

SYSTEMIC RISK EXCEPTION LEGISLATION

Codified at 12 U.S.C. 1823(c)(4)(G), the “Systemic Risk” exception, enacted as part of the Federal Deposit Insurance Incorporation Act of 1991, Pub. L. No. 102-242, 105 Stat. 2236 (1991), provides:

(G) Systemic risk

(i) Emergency determination by Secretary of the Treasury

Notwithstanding subparagraphs (A) and (E), if, upon the written recommendation of the Board of Directors (upon a vote of not less than two-thirds of the members of the Board of Directors) and the Board of Governors of the Federal Reserve System (upon a vote of not less than two-thirds of the members of such Board), the Secretary of the Treasury (in consultation with the President) determines that--

(I) the Corporation's compliance with subparagraphs (A) and (E) with respect to an insured depository institution for which the Corporation has been appointed receiver would have serious adverse effects on economic conditions or financial stability; and

(II) any action or assistance under this subparagraph would avoid or mitigate such adverse effects, the Corporation may take other action or provide assistance under this section for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver as necessary to avoid or mitigate such effects.

(ii) Repayment of loss

(I) In general

The Corporation shall recover the loss to the Deposit Insurance Fund arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) from 1 or more special assessments on insured depository institutions, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the Corporation determines to be appropriate.

(II) Treatment of depository institution holding companies

For purposes of this clause, [sections 1817\(c\)\(2\)](#) and [1828\(h\)](#) of this title shall apply to depository institution holding companies as if they were insured depository institutions.

(III) Regulations

The Corporation shall prescribe such regulations as it deems necessary to implement this clause. In prescribing such regulations, defining terms, and setting the appropriate assessment rate or rates, the Corporation shall establish rates sufficient to cover the losses incurred as a result of the actions of the Corporation under clause (i) and shall consider: the types of entities that benefit from any action taken or assistance provided under this subparagraph; economic conditions, the effects on the industry, and such other factors as the Corporation deems appropriate and relevant to the action taken or the assistance provided. Any funds so collected that exceed actual losses shall be placed in the Deposit Insurance Fund.

(iii) Documentation required

The Secretary of the Treasury shall--

(I) document any determination under clause (i); and

(II) retain the documentation for review under clause (iv).

(iv) GAO review

The Comptroller General of the United States shall review and report to the Congress on any determination under clause (i), including--

(I) the basis for the determination;

(II) the purpose for which any action was taken pursuant to such clause; and

(III) the likely effect of the determination and such action on the incentives and conduct of insured depository institutions and uninsured depositors.

(v) Notice

(I) In general

Not later than 3 days after making a determination under clause (i), the Secretary of the Treasury shall provide written notice of any determination under clause (i) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives.

(II) Description of basis of determination

The notice under subclause (I) shall include a description of the basis for any determination under clause (i).