

FDIC & RTC COMMENTS ON S. 1970

APPENDIX

Section [], Page [], "Definitions"

On page [], line [], insert the following new subsection:

"A new section 3(y) shall be added to The Federal Deposit Insurance Act, 12 U.S.C. 1813(y), as follows:

(y) INSTITUTION-RELATED PARTY.-- The term "institution-related party" shall mean any insured depository institution's director, officer, employee, agent, attorney, accountant, appraiser or any other party employed by or providing services to an insured depository institution."

Section 155, Page 21, "Disallowing Use of Bankruptcy to Evade Capital Commitments"

On page 21, line 16, substitute the following section:

"(c) PLANS UNDER CHAPTER 13.-- Section 1328(a)(2) of Title 11, United States Code, is amended to read as follows:

"(2) of a kind specified in--

"(A) section 523(a)(5), (7), (11), (12) or (13) of this title; or

"(B) section 523(a)(2), (4) or (6) of this title, when such debts are owed to the appropriate Federal financial institutions regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1813(e)(7)(D)), and in addition includes the Resolution Trust Corporation, and includes such an agency or corporation whether it is acting in its capacity as a conservator or receiver or in its corporate capacity, or a conservator or receiver of an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2))) or insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7)))."

Section 155(d), Page 22, "Disallowing Use of Bankruptcy to Evade Capital Commitments"

On page 22, line 10, substitute the following section:

"(d) EXEMPTION OF PROPERTY.-- Section 522(c)(1) of Title 11, United States Code, is amended to read as follows:

"(1) a debt of a kind specified in--

"(A) section 523(a)(1), (5), (11), (12) or (13) of this title; or

"(B) section 523(a)(2), (4) or (6) of this title, when such debts are owed to the appropriate Federal financial institutions regulatory agency (as defined in section 8(e)(7)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1813(e)(7)(D)), and in addition includes the Resolution Trust Corporation, and includes such an agency or corporation whether it is acting in its capacity as a conservator or receiver or in its corporate capacity, or a conservator or receiver of an insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2))) or insured credit union (as defined in section 101(7) of the Federal Credit Union Act (12 U.S.C. 1752(7)))."

Pages 38-39, Section 255, "Fraudulent Conveyances"

On page 38, line 13, delete the word "affiliated" and insert in its place the word "related"

On page 38, line 21, after the word "involuntarily" insert a dash, delete the remainder of that sentence and add the following:

"(1) made such transfer or incurred such liability with actual intent to hinder, delay, or defraud the insured depository institution, the Corporation or any appropriate Federal banking agency; or

(2)(A) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(B)(i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(ii) was engaged in business or a transaction or was about to engage in business or a transaction, for which any property remaining with the institution-related party or debtor was unreasonably small capital; or

(iii) intended to incur, or believed that the institution-related party or debtor would incur, debts that would be beyond the institution-related party's or debtor's ability to pay as such debts matured."

On page 39, line 23, insert the following new subparagraph:

"(D) RIGHTS UNDER THIS SECTION.-- The rights of the Corporation under this section shall be superior to any rights of a trustee or any other party under Title 11."

Pages 39-42, Section 256, "Prejudgment Attachments"

On page 40, lines 6-8, delete the words "(in the Corporation's capacity as conservator or receiver for any insured depository institution)," and insert the words "in connection with exercising the powers conferred by this section and Sections 12 and 13 of the Act,"

On page 40, line 13, delete the word "affiliated" and insert the word "related"

On page 40, line 14, insert the words "or may be" after the word "is"

On page 40, line 22, insert the words "or that the Federal banking agency can demonstrate that a fraud has occurred" after the word "appointed"

On page 40, line 23, delete the words "Section 8(i)" and insert instead "Section 8(h)"

On page 40, line 24, delete the words "(12 U.S.C. 1818(i))" and insert instead "(12 U.S.C. 1818(h))"

On page 41, line 3, delete the words "including actions brought in aid of, or to enforce an order in, any other civil or administrative action for money damages, restitution, or injunctive relief brought by such agency or corporation" and insert instead "this section, or section 7 or 18 of this Act"

On page 41, line 6, insert after "corporation" the following:

"to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the depository institution is located, the court may"

Page 47, Section 259, "Priority of Certain Claims"

On page 47, line 23, insert a comma and the number "12" after the number 11.

On page 48, lines 6-7, delete the words "or the United States" and insert the words "under Section 6321 of the Internal Revenue Code of 1986 and Section 3713 of Title 31, United States Code,"

On page 48, line 11, after the word "notice" insert the words "of the commencement of such other suit, claim or cause of action or, in the event that a suit, claim or cause of action is pending at the time the Corporation acquires claims under Section 11, 12 or 13 of the Act, 180 days after receiving written notice of such pending suit, claim or cause of action,"

On page 48, line 13, after the word "to" delete the words "file suit" and insert the words "pursue potential claims against such party", and after the word "diligently" delete the word "pursuing" and insert the word "investigating"

On page 49, lines 1-3, delete the entire sentence and insert in its place the following: "This provision shall not afford the Corporation priority as to any asset which is finally adjudicated to be unavailable to satisfy any subsequent judgment obtained by the Corporation as a result of its suit, claim or cause of action."

On page 49, line 3, add the following sentence: "This priority shall apply to both the prosecution of any suit claim or cause of action, and to the execution and satisfaction of any subsequent judgment resulting from any suit claim or cause of action."