§ 4620. Powers of conservators

(a) General powers

A conservator shall have all the powers of the shareholders, directors, and officers of the enterprise under conservatorship and may operate the enterprise in the name of the enterprise, unless the Director provides otherwise.

(b) Additional power

A conservator may avoid any security interest taken by a creditor with the intent to hinder, delay, or defraud the enterprise or the creditors of the enterprise.

(c) Limitations by Director

A conservator shall be subject to any rules, regulations, and orders issued from time to time by the Director and, except as otherwise specifically provided in such rules, regulations, or orders or in section 4621 of this title, shall have the same rights and privileges and be subject to the same duties, restrictions, penalties, conditions, and limitations applicable to directors, officers, or employees of the enterprise.

(d) Enforcement of contracts

(1) In general

A conservator may enforce any contract described in paragraph (2), notwithstanding any provision of the contract providing for the termination, default, acceleration, or other exercise of rights upon, or solely by reason of, the insolvency of the enterprise or the appointment of a conservator.

(2) Enforceable contracts

Any contract that is within a class of contracts shall be enforceable under paragraph (1) if the Director—

(A) determines that the continued enforceability of such class of contracts is necessary to achieve the purpose of the conservatorship; and

(B) specifically provides for the enforceability of such class of contracts in a regulation or order, issued for the purpose of this subsection, which describes such class.

(3) Applicability

This subsection and any regulation or order issued under this subsection shall apply only to contracts entered into, modified, extended, or renewed after the effective date of the regulation or order.

(e) Stays

(1) In general

Not later than 45 days after appointment pursuant to section 4616, 4617, or 4619 of this title, or 45 days after receipt of actual notice of an action or proceeding that is pending at the time of appointment, a conservator may request that any judicial action or proceeding to which the conservator or the enterprise is or may become a party be stayed for a period not exceeding 45 days after the request. Upon petition, the court shall grant such stay as to all parties.

(2) Federal agency as conservator

In any case in which the conservator appointed for an enterprise is a Federal agency or an officer or employee of the Federal Government, the conservator may make a request for a stay under paragraph (1) only with the prior consent of the Attorney General and subject to the direction and control of the Attorney General.

(f) Payment of creditors

The Director may require a conservator to set aside and make available for payment to creditors any amounts that the Director determines may safely be used for such purpose. All creditors who are similarly situated shall be treated in a similar manner.

(g) Compensation of conservator and employees

A conservator and professional employees (other than Federal employees) appointed to represent or assist the conservator may be compensated for activities conducted as conservator. Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the Director may provide for compensation at higher rates (but not in excess of rates prevailing in the private sector), if the Director determines that compensation at higher rates is necessary in order to recruit and retain competent personnel.

(h) Expenses

All expenses of a conservatorship pursuant to this section (including compensation pursuant to subsection (f) of this section) shall be paid by the enterprise under conservatorship and shall be secured by a lien on the enterprise, which shall have priority over any other lien.

(i) Conflicts of interest and financial disclosure

A conservator shall be subject to any laws and regulations relating to conflicts of interest and financial disclosure that apply to employees of the Office.


§ 4621. Liability protection for conservators

(a) Federal agencies and employees

In any case in which a conservator appointed under this subchapter is a Federal agency or an officer or employee of the Federal Government, the provisions of chapters 161 and 171 of title 28 shall apply with respect to the liability of the conservator for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.

(b) Other conservators

In any case where the conservator is not a conservator described in subsection (a) of this
section, the conservator shall not be personally liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence or any form of intentional tortious conduct or criminal conduct.

(c) Indemnification

The Director, with the approval of the Attorney General, may indemnify the conservator on such terms as the Director considers appropriate.


§ 4622. Capital restoration plans

(a) Contents

Each capital restoration plan submitted under this subchapter shall set forth a feasible plan for restoring the core capital of the enterprise subject to the plan to an amount not less than the minimum capital level for the enterprise and for restoring the total capital of the enterprise to an amount not less than the risk-based capital level for the enterprise. Each capital restoration plan shall—

(1) specify the level of capital the enterprise will achieve and maintain;
(2) describe the actions that the enterprise will take to become classified as adequately capitalized;
(3) establish a schedule for completing the actions set forth in the plan;
(4) specify the types and levels of activities (including existing and new programs) in which the enterprise will engage during the term of the plan; and
(5) describe the actions that the enterprise will take to comply with any mandatory and discretionary requirements imposed under this subchapter.

(b) Deadlines for submission

The Director shall, by regulation, establish a deadline for submission of a capital restoration plan, which may not be more than 45 days after the enterprise is notified in writing that a plan is required. The regulations shall provide that the Director may extend the deadline to the extent that the Director determines it necessary. Any extension of the deadline shall be in writing and for a time certain.

(c) Approval

The Director shall review each capital restoration plan submitted under this section and, not later than 30 days after submission of the plan, approve or disapprove the plan. The Director may extend the period for approval or disapproval for any plan for a single additional 30-day period if the Director determines it necessary. The Director shall provide written notice to any enterprise submitting a plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(d) Resubmission

If the Director disapproves the initial capital restoration plan submitted by the enterprise, the enterprise shall submit an amended plan acceptable to the Director within 30 days or such longer period that the Director determines is in the public interest.


§ 4623. Judicial review of Director action

(a) Jurisdiction

(1) Filing of petition

An enterprise that is not classified as critically undercapitalized and is the subject of a classification under section 4614 of this title or a discretionary supervisory action taken under this subchapter by the Director (other than action to appoint a conservator under section 4616 or 4617 of this title or action under section 4619 of this title) may obtain review of the classification or action by filing, within 10 days after receiving written notice of the Director's action, a written petition requesting that the classification or action of the Director be modified, terminated, or set aside.

(2) Place for filing

A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(b) Scope of review

The Court may modify, terminate, or set aside an action taken by the Director and reviewed by the Court pursuant to this section only if the court finds, on the record on which the Director acted, that the action of the Director was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(c) Unavailability of stay

The commencement of proceedings for judicial review pursuant to this section shall not operate as a stay of any action taken by the Director. Pending judicial review of the action, the court shall have jurisdiction to stay, enjoin, or otherwise delay any supervisory action taken by the Director with respect to an enterprise that is classified as significantly or critically undercapitalized or any action of the Director that results in the classification of an enterprise as significantly or critically undercapitalized.

(d) Limitation on jurisdiction

Except as provided in this section, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this subchapter (other than appointment of a conservator under section 4616 or 4617 of this title or action under section 4619 of this title) or to review, modify, suspend, terminate, or set aside such classification or action.

1 So in original. Probably should not be capitalized.