

TITLE II: ORDERLY LIQUIDATION AUTHORITY

- **Resolution Plan or “Living Will” requirement:** Nonbank financial companies supervised under the Federal Reserve Board of Governors must submit a plan for rapid and orderly resolution.
- **Appointment of Receiver:** Requires U.S. District Courts to rule on Treasury Secretary’s petition to appoint the FDIC as receiver when receivership is contested. The standard for appealing the district court’s determination is “arbitrary and capricious.”
- **Establishes Orderly Liquidation Fund:** Establishes an “Orderly Liquidation Fund” housed within Treasury. Funds will be generated by assessments on institutions with total consolidated assets over \$50 billion, and will provide the FDIC with funds for expenses incurred during receivership.
- **FDIC May Repudiate and Enforce Contracts:** The FDIC may repudiate burdensome contracts and leases of the financial company if the FDIC determines that repudiation would promote the orderly administration of the company. The FDIC can enforce contractual obligations even if the counterparty’s termination rights were triggered by the insolvency of financial condition.
- **Compensation Clawbacks:** Creates 2 year clawback period on executive compensation if institution fails.
- **90 Day Holding Period:** Creditors of the failed institution are subject to a 90-day stay. **5 Business Day Stay for Qualified Financial Contracts:** Parties with Qualified Financial Contracts cannot exercise their rights until the close of the fifth business day since FDIC receivership. **“Walk Away” Clauses in QFCs are Unenforceable and fraudulent and preferential transfers can be avoided:** The FDIC may avoid the transfer of any property interest or obligation that is fraudulent and may recover property already transferred.
- **FDIC May Organize Bridge Financial Companies:** The FDIC may transfer any of a financial company’s assets to bridge companies, and then liquidate the company left behind. The aggregate liabilities transferred cannot be larger than the aggregate assets transferred or purchased by a bridge company.