Appendix A

Comparison of Title II of the Dodd-Frank Act, Bankruptcy Code, and Federal Deposit Insurance Act

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The following chart compares the Act to the Bankruptcy Code and the FDIA, including (i) the financial companies covered, (ii) the grounds for exercising resolution powers, (iii) the resolution powers available to the FDIC, (iv) special provisions concerning qualified financial contracts, and (v) the Regulatory Agency's authority to handle claims from creditors, with limited judicial oversight.

Supervisory entity ("Regulatory Agency")	The Bankruptcy Courts, subject to the appellate jurisdiction of the federal district courts, circuit courts and the Supreme Court. 11 U.S.C. § 105. The Office of the United States Trustee, a division of the Department of Justice (the "UST"), is charged with oversight of the administrative issues in bankruptcy. A local representative of the UST is typically assigned to monitor every chapter 11 case. The UST is concerned with protecting creditors' rights, and typically appoints an official committee of unsecured creditors, consisting of creditors holding the largest claims against the debtor.	The FDIC is the Regulatory Agency for covered financial companies ("CFCs"). CFCs are defined as financial companies, other than insured depository institutions, for which a determination has been made by the Secretary of the Treasury (the "Secretary") under § 203(b). § 201(a)(8). When the CFC is a broker or dealer registered with the Securities and Exchange Commission (the "SEC") and a member of the Securities Investor Protection Corporation ("covered broker or dealer" or "CBD"), the Securities Investor Protection Corporation ("SIPC") will be appointed as the trustee to liquidate the CBD. §§ 201(a)(7) and 205(a). The Act grants the United States District Court of the District of Columbia (the "Court") original and exclusive jurisdiction over petitions by the Secretary for an order to appoint the FDIC as receiver of a CFC if the board of directors of such CFC does not consent or acquiesce to the FDIC's appointment. § 202(a).	The FDIC. The FDIC has broad powers over the process prescribed in the FDIA. There is minimal court supervision and judicial review.

Laws governing the proceedings	Title 11 of the United States Code (the "Bankruptcy Code"), the Federal Rules of Bankruptcy Procedure ("FRBP"), and Local Rules for each jurisdiction.	The Act, with rules and regulations passed by the FDIC. The Act applies exclusively to all CFCs for which the FDIC has been appointed as the receiver. § 202(c)(2). The Bankruptcy Code applies to all financial companies that are not CFCs for whom the FDIC has been appointed as the receiver. § 202(c)(1).	The Federal Deposit Insurance Act, with limited regulations passed by the FDIC.
Judicial precedent	Significant judicial precedent.	No judicial precedent exists for the Act. The FDIC must seek to harmonize the provisions of the Act with insolvency laws that would otherwise apply to a CFC and address the potential for conflicts of interest between or among individual receiverships established under this title or under the Federal Deposit Insurance Act. § 209.	Some judicial precedent.
Who is covered	The Bankruptcy Code applies to individuals or other "persons" who reside, are domiciled or have a place of business or property in the United States, with the exception generally of banks and savings and loan associations, railroads and insurance companies. Municipalities (chapter 9) and entities with pending foreign bankruptcy proceedings (chapter 15) may also seek relief under the Bankruptcy Code. 11 U.S.C. § 109. Insurance companies are governed by state insurance insolvency codes. Broker-dealers that are members of the Securities Investor Protection Corporation ("SIPC") are subject to the Securities Investor Protection Act ("SIPA"), but may also file chapter 7 liquidation cases under the Bankruptcy Code. Although generally the Bankruptcy Code would continue to apply to most financial companies, the Act would make the Bankruptcy Code unavailable to a financial company if the Treasury elected to put such financial company into an FDIC	The Act applies to any financial company, which (i) is a company incorporated or organized under federal law or the laws of any State, (ii) is: • a bank holding company; • a nonbank financial company supervised by the Federal Reserve Board (the "Fed") pursuant to the provisions of Title I under the Act; • any company that is predominantly engaged in activities that the Fed has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956; or • any subsidiary of the above that is predominantly engaged in activities that the Fed has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. § 1843(k)) (other than a subsidiary that is an insured depository institution or insurance company); and	The FDIA governs FDIC-insured bank or thrift subsidiaries. The Act would not affect the entities that are subject to an FDIC proceeding.

	receivership. The appointment of the FDIC as receiver for the CFC would automatically terminate any bankruptcy case in progress. § 208(a).	(iii) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. § 2001 et seq.), government entity or regulated entity (as defined under section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. § 4502(20)). § 201(a)(11). For a company to classify as a financial company due to activities that the Fed has determined are financial in nature for purposes of section 4(k) of the Bank Holding Company Act, 85 percent or more of the company's revenue must come from such activities. § 201(b). "Covered subsidiaries" are subsidiaries of a CFC that are not insured depository institutions, insurance companies or CBDs. § 201(a)(9). The FDIC may appoint itself as receiver of a covered subsidiary if the FDIC and the Secretary jointly determine that (i) the covered subsidiary is in default or danger of default; (ii) such action would avoid serious adverse effects on the U.S. economy; and (iii) such action would facilitate the orderly liquidation of the CFC. § 210(a)(1)(E). CFCs, or subsidiaries of CFCs, that are insurance companies are resolved under State law, but if the proper regulatory agency has not taken action under State law within 60 days of a determination that such company is a CFC, then the FDIC may stand in place of the proper regulatory agency and take appropriate action under State law. § 203(e).	
Commencement of proceedings	An eligible entity may elect to file a voluntary bankruptcy petition. 11 U.S.C. § 301. Although solvent companies can be debtors, the Bankruptcy Court may dismiss the case based on bad faith filing. Three or more entities, each of which holds an unsecured, non-contingent, undisputed claim, which aggregate to at least $13,475, can file an involuntary petition, which may be contested by the debtor/company. Any disputes will be evaluated by the Bankruptcy	On their own initiative, or at the request of the Secretary, the Fed and the FDIC, or the Fed and the SEC (in the case of a CBD) or Federal Insurance Office (in the case the CFC or its largest U.S. subsidiary is an insurance company) each with a 2/3 vote of approval, issue a joint written recommendation to the Secretary. § 203(a). The written recommendation must contain an evaluation of whether the financial company is in default or in danger of default; a description of the effect the default of the financial company would	A conservator or receiver may be appointed without a systemic risk determination if the grounds specified in the FDIA apply. 12 U.S.C. § 1821(c)(5). Generally, the FDIC is required to meet a statutory "least cost resolution" standard when determining how to resolve a failed bank, which includes estimating the costs of liquidation. However, the FDIC has broader powers if there is a systemic risk determination that (a) the FDIC's compliance with the "least cost

	Court which will make a finding as to whether the company is paying its debts as they come due. If there are fewer than 12 such creditors, a single creditor holding at least $13,475 in unsecured, non-contingent, undisputed claims, may file the involuntary petition. 11 U.S.C. § 303.	have on financial stability in the U.S.; a description of the effect the default would have on economic conditions or financial stability of low income, minority or underserved communities; a recommendation regarding the nature and the extent of actions to be taken; an evaluation of the likelihood of a private sector alternative preventing the default of the financial company or rendering the financial company solvent; an evaluation of why a case under the Bankruptcy Code is not appropriate; an evaluation of the effect on creditors, counterparties and shareholders of the financial company and other market participants; and an evaluation of whether the company satisfies the definition of a financial company under § 201. § 203(a)(2). The Secretary (in consultation with the President) must determine, based on the written recommendation, that (i) the financial company is in default or in danger of default, (ii) the failure of the financial company and its resolution under otherwise applicable Federal or State law would have serious negative effects on U.S. financial stability, (iii) private sector alternatives will not prevent the default of the CFC, (iv) any effect on the claims and interests of creditors, counterparties and shareholders of the financial company and other market participants is appropriate given the impact of such actions on the U.S. economy, (v) actions under the Act would avoid or mitigate such adverse effects, (vi) a federal regulatory agency has ordered the financial company to convert all of its convertible debt instruments and (vii) the company satisfies the definition of a financial company under section 201. § 203(b). Upon such determination by the Secretary, the financial company becomes a CFC. § 201(a)(8). A company is in "default or in danger of default" if (i) a case has been, or likely will be, commenced with respect to the financial company under the Bankruptcy Code; (ii) the financial company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital and there is no reasonable prospect for the company to avoid such depletion; (iii) the assets of the financial company	resolution" requirements for government assistance with respect to an institution would have serious adverse effects on economic conditions or financial stability and (b) any assistance under 12 U.S.C. § 1823 would avoid or mitigate such adverse effects. 12 U.S.C. § 1823(c)(4)(G). In the event of this determination, the FDIC may then take action or provide assistance under § 1823 as necessary to avoid/mitigate such effects. This determination requires the recommendation of the FDIC and the Fed, and approval of the Secretary, in consultation with the President.

		are, or are likely to be, less than its obligations to creditors and others; (iv) the financial company is, or is likely to be, unable to pay its obligations in the normal course of business; or (v) the financial company consents to the appointment of the FDIC as receiver. § 203(c)(4). Subsequent to a determination by the Secretary under section 203 that a financial company satisfies the criteria in section 203(b), the Secretary must notify the board of directors of the CFC of its determination. If the board of directors does not consent to the appointment, the Secretary must petition the Court for an order authorizing the Secretary to appoint the FDIC as receiver. § 202(a)(1)(A)(i). The Court, after a hearing in which the CFC may oppose the petition, must determine whether the finding of the Secretary that the CFC is in default or in danger of default and satisfies the definition of a "financial company" under section 201(a)(11) is arbitrary and capricious. § 202(a)(1)(A)(iii). If the Court finds the Secretary's determination is not arbitrary and capricious, the Court must issue an order immediately authorizing the Secretary to appoint the FDIC as receiver for the CFC. If the Court finds the Secretary's determination is arbitrary and capricious, the Court must immediately provide the Secretary with a written statement of the reasons for its determination, and afford the Secretary an immediate opportunity to amend and refile the petition. § 202(a)(1)(A)(iv). If the Court does not make a determination within 24 hours of receipt of the petition, the petition must be granted by operation of law, the FDIC must be appointed receiver of the CFC and liquidation under this title must commence. § 202(a)(1)(A)(v). A person who recklessly discloses a determination or petition of the Secretary must be fined not more than $250,000, or imprisoned for up to 5 years, or both. § 202(a)(1)(C).	
Reporting requirements	The Bankruptcy Court issues orders and final judgments, which are public documents.	The Secretary must provide written notice of the appointment of the FDIC as receiver to the Majority and Minority Leaders of the Senate, the Speaker and the Minority Leader of the House of Representatives,	If the FDIC suspends dividends from excess amounts in the Deposit Insurance Fund, the FDIC must submit such determination to the Committee on Banking, Housing, and Urban

		the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives within 24 hours after time of commencement. § 203(c)(2). Within 60 days after the time of appointment of the FDIC as receiver, the FDIC must file a report with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives (i) setting forth information on the financial condition of the CFC, (ii) describing the plan and actions taken by the CFC, (iii) explaining each instance in which the FDIC waived any applicable requirements of part 366 of title 12, (iv) describing the reasons for the provisions of any funding to the receivership of the Fund (defined below), (v) setting forth the expected costs of the liquidation of the CFC, (vi) setting forth the identity of any claimant treated differently than similarly situated claimants; and (vii) which report the FDIC must publish online. § 203(c)(3)(A). The FDIC and the primary financial regulatory agency, if any, of the financial company for which the FDIC was appointed receiver under this title must appear before Congress, if requested, not later than 30 days after the date on which the FDIC first files the reports required by § 203(c)(3)(A). § 203(c)(3)(C). The Comptroller General of the U.S. must review and report to Congress any determination to use the resolution authority. § 203(c)(5). The FDIC must maintain a full accounting of each receivership or other disposition of any CFC. The FDIC must file an annual report to the Secretary and the Comptroller General, which must be made available to the public. § 210(a)(16). The Administrative Office of the U.S. Courts and the Comptroller General of the U.S. must conduct separate studies regarding the orderly liquidation process for financial companies under the Bankruptcy Code. § 202(e). The Comptroller General of the U.S. must conduct a	Affairs of the Senate and the Committee on Financial Services of the House of Representatives within 270 days after making such determination. Pub. L. No. 109-173, § 5, Feb. 15, 2006, 119 Stat. 3606.

		study regarding international coordination relating to the orderly liquidation of financial companies under the Bankruptcy Code. § 202(f). The Comptroller General of the U.S. must conduct a study regarding the implementation of the prompt corrective action by the appropriate federal banking agencies. § 202(g).	
Funding	There is no provision for statutory government funding. Subject to Bankruptcy Court approval, the company may use its available cash or obtain post-petition funding to provide for its funding requirements during the reorganization process. Such funds are provided by third-party lenders. If necessary, the Bankruptcy Court can authorize the debtor to grant the debtor-in-possession (the "DIP") lender a priming lien, which has priority over pre-bankruptcy liens and is a claim with super-priority over administrative expenses incurred during chapter 11 and over all other claims.	The Act creates a separate Orderly Liquidation Fund (the "Fund"), which is available to the FDIC for the orderly liquidation of the CFC. §§ 210(n)(1) and 204(d). The Fund is likely to be initially established when the FDIC is appointed as receiver of a CFC through FDIC-issued debt obligations bought by the Secretary. §§ 210(n)(5) and (o)(1)(B). The FDIC may issue obligations to be sold to the Secretary, which the Secretary can then sell. § 210(n)(5). The FDIC may only issue debt obligations up to (i) an amount equal to 10 percent of the total consolidated assets of the CFC during the 30-day period immediately following the date of appointment of the FDIC as receiver (or a shorter time if the FDIC has calculated the fair value of the assets of the CFC) and (ii) the amount that is equal to 90 percent of the fair value of the total consolidated assets of each CFC that are available for repayment after the 30-day period following the appointment of the FDIC as receiver (or a shorter time if the FDIC has calculated the fair value of the assets of the CFC). § 210(n)(6). The FDIC would be required to repay its borrowings through proceeds received through the liquidation process and assessments on any claimant that received additional payments as a result of its unequal treatment by the FDIC to minimize losses to the FDIC in the orderly liquidation process, unless such payments were necessary to initiate and continue operations essential to the implementation of the receivership or any bridge financial company. §§ 210(n)(2) and (o)(1)(D). Such assessment would equal the amount the claimant received from the	Financial assistance is funded from the deposit insurance fund. 12 U.S.C. § 1821(a)(4). The FDIC, in seeking to provide assistance to an institution or other prescribed actions, must determine that such action is necessary and will incur the least cost to the FDIC. 12 U.S.C. § 1823(c)(4). The FDIC may borrow money from the Treasury for funding the insurance fund. The FDIC may also sell its obligations to the Federal Financing Bank and also borrow from insured depository institutions and federal home loan banks. 12 U.S.C. § 1824. The FDIC Board of Directors (the "Board") sets assessments by considering: the FDIC's operating costs, estimated case resolution expenses and income, the projected effects of the payment of assessments on institutions, risk factors under the risk-based assessment system and other factors the Board deems appropriate. 12 U.S.C. § 1817(b)(2)(B). Risk factors in the "risk-based" assessment system are based on the probability the FDIC will incur a loss from an institution, the likely amount of loss and the revenue needs of the FDIC. 12 U.S.C. § 1817(b)(1)(C). An institution is not barred from the lowest-risk category in the risk-based assessment system solely because of its size. 12 U.S.C. § 1817(b)(2)(D).

		FDIC minus the amount the claimant was entitled to recover solely from the liquidation of the CFC under Title II (or the amount the claimant would have received from a chapter 7 liquidation under the Bankruptcy Code). § 210(o)(1)(D). If assessments on claimants are insufficient to recoup the Fund's expenditures, the FDIC must impose assessments on bank holding companies and financial companies with total consolidated assets equal to or greater than $50 billion and nonbank financial companies supervised by the Fed. § 210(o)(1)(D). When replenishing the Fund through proceeds from the liquidation process, such amount owed to the Fund must have priority among all administrative claims and amounts owed to the United States under the priority scheme established for unsecured claims in section 210(b)(1). § 204(d). The FDIC must charge one or more risk-based assessments if such assessments are necessary to pay in full the obligations issued by the FDIC to the Secretary within 60 months of the date of issuance of such obligations. § 210(o)(1)(B). Assessments are imposed on a graduated basis; financial companies with greater assets will be assessed at a higher rate. § 210(o)(2). When imposing assessments, the FDIC must consider several listed factors, including the economic conditions generally affecting financial companies, assessments imposed on the company under the FDIA, SIPC, Federal Credit Union Act or applicable State law for insurance companies, the risks presented by the financial company to the financial system and the extent to which the financial company has benefitted, or likely would benefit, from the orderly liquidation of a financial company under this title, any risks presented by the financial company during the 10-year period prior to the appointment of the FDIC as receiver that contributed to the failure of the CFC and such other factors as the FDIC, and such other risk-related factors as the FDIC or Financial Stability Oversight Council (the "Council") deems appropriate. § 210(o)(4).	

		If the FDIC, as receiver, cannot obtain unsecured credit for the CFC from commercial sources, the FDIC may obtain credit or incur debt for the CFC which must have priority over any or all administrative expenses of the receiver. § 210(b)(2).	
Management	In chapter 11, the board and management of the debtor continue to operate the company as a DIP and are entitled to propose a plan for the reorganization or the liquidation of the debtor. Under certain circumstances, a trustee may be appointed. 11 U.S.C. §§ 322 and 1104. In a chapter 7 case (bankruptcy liquidation), a trustee administers the liquidation of the assets of the debtors. 11 U.S.C. §§ 322, 701, 702, 703.	Upon the Court issuing an order for the Secretary to appoint the FDIC as receiver, the Secretary must appoint the FDIC as receiver. § 202(a)(1)(A)(iv). As the receiver, the FDIC is the liquidator of the financial company. § 204(a). The FDIC may create a bridge financial company (a "Bridge Company"). § 210(a)(1)(F). The appointment of the FDIC as receiver must terminate in 3 years after the date of the FDIC's appointment as the receiver. § 202(d)(1). The time limit for the FDIC as receiver can be extended for up to one additional year if the Chairperson of the FDIC certifies in writing that the continuation of the receivership is necessary to maximize the return or minimize the losses in the liquidation of the CFC and to protect the stability of the U.S. financial system. § 202(d)(2). The time limit can be further extended for an additional year if the conditions under § 202(d)(2) are met and FDIC submits a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing that includes the reasons for a second extension and a specific plan for concluding the receivership. § 202(d)(3).	An institution's charter determines which agency appoints the receiver. The FDIC may appoint itself the sole receiver or conservator. 12 U.S.C. § 1821(c)(4). As a conservator, the FDIC takes operational control of the company to preserve it. 12 U.S.C. § 1821(c)(2)(A)(i). Similar to chapter 11 bankruptcy. As a receiver, the FDIC is the liquidator of the company. 12 U.S.C. § 1821(c)(2)(A)(ii).
Rulemaking authority	Congress alone amends the Bankruptcy Code, with the federal judiciary to prescribe the rules of practice, procedure and evidence for the federal courts, subject to the right of Congress to reject, modify or defer any Bankruptcy Rules that have been adopted. The various bankruptcy courts may enact their own Local Rules. The FRBP governs procedural aspects of a case.	The FDIC must, in consultation with the Council, prescribe such rules and regulations as the FDIC considers necessary or appropriate to implement this title. § 209. The Court must establish such rules and procedures as may be necessary to ensure the orderly conduct of proceedings, including rules and procedures to ensure that the 24-hour deadline is met and that the Secretary must have an ongoing opportunity to amend and re-file petitions. § 202(b).	The FDIC may prescribe such regulations as the FDIC determines to be appropriate regarding the conduct of conservatorships or receiverships. 12 U.S.C. § 1821(d)(1).

		The FDIC may prescribe rules to establish an interest rate for creditors holding proven claims against the receivership estates of a CFC. § 210(a)(7)(D). The SEC and FDIC, after consultation with the SIPC, must jointly issue rules to implement the orderly liquidation of a CBD. § 205(h). The FDIC must, in consultation with the Secretary, impose rules and regulations to administer assessments. § 210(o)(6). The FDIC must promulgate regulations on the recoupment of compensation from executives and directors due to their responsibility for the failed condition of a CFC. § 210(s)(3).	
Coordination with other Regulators	No obligation.	The FDIC, as receiver, must consult with the primary regulators of the CFC and its covered subsidiaries and the primary regulators of any subsidiaries of the CFC that are not covered subsidiaries. § 204(c)(1) and (3). The FDIC must consult with the SEC and SIPC for a covered broker or dealer for the purpose of determining whether to transfer customer accounts of the CFC without consent of any customer to a Bridge Company. § 204(c)(4). The FDIC may consult with outside experts as appropriate. § 204(c)(2).	No obligation.
Power of the DIP/ FDIC/Trustee	The trustee or DIP is the successor in interest to the rights, title, assets and affairs of the debtor and can manage them in the ordinary course of business. The DIP/trustee also obtains the books and records of the debtor. The DIP or trustee must seek the approval of the Bankruptcy Court for any transactions that are deemed "outside the ordinary course of business," including one-off transactions such as post-petition loans and the sale of significant operating assets. Court approval for transactions "outside the ordinary course of business" is determined	The FDIC, as receiver, succeeds to the: • rights, titles, powers and privileges of the CFC and of any stockholder, member, officer or director of the CFC and its assets and • title to the books, records, and assets of any previous receiver or legal custodian of the CFC. § 210(a)(1)(A). During the orderly liquidation, the FDIC, as receiver, will operate the CFC and may take the following actions:	The FDIC, as conservator or receiver, succeeds to the company's: • rights, titles, powers and privileges of the company and of any stockholder; and • title to the books, records and assets of any previous receiver. 12 U.S.C. § 1821(d)(2)(A). The FDIC, as conservator or receiver, may: • take over the assets and operate the company;

	by the best-interest-of-the-estate standard. The DIP/trustee is a fiduciary for the creditors and shareholders of the company and is required to comply with significant operating and reporting requirements under the Bankruptcy Code, the FRBP and the Local Rules of the relevant jurisdiction. The DIP/trustee is required, among other things, to: • perform all functions of the company in the company's name; • collect all assets, obligations and money due to, and collect and evaluate claims against, the estate; • preserve and conserve the assets and property of the estate; • pay all expenses arising post-petition, including wages, and taxes; • maintain insurance, as directed by the UST; • close pre-petition accounts and open at least one post-petition account, which indicates that the debtor is operating as a DIP, at a bank that agrees to comply with the UST reporting requirements; • file schedules, creditors matrices (with addresses for notification) and statements of financial affairs (these are generally publicly available but can be filed under seal (FRBP 1007)); • file operating reports with the UST pursuant to FRBP 2015(a)(3); and • notify creditors of the bankruptcy proceeding and major	• take over the assets and operate the CFC; • collect all obligations and money due to the CFC; • perform all functions of the CFC in the company's name; • manage the assets and property of the CFC; • provide by contract for assistance in fulfilling any function, activity, action or duty of the receiver; • merge the CFC with another company; • provide for the exercise of any function by any member or stockholder, director or officer of the CFC; • organize a Bridge Company; or • transfer any asset or liability of the CFC without any approval, assignment or consent with respect to such transfer. § 210(a)(1)(B)-(G). The FDIC, as receiver, must liquidate and wind-up the CFC. § 210(a)(1)(D). Upon the appointment of the FDIC as receiver for any CFC that is a CBD, the SIPC must be appointed as trustee to liquidate the CBD. § 205(a). **A.** Upon its appointment as trustee by the FDIC, the SIPC must have all of the powers and duties provided by the Securities Investor Protection Act (the "SIPA") as to the CBD, but must have no powers or duties with respect to assets and liabilities transferred by the FDIC from the CBD to a Bridge Company. § 205(b)(1). The SIPC must promptly file an application for a protective decree under the SIPA with any Federal district court of competent jurisdiction, which the district court must approve. § 205(a)(2)(A). The SIPC must administer the determination of claims and liquidation of assets of the CBD that were not transferred to a Bridge Company. § 205(a)(2)(B).	• collect all obligations and money due to the company; • perform all functions of the company in the company's name; and • preserve and conserve the assets and property of the company. 12 U.S.C. § 1821(d)(2)(B). Typically, the FDIC arranges a purchase-and-assumption ("P&A") transaction for insured (or all) deposits and some assets with a healthy bank at the time a receivership is established. The FDIC can: • prescribe, • make loans to, • make deposits in, • purchase the assets or securities of, • assume the liabilities of, • or make contributions to any insured depository institution if such action (a) is taken to prevent the default of such institution, (b) is taken to restore the institution to normal operations or (c) will decrease the threat of instability to several such institutions, so long as the FDIC uses the least costly resolution. 12 U.S.C. § 1823(c). FDIC can merge or transfer any asset or liability in default without any approval, assignment, or consent, and is not bound by non-assignability provisions. 12 U.S.C. § 1821(d)(2)(G). Relief is limited to damages. The FDIC can provide assistance to the institution before the appointment of a conservator or receiver, as long as it is the least costly resolution. 12 U.S.C.

	developments. The DIP/trustee may not do the following, among other things, without Bankruptcy Court approval: • pay pre-petition debts; • pay professionals and advisors without a Bankruptcy Court order; • sell assets outside the ordinary course of business (11 U.S.C. § 363 and FRBP 4001); • use cash collateral without the consent of secured creditors or the Bankruptcy Court (11 U.S.C. § 363(c)(2)); and • obtain credit or incur secured or unsecured debt without Court approval (11 U.S.C. § 364 and FRBP 4001).	**B.** The SIPC's exercise of powers and functions as trustee must not impair or impede the exercise of the powers and duties of the FDIC with regard to: • any action to (i) make funds available under § 204(d), (ii) operate or terminate any Bridge Company, (iii) transfer assets and liabilities, (iv) enforce or repudiate contracts and (v) take any other actions relating to such Bridge Company; or • determining claims under § 205(e). § 205(b)(2). No action taken by the FDIC with respect to a CBD may adversely affect the rights, claims and recoveries of a customer to customer property, diminish the amount of timely payment of net equity claims or otherwise impair recoveries under the SIPA. § 205(d)(1). In taking any action under the Act, the FDIC must (i) determine that such action is necessary for purposes of financial stability of the U.S. and not for the purpose of preserving the CFC; (ii) ensure that the shareholders of a CFC do not receive payments until after all other claims and the Fund are fully paid; (iii) ensure that unsecured creditors bear losses in accordance with the priority of claim provisions under the Act; (iv) ensure that the management responsible for the failed conditions of the CFC is removed; (v) ensure that the members of the board responsible for the failed condition are removed; and (vi) not take an equity interest in or become a shareholder of any CFC or any covered subsidiary. § 206. Unlike the FDIA, there is no provision in the Act that requires the FDIC to seek the least costly resolution. The FDIC may use the Fund for (i) making loans to, or purchasing any debt obligation of, the CFC or any covered subsidiary; (ii) purchasing or guaranteeing against loss the assets of the CFC or any covered subsidiary, directly or through an entity established by the FDIC for such purpose; (iii) assuming or	§ 1823(c)(8) and (c)(4). The conservator or receiver can offer any asset of the institution for sale to the FDIC or as security for loans from the FDIC. 12 U.S.C. § 1823(d). Proceeds from such sale or loan are used to pay the institution's claims. The FDIC can conduct certain emergency acquisitions if severe financial conditions threaten the stability of a significant number of savings associations or savings associations with a significant amount of resources, without meeting the least cost resolution test, under the terms and as authorized under 12 U.S.C. § 1823(k).

		guaranteeing the obligations of the CFC or any covered subsidiary to 1 or more third parties; (iv) taking a lien on any or all assets of the CFC or any covered subsidiary, including a first priority lien on all unencumbered assets of the CFC or any covered subsidiary to secure repayment of any transactions conducted under this subsection; (v) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the CFC or any covered subsidiary; and (vi) making payments pursuant to sections 210(b)(4), (d)(4), and (h)(5)(E). § 204(d)(1)-(6).	
Foreign investigations	A trustee or DIP may be authorized by the Court to act in any foreign country on behalf of an estate. 11 U.S.C. § 1505. A foreign representative can also apply for recognition of foreign proceedings and can attain access to federal bankruptcy proceedings. 11 U.S.C. §§ 1515 and 1509. Chapter 15 of the Bankruptcy Code contains provisions relative to proceedings in foreign jurisdictions and the rights of foreign representatives to appear and be heard in U.S. bankruptcy courts.	The FDIC must coordinate with the appropriate foreign financial authorities regarding the orderly liquidation of subsidiaries of CFCs that have assets and operations in a country other than the U.S. § 210(a)(1)(N). The FDIC may request the assistance of any foreign financial authority, provide assistance to any foreign financial authority and maintain an office to coordinate foreign investigations for the purpose of carrying out any power, authority or duty with respect to a CFC. § 210(k). The provisions of the Act are substantially similar to those of the FDIA.	The FDIC may request the assistance of any foreign financial authority and provide assistance to any foreign financial authority. The FDIC may also maintain an office to coordinate foreign investigations. 12 U.S.C. § 1818(v).
Judicial review of DIP/FDIC/ trustee's actions	The Bankruptcy Court must approve all out-of-the-ordinary-course actions by the DIP/trustee. In addition, any creditor or the UST can file a motion or objection with respect to certain actions in the bankruptcy case. The DIP/trustee may object to any creditor's proof of claim, for cause. FRBP 3007. The Bankruptcy Court, after notice and a hearing, determines the nature and amount of such claim as a contested matter. 11 U.S.C. § 502(b). The Bankruptcy Court has jurisdiction over adversary proceedings, which are actions that cannot be handled by motion in the	To appoint the FDIC as receiver without the consent of the CFC's board of directors, the Secretary must petition the Court for an order authorizing the Secretary to appoint the FDIC as receiver. § 202(a)(1)(A)(i). The Court, after a hearing in which the CFC may oppose the petition, must determine whether the finding of the Secretary that the CFC is in default or in danger of default and satisfies the definition of a financial company under section 201(a)(11) is arbitrary and capricious. § 202(a)(1)(A)(iii). If the Court finds the Secretary's determination is not arbitrary and capricious, the Court must issue an order immediately authorizing the Secretary to appoint the FDIC as receiver for the CFC. If the Court finds that the Secretary's determination is arbitrary and capricious, the Court	The company may bring an action in U.S. District Court within 30 days of the appointment of a conservator or receiver to challenge the appointment of the conservator or receiver. 12 U.S.C. § 1821(c)(7). Claimants can request a judicial determination or an administrative hearing to review the FDIC's determinations. Final determinations in administrative hearings are subject to judicial review. 12 U.S.C. § 1821(d)(6). There are inconsistent sections related to the availability of judicial review over claims determinations made by the FDIC in 12 U.S.C. § 1821(d). However, cases interpreting these sections suggest that

	bankruptcy case, but instead require the filing of a separate complaint. FRBP 7001 lists types of actions that require an adversary proceeding.	must immediately provide the Secretary with a written statement of the reasons for its determination, and afford the Secretary an immediate opportunity to amend and refile the petition. § 202(a)(1)(A)(iv). Appeals from the Court's decision to the United States Court of Appeals for the District of Columbia Circuit must be on an expedited basis and filed by the Secretary or the board of directors of the CFC no more than 30 days after the Court's decision is rendered. The Court of Appeals must have jurisdiction of an appeal only if the CFC did not consent to the appointment of the FDIC as receiver; such appeal must be limited to whether the determination of the Secretary that the CFC is in default or in danger of default and that the CFC is a financial company is arbitrary and capricious. The Secretary or the board of directors may petition for a writ of certiorari to the Supreme Court 30 days after the final decision of the Court of Appeals; such appeal is limited to whether the determination of the Secretary that the CFC is in default or in danger of default and that the CFC is a financial company is arbitrary and capricious. § 202(a)(2). The notice of appeal of any order, entered in any case brought by the FDIC against a CFC's director, officer, employee or any other person employed by or providing services to such company, must undergo expedited procedures and be filed not later than 30 days after entry of the order. The hearing of the appeal must not be later than 120 days after the date of the notice of appeal and must be decided no later than 180 days after the date of the notice of appeal. The court may modify these periods in the interest of justice. § 210(j). A claimant may contest a claim determination by the FDIC in the district court for the district where the principal place of business of the CFC is located. § 210(a)(4)(A). No court may take any action to restrain or affect the exercise of powers or functions of the receiver hereunder, unless specifically provided for in the Act, and any remedy against the FDIC or receiver must be	judicial review is available after exhaustion of the administrative claim process with the FDIC. Unless otherwise provided, no court has jurisdiction over any action for payment from, or determination of rights with respect to, the assets of any company for which the FDIC has been appointed as its receiver, or any claim relating to any act or omission of the company or FDIC as receiver. 12 U.S.C. § 1821(d)(13)(D). An appeal of any order, entered in any case brought by the FDIC against a company's director, officer, employee or any other person employed by or providing services to such company, <u>must</u> undergo expedited procedures and be filed within 30 days after entry of the order and heard 120 days after the date of the notice of appeal. 12 U.S.C. § 1821(q). No court may issue an attachment or execution over the assets that are in the possession of the FDIC as receiver. 12 U.S.C. § 1821(d)(13)(c).

		limited to money damages determined in accordance with the Act. § 210(e). Similar provisions apply to CBDs under § 205.	
Suspension of other legal actions	Once a bankruptcy petition is filed, all other judicial, administrative or other actions or proceedings (with the exception of certain police and regulatory proceedings) against the debtor are automatically, and without the need for a specific request, stayed. No such actions can proceed without the Bankruptcy Court lifting the automatic stay, which remains in place until the case is dismissed or closed. 11 U.S.C. § 362. The automatic stay applies to non-judicial actions, including the enforcement of a judgment, any act to obtain possession of property of the estate, any act to create, perfect, or enforce any lien against property of the estate, any act to collect, assess or recover a pre-petition claim, and the setoff of any pre-petition debt against any claim against the debtor. The automatic stay terminates when the property is no longer part of the estate, the Court lifts the stay, or the case is dismissed or closed. 11 U.S.C. § 362.	The FDIC's placement as receiver terminates any bankruptcy court or SIPC case or proceeding commenced with regards to the CFC, and no such case or proceeding may be commenced with respect to the CFC while an orderly liquidation is pending. § 208(a). The rights of the FDIC to recover assets from avoidable transfers supersede the rights of any trustee in bankruptcy or any other person under the Bankruptcy Code. § 210(a)(11)(G). Any assets of the CFC which vested in another entity as a result of any proceeding commenced with respect to the CFC under the Bankruptcy Code or SIPA must revest in the CFC. § 208(b). Upon the request by the FDIC, any court where a judicial action is pending to which the CFC is or becomes a party must grant a stay to all parties for 90 days. § 210(a)(8).	The FDIC can direct a court to temporarily stay any judicial action, criminal or non-criminal. 12 U.S.C. § 1821(d)(12).
Revival of claims	The DIP/trustee has the power to bring lawsuits and avoidance actions, including fraudulent conveyance and preference claims, but cannot revive claims where the statute of limitations has expired before the filing. The Bankruptcy Code contains provisions for extending the statute of limitations, commencement of actions and response dates but only if those periods have not expired when the bankruptcy case is filed. 11 U.S.C. § 108.	The FDIC can bring an action on certain tort claims where the state statute of limitations has expired not more than 5 years before the appointment of the FDIC as receiver. The claim must arise from fraud, intentional misconduct resulting in unjust enrichment or intentional misconduct resulting in substantial loss to the CFC. § 210(a)(10)(C). The provisions of the Act are substantially similar to those of the FDIA.	Within 5 years of the appointment of the FDIC as receiver or conservator, the FDIC can bring an action on certain tort claims even though the state statute of limitations has expired. The claim must arise from fraud, intentional misconduct resulting in unjust enrichment or intentional misconduct resulting in substantial loss to the eligible institution. 12 U.S.C. § 1821(d)(14)(c).
Director and officer liability	Directors and officers of a company owe fiduciary duties to the company. When the company is solvent, shareholders can bring	Directors are not liable to the shareholders or creditors for acquiescing or consenting in good faith	Directors and officers are not liable for acquiescing to the appointment of the FDIC and acquisitions, combinations or transfers of

	an action for breach of those duties. When the company is insolvent, creditors can also bring an action for breach of those duties. Directors can be held liable for taking actions that are not in the best interest of the estate or for failing to take actions that are in the best interest of the estate. Failing to file a bankruptcy case to protect valuable assets of the company may be the basis of a breach of fiduciary duty claim.	to the appointment of the FDIC as receiver. § 207. Directors and officers of a CFC may be held personally liable for monetary damages in any civil action for gross negligence, including intentional tortious conduct, as defined under applicable state law. § 210(f). In claim proceedings involving any director, employee, officer, agent, attorney, accountant, appraiser or other service provider, recoverable damages due to "improvident or otherwise improper use or investment" of any assets include principal losses and appropriate interest. § 210(g). The FDIC can recover from any current or former executive or director substantially responsible for the failed condition of the CFC any compensation received from 2 years prior to appointment of the FDIC as receiver. In cases of fraud, no time-limit would exist for the FDIC's ability to recover such compensation. § 210(s)(1). The provisions of the Act are substantially similar to those of the FDIA.	assets taken by the FDIC. 12 U.S.C. § 1821(c)(12). Directors and officers may be personally liable for actions for gross negligence or "intentional tortious conduct." 12 U.S.C. § 1821(k). In claims proceedings involving any director, employee or service provider, damages due to "improvident or otherwise improper use or investment" of any assets include principal losses and interest are recoverable. 12 U.S.C. § 1821(l).
Creditor claims	The DIP/trustee cannot unilaterally disallow any claim or portion of a claim. The DIP/trustee will file a list of creditors and their claims and, in addition, receive and evaluate claims submitted by creditors. Claims are deemed allowed unless contested. If contested, the Bankruptcy Court, after notice and a hearing, determines the nature and amount of such claim as a contested matter, and may allow or disallow some or all of any such claim. 11 U.S.C. § 502.	The FDIC, as receiver, may determine claims by creditors. § 210(a)(2)(A). The FDIC must determine whether to allow or disallow a claim within 180 days of the filing of such claim with the FDIC. § 210(a)(3)(A)(i). The FDIC may object to any portion of any claim that is not proved to the FDIC's satisfaction. § 210(a)(3)(D)(i). Credit extensions from the Federal Reserve or the Treasury to a CFC and any legally enforceable and perfected security interest with respect to such credit extensions must not be disallowed. § 210(a)(3)(D)(iii). The FDIC, as receiver, must establish procedures for expedited relief for a claimant that alleges the existence of a legally valid, enforceable or perfected security interest for which they will suffer irreparable harm if resolved under the normal claim procedures. § 210(a)(5)(A). The FDIC must determine within 90	The FDIC may allow or disallow any claim as a receiver. 12 U.S.C. § 1821(d)(5). The FDIC may disallow any portion of the claim that is not proved to the FDIC's satisfaction. 12 U.S.C. § 1821(d)(5)(D). See Judicial Review above for the limited role of the court in the claims process.

		days of the filing for expedited relief whether to allow or disallow such claim or whether such claim should be determined pursuant to the normal procedures for claims. § 210(a)(5)(B).	
Post-commencement claims	Post-petition claims are treated as administrative claims and paid in full no later than the effective date of the plan; post-petition claims are paid before pre-petition claims.	Final judgment for money damages against the FDIC for contracts executed or approved after the date of the FDIC's appointment must be paid as an administrative expense (the highest priority for unsecured claims). § 210(a)(15). The provisions of the Act are substantially similar to those of the FDIA.	Final judgment for money damages against the FDIC for contracts executed or approved by the conservator or receiver after the date of its appointment <u>must</u> be paid as an administrative expense. 12 U.S.C. § 1821(d)(20).
Claims preceding commencement	The payment of pre-petition claims is generally done through the plan of reorganization, although the Bankruptcy Court can permit early payment of certain pre-petition claims, such as critical vendor claims, if that is in the best interest of the estate. The Bankruptcy Code sets out the priority of distributions and how much a class of creditors must receive before distributions may be made to a more junior class. In a chapter 11 reorganization, creditors may receive considerably more than liquidation value as the value of a business as a going concern may greatly exceed its liquidation value.	The FDIC, as receiver, must pay all valid obligations of the CFC that are due and payable at the appointment of the FDIC as receiver, in accordance with the limitations of the Act. § 210(a)(1)(H). This is subject to the limitation in § 210(d)(2) that the maximum liability is capped at the amount a claimant would have received if the CFC had not been the subject of a determination under the Act and had been liquidated under chapter 7 of the Bankruptcy Code (claims are valued at face but are only paid to the extent money is available at that priority level) (hereinafter, the "Liquidation Amount"). The maximum liability of the FDIC, as receiver of a CBD, must equal the amount such customer would have received in a case initiated by the SIPC under the SIPA, determined as of the close of business on the date the FDIC is appointed as receiver. § 210(d)(3).	Claims due and payable preceding commencement undergo the same process and are treated the same as other claims, with no mandate for payment. Uses the procedure of 12 U.S.C. § 1821(e).
Shareholder claims	Shareholders are entitled to recover a distribution if there are sufficient assets in the estate to pay in full claimants with a higher priority. While the debtor remains in possession in a chapter 11 case, it is managed by its board of directors and duly authorized officers. The directors and officers have to act in the best interest of the estate as a whole, however, as they also owe fiduciary duties to creditors in the insolvency context.	The Act terminates all rights and claims that stockholders and creditors of the corporation have against the assets of the company, except rights to payment, dissolution or other satisfaction of their claims as permitted under section 210, by operation of law on the appointment of the FDIC. The FDIC must ensure that shareholders and unsecured creditors bear losses, consistent with the priority of claims outlined in the Act. § 210(a)(1)(M).	Shareholder claims arising from their status as shareholders receive the lowest priority, after payment of other unsecured claims. 12 U.S.C. § 1821(d)(11).

Secured claims	Secured claims are secured up to the value of the collateral. An over-secured creditor's claim will include post-petition interest on the claim. 11 U.S.C. § 506. As noted below, the value of the collateral will be determined in light of the purpose of the valuation; thus, the valuation may differ depending on the context in which the valuation arises. Secured party's collateral can be used if there is a demonstration of adequate protection of the interest of such party.	The FDIC may object to any portion of any claim by a creditor or claim of a security, preference, set-off or priority which is not proved to its satisfaction. The FDIC cannot disallow a portion of a legally enforceable and perfected security interest securing an extension of credit from any Federal Reserve Bank or the Secretary. § 210(a)(3)(D)(i) and (iii)(II). Claims proven to the satisfaction of the FDIC are secured up to the fair market value of the collateral. § 210(a)(3)(D)(ii). The value of collateral in a liquidation may be significantly less than its value in a reorganization. The FDIC may not reject any legally enforceable or perfected security interest in the assets of the CFC (unless such interest was a fraudulent or preferential transfer) or legally enforceable interest in customer property. § 210(c)(12).	The FDIC may disallow all or part of any security not proved to its satisfaction, with the exception of any extension of credit from any federal home loan bank or Federal Reserve Bank to any insured depository institution; or any security interest in the assets of the institution securing any such extension of credit. § 1821(d)(5)(D)(i) and (iii). Claims proved to the satisfaction of the FDIC are secured up to the fair market value of the secured collateral and the amount a claimant would have received if the company had been liquidated under the FDIA. 12 U.S.C. § 1821(d)(5)(D)(ii)(I). The value of collateral in an FDIA liquidation may be significantly less than its value in a reorganization. Claims of federal home loan banks and secured claims are paid before unsecured claims. The FDIC may not avoid any legally enforceable or perfected security interest in any of the assets of any depository institution unless such interest was taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or its creditors. 12 U.S.C. § 1821(e)(11).
Under-secured creditors	Generally, the portion of the claim that exceeds the value of the collateral is considered to be an unsecured claim and this portion has the same priority as other unsecured claims. 11 U.S.C. § 506. As noted above, the value of the collateral will be determined in light of the purpose of the valuation and may differ depending on the context.	The FDIC, as receiver, may treat the portion of any secured claim which exceeds the fair market value of such collateral as an unsecured claim, and may not make payment with respect to such unsecured portion other than in connection with a disposition of all unsecured claims. § 210(a)(3)(D)(ii). The provisions of the Act are substantially similar to those of the FDIA.	The portion of the claim that exceeds the fair market value of the collateral in a secured claim may be treated as an unsecured claim and this portion has the same priority as other unsecured claims. 12 U.S.C. § 1821(d)(5)(D)(ii).
Unsecured claims	Unsecured claims have the following priority in descending order:	Unsecured claims have the following priority, in descending order:	Depositors are given priority over general creditors. 12 U.S.C. § 1821(d)(11).

	• administrative expenses; • priority wage/commission claims ($10,950 per individual); • priority claims for employee benefit plans (shares the $10,950 cap above); • priority claims of governmental units; • priority claims based upon any commitment by the debtor to a Federal depository; and • general unsecured claims. 11 U.S.C. § 507. Similarly situated creditors are to be treated similarly under the plan, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest. 11 U.S.C. § 1123. Under section 105 of the Bankruptcy Code, the Bankruptcy Court has the power, under certain circumstances, to treat similarly situated creditors dissimilarly; e.g., by providing that critical vendors who agree to provide post-petition credit terms to a debtor may be paid in full for pre-petition claims.	• administrative expenses of the receiver; • any amounts owed to the U.S.; • wages, salaries, or commissions earned not later than 180 days before the date of appointment of the FDIC as receiver ($11,725 per individual); • contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the FDIC as receiver ($11,725 per individual); • general or senior liabilities of the CFC; • obligations subordinated to general creditors; • any wages, salaries, or commissions owed to senior executives and directors of the covered financial company; • obligations to persons with interests in the equity of the CFC as a result of their status as a shareholder, member, etc. § 210(b)(1). This priority scheme applies to claims of CBDs other than claims for the allocation of customer property and the delivery of customer name securities (which the SIPC must resolve in accordance with the SIPA). § 205(g). Where the FDIC is appointed as receiver for a CBD, unsecured claims against such CBD that are proven to the satisfaction of the receiver under § 205(e) must have the priority prescribed in § 210(b)(1) except that: • the SIPC must be entitled to recover administrative expenses on an equal basis with the FDIC; • the FDIC must be entitled to recover any amounts paid to customers or the SIPC which are liabilities owed to the U.S.; • the SIPC must be entitled to recover any amounts paid out of the SIPC Fund to meet	Unsecured claims have the following priority, in descending order: • administrative expenses; • deposit liability claims; • other general or senior liabilities; • subordinated obligations; and • shareholder claims. 12 U.S.C. § 1821(d)(11). Cases have construed the FDIA to require the ratable treatment of similarly situated creditors, up to the maximum liability set out in 12 U.S.C. § 1821(i)(2).

		its obligations, which claim must be subordinate to administrative expenses and liabilities owed to the U.S., but senior to all other claims; and • the FDIC may, after paying any proven claims to customers, pay dividends on other proven claims in its discretion with the priorities set forth in § 210(b)(1). § 210(b)(6). Unsecured claims of the U.S. must have a higher priority than liabilities of the CFC that count as regulatory capital. § 210(b)(3). Similarly situated creditors for each type of unsecured claim must be treated similarly unless the FDIC determines that the treatment is necessary to maximize the value of the CFC's assets, initiate and continue operations essential to implementation of the receivership or any Bridge Company, maximize the present value return from the sale of assets or minimize the losses of the CFC's assets. § 210(b)(4)(A). All similarly situated creditors must receive not less than the Liquidation Amount under § 210(d)(2) and (3). § 210(b)(4). "Administrative expenses" include any obligations that the receiver determines are necessary and appropriate to facilitate the smooth and orderly liquidation of the CFC. § 201(a)(1).	
Set-off Rights	A creditor can enforce its rights under applicable law to offset a mutual debt owing to the debtor against a claim against the debtor, subject to certain exceptions. The Bankruptcy Code provides that a creditor is not entitled to (i) set off a claim that was transferred to the creditor by an entity other than the debtor after the commencement of the case, or within 90 days before the filing of the petition and while the debtor was insolvent or (ii) set off a debt owed to the debtor if the debt was incurred (A) within 90 days of the bankruptcy filing, (B) while the debtor was insolvent, and (C) for the purpose	A creditor may enforce its rights under applicable law to offset a mutual debt owed by the creditor to the CFC that arose before the FDIC was appointed as receiver, unless: • the claim of the creditor is disallowed; • the claim was transferred, by an entity other than the CFC, to the creditor after the FDIC was appointed as receiver or after 90 days before the date on which the FDIC was appointed as receiver and while the CFC was insolvent (except for a set-off in connection with a qualified financial contract (a	The FDIA does not include specific protections for set-off rights under applicable law, however case law under the FDIA has established that set-off rights under applicable state law will be enforceable. The FDIA includes protections for the exercise of contractual rights to set off or net any termination values or payment amounts due in connection with a QFC.

	of obtaining a right to set-off against the debtor. See 11 U.S.C. § 553(a). This limitation does not apply to the exercise of contractual rights to set off or net any termination values or payment amounts due in connection with a QFC. See 11 U.S.C. §§ 560 and 561.	"QFC")); or • the debt owed to the CFC was incurred by the CFC after 90 days before the date on which the FDIC was appointed as receiver, while the CFC was insolvent and for the purpose of obtaining a right of set-off against the CFC (except for a set-off in connection with a QFC). § 210(a)(12)(A). Other than a set-off in connection with a QFC, if a creditor offsets a debt on or within 90 days before the FDIC was appointed as receiver, then the FDIC may recover from the creditor the amount so offset to the extent that any insufficiency on the date of such set-off is less than the insufficiency on the later of 90 days before the FDIC was appointed as receiver and the first day during the 90 days immediately preceding the date on which the FDIC was appointed as receiver for the CFC on which there is an insufficiency. § 210(a)(12)(B). The FDIC may object to any portion of any set-off which is not proven to its satisfaction. § 210(a)(3)(D)(i). Except as otherwise provided in the Act, the FDIC, as receiver for the CFC, may sell or transfer any assets free and clear of the set-off rights of any party. Such party must be entitled to a claim in an amount equal to the value of such set-off rights that will be junior to certain priority claims but senior to other general or senior liabilities of the CFC. § 210(a)(12)(F).	
Payment of claims	All claims are paid pursuant to the terms of the confirmed plan. Holders of secured claims may request relief from the automatic stay to foreclose on their collateral for cause or upon a demonstration that the debtor has no equity in the collateral and that it is not essential to the debtor's reorganization. 11 U.S.C. § 362. The general rule is that if senior classes consent to their distribution, junior classes may receive distributions so long as the	The FDIC may pay authorized claims allowed by the receiver, approved by the FDIC or determined by the final judgment of a court of competent jurisdiction. § 210(a)(7)(A). The receiver has the sole discretion to pay dividends on proven claims. No liability may attach for failing to pay dividends of an unproven claim. § 210(a)(7)(C). The FDIC may prescribe rules to establish an interest rate for, or to make payments of, post-insolvency interest to creditors holding proven claims. No such	Receiver may pay authorized claims allowed by the receiver, approved by the FDIC or determined by the final judgment of a court. 12 U.S.C. § 1821(d)(10)(A). The receiver has the sole discretion to pay dividends on proven claims. No liability may attach for failing to pay dividends on an unproven claim. 12 U.S.C. § 1821(d)(10)(B). The minimum requirement is that the claimant receive at least the amount that would be provided with the liquidation of the assets and

	members of such senior consenting classes receive at least as much as they would in a chapter 7 liquidation; however, if a class does not consent to its distribution, it is entitled to be paid in full before any junior class can receive any recovery. Certain pre-petition claims, such as those owed to employees and to the government for certain taxes, are afforded priority treatment. Priority pre-petition claims are paid after administrative claims but before payment of general unsecured claims.	interest must be paid until the FDIC, as receiver, has satisfied the principal amount of all creditor claims. § 210(a)(7)(D). If the FDIC, as receiver, enforces any contract to extend credit to the CFC or Bridge Company, any obligation to repay such debt must be paid as an administrative expense. § 210(c)(13)(D).	liabilities of the institution without a transfer of the assets or liabilities to a Bridge Company or the purchase of such assets or liabilities by the FDIC (such claims are valued according to the determinations of the FDIC but are only paid to the extent funds are available at that particular FDIC priority level). 12 U.S.C. § 1821(i)(2).
Disposition of assets	Ordinary course dispositions of assets, i.e., those dispositions that are in the ordinary course of the debtor's day-to-day business operations, may occur without Court approval. Sales outside the ordinary course must be approved by the Bankruptcy Court under 11 U.S.C. § 363 or the plan. 11 U.S.C. § 1123. Assets may be sold free and clear of all liens under 11 U.S.C. § 363 or the plan. Both types of sales are subject to Court approval under the "best interest of the estate" standard which seeks to maximize the value of the assets for the benefit of the estate.	In the disposition of assets, the receiver, to the greatest extent possible, must: • maximize its net present value return from the sale or disposition of assets; • minimize losses in the resolution of cases; • mitigate serious adverse effects to the financial system; • ensure competition and fair treatment; and • prohibit discrimination. § 210(a)(9)(E). The FDIC must prescribe regulations that prohibit the sale of assets of a CFC by the FDIC to parties who engaged in improper conduct with, or caused losses to, the CFC. § 210(r)(1). Persons convicted of certain crimes may not purchase assets from the FDIC as receiver. § 210(r)(2). The provisions of the Act are substantially similar to those of the FDIA, with the exception of the fact that the FDIC has no duty to maximize the availability and affordability of residential real property to low- and moderate-income individuals.	In the disposition of assets, a conservator or receiver <u>must</u>: • maximize its present value return from sale of assets; • minimize losses in the resolution of cases; • ensure competition and fair treatment; • prohibit discrimination; and • maximize the availability and affordability of residential real property to low- and moderate-income individuals. 12 U.S.C. § 1821(d)(13)(E). The FDIC <u>must</u> prescribe regulations which, at a minimum, prohibit the sale of assets of a CFC by the FDIC to parties who engaged in improper conduct with, or caused losses to, the CFC. § 210(r)(1). Persons convicted of certain crimes may not purchase assets from the FDIC as receiver. § 210(r)(2).
Maximum liability of the FDIC/DIP/ trustee	No creditor is entitled to be paid more than 100% of its claim, plus interest (if applicable). Any excess available after all creditors are paid such amount inures to the	Maximum liability of the FDIC is capped at the Liquidation Amount, or the amount a claimant would receive for their claims under chapter 7 of the Bankruptcy Code and if the FDIC had not been	Liability is capped at the amount claimant would receive in a liquidation of the institution without a transfer of the assets to a Bridge Company or the purchase of such assets by the FDIC (such claims are valued

	benefit of shareholders. A secured party receives the value of the collateral. The value of the collateral will be determined in light of the purpose of the valuation. Thus, value in the context of treatment under a reorganization plan may be determined to be far more than the liquidation value of such collateral.	appointed receiver. § 210(d)(2). For a CBD, the Liquidation Amount is equal to the amount a customer would have received from its customer property in a case initiated by the SIPC under the SIPA determined at the close of business on the day when the FDIC was appointed receiver. § 210(d)(3). The FDIC may, as receiver and with the approval of the Secretary, make additional payments or credit additional amounts to any claimant if necessary to minimize losses in the liquidation of the CFC. § 210(d)(4)(A). The FDIC must not make any such payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of its claim. § 210(d)(4)(B)(i). When liquidating any CFC or Bridge Company that is or has a subsidiary that is a stockbroker but is not a member of the SIPC, the FDIC, as receiver, must apply the provisions of subchapter III of chapter 7 of the Bankruptcy Code for the distribution to any “customer” of all “customer name securities” and “customer property”; if the company is a commodity broker, the FDIC must apply the provisions of subchapter IV of chapter 7 of the Bankruptcy Code. § 210(m).	according to the determinations of the FDIC but are only paid to the extent funds are available at that particular FDIC priority level). 12 U.S.C. § 1821(i)(2).
Fraudulent conveyances	The DIP/trustee may avoid any transfer of an interest of the debtor in property, or any obligation by the debtor, made or incurred on or within 2 years before the date of the filing of the petition, if: (a) made with the intent to hinder or defraud a creditor (actual fraud); or (b) in exchange for the transfer, the debtor received less than “reasonably equivalent value,” and the debtor was unable to pay debts either at the time the transfer was made or as a result of the transfer itself (constructive fraud). 11 U.S.C. § 548. The DIP/trustee can recover the property transferred, or the value of such property,	The FDIC, as receiver for any CFC, may avoid a transfer of any interest of the CFC in property, or any obligation incurred by the CFC, that was made or incurred on or within 2 years before the time of commencement of an orderly liquidation proceeding under this Act, if the CFC voluntarily or involuntarily (i) made such transfer or incurred such obligation with actual intent to hinder, delay or defraud the CFC, or received less than a reasonably equivalent value in exchange for such transfer or obligation; and (ii) was insolvent on the date that such transfer was made or became insolvent as a result of the transfer, was engaged in a transaction for which any property remaining with the CFC was an unreasonably small amount of capital, intended to incur debts that would be beyond the CFC’s ability to pay as they matured;	The FDIC may avoid a transfer of interest that was made within 5 years of the date the FDIC was appointed as a conservator or receiver if the person who made the transfer did so with the intent to hinder, defraud or delay the institution, the FDIC or any other federal banking agency. 12 U.S.C. § 1821(d)(17)(A). Avoiding a fraudulent conveyance allows the FDIC to recover the property transferred or the value of the property from either the initial transferee or any immediate transferee of the initial transferee. 12 U.S.C. § 1821(d)(17)(B). The FDIC cannot recover from any transferee that takes for value, including satisfaction or securing of a present or prior debt, in good

	from the initial transferee or any immediate or mediate transferee of such initial transferee, unless the subsequent transferee took for value and without knowledge of the voidability of the transfer avoided. 11 U.S.C. § 550. The Bankruptcy Code also allows actions to be brought under applicable state fraudulent conveyance statutes if such actions are commenced within the applicable fraudulent conveyance statute of limitations. 11 U.S.C. § 544(b). The applicable statute of limitations under state statutes may be 4 years or more.	or made such transfer to or for the benefit of an insider under an employment contract and not in the ordinary course of business. § 210(a)(11)(A). The FDIC can recover the property transferred or value of the property (at the time of the transfer, with a court order) from the initial transferee or others in the chain of transfer. § 210(a)(11)(D). The FDIC cannot recover from any transferee that takes for value in good faith and without knowledge of the voidability of the transfer avoided or any immediate or mediate good faith transferee of such transferee. § 210(a)(11)(E). A transferee or obligee under the Act has the same defenses available to such transferee or obligee in an action brought under sections 547, 548 and 549 of the Code. As such, the defenses available under the Bankruptcy Code for fraudulent transfers appear to have been incorporated into the Act. § 210(a)(11)(F)(i). The FDIC's power to recover a transfer or avoid an obligation must include §§ 546(b) and (c), 547(c) and 548(c) of the Bankruptcy Code. § 210(a)(11)(F)(ii). The rights of the FDIC to recover assets from fraudulent transfers supersede the rights of any trustee in bankruptcy or any other person under the Bankruptcy Code. § 210(a)(11)(G).	faith or any immediate good faith transferee of such transferee. 12 U.S.C. § 1821(d)(17)(C). The avoidance rights of the FDIC are superior to any rights of a trustee or any other party. 12 U.S.C. § 1821(d)(17)(D).
Avoiding security interests and other preferential transfers	The Bankruptcy Code allows the avoidance of preferential transfers. A preference is a transfer of an interest of the debtor in property to or for the benefit of a creditor, on account of an antecedent debt, which was made while the debtor was insolvent, that enables such creditor to receive more than it would have otherwise received, if that transfer was made within 90 days before the date of the filing of the petition. This period is extended from 90 days to a year if the creditor was an "insider." 11 U.S.C. § 547. Preferential transfers may include payments of amounts due to existing creditors or grants of new security interests to secure	The FDIC, as receiver for any CFC, may avoid a transfer of an interest of the CFC in property (i) to or for the benefit of a creditor; (ii) for or on account of an antecedent debt; (iii) made while the CFC was insolvent; (iv) made 90 days before the date on which the FDIC was appointed receiver or between 90 days and 1 year before the date the FDIC was appointed receiver, if such creditor was an insider; and (v) that enables the creditor to receive more than the creditor would receive if the CFC had been liquidated under chapter 7 of the Bankruptcy Code, the transfer had not been made and the creditor received payment of such debt to the extent provided by chapter 7 of the Bankruptcy Code. § 210(a)(11)(B). The FDIC can recover the property transferred or	The FDIC cannot avoid any otherwise legally enforceable or perfected security interest in any of the institution's assets unless such interest was taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or its creditors. 12 U.S.C. § 1821(e)(12).

	obligations owed to existing creditors. 11 U.S.C. § 547. Defenses include that the transfer was made for new value or in the ordinary course of business.	value of the property (at the time of the transfer, with a court order) from the initial transferee or others in the chain of transfer. § 210(a)(11)(D). The FDIC may avoid a transfer of property of the receivership that occurred after the FDIC was appointed receiver that was not authorized by the FDIC as receiver. § 210(a)(11)(C). A transferee or obligee under the Act has the same defenses available to such transferee or obligee in an action brought under sections 547, 548 and 549 of the Code. As such, the defenses available under the Bankruptcy Code for preferential transfers appear to have been incorporated into the Act. § 210(a)(11)(F)(i). The FDIC's power to recover a transfer or avoid an obligation include §§ 546(b) and (c), 547(c) and 548(c) of the Bankruptcy Code. § 210(a)(11)(F)(ii).	
Attachment of assets		The FDIC may request a court to issue an order (in accordance with Rule 65 of the Federal Rules of Civil Procedure) to place the assets of any person designated by the FDIC under the control of the court and appoint a trustee to hold such assets. §210(a)(13).	A Federal banking agency may issue a restraining order that prohibits a person from withdrawing, transferring, removing or disposing of any funds, assets or other property and appoint a temporary receiver to administer the restraining order. Rule 65 of the Federal Rules of Civil Procedure apply to any such proceeding for a restraining order. 12 U.S.C. § 1818(i)(4).
Contracts	A DIP/trustee may reject, assume or assume and assign to a third party the debtor's interest in pre-petition executory contracts (contracts where performance remains due on both sides), even if the debtor is in default under the contract at the time of the bankruptcy filing. If a debtor wishes to assume/assign an executory contract, it must "cure" all defaults, compensate for any damages sustained and provide adequate assurance of future performance. There are some executory contracts which cannot be assumed or assigned (without the consent of the non-debtor party) because they are financial accommodations contracts or	No agreement that diminishes or defeats the interest of the receiver in any asset is valid unless the agreement (i) is in writing, (ii) was executed by an authorized officer or representative of the CFC, or confirmed in the ordinary course of business by the CFC and (iii) has been an official record of the CFC since the time of its execution or the party claiming under the agreement provides documentation of such agreement and its authorized execution by the CFC. § 210(a)(6). These standards are similar to, though not as strict as, the parallel provisions of the FDIA. The FDIC may repudiate any contract or lease to which the CFC is a party, where contract performance is "burdensome" and the repudiation of	No agreement is valid against the FDIC's interest as receiver unless the agreement: • is in writing; • was executed contemporaneously with the acquisition of the asset by the institution and a counterparty; • was approved by the board of directors of the institution or its loan committee and the approval is reflected in the minutes of the board or committee; and • has been continuously an official

	because applicable law excuses performance to an assignee of the debtor (personal services contracts). 11 U.S.C. § 365. Contracts must be in writing only if they fall within the statute of frauds. Thus, some oral contracts are enforceable.	the contract will promote the orderly administration of the CFC's affairs. § 210(c)(1). The FDIC has a "reasonable" time from the date of its appointment as receiver to exercise such right. § 210(c)(2). Subsection 210(c) must not apply with respect to extensions of credit from any Federal Reserve Bank or the FDIC to any CFC or to any security interest in the assets of the CFC securing such extension of credit. § 210(c)(14). Contractual clauses which negatively affect a party's ability to acquire all or part of any CFC in a transaction in which the FDIC exercises its powers are against public policy and must be unenforceable. § 210(p).	record of the depository institution. 12 U.S.C. § 1823(e) (codifies the *D'Oench Duhme* case standards). The FDIC may repudiate any contract executed before the appointment of the FDIC where contract performance is "burdensome" and the repudiation of the contract will promote the orderly administration of the company's affairs. 12 U.S.C. § 1821(e)(1). This must not apply with respect to extensions of credit from any Federal Reserve Bank and federal home loan banks to any insured depositary institution or any security interest in the assets of the institution securing such extension of credit. § 1821(e)(14).
Damages for repudiation	If the contract is rejected, it will give rise to a pre-petition unsecured claim for damages, which may be paid *pro rata* rather than in full. Rejection claims for some types of contracts, such as long-term leases and employment contracts, are limited to defined time periods. Executory contracts first assumed by a debtor but subsequently rejected give rise to an administrative claim for a portion of the damages. Administrative claims must be paid in full by the debtor on or before the effective date of the plan. 11 U.S.C. § 503.	Damages for contracts executed or approved by the FDIC after its appointment as receiver must be paid as an administrative expense. § 210(a)(15). Damages for repudiation of a contract are limited to actual, direct compensatory damages, determined at the date of the appointment of the FDIC or the date of repudiation in the case of QFCs. § 210(c)(3)(A). There is no liability for other damages, including punitive, lost profits, pain and suffering and, presumably, attorney's fees. § 210(c)(3)(B). Compensatory damages for repudiated QFCs must include normal and reasonable costs of cover or other reasonable measures of damages used in the industry. § 210(c)(3)(C). For any debt for borrowed money or evidenced by a security, actual direct compensatory damages must be no less than the amount loaned plus accrued interest and any accreted original issue discount as of the date the FDIC was appointed receiver and, to the extent that an allowed secured claim is secured by property (the value of which is greater than the amount of such claim), any accrued interest through the date of repudiation or disaffirmance. § 210(c)(3)(D). For any contingent obligation of a CFC, consisting of	Damages for repudiation of a contract are limited to direct compensatory damages, determined at the date of the appointment of the FDIC. 12 U.S.C. § 1821(e)(3)(A)(i). But courts have determined that the amount of receiver liability can be affected by post-insolvency events. There is no liability for other damages, including punitive, lost profits and pain and suffering. 12 U.S.C. § 1821(e)(3)(B). Courts have construed this to mean that there is no liability for attorney's fees. Claimant under a contract repudiated by the FDIC must prove its damages to obtain compensation.

		any obligation under a guarantee, letter of credit, loan commitment or similar credit obligation, the FDIC may, by rule or regulation, prescribe that actual direct compensatory damages must be no less than the estimated value of the claim as of the date the FDIC was appointed receiver of the CFC. § 210(c)(3)(E).	
Contract enforcement	The DIP/trustee is the successor to the debtor's interest in any contracts and may enforce such interest. Before assumption or rejection, the non-debtor party to the agreement has to perform the agreement, and the DIP/trustee is generally obligated to timely perform the debtor's current obligations. Generally, termination provisions effective on the filing of a case under the Bankruptcy Code or in the event of insolvency are not enforceable; an exception exists for such termination provisions in the context of QFCs, financial accommodations contracts or contracts where applicable law excuses performance to an assignee of the debtor (personal services contracts).	The FDIC, as receiver, may enforce any contract, other than a director's or officer's liability insurance contract or financial institution bond. § 210(c)(13)(A). For the first 90 days of a receivership, the other party to a contract with a CFC may not exercise any right to terminate, accelerate or declare a default to the contract or obtain possession or control over any property of the CFC without the FDIC's consent. § 210(c)(13)(C)(i). This provision does not apply to director or officer liability insurance contracts, financial institution bonds, the rights of parties to certain QFCs or certain contracts under the FDIC Improvement Act. § 210(c)(13)(C)(ii). The FDIC, as receiver of a CFC or subsidiary of a CFC, must have the power to enforce contracts of subsidiaries or affiliates of the CFC for whom the obligations are guaranteed by the CFC, notwithstanding any *ipso facto* provision, provided that (i) such guaranty and all related assets and liabilities are transferred to and assumed by a Bridge Company or a third party or (ii) the FDIC provides adequate protection with respect to such obligations. § 210(c)(16)(A).	The FDIC as conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or financial institution bond. 12 U.S.C. § 1821(e)(13)(A). For the first 45 days of a conservatorship and the first 90 days of a receivership, the other party to the contract may not exercise any right to terminate, accelerate, or declare a default to the contract without the FDIC's consent. 12 U.S.C. § 1821(e)(13)(C). Director or officer liability insurance contracts, financial institution bonds, certain qualified financial contracts, or certain contracts under the FDIC Improvement Act are exceptions. After the 45- or 90-day stay, a counterparty may exercise any such rights.
Service contracts	No separate provision. Treated as any other executory contract. See above. Generally, though, services performed after the petition date will be paid as an administrative expense. The contract can be rejected even if performance has been accepted prior to such rejection.	Service contracts for performances before the FDIC's appointment are treated as claims and deemed to have arisen on the date of the FDIC's appointment. § 210(c)(7)(A). Services accepted by the FDIC and performed after the FDIC's appointment must be paid as per the contract, which must be treated as an administrative expense. § 210(c)(7)(B). Service contracts can be repudiated despite acceptance or performance of the contract.	Service contracts for performances before the FDIC appointment are treated as claims and deemed to have arisen on the date of the FDIC appointment. 12 U.S.C. § 1821(e)(7)(A). Services accepted by the FDIC and performed after the FDIC appointment <u>must</u> be paid as per the contract, which <u>must</u> be treated as an administrative expense. 12 U.S.C. § 1821(e)(7)(B). Service contracts can be repudiated despite

		§ 210(c)(7)(C). The provisions of the Act are substantially similar to those of the FDIA.	acceptance or performance of the contract. 12 U.S.C. § 1821(e)(7)(C).
Property contracts	The DIP/trustee may assume, reject or assume and assign to a third party the debtor's interest in any pre-petition unexpired lease, subject to the obligation to cure any defaults, compensate for damages and provide adequate assurance of future performance. 11 U.S.C. § 365. Rejection damages claims under long-term leases are limited. The Bankruptcy Code contains complex provisions related to the rejection of license agreements, land contracts and the like, and the rights of the counterparties thereto.	Leases in which the FDIC is the lessee can be repudiated and the counterparty only has a claim for accrued rent. § 210(c)(4). Leases in which the FDIC is the lessor may be repudiated and the counterparty can treat the lease as terminated or remain in possession of the property, while continuing to pay rent. § 210(c)(5). Assignment and sale of land contracts by the FDIC are allowed. § 210(c)(6)(C). The Act contains various provisions concerning the payment of rent, purchasers and lessees that remain in possession, contracts for the sale of real property and leases under which the CFC is a lessor. § 210(c)(4)-(6). The provisions of the Act are substantially similar to those of the FDIA.	Leases can be repudiated but the counterparty cannot assert a claim for lost profits. 12 U.S.C. § 1821(e). Assignment and sale of land contracts are allowed. 12 U.S.C. § 1821(e)(6)(C).
Qualified Financial Contracts ("QFCs")	The Bankruptcy Code provides "safe harbors" for Qualified Financial Contracts, which are defined as securities contracts, forward contracts, commodity contracts, repurchase agreements, swap agreements and other similar agreements. Credit support, including guarantees, issued in connection with these QFCs is also protected. Non-debtor counterparties may, immediately and without seeking relief from the automatic stay, exercise their contractual rights under Qualified Financial Contracts to (i) terminate or accelerate the obligations of the parties and liquidate and realize against any collateral held to secure the debtor's obligations, and (ii) set off mutual debts and claims. These rights would typically be restricted under the Bankruptcy Code, in order to protect the estate of the debtor. In	QFCs are securities contracts, commodities contracts, forward contracts, repurchase agreements, swap agreements or other similar agreements that the FDIC determines by regulation, resolution or order to be QFCs. § 210(c)(8)(D)(i). After the FDIC is appointed as receiver, the non-CFC counterparty to a QFC must wait until 5:00 p.m. of the following business day of the appointment of the receiver or after the person received notice that the contract has been transferred, to exercise any right to terminate, liquidate or net such contract solely because of the FDIC's appointment as receiver or for the insolvency or financial condition of the CFC. § 210(c)(10)(B)(i). During this time, the FDIC may choose to transfer all of the QFCs and related claims of a QFC to one financial institution for which a conservator, receiver, trustee or other legal custodian has not been appointed, including a Bridge Company, or none of the QFCs and related claims. §§ 210(c)(9)(A) and (10)(C). After such transfer, the	Qualified Financial Contracts are securities contracts, commodities contracts, forward contracts, repurchase agreements, swap agreements or other similar agreements. 12 U.S.C. § 1821(e)(8)(D)(i). If the FDIC is appointed as the receiver, parties to QFCs can terminate, liquidate, or accelerate the contract; exercise any right under a security agreement related to the contract; or exercise any right to a transfer obligation with one or more such contracts that is related to the termination, liquidation or acceleration of a qualified financial contract. 12 U.S.C. § 1821(e)(8)(A)(i). The party must wait until 5:00 p.m. the following business day of the appointment of the receiver to exercise any right to terminate, liquidate or net such contract solely because of the FDIC's appointment as receiver.

	addition, any deliveries or settlements made pursuant to these Qualified Financial Contracts are protected from being avoided as either preferential or fraudulent transfers, provided that they were not made with an intent to defraud.	counterparty cannot terminate the QFC based on the transfer or the appointment of the FDIC. § 210(c)(10)(B)(i). After the waiting period has elapsed, and the QFCs have not been transferred to another financial institution (as set forth above), the counterparties may then exercise their rights to terminate, liquidate or accelerate the contract; exercise any rights under a related security agreement; or exercise its rights to offset or net amounts due in connection with such QFCs. § 210(c)(10)(B)(i). The FDIC may not avoid a transfer of money or property in connection with any QFC with a CFC, unless the transferee had actual intent to hinder, delay or defraud the CFC, its creditors or the receiver for the CFC. § 210(c)(8)(C). The FDIC, as receiver, must choose to repudiate all QFCs between the company and any person, or affiliate of that person, or disaffirm none of those QFCs. § 210(c)(11). This provision is to ensure that the FDIC is not "cherry-picking" only those QFCs in its favor. When transferring QFCs, the FDIC can transfer all QFCs, claims and property securing the QFC or other credit enhancement between any person or affiliate and the CFC, or transfer none of the QFCs, claims, property or credit enhancements. § 210(c)(9)(A). Clauses that suspend conditions, or extinguish a payment obligation of a party due to a party's status as a non-defaulting party ("walk away clauses") are unenforceable in a QFC of a CFC in default. § 210(c)(8)(F). For any QFC subject to or cleared by a clearing organization, the FDIC must use its best efforts to meet all margin, collateral and settlement obligations of the CFC that arise under the QFC. If the FDIC defaults, the clearing organization must have the immediate right to exercise all of its rights and remedies under its rules and applicable law. § 210(c)(8)(G). Within 24 months of enactment of this Act, the	During this time, the FDIC may choose to transfer the QFCs to a third party, at which time the counterparty cannot terminate the QFC based on the transfer or the appointment of the FDIC. 12 U.S.C. § 1821(e)(10)(B)(i). If the FDIC is appointed as the conservator, a party to a QFC may not terminate, liquidate or net such contract solely by reason of the appointment of a conservator for the institution or the insolvency or financial condition of the institution for which the conservator has been appointed. 12 U.S.C. § 1821(e)(10)(B)(ii). The FDIC may not avoid a transfer of money or property in connection with any QFC with a CFC, unless the transferee had actual intent to hinder, delay or defraud such institution, the creditors of such institution, or any conservator or receiver appointed for such institution. 12 U.S.C. § 1821 (e)(8)(C)(ii). The FDIC, as conservator or receiver, must choose to repudiate all QFCs between the institution and any person, or affiliate of that person, or disqualify none of those QFCs. 12 U.S.C. § 1821(e)(11). The FDIC, as conservator or receiver, can transfer all QFCs, claims and property securing the credit between the company and a party, or none of the QFCs. The FDIC cannot transfer these assets or liabilities to a company in bankruptcy or that has a conservator or receiver. 12 U.S.C. § 1821(e)(9). Damages for repudiation are determined as of the date of the repudiation of the contract and include the cost of cover. Clauses that suspend conditions, or extinguish a payment obligation of a party due to a party's status as a non-defaulting party ("walk away clauses") are unenforceable in qualified financial contracts. 12 U.S.C.

		federal primary financial regulatory agencies must jointly prescribe regulations requiring that financial companies maintain records with respect to QFCs in order to assist the FDIC in implementing its duties in regards to the transfer, and notification of transfer, of a QFC. § 210(c)(8)(H). The provisions of the Act are substantially similar to those of the FDIA.	§ 1821(e)(8)(G).
***Ipso facto* clause**	To protect the debtor's estate, provisions allowing a counterparty to terminate a contract or a lease with the debtor because the debtor is insolvent or has filed for bankruptcy will generally not be enforced. 11 U.S.C. § 365(e). There are exceptions, however, including QFCs, personal services contracts and contracts for financing accommodations.	The FDIC, as receiver, may enforce any contract, other than a director's or officer's liability insurance contract or financial institution bond, notwithstanding any provision that would otherwise allow counterparties to terminate, default, accelerate or exercise any other rights upon, or solely because of, the insolvency of the CFC, the Secretary's determination and petition of the Court or appointment of the FDIC as receiver. As such, *ipso facto* clauses are not enforceable at the counterparty's discretion. There are no exceptions for personal services contracts, IP licenses or financing contracts. § 210(c)(13)(A). The provisions of the Act are substantially similar to those of the FDIA.	Conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or financial institution bond, notwithstanding any provision that would otherwise allow counterparties to terminate, treat as a default, accelerate or exercise any other rights upon, or solely because of, the insolvency or appointment of the FDIC as conservator or receiver. 12 U.S.C. § 1821(e)(12)(A). Thus, *ipso facto* clauses are not enforceable at the counterparty's discretion. The FDIC may choose to enforce the contract irrespective of any *ipso facto* clause. *Ipso facto* clauses create a provable claim for damages at the time of repudiation because the status of the parties was permanently fixed at the time of default. The counterparty can seek to file a claim for the contract.
Confidentiality agreements	Generally, actions taken and decisions made in a bankruptcy case must be disclosed and are publicly available. Under certain circumstances, the Bankruptcy Court may enter an order protecting the disclosure of proprietary and trade secret information.	The FDIC may not enter into any agreement or approve any protective order which prohibits the FDIC from disclosing the terms of a settlement of an administrative or other action from damages or restitution brought by the FDIC as receiver. § 210(l). The provisions of the Act are substantially similar to those of the FDIA.	The FDIC may not enter into any agreement or any protective order which prohibits the FDIC from disclosing the terms of a settlement brought by the FDIC as conservator or receiver. 12 U.S.C. § 1821(s).
Bridge Bank Holding Company ("Bridge Companies")	No concept of Bridge Companies to hold assets, although often a plan of reorganization will distribute certain assets to a liquidating trust, which will liquidate those assets and distribute them as provided	Bridge Companies may assume liabilities, purchase assets and perform other temporary functions of the FDIC. § 210(h)(1)(B). The FDIC, as receiver, may transfer any of the CFC's	The FDIC can create "bridge banks." 12 U.S.C. § 1821(d)(2)(F)(ii). The Office of the Comptroller of the Currency provides national charters for bridge banks.

	in the plan. Generally, a liquidating trust only holds non-operating assets and litigation claims, but not the operating assets of a business.	assets and liabilities to one or more Bridge Companies. § 210(h)(5)(A). The Bridge Company will work to maximize the net asset value of the transferred assets and liabilities. The company left behind would be liquidated. The FDIC can create Bridge Companies with federal charters except where the CFC is a CBD. § 210(h)(2)(A). The FDIC appoints the board of directors of the Bridge Company. § 210(h)(2)(B). A Bridge Company must assume, acquire, or succeed to the assets or liabilities of the CFC to the extent the CFC's assets or liabilities are transferred to the Bridge Company, but the Bridge Company must not assume obligations stemming from an equity interest in the CFC. § 210(h)(3). The aggregate amount of liabilities of a CFC that are transferred to the Bridge Company may not exceed the aggregate amount of assets of the CFC that are transferred to, or purchased by, the Bridge Company from the CFC. § 210(h)(5)(F). The FDIC may provide funding to facilitate a transaction of or acquisition by a Bridge Company. § 210(h)(9). A Bridge Company will be treated as a CFC in default at such times and for such purposes as the FDIC may determine. § 210(h)(4). The Bridge Company can operate without any capital or surplus. The Bridge Company can also issue capital stock and securities. § 210(h)(2)(G). The FDIC must treat all similarly situated creditors of a Bridge Company in a similar manner in transferring any assets or liabilities of the CFC to a Bridge Company. § 210(h)(5)(E). The FDIC does not have to comply with § 210(h)(5)(E) if (i) the FDIC determines that such actions are necessary to maximize the value of the assets of the CFC, maximize the present value of return from the sale of assets, minimize the amount of any loss from the sale of assets or to contain or address serious adverse	12 U.S.C. § 1821(n)(1)(A). A bridge bank does not have federal status. 12 U.S.C. § 1821(n)(6). Bridge banks may assume defaulting deposits, assume other liabilities, purchase assets and perform other temporary functions of the institution. 12 U.S.C. § 1821(n)(1)(B). The FDIC appoints the board of directors of the bridge bank. 12 U.S.C. § 1821(n)(2)(D). The FDIC-controlled institution can transfer any assets and liabilities of the institution to the bridge bank. 12 U.S.C. § 1821(n)(3)(A). The FDIC does not have to give the bridge bank any capital to operate. The FDIC can make available to the bridge bank funds for its operation. 12 U.S.C. § 1821(n)(5).

		effects to financial stability; and (ii) all similarly situated creditors receive not less than the Liquidation Amount. § 210(h)(5)(E). Bridge Companies can obtain unsecured credit and issue unsecured debt. § 210(h)(16)(A). If a Bridge Company is unable to obtain unsecured credit or issue unsecured debt, the FDIC may authorize it to obtain secured credit or issue debt with priority over any or all obligations of the Bridge Company, secured by a lien on property that is not otherwise subject to a lien or secured by a junior lien. § 210(h)(16)(B). The FDIC may, after notice and a hearing, authorize the Bridge Company to obtain debt secured by a senior or equal lien on property of the Bridge Company if the Bridge Company is unable to otherwise obtain such credit and there is adequate protection of the interest of the holder of the lien on the property the senior or equal lien is proposed to be granted. § 210(h)(16)(C). No credit or debt obtained or issued by a Bridge Company may contain terms that impair the rights of a counterparty to a QFC upon a default by the Bridge Company, other than the priority of such counterparty's unsecured claim (after the exercise of rights) relative to the priority of the Bridge Company's obligations. § 210(h)(16)(E). 1. If the FDIC establishes one or more Bridge Companies with respect to a CBD, the FDIC must transfer all customer accounts of the CBD to the Bridge Company unless the FDIC, after consulting with the SEC and SIPC, determines that the customer accounts are likely to be promptly transferred to another CBD, or the transfer of the accounts to a Bridge Company would materially interfere with the FDIC's ability to avoid or mitigate serious adverse effects on financial stability of the U.S. § 210(a)(1)(O). 2. The FDIC, as receiver for a CBD, may approve articles of association for one or more Bridge Companies that are covered brokers or dealers, which must (i) be established and deemed registered with	

		the SEC and a member of the SIPC; (ii) operate in accordance with such articles and § 210; and (iii) succeed to any and all registrations and memberships of the CFC with any self-regulatory organizations. § 210(h)(2)(H)(i). Customer accounts of CBDs transferred to a Bridge Company must have the same protections under § 205(f) and the SIPA, and the FDIC must not operate the Bridge Company in such a way so as to limit the ability of customers to access customer property. § 210(h)(2)(H)(iii) and (iv). Generally, a Bridge Company terminates 2 years after the charter was granted but the FDIC may extend this for three additional 1-year periods. § 210(h)(12).	