

Federal Deposit Insurance Corporation

§ 380.7

unit, subsidiary or assets thereof from the Corporation as receiver or from any bridge financial company shall be bound by a personal service agreement unless the acquiring party expressly assumes the personal service agreement.

(d) The acceptance by the Corporation as receiver for a covered financial company, or by any bridge financial company or the Corporation as receiver for a bridge financial company of services subject to a personal service agreement shall not limit or impair the authority of the receiver to disaffirm or repudiate any personal service agreement in the manner provided for the disaffirmance or repudiation of any agreement under 12 U.S.C. 5390(c).

(e) Paragraph (b) of this section shall not apply to any personal service agreement with any senior executive or director of the covered financial company or covered subsidiary, nor shall it in any way limit or impair the ability of the receiver to recover compensation from any senior executive or director of a covered financial company under 12 U.S.C. 5390 and the regulations promulgated thereunder.

[76 FR 41640, July 15, 2011]

§ 380.4 [Reserved]

§ 380.5 Treatment of covered financial companies that are subsidiaries of insurance companies.

The Corporation as receiver shall distribute the value realized from the liquidation, transfer, sale or other disposition of the direct or indirect subsidiaries of an insurance company, that are not themselves insurance companies, solely in accordance with the order of priorities set forth in 12 U.S.C. 5390(b)(1) and the regulations promulgated thereunder.

[76 FR 41640, July 15, 2011]

§ 380.6 Limitation on liens on assets of covered financial companies that are insurance companies or covered subsidiaries of insurance companies.

(a) In the event that the Corporation makes funds available to a covered financial company that is an insurance company or to any covered subsidiary of an insurance company, or enters

into any other transaction with respect to such covered entity under 12 U.S.C. 5384(d), the Corporation will exercise its right to take liens on any or all assets of the covered entities receiving such funds to secure repayment of any such transactions only when the Corporation, in its sole discretion, determines that:

(1) Taking such lien is necessary for the orderly liquidation of the entity; and

(2) Taking such lien will not either unduly impede or delay the liquidation or rehabilitation of such insurance company, or the recovery by its policyholders.

(b) This section shall not be construed to restrict or impair the ability of the Corporation to take a lien on any or all of the assets of any covered financial company or covered subsidiary in order to secure financing provided by the Corporation or the receiver in connection with the sale or transfer of the covered financial company or covered subsidiary or any or all of the assets of such covered entity.

[76 FR 41640, July 15, 2011]

§ 380.7 Recoupment of compensation from senior executives and directors.

(a) *Substantially responsible.* The Corporation, as receiver of a covered financial company, may file an action to recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply. A senior executive or director shall be deemed to be substantially responsible for the failed condition of a covered financial company that is placed into receivership under the orderly liquidation authority of the Dodd-Frank Act if he or she:

(1) Failed to conduct his or her responsibilities with the degree of skill and care an ordinarily prudent person in a like position would exercise under similar circumstances, and