SEC. 255. SPECIAL RESOLUTION OF INVESTMENT BANKS.

(a) Definitions.—In this section:

(1) Affiliate.—The term "affiliate" means a person that controls, is controlled by, or is under common ownership or control with another person.

(2) Appropriate Federal financial regulator.—The term "appropriate Federal financial regulator" has the meaning given the term in section 256(a)(2).

(3) Board.—The term "Board" means the Board of Governors of the Federal Reserve System.

(4) Capital markets intermediation.—The term "capital markets intermediation" has the meaning given the term in section 256(a)(5).

(5) Common ownership or control.—The term "common ownership or control" has the meaning given the term in section 256(a)(7).

(6) Control.—The term "control" has the meaning given the term in section 256(a)(8).

(7) Director.—The term "Director" means the Director of the Office of Systemic Solvency established under section 254(h).

(8) Financial services vertical.—The term "financial services vertical" has the meaning given the term in section 256(a)(11).

(9) Investment bank.—The term "investment bank" means a person authorized under applicable law to engage in capital markets intermediation as its financial services vertical, to issue investment instruments, and to maintain accounts designated for risk bearing financial activity, but not to accept deposits or maintain an account or other liability that is payable on demand at par and usable to make payments or transfers to another person.

(10) Investment bank business.—The term "investment bank business" means the operations, operating assets, contracts, systems, and other property used to conduct capital markets intermediation as an investment bank.

(11) Investment instrument.—The term "investment instrument" means a security, share, unit, participation, note, or contractual claim issued by an investment bank to finance risk bearing financial activity, the value or payment of which is subject to loss based on the financial performance of the investment bank or the underlying activity and that is not payable on demand at par. The term does not include a deposit, an account or other liability that is payable on demand at par and usable to make payments or transfers to another person, or Treasury Dollar Bills.

(12) Office.—The term "Office" means the Office of Systemic Solvency established under section 254(h).

(13) Person.—The term "person" has the meaning given the term in section 256(a)(14).

(14) Receiver.—The term "receiver" means the Office acting as receiver under subsection (e).

(15) Receivership estate.—The term "receivership estate" means all legal or equitable interests of the investment bank in property as of the appointment of the receiver and all property acquired by the receiver in administering the receivership. The term does not include property excluded from the receivership estate under subsection (g).

(b) Bailouts prohibited.—

(1) Prohibition.—It shall be unlawful for any officer, employee, agency, or instrumentality of the United States to provide public funds, credit facilities, capital contributions, guarantees, asset purchases, loss-sharing arrangements, or other financial assistance for the purpose of preventing, delaying, or mitigating losses borne by an investment bank or a holder of an investment instrument.

(2) No exception based on systemic importance.—No investment bank shall be deemed too big to fail, too interconnected to fail, or too strategic to fail.

(3) Exceptions.—Paragraph (1) does not prohibit—

(A) payment at fair market value for goods or services procured for a bona fide public purpose; or

(B) a generally applicable fiscal measure that is not directed to the rescue or support of a particular investment bank or investment instrument.

(c) Applicability and relationship to other law.—

(1) Exclusive applicability.—Notwithstanding any other provision of Federal or State law, this section shall exclusively govern the resolution of an investment bank and the administration of its receivership estate.

(2) Separate entities.—An affiliate of an investment bank shall not be placed into resolution under this section solely because of common ownership or control, unless the affiliate independently satisfies the definition of an investment bank and a trigger under subsection (d).

(3) Relationship to systemic solvency rule.—

(A) Before appointment of the receiver, section 254 shall govern systemic solvency supervision, examination, remediation, and enforcement with respect to an investment bank.

(B) Upon appointment of the receiver, this section shall govern administration and resolution of the investment bank, except that records, valuations, findings, orders, and other information developed under section 254 may be used in the resolution.

(C) Appointment of the receiver shall not terminate or limit an investigation, enforcement action, or claim against an officer, director, controlling person, affiliate, auditor, or other person arising from conduct occurring before appointment.

(d) Resolution triggers and referral.—

(1) Mandatory appointment.—The Board shall appoint a receiver for an investment bank upon the written recommendation of the Director and a finding that—

(A) the investment bank is not systemically solvent under section 254 and has failed to restore compliance within the period required by a final remediation order;

(B) the Office has determined under section 254(j)(8)(B) that restoration of systemic solvency is no longer reasonably achievable outside an orderly resolution proceeding; or

(C) the investment bank has failed to satisfy a material obligation when due and cannot promptly cure the failure without violating section 254 or receiving assistance prohibited under subsection (b).

(2) Referral by Federal financial regulator.—

(A) An appropriate Federal financial regulator may refer an investment bank to the Office upon identifying facts indicating that a trigger under paragraph (1) has occurred or is imminent.

(B) The Office shall promptly evaluate a referral and submit to the Board either—

(i) a recommendation for appointment of a receiver; or

(ii) a written determination explaining why appointment is not warranted.

(3) Emergency appointment.—

(A) The Board may appoint a receiver before completion of otherwise applicable notice or remediation procedures if the Director certifies in writing that—

(i) a trigger under paragraph (1) has occurred or is substantially certain to occur; and

(ii) delay would materially increase losses, permit dissipation or concealment of assets, impair payment obligations, or frustrate an orderly resolution.

(B) The Board shall issue final written findings supporting an appointment under subparagraph (A) not later than 5 business days after the appointment.

(4) Insufficient grounds.—A decline in market value, the systemic importance of an investment bank, or anticipated adverse market consequences shall not, standing alone, constitute a trigger for resolution under this subsection.

(e) Appointment and authority of receiver.—

(1) Appointment.—Upon a finding under subsection (d), the Board shall appoint the Office, acting through the Director, as receiver for the investment bank.

(2) Succession.—Upon appointment, the receiver shall succeed by operation of law to all rights, titles, powers, and privileges of the investment bank and of its officers, directors, managers, and equity holders with respect to the investment bank and its property.

(3) Exclusive resolution authority.—

(A) The receiver shall have exclusive authority to administer and resolve the investment bank and its receivership estate.

(B) After appointment of the receiver, no bankruptcy, conservatorship, receivership, liquidation, or other insolvency proceeding concerning the investment bank may be commenced or continued under Federal or State law except as authorized by this section.

(C) An appropriate Federal financial regulator may continue to exercise authority over violations of law, responsible persons, and entities outside the receivership estate, but may not direct or control administration of the receivership.

(4) General powers.—The receiver may—

(A) take possession and control of the property, books, records, contracts, systems, and operations of the investment bank;

(B) preserve, operate, suspend, terminate, transfer, or sell an activity, business line, asset, or liability as necessary to carry out this section;

(C) collect obligations owed to the investment bank and enforce or repudiate contracts, subject to this section and other applicable limitations of law;

(D) determine claims against the receivership estate and distribute proceeds in accordance with this section;

(E) exercise any right or power of the investment bank and appoint such agents and professionals as are reasonably necessary to administer the receivership; and

(F) sue and be sued in the name of the receiver.

(5) Administrative expenses and limitations.—

(A) Appropriation and use.—There is appropriated to the Board, out of amounts in the Treasury not otherwise appropriated, \$500,000,000, to remain available until expended, for use by the Office to pay reasonable and necessary expenses of administering receiverships under this section. Use of amounts appropriated under this subparagraph shall not constitute financial assistance prohibited under subsection (b). An amount paid under this subparagraph shall be an administrative expense of the receivership estate and shall be reimbursed from the estate to the extent assets are available. An amount reimbursed under this subparagraph shall be deposited into the general fund of the Treasury.

(B) Funds may not be used under subparagraph (A) to satisfy a preappointment obligation of the investment bank, provide capital or liquidity to the investment bank, or preserve the value of an investment instrument.

(C) Except for an expenditure authorized under subparagraph (A), a liability incurred by the receiver in administering the receivership shall be payable solely from the receivership estate and shall not constitute a debt or obligation of the United States.

(f) Immediate actions and continuation of essential operations.—

(1) Immediate actions.—Upon appointment, the receiver shall—

(A) take control of the investment bank and suspend the authority of its officers, directors, managers, and equity holders;

(B) prohibit dividends, distributions, redemptions, repurchases, transfers to affiliates, and other discretionary payments;

(C) secure and preserve the property, books, records, data, systems, and communications of the investment bank; and

(D) prevent the transfer, concealment, destruction, dissipation, or material impairment of property of the receivership estate.

(2) Management and personnel.—

(A) The receiver may remove or retain an officer, employee, contractor, or other agent as necessary to preserve value, maintain essential operations, or complete the resolution.

(B) A person retained under subparagraph (A) shall act under the direction of the receiver and shall have no authority except as delegated by the receiver.

(3) Essential operations.—The receiver may continue an operation or perform an obligation only to the extent reasonably necessary to—

(A) preserve or realize the value of property;

(B) protect customer or custodial property;

(C) maintain critical records, systems, security, or settlement functions;

(D) complete an orderly transfer or sale; or

(E) prevent a greater loss to the receivership estate.

(4) No continuation for rescue.—An operation may not be continued to rescue or perpetuate the investment bank, protect the value of an investment instrument, or delay loss recognition. This paragraph does not prohibit temporary continuation solely to preserve value for a prompt sale or transfer under subsection (j).

(g) Customer, custodial, and other nonestate property.—

(1) Exclusion from estate.—Property in the possession or control of the investment bank that is beneficially owned by another person shall not constitute property of the receivership estate, including—

(A) customer owned or custodial property;

(B) property held in trust, agency, or fiduciary capacity;

(C) collateral required by law or contract to be held in segregation;

(D) Treasury Dollar Bills or other property held for the account of another person; and

(E) property of a legally separate fund or entity that is not beneficially owned by the investment bank.

(2) Identification and segregation.—The receiver shall promptly identify, secure, and segregate property described in paragraph (1) from property of the receivership estate.

(3) Return or transfer.—Subject to verification of ownership and any valid lien or other legally enforceable interest, the receiver shall return property described in paragraph (1) to its owner or transfer the property to a qualified custodian or successor designated by the owner.

(4) Shortfall or dispute.—

(A) If property claimed under this subsection is missing, commingled, deficient, or subject to a material ownership dispute, the receiver shall determine the claimant's interest using available books, records, transaction data, and other reliable evidence.

(B) A verified claim for property that cannot be specifically returned shall be allowed under subsection (i) as a customer property deficiency claim entitled to priority under subsection (l)(1)(C).

(5) No use for estate obligations.—The receiver may not sell, pledge, transfer, or otherwise use property excluded under paragraph (1) to satisfy an obligation of the investment bank or the receivership estate.

(h) Temporary stay.—

(1) Automatic stay.—Upon appointment of the receiver, and until 5 p.m. eastern time on the second business day after the appointment, no person may, without the consent of the receiver—

(A) terminate, accelerate, or enforce a contract solely because of the appointment of the receiver or the financial condition of the investment bank;

(B) foreclose on, seize, or exercise control over property of the receivership estate;

(C) exercise a right of setoff or netting against the investment bank; or

(D) commence or continue an action to collect, recover, or enforce a claim against the investment bank or its property.

(2) Exclusions.—Paragraph (1) shall not—

(A) prevent the return or transfer of property excluded from the receivership estate under subsection (g);

(B) stay a criminal, regulatory, or enforcement action against a person other than the investment bank or the receivership estate; or

(C) prohibit an action authorized by the receiver.

(3) Limited extension.—A court of competent jurisdiction may extend the stay for not more than 5 additional business days upon a showing by the receiver that the extension is necessary to prevent material loss, preserve property, or complete an imminent transfer and will not provide financial support prohibited under subsection (b).

(4) Actions after expiration.—Except as otherwise provided by this section, an action prohibited under paragraph (1) may be taken upon expiration of the stay.

(i) Claims determination and asset valuation.—

(1) Notice and submission of claims.—The receiver shall publish notice of the receivership and establish a reasonable period and procedure for the submission of claims against the receivership estate.

(2) Determination of claims.—

(A) The receiver shall allow or disallow each claim according to applicable law as of the date of appointment.

(B) A contingent, unmatured, or unliquidated claim may be estimated at the amount reasonably necessary to permit an orderly distribution.

(C) Allowance of a claim under this paragraph shall not determine the priority of the claim under subsection (l).

(3) Asset valuation.—The receiver shall value property of the receivership estate using a commercially reasonable method appropriate to its disposition, taking into account current market conditions, enforceable contractual rights, disposition costs, and the value reasonably obtainable through a competitive sale.

(4) Use of section 254 information.—A valuation, classification, report, audit, finding, order, or other record developed under section 254 may be relied upon by the receiver as evidence but shall not conclusively bind the receiver in determining ownership, claims, asset value, or recoveries in resolution.

(5) Independent review.—The receiver may obtain an independent appraisal, audit, legal opinion, or other expert review when reasonably necessary to resolve a material valuation, ownership, or claims issue.

(6) Records of determination.—The receiver shall maintain a written record of each material claims and valuation determination and the basis for that determination.

(j) Competitive sales and auctions.—

(1) Initiation.—Not later than 72 hours after appointment, the receiver shall initiate one or more public auctions or other open competitive processes for the sale of all or substantially all property of the receivership estate.

(2) Manner of disposition.—The receiver may sell the investment bank business as a whole or divide the property into business lines, asset pools, contracts, or other commercially reasonable units if the receiver determines that separate dispositions are likely to increase aggregate recovery or facilitate an orderly resolution.

(3) Timing.—

(A) The receiver shall complete each disposition as expeditiously as practicable and presumptively not later than 30 days after appointment.

(B) The receiver may extend the period under subparagraph (A) to a date not later than 60 days after appointment upon a written public determination that the extension is reasonably necessary to increase aggregate recovery, resolve a material ownership or claims issue, or complete an imminent transfer.

(C) A court of competent jurisdiction may authorize a further extension, in periods not exceeding 30 days, upon clear and convincing evidence that—

- (i) the receiver is proceeding diligently;
- (ii) the extension is necessary to prevent a material reduction in net recovery or resolve a material ownership or claims issue; and
- (iii) the extension will not result in financial assistance prohibited under subsection (b).

(4) Competitive procedures.—The receiver shall provide reasonable notice, equal access to material information, and a fair opportunity to submit bids under uniform procedures, taking into account the need for prompt resolution and protection of confidential information.

(5) Selection of bids.—The receiver shall accept the qualified bid or combination of qualified bids that the receiver determines will produce the greatest aggregate recovery, after accounting for execution risk, required conditions, disposition costs, and compliance with this section.

(6) Public disclosure.—Promptly after consummation of a disposition, the receiver shall publish the identity of the purchaser, the property transferred, the consideration received, and the material terms of the transaction.

(7) Prohibited public support.—Neither the Board, a Federal Reserve Bank, the Department of the Treasury, nor any other Federal entity may—

- (A) submit or finance a bid;
- (B) guarantee, backstop, subsidize, or insure a bidder or disposition;
- (C) purchase property for the purpose of supporting the sale price; or
- (D) assume a loss arising from a disposition under this subsection.

(k) Bidder eligibility and compliance with section 256.—

(1) Uniform criteria.—The receiver shall establish uniform, objective eligibility criteria concerning financial capacity, operational capability, legal eligibility, and ability to consummate the proposed transaction without public financial assistance.

(2) Discrete assets.—Subject to paragraph (1), any person may bid on a discrete asset or asset pool that does not by itself constitute an investment bank business or confer control over such a business.

(3) Investment bank business.—The receiver may not consummate a sale or transfer of an investment bank business, a controlling interest in an investment bank, or substantially all operating assets necessary to conduct capital markets intermediation unless—

- (A) the purchaser is authorized to engage in the acquired activity;
- (B) the acquisition complies with section 256; and

(C) the acquisition does not create, continue, or facilitate prohibited common ownership, control, affiliation, or engagement in more than 1 financial services vertical.

(4) Indirect acquisitions.—Paragraph (3) applies to an acquisition made directly or indirectly, through an affiliate, intermediary, common-control arrangement, contractual relationship, or series of related transactions.

(5) Rejection of bid.—The receiver shall reject a bid that fails to satisfy this subsection or is conditioned on financial assistance prohibited under subsection (b).

(l) Distribution of property and proceeds.—

(1) Order of distribution.—After compliance with subsection (g), property and proceeds of the receivership estate shall be distributed in the following order:

(A) reasonable and necessary expenses incurred in administering the receivership, payable from unencumbered property;

(B) valid secured claims, to the extent of the value of the collateral remaining after payment of expenses described in paragraph (2)(A);

(C) verified customer property deficiency claims determined under subsection (g)(4);

(D) unpaid wages, salaries, and employee-benefit contributions earned before appointment;

(E) tax claims and other claims entitled to priority under Federal law;

(F) general unsecured claims other than claims arising from investment instruments;

(G) senior investment instruments;

(H) subordinated investment instruments; and

(I) any remaining value to equity holders.

(2) Secured claims.—

(A) Reasonable and necessary expenses incurred to preserve or dispose of collateral shall be paid from the proceeds of that collateral before payment of the secured claim.

(B) A secured claim shall be paid from the remaining value of the collateral securing the claim.

(C) The portion of a secured claim exceeding the remaining value of the collateral shall be treated as an unsecured claim in the class otherwise applicable to the obligation.

(3) Equal treatment.—Claims within the same class shall be paid pro rata unless a valid contractual subordination provision requires a lower priority.

(4) Limitation on recovery.—No claimant may receive more than the allowed amount of the claim, and no investment instrument shall be redeemed or satisfied at par unless property of the receivership estate is sufficient to pay all claims of equal or higher priority in full.

(5) Losses borne by investors.—Losses allocated to an investment instrument or equity interest may not be imposed on a depositor, a holder of an account or other liability payable on demand at par and usable to make payments or transfers, a holder of Treasury Dollar Bills, the Federal Reserve System, the Department of the Treasury, or the public fisc.

(m) Management and individual accountability.—

(1) Preservation of claims.—The receiver shall preserve, investigate, and, when appropriate, pursue any claim of the investment bank or receivership estate against an officer, director, controlling person, auditor, contractor, or other responsible person whose act or omission contributed to a loss, violation of law, dissipation of assets, false valuation, or failure of the investment bank.

(2) Available remedies.—In pursuing a claim under paragraph (1), the receiver may seek damages, restitution, disgorgement, avoidance of a fraudulent or preferential transfer, recovery of compensation or distributions, or other relief otherwise available under law.

(3) No estate funded indemnification.—The receiver may not use property of the receivership estate to indemnify or reimburse a person for liability arising from fraud, knowing misconduct, gross negligence, breach of fiduciary duty, or a violation of this section or section 254.

(4) Relationship to other enforcement.—This subsection does not limit any civil, administrative, or criminal investigation, action, penalty, or remedy available under section 254 or any other provision of law.

(n) Judicial review.—

(1) Expedited review.—A person adversely affected by the appointment of the receiver, an authorization of a sale or transfer that determines or materially impairs the legal interest of the person, or a final action of the receiver may, not later than 30 days after the appointment, authorization, or final action, as applicable, seek judicial review in the United States District Court for the District of Columbia or the district in which the investment bank had its principal place of business. The court shall consider the action on an expedited basis.

(2) No automatic stay.—The commencement of an action under paragraph (1) shall not stay, enjoin, or delay the appointment of the receiver, administration of the receivership, or a sale or transfer under this section.

(3) Temporary relief.—A court may grant temporary relief before consummation of a sale or transfer only upon clear and convincing evidence that—

(A) the challenged action is plainly contrary to this section;

(B) the applicant is likely to suffer irreparable harm that cannot be remedied by monetary relief; and

(C) the relief will not materially impair an orderly resolution or increase losses to the receivership estate.

(4) Finality of completed transactions.—A sale or transfer consummated in good faith under this section may not be stayed, rescinded, reversed, or otherwise unwound by a court.

(5) Monetary relief.—

(A) If a court determines that the Board, the Office, or the receiver acted unlawfully, the United States waives sovereign immunity with respect to a claim under this paragraph, and the court may award monetary relief for actual loss directly caused by the unlawful action.

(B) A final judgment under subparagraph (A) shall be paid under [section 1304 of title 31, United States Code](#), and not from the receivership estate or by a purchaser.

(C) A court may not award relief that protects an investment instrument from a loss properly allocated under this section or requires the rescue, recapitalization, or continued operation of the investment bank.

(o) Rulemaking and systemwide stabilization.—

(1) Rulemaking.—

(A) In general.—Not later than 180 days after the date of enactment of this Act, the Board, in consultation with the Director and appropriate Federal financial regulators, shall issue rules necessary to carry out this section, including rules governing—

(i) referrals, receivership administration, competitive sales, bidder eligibility under section 256, claims procedures, and distributions;

(ii) the identification, valuation, preservation, transfer, termination, repudiation, and treatment of contracts and financial arrangements of an investment bank; and

(iii) coordination among the Board, the Office, the receiver, appropriate Federal financial regulators, clearing organizations, custodians, and other persons necessary to conduct an orderly resolution.

(B) Qualified financial contracts.—The rules issued under subparagraph (A) shall govern qualified financial contracts (as defined in section 11(e)(8)(D) of the Federal Deposit Insurance Act ([12 U.S.C. 1821\(e\)\(8\)\(D\)](#))) and related master agreements, netting sets, collateral rights, security arrangements, and credit enhancements, including rules—

(i) implementing the temporary stay under subsection (h);

(ii) governing the transfer or termination of such contracts and related property;

(iii) preserving legally enforceable netting, setoff, collateral, and credit-enhancement rights except to the extent expressly limited by this section;

(iv) requiring that, with respect to a person that is a party to 1 or more qualified financial contracts with the investment bank, all qualified financial contracts between the person or any affiliate of the person and the investment bank, together with all claims, property, collateral, security arrangements, and credit enhancements related to those contracts, be transferred to the same transferee, or that none be transferred, and

prohibiting selective enforcement or repudiation within an integrated master agreement or netting set; and

(v) coordinating such contracts with the claims, customer-property, sale, and distribution provisions of this section.

(C) Cross-border resolution.—The rules issued under subparagraph (A) shall govern cross-border resolution matters, including—

(i) coordination with and, to the extent permitted by law, giving effect to a foreign insolvency, liquidation, or resolution proceeding;

(ii) cooperation and information sharing with a foreign financial or resolution authority, to the extent permitted by law and subject to appropriate confidentiality safeguards;

(iii) protection of property located in the United States and claims arising under United States law;

(iv) prevention of duplicative proceedings, inconsistent transfers, double recovery, or evasion of this section; and

(v) standards prohibiting the transfer of a qualified financial contract, netting agreement, collateral arrangement, security arrangement, credit enhancement, or related property to a foreign person unless the receiver determines that the applicable contractual, netting, collateral, security, and credit-enhancement rights will remain enforceable to substantially the same extent as under this section.

(D) Limitations.—A rule, agreement, recognition, transfer, or cooperative arrangement under this paragraph may not—

(i) authorize financial assistance prohibited under subsection (b);

(ii) subordinate customer or custodial property protected under subsection (g);

(iii) transfer a loss to the United States, the Federal Reserve System, the Department of the Treasury, a holder of Treasury Dollar Bills, or the public fisc;

(iv) protect an investment instrument from a loss otherwise allocable under this section; or

(v) authorize an ownership arrangement, affiliation, or acquisition prohibited under section 256.

(2) Self-executing authority.—A failure to issue a rule under paragraph (1) shall not delay or prevent the appointment of a receiver or the exercise of authority expressly granted by this section when a trigger under subsection (d) has occurred.

(3) Systemwide stabilization.—In the event of systemwide financial stress, stabilization shall be accomplished through generally applicable fiscal measures authorized by law, including direct public spending or per capita distributions, and not through financial assistance directed to an individual investment bank, purchaser, creditor, equity holder, or investment instrument.

(4) Construction.—Nothing in this section authorizes an activity, acquisition, ownership arrangement, or affiliation prohibited under section 256.

SEC. 256. STRUCTURAL SEPARATION OF FINANCIAL CONGLOMERATES.

(a) Definitions.—In this section:

(1) Antitrust Division.—The term "Antitrust Division" means the Antitrust Division of the Department of Justice, acting through the Assistant Attorney General in charge of the Antitrust Division.

(2) Appropriate Federal financial regulator.—The term "appropriate Federal financial regulator" means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal agency that the Council determines has primary supervisory or regulatory jurisdiction over an entity or activity of a person subject to this section.

(3) Appropriate State insurance regulator.—The term "appropriate State insurance regulator" means the insurance commissioner or other State officer or agency with primary supervisory authority over an insurance company.

(4) Asset management.—

(A) In general.—The term "asset management" means the business of managing, advising, sponsoring, or exercising discretionary authority over assets beneficially owned by 1 or more unaffiliated persons, including the activities of—

(i) an investment adviser or investment company, as those terms are defined in section 202(a)(11) of the Investment Advisers Act of 1940 ([15 U.S.C. 80b-2\(a\)\(11\)](#)) and section 3(a)(1) of the Investment Company Act of 1940 ([15 U.S.C. 80a-3\(a\)\(1\)](#)), respectively;

(ii) a commodity pool operator or commodity trading advisor, as those terms are defined in section 1a of the Commodity Exchange Act ([7 U.S.C. 1a](#)); or

(iii) a sponsor, general partner, managing member, or manager of a private fund, as defined in section 202(a)(29) of the Investment Advisers Act of 1940 ([15 U.S.C. 80b-2\(a\)\(29\)](#)), or a similar pooled investment vehicle.

(B) Exclusions.—The term "asset management" does not include custody, safekeeping, recordkeeping, nondiscretionary administrative services, or trust and fiduciary activities permitted under subsection (b)(2).

(5) Capital markets intermediation.—The term "capital markets intermediation" means the business of—

(A) underwriting, placing, or distributing securities of another person;

(B) acting as a broker or dealer, as those terms are defined in section 3(a) of the Securities Exchange Act of 1934 ([15 U.S.C. 78c\(a\)](#));

(C) market making, prime brokerage, or securities lending as an intermediary;

(D) acting as a futures commission merchant, swap dealer, security-based swap dealer, major swap participant, or major security-based swap participant; or

(E) operating a national securities exchange, alternative trading system, securities clearing agency, derivatives clearing organization, or comparable capital markets trading or clearing facility.

(6) Commission.—The term "Commission" means the Federal Trade Commission.

(7) Common ownership or control.—The term "common ownership or control" means ownership or control, direct or indirect, of 2 or more entities by the same person or group of persons.

(8) Control.—The term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies, or operations of an entity. A person shall be rebuttably presumed to control an entity if such person—

(A) owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the entity;

(B) has the power to appoint 25 percent or more of the board of directors or equivalent governing body of the entity; or

(C) has contractual or other authority to direct or materially influence the lending, underwriting, dealing, trading, investment advisory, insurance underwriting, custody, clearing, settlement, capital-allocation, risk management, or customer-access decisions of the entity.

(9) Council.—The term "Council" means the Financial Stability Oversight Council established under section 111 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ([12 U.S.C. 5321](#)).

(10) Depository banking and balance sheet lending.—

(A) In general.—The term "depository banking and balance sheet lending" means the business of—

(i) operating as a depository institution, as defined in section 3(c)(1) of the Federal Deposit Insurance Act ([12 U.S.C. 1813\(c\)\(1\)](#)), a credit union, as defined in section 2(9) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ([12 U.S.C. 5301\(9\)](#)), or a branch or agency of a foreign bank, as those terms are defined in section 1(b) of the International Banking Act of 1978 ([12 U.S.C. 3101\(b\)](#));

(ii) receiving deposits or issuing deposit-like liabilities; or

(iii) extending consumer, commercial, real estate, or other credit as principal and retaining the predominant economic interest in such credit.

(B) Exclusions.—The term "depository banking and balance sheet lending" does not include—

(i) margin, settlement, or securities lending credit extended solely as an incident to capital markets intermediation;

(ii) an extension of credit made by a pooled investment vehicle using assets beneficially owned by the investors in such vehicle, if the asset manager does not guarantee the credit or fund it from the asset manager's own balance sheet;

(iii) a policy loan, premium financing arrangement, or investment made from the general or separate account of an insurance company; or

(iv) trade credit extended solely as an incident to the sale of nonfinancial goods or services.

(11) Financial services vertical.—The term "financial services vertical" means any of the following:

(A) Asset management.

(B) Capital markets intermediation.

(C) Depository banking and balance sheet lending.

(D) Insurance underwriting.

(12) Insurance underwriting.—The term "insurance underwriting" means the business of assuming insurance, reinsurance, or annuity risk in return for a premium or other consideration, including life, health, property, casualty, title, mortgage, financial guaranty, and other insurance risk. Such term does not include acting solely as an insurance agent or broker without assuming insurance risk.

(13) Lead financial regulator.—The term "lead financial regulator" means the appropriate Federal financial regulator designated by the Council under subsection (b)(5)(C).

(14) Person.—The term "person" has the meaning given the term in section 1 of the Clayton Act ([15 U.S.C. 12](#)).

(15) Profits.—The term "profits" means, with respect to any person and any month, the amount equal to the greater of—

(A) the net income (or loss) of such person before provision for income taxes for such month, as determined in accordance with generally accepted accounting principles and consistent with the accounting principles used in the most recent audited consolidated financial statements of such person; and

(B) 4 percent of the gross revenues of such person for such month, as so determined.

(16) Reviewing agencies.—The term "reviewing agencies" means the lead financial regulator, the Commission, and the Antitrust Division.

(17) Unaffiliated.—The term "unaffiliated", with respect to 2 persons, means that the persons are not under common ownership or control, directly or indirectly.

(b) Prohibition on ownership of more than 1 financial services vertical.—

(1) (A) In general.—Notwithstanding any other provision of Federal or State law, it shall be unlawful for any person to directly or indirectly own, operate, control, or direct the operation of any entity or combination of entities engaged in more than 1 financial services vertical, in or affecting interstate or foreign commerce.

(B) Prohibition on new acquisitions.—After the date of enactment of this Act, no person may acquire, directly or indirectly, control of assets or operations in a financial services vertical other than the financial services vertical in which such person already engages, in violation of subparagraph (A).

(2) Permitted incidental activities.—

(A) General rule.—A person engaged in a financial services vertical may conduct an activity associated with another financial services vertical only to the extent expressly permitted under this paragraph, necessary and incidental to the person's selected financial services vertical, and not used to preserve, recreate, or continue common ownership or control across financial services verticals.

(B) Depository banking and balance sheet lending.—A person engaged in depository banking and balance sheet lending may—

(i) purchase or sell investments for the account of a customer, or provide financial or investment advice to a customer, pursuant to authorized trust and fiduciary activities;

(ii) provide custody, safekeeping, recordkeeping, payment, and settlement services;

(iii) acquire and hold assets for liquidity, reserves, capital, foreclosure, debt collection, or resolution, provided that an asset acquired through foreclosure, debt collection, or resolution is disposed of as soon as practicable and not later than 2 years after acquisition, unless the appropriate Federal financial regulator with primary supervisory jurisdiction over the person authorizes a temporary extension necessary to avoid material loss; and

(iv) enter into a bona fide transaction to hedge a risk arising from the person's permitted activities.

(C) Capital markets intermediation.—A person engaged in capital markets intermediation may extend margin or settlement credit, provide custody of customer assets or collateral, provide research or advice incidental to brokerage, hold trading inventory, and enter into bona fide hedging transactions, in each case only as an incident to capital markets intermediation.

(D) Asset management.—A person engaged in asset management may cause a managed investment vehicle to purchase or sell securities, make or acquire loans, use derivatives, and maintain cash or collateral, provided that the person does not guarantee the obligations of the vehicle or fund the vehicle's activities from the person's own balance sheet except for seed capital permitted by joint rule.

(E) Insurance underwriting.—A person engaged in insurance underwriting may invest general-account and separate-account assets, enter into bona fide hedging transactions,

make policy loans, finance premiums, and manage assets solely to support insurance or annuity obligations.

(F) Narrow construction.—An activity permitted under this paragraph shall be construed narrowly and may not be offered as a separate line of business to unaffiliated persons except to the extent expressly authorized under this paragraph.

(G) Treasury interface services.—Providing interface services for Treasury transaction accounts under section 623(h) shall not, by itself, constitute engagement in a financial services vertical.

(3) Rulemaking.—Not later than January 30, 2027, the Council, the Commission, and the Antitrust Division shall, in consultation with the appropriate Federal financial regulators and appropriate State insurance regulators, issue a joint interim final rule defining for purposes of this section—

(A) a de minimis threshold of revenue, assets, or activity within a financial services vertical below which an activity may be excluded from the prohibition under paragraph (1), except that any exclusion under this subparagraph shall be construed narrowly and shall not permit the preservation, recreation, or continuation of integrated control across financial services verticals inconsistent with the purposes of this section;

(B) standards for applying the definitions of "common ownership or control" and "control" under subsection (a), including standards addressing contractual arrangements of operational control, indirect means of control, interlocking management, guarantees, shared capital or liquidity, and functions materially comparable to a financial services vertical;

(C) standards for applying paragraph (2), including limitations necessary to ensure that an incidental activity does not become a separate line of business or a means of evading paragraph (1);

(D) milestones for divestiture to ensure compliance within the deadline under subsection (c), provided such milestones may not be later than permitted under subsection (d), including—

(i) filing of a divestiture plan;

(ii) the length of time the reviewing agencies will review such plan;

(iii) filing of a revised plan, if necessary;

(iv) notification of the person acquiring such divestiture;

(v) the submission of any transaction filing required by section 7A of the Clayton Act ([15 U.S.C. 18a](#)) by the person acquiring such divestiture; and

(vi) completion of such divestiture; and

(E) for each milestone, whether, in the case of a person's knowing and willful failure to meet the milestone, the reviewing agencies shall seek—

(i) penalties under subsection (e)(3);

(ii) appointment of a divestiture trustee under subsection (e)(4); or

(iii) both clauses (i) and (ii).

(4) Effect of interim final rule.—The interim final rule under paragraph (3) shall take effect upon publication in the Federal Register, shall have the force and effect of law, and may be issued without regard to [section 553 of title 5, United States Code](#). The issuing agencies shall provide a public comment period of not less than 60 days after publication and shall issue final rules not later than October 30, 2027. A delay in issuance or finalization of rules under this paragraph shall not delay, limit, extinguish, or reduce any prohibition, duty, enforcement authority, or divestiture obligation established by this section.

(5) Notice of divestiture requirement.—

(A) In general.—Not later than 60 days after the date of enactment of this Act, the Council, the Commission, and the Antitrust Division shall, using the best information available, identify each person that they jointly determine is required to divest under subsection (c) and notify such person of the determination.

(B) 60-day notice not exhaustive.—Notwithstanding subparagraph (A), if the Council, the Commission, and the Antitrust Division later jointly determine, using the best information available, that a person not identified under subparagraph (A) is required to divest under subsection (c), the Commission and the Antitrust Division shall promptly notify such person.

(C) Lead financial regulator.—For each person identified under subparagraphs (A) or (B), the Council shall designate an appropriate Federal financial regulator to act as the lead financial regulator, based on the regulator's primary supervisory jurisdiction, the person's predominant financial services vertical, and the need to protect customers, depositors, investors, and policyholders. If the person engages in insurance underwriting, the lead financial regulator shall consult with each State insurance regulator having primary supervisory jurisdiction over a material insurance entity of the person.

(D) No immunity.—Failure to identify or notify a person under this paragraph shall not limit, extinguish, or otherwise affect any prohibition, duty, enforcement authority, or divestiture obligation established by this section.

(6) Determination upon request.—

(A) Request.—Any person that has not received notice under paragraph (5) may submit to the Council, the Commission, and the Antitrust Division a written request for a determination of whether that person is required to divest under subsection (c).

(B) Determination.—Not later than the later of 30 days after receipt of a request under subparagraph (A) or the expiration of the 60-day period under paragraph (5)(A), the Council, the Commission, and the Antitrust Division shall jointly issue to the person a written determination that states whether the person is required to divest under subsection (c). If the determination states that the person is required to divest, the Council shall designate a lead financial regulator in accordance with paragraph (5)(C). Notice issued under paragraph (5) after receipt of a request under subparagraph (A) shall satisfy this requirement.

(C) No admission or tolling.—Submission of a request under subparagraph (A) shall not—

(i) constitute an admission that the person is subject to subsection (b) or required to divest under subsection (c); or

(ii) toll or extend any prohibition, duty, enforcement authority, divestiture obligation, or deadline under this section.

(7) Judicial review.—

(A) Petition for review.—

(i) Determination.—A person receiving notice under paragraph (5) or a written determination under paragraph (6) may, not later than 30 days after receipt of such notice or determination, file a petition for review of the determination in the United States Court of Appeals for the District of Columbia Circuit.

(ii) Failure to act.—A person that submits a request under paragraph (6)(A) and does not receive a written determination within the period required under paragraph (6)(B) may, at any time before receipt of such determination, file a petition in the United States Court of Appeals for the District of Columbia Circuit to compel issuance of the determination.

(B) Application of chapter 7.—[Chapter 7 of title 5](#), United States Code, shall apply to a petition under subparagraph (A). For purposes of such chapter—

(i) a determination under paragraph (5) or (6) shall constitute final agency action; and

(ii) a failure to issue a determination within the period required under paragraph (6)(B) shall constitute agency action unlawfully withheld.

(C) Expedited consideration.—The court shall expedite consideration of a petition filed under subparagraph (A) to the greatest extent practicable.

(c) Divestiture.—Not later than July 1, 2028, any person in violation of subsection (b) shall divest such interests as are necessary to come into compliance.

(d) Financial and antitrust review.—

(1) Divestiture plan required.—Not later than April 1, 2027, any person required to divest under subsection (c) shall submit to the lead financial regulator, the Commission, and the Antitrust Division a divestiture plan. Such plan—

(A) shall be submitted in the same manner, and contain substantially similar information, as a transaction filing under section 7A of the Clayton Act ([15 U.S.C. 18a](#)), without respect to any threshold, exemption, or other limitation of such section; and

(B) shall include—

(i) identification of the business, assets, entities, operations, licenses, contracts, or interests to be divested to come into compliance with subsection (b);

(ii) identification of the proposed acquiring person, if known;

(iii) a timetable for execution;

(iv) any transitional services proposed;

(v) a plan to separate capital, liquidity, funding, customer and client assets, personnel, data, systems, guarantees, contractual obligations, and regulatory licenses and permissions;

(vi) a plan to preserve operational continuity and protect depositors, borrowers, customers, clients, investors, and policyholders; and

(vii) such other information as the reviewing agencies may require by joint rule.

(2) Agency review process.—Not later than 180 days after receipt of a divestiture plan under paragraph (1), but in no case later than October 1, 2027, the reviewing agencies shall review the plan.

(A) Financial review.—The lead financial regulator shall coordinate review by the appropriate Federal financial regulators and, where applicable, appropriate State insurance regulators. The lead financial regulator shall review the effect of the proposed divestiture on safety and soundness, financial stability, financial viability, operational continuity, customer-asset protection, policyholder protection, and the ability of each resulting enterprise to operate independently.

(B) Antitrust review.—The Commission and the Antitrust Division shall review the effect on competition, concentration, independent market access, conflicts of interest, and the public interest—

(i) of the divestiture; and

(ii) of the subsequent acquisition of the divested business, assets, entities, operations, licenses, contracts, or interests by the acquiring person.

(C) Additional information.—Any request for additional information by a reviewing agency shall be made within 30 days of receipt of the plan.

(D) Acquiring person.—

(i) A divestiture plan that identifies a proposed acquiring person may be approved only if the following requirements are satisfied—

(I) the proposed acquisition is consistent with subsection (b);

(II) the proposed acquisition would not materially harm competition, increase concentration, recreate integrated control across financial services verticals, or otherwise undermine the purposes of this section;

(III) each resulting enterprise will be financially viable, operationally independent, and adequately protect depositors, borrowers, customers, clients, investors, and policyholders; and

(IV) each statutory reporting, waiting period, licensing, supervisory, or approval requirement applicable to the proposed acquisition will be satisfied before consummation.

(ii) A divestiture plan may be submitted and reviewed without identifying a proposed acquiring person, but no sale, transfer, assignment, or other disposition to an acquiring person may be consummated if the lead financial regulator, the Commission, or the Antitrust Division disapproves in writing.

(E) Notice of decision.—Not later than the end of the review period, the lead financial regulator shall notify the person in writing—

(i) whether the plan is approved, approved with conditions, or disapproved; and

(ii) the reasons for any disapproval or conditions.

(F) Approval standard.—A divestiture plan shall be treated as approved only if, before the end of the review period, the lead financial regulator has approved the plan in writing, whether unconditionally or subject to conditions accepted in writing by the person submitting the plan, and neither the Commission nor the Antitrust Division has disapproved the plan in writing.

(3) Revised plan following disapproval.—If a plan is disapproved under paragraph (2), the person shall submit a revised divestiture plan not later than 60 days after receipt of the disapproval notice.

(A) Review deadline.—Not later than 150 days after receipt of a revised plan, but in no case later than May 1, 2028, the reviewing agencies shall review the revised plan under the procedures set forth in paragraph (2).

(4) No tolling.—No submission, resubmission, agency review, negotiation, request for additional information, waiting period, court proceeding, or other matter shall toll or extend any deadline under this section.

(5) Consequences of noncompliance.—A person required to divest under subsection (c) shall be subject to subsection (e)(3), subsection (e)(4), or both, if such person fails to—

(A) submit a divestiture plan under paragraph (1);

(B) submit a revised plan under paragraph (3), if required to do so;

(C) obtain approval of either—

(i) a plan under paragraph (2); or

(ii) a revised plan under paragraph (3);

(D) conform to agreed upon conditions of an approved plan; or

(E) conclude the divestiture required by subsection (c).

(6) Blocking of actions.—The lead financial regulator, the Commission, and the Antitrust Division, jointly or separately, may bring a civil action in any court of competent jurisdiction to block any action that would materially increase financial risk, harm competition, recreate integrated control across financial services verticals, or otherwise undermine the purposes of this section.

(e) Enforcement.—

(1) Civil enforcement.—When the Commission, the Antitrust Division, a lead financial regulator, an appropriate Federal financial regulator, or an attorney general of a State has reason to believe that a person is in violation of this section or a rule promulgated under this section, such agency or attorney general may bring a civil action in an appropriate district court of the United States.

(2) Injunctive and equitable relief.—In any action described in paragraph (1), the applicable court, on a finding that a person is in violation of this section or a rule promulgated under this section, shall issue an order requiring such person—

(A) to cease and desist from such violation and, if applicable, divest such interests as are necessary to come into compliance with this section; and

(B) to pay an amount equal to the profits derived from any business, asset, operation, or interest subject to divestiture during the period of the violation.

(3) Penalties.—

(A) Written determination and transfer.—If a person knowingly and willfully fails to comply with a milestone specified under subsection (b)(3)(D), the lead financial regulator, an appropriate Federal financial regulator with primary jurisdiction over the missed milestone, or the Commission and the Antitrust Division acting jointly shall issue a written determination identifying the missed milestone, the month for which escrow is required, the amount required to be transferred, and the method used to calculate such amount. Beginning not later than 15 days after receipt of such written determination, the person shall transfer into escrow on a monthly basis 10 percent of the profits of the person, to be—

(i) returned to the person if divestiture occurs by the deadline under subsection (c);
or

(ii) deposited into the general fund of the Treasury if divestiture does not occur by the deadline under subsection (c).

(B) Escrow administration and certification.—Any transfer into escrow under subparagraph (A) shall be deposited with the Secretary of the Treasury into a segregated account established for purposes of this section.

(i) Not later than 15 days after the end of each month for which a transfer is required, the person shall submit to the lead financial regulator, the Chair of the Commission, and the Antitrust Division a certification, signed by the chief executive

officer and chief financial officer, attesting to the calculation of profits and gross revenues for such month and the amount transferred.

(ii) Not later than 120 days after the end of each fiscal year, the person shall submit a reconciliation based on audited financial statements and shall pay any underpayment, together with interest on the underpayment from the date the underpayment was required to be transferred into escrow, at the underpayment rate determined under [section 6621\(a\)\(2\)](#) of the Internal Revenue Code of 1986 and compounded daily under [section 6622\(a\)](#) of such Code, or receive a return of any overpayment, as applicable.

(C) Judicial review.—A person subject to a transfer requirement under subparagraph (A) may, not later than 30 days after notice of such requirement, petition for review in the United States Court of Appeals for the District of Columbia Circuit. The filing of a petition for review shall not stay any obligation to transfer amounts into escrow unless the court orders otherwise.

(4) Trustee.—The lead financial regulator, the Commission, or the Antitrust Division may apply to a court of competent jurisdiction for the appointment of a divestiture trustee.

(A) Authority.—The divestiture trustee shall have the authority, at the expense of the person required to divest, to take such actions as are necessary to effectuate the divestiture required under this section, including selling, transferring, assigning, or otherwise disposing of the business, assets, entities, operations, licenses, contracts, or interests required to be divested.

(B) Cooperation.—The person required to divest shall cooperate fully with the divestiture trustee and shall take no action to interfere with, delay, or impede the divestiture.

(C) Approval.—Any proposed sale by the divestiture trustee shall be subject to approval under subsection (d).

(D) Duty of trustee.—The divestiture trustee shall act in the interest of effectuating prompt compliance with this section, preserving financial stability and operational continuity, and restoring competition, and shall not be required to maximize the value received by the person required to divest.

(5) Deposit.—Any amount paid under paragraph (2)(B) shall be deposited into the general fund of the Treasury.

(6) Other relief.—In addition to any relief obtained under paragraph (1) or (2), the court may grant any other equitable relief necessary to redress and prevent recurrence of the violation.

(f) Anti-circumvention.—It shall be unlawful for any person to evade or attempt to evade this section, including by entering into an agreement or contract, engaging in a transaction, structuring an entity, sharing capital, liquidity, guarantees, personnel, data, systems, or risk, or recreating through contractual means the common ownership, control, conflicts of interest, or financial integration prohibited under subsection (b).

(g) Rulemaking authority.—The Council, the Commission, and the Antitrust Division shall, in consultation with the appropriate Federal financial regulators and appropriate State insurance regulators, jointly promulgate regulations to carry out this section.

(h) Reports required.—The Chairperson of the Council, the Chair of the Commission, and the Antitrust Division shall submit to the appropriate congressional committees quarterly reports on compliance with this section, including the status of any divestitures required under this section.

(i) Rule of construction.—Nothing in this section shall be construed to limit the authority of the Council, the Commission, the Department of Justice, an appropriate Federal financial regulator, an appropriate State insurance regulator, or the attorney general of a State under any other provision of law.

SEC. 257. CERTAIN EVENT CONTRACTS PROHIBITED.

Section 5c(c) of the Commodity Exchange Act ([7 U.S.C. 7a-2\(c\)](#)) is amended by adding at the end the following:

"(6) Certain event contracts prohibited.—

"(A) Definitions.—In this paragraph:

"(i) Casino-style game.—The term 'casino-style game' means any game traditionally found in a casino, including slot machine games, video poker, blackjack, roulette, craps, any other casino-style table game, bingo, lottery, and any simulation of any such game.

"(ii) Military action.—The term 'military action' means any military action taken by the United States or any foreign country.

"(iii) Political contest.—The term 'political contest' means any primary, general, special, runoff, recall, or other election for Federal, State, local, or territorial public office, and any caucus, convention, ballot measure, referendum, initiative, or other political contest or process the outcome of which is determined in whole or in part by votes cast or formally tabulated.

"(iv) Sporting event.—The term 'sporting event' means any live or virtual contest involving physical activity or skill in which individuals or teams compete and performance determines an outcome or statistical result, including amateur, collegiate, and professional sports.

"(v) United States governmental action.—The term 'United States governmental action' means any action taken, proposed, authorized, or officially announced by the executive, legislative, or judicial branch of the United States or any member of any such branch.

"(B) Prohibition.—

"(i) In general.—Notwithstanding any other provision of this section, no agreement, contract, or transaction relating to any casino-style game, military action, political contest, sporting event, or United States governmental action may be listed or made available for clearing or trading on or through a registered entity.

"(ii) Exception.—Clause (i) shall not apply with respect to any agreement, contract, transaction, or swap relating to a United States governmental action if such agreement, contract, transaction, or swap is used for hedging or mitigating commercial risk and the

person entering into such agreement, contract, transaction, or swap has a preexisting, demonstrable commercial exposure, independent of such agreement, contract, transaction, or swap, that is more than de minimis.

"(C) Rule of construction.—Nothing in this subsection shall be construed to preempt any State law or rule that regulates or prohibits any agreement, contract, or transaction relating to any casino-style game, military action, political contest, sporting event, or United States governmental action.

"(D) Transition rule.—Any agreement, contract, or transaction described in subparagraph (B)(i) that was entered into on or before the date of enactment of this Act, may remain in effect solely until settlement, exercise, liquidation, or expiration in accordance with its terms, but may not, after the date of enactment of this Act, be newly listed, offered to a new holder, assigned, novated, rolled over, or made available for secondary trading on or through a registered entity."

Subtitle F—Toward a Uniform Bankruptcy Code

SEC. 261. FINDINGS.

Congress finds the following:

(1) Article I, Section 8, Clause 4 of the Constitution of the United States directs Congress to establish uniform laws on the subject of bankruptcies throughout the United States.

(2) The requirement of uniformity in bankruptcy law reflects a Constitutional judgment that relief from debt and the orderly resolution of insolvency must not vary arbitrarily based on creditor power, debtor status, or financial sophistication.

(3) Bankruptcy law has historically served two complementary purposes: providing a fresh start for honest but unfortunate debtors, and ensuring the fair and orderly reorganization or liquidation of distressed enterprises for the benefit of all stakeholders.

(4) Over time, amendments to the Bankruptcy Code and changes in bankruptcy practice have produced nonuniform outcomes in which similarly situated debtors are treated differently based on the type of debt incurred, the identity of creditors, or the procedural posture of a case.

(5) Certain categories of educational debt have been rendered effectively nondischargeable absent a showing of undue hardship, creating a deviation from uniform bankruptcy principles and imposing long-term financial burdens on individuals regardless of good faith efforts to repay.

(6) Amendments enacted in 2005 to [chapter 7 of title 11, United States Code](#), replaced discretionary judicial standards with mechanical presumptions of abuse, shifted burdens onto individual debtors, and eliminated the historical presumption in favor of granting relief, thereby impairing the uniform availability of a fresh start.

(7) At the same time, sophisticated financial actors have increasingly employed chapter 11 procedures, including expedited asset sales under [section 363 of title 11, United States Code](#), to retain control of distressed enterprises while shedding obligations to workers, retirees, and unsecured creditors.