

*Revised*

**\*\* Senate Counteroffer \*\***

**Title II**

**Orderly Liquidation Authority**

The Senate proposes the following counteroffer to the June 23, 2010 counteroffer from the House on Title II:

Numbers refer to the items in the June 23 House offer. The Senate:

- (1) Does not accept changing the definition of financial company for purposes of the Orderly Liquidation Authority to include Fannie Mae, Freddie Mac, and governmental entities.
- (2) Accepts the House amendment to include the Federal Insurance Office as a triggering authority for orderly liquidation when a financial company or its largest subsidiary is an insurance company.
- (3) Accepts the House offer to require a mandatory repayment plan, as modified in the attachment, and also accepts the House offer to require a risk matrix, as modified in the attachment.
- (4) (The House has withdrawn its offer to require FDIC to establish a separate subcorporation to handle orderly liquidation.)
- (5) Does not accept replacing the ex ante judicial review with an ex post process.
- (6) (See (1) above.)
- (7) (Resolved.)
- (8) (Resolved.)

In addition:

- (1) The Senate also accepts the House proposal to replace a 3-business day stay on the rights of counterparties to a qualified financial contract with a 1-business day stay.

**Item 2** - insurance professional participation in triggering an orderly liquidation under title II

Amendment to original House offer (which is written to base text):

Page 149, line 7, strike "On" and insert "Except as provided in subparagraph (B) or (C), on".

Page 150, after line 10, insert the following new subparagraph:

4           (C) CASES INVOLVING INSURANCE COMPA-  
5           NIES.—In the case of an insurance company, or  
6           in which the largest United States subsidiary  
7           (as measured by total assets as of the end of  
8           the previous calendar quarter) of a financial  
9           company is an insurance company, the applica-  
10          ~~ble State insurance authority of the State in~~  
11          ~~which the insurance company is domiciled and~~  
12          the Board of Governors, at the request of the  
13          Secretary or on their own initiative, shall con-  
14          sider whether to make the written recommenda-  
15          tion described in paragraph (2) with respect to  
16          the financial company. Subject to the require-  
17          ments in paragraph (2), such recommendation

Director  
of the  
Federal  
Insurance  
Office

1 shall be made upon a vote of not fewer than  $\frac{2}{3}$   
2 of the Board of Governors then serving and the  
3 affirmative approval of the insurance authority,  
4 and in consultation with the Corporation.

*Director of  
the  
Federal  
Insurance  
Office*

Item 3 - *ux*  
S.L.C post fund

*Proceeds to  
Senate  
§ 210(n)-  
(o), with  
the following  
amendments  
to base text:*

1 (n) ORDERLY LIQUIDATION FUND.—

2 (1) ESTABLISHMENT.—There is established in  
3 the Treasury of the United States a separate fund  
4 to be known as the "Orderly Liquidation Fund",  
5 which shall be available to the Corporation to carry  
6 out the authorities contained in this title, for the  
7 cost of actions authorized by this title, including the  
8 orderly liquidation of covered financial companies,  
9 payment of administrative expenses, the payment of  
10 principal and interest by the Corporation on obliga-  
11 tions issued under paragraph (b)<sup>5</sup>, and the exercise  
12 of the authorities of the Corporation under this title.

13 (2) PROCEEDS.—Amounts received by the Cor-  
14 poration, including assessments received under sub-  
15 section (o), proceeds of obligations issued under  
16 paragraph (b)<sup>5</sup>, interest and other earnings from in-  
17 vestments, and repayments to the Corporation by  
18 covered financial companies, shall be deposited into  
19 the Fund.

20 (3) MANAGEMENT.—The Corporation shall  
21 manage the Fund in accordance with this subsection  
22 and the policies and procedures established under  
23 section 203(d).

24 (4) INVESTMENTS.—At the request of the Cor-  
25 poration, the Secretary may invest such portion of

1           tion under applicable law other than this  
2           title, shall not be used to assist a covered  
3           financial company pursuant to this title;  
4           and

5                   (iii) the Deposit Insurance Fund may  
6           not be used in any manner to otherwise  
7           circumvent the purposes of this title.

8           (B) VALUATION.—For purposes of deter-  
9           mining the amount of obligations under this  
10          subsection—

11                   (i) the Corporation shall include as an  
12          obligation any contingent liability of the  
13          Corporation pursuant to this title; and

14                   (ii) the Corporation shall value any  
15          contingent liability at its expected cost to  
16          the Corporation.

17          (9) ORDERLY LIQUIDATION PLAN.—Amounts in  
18          the Fund shall be available to the Corporation with  
19          regard to a covered financial company for which the  
20          Corporation is appointed receiver after the Corpora-  
21          tion has developed an orderly liquidation plan that  
22          is acceptable to the Secretary with regard to such  
23          covered financial company, including the provision  
24          and use of funds, including taking any actions speci-  
25          fied under section 204(d) and subsection

+ Repayment

(A) Orderly  
Liquidation  
Plan.

1 (h)(2)(G)(iv) and (h)(9) of this section, and pay-  
2 ments to third parties. The orderly liquidation plan  
3 shall take into account actions to avoid or mitigate  
4 potential adverse effects on low income, minority, or  
5 underserved communities affected by the failure of  
6 the covered financial company, and shall provide for  
7 coordination with the primary financial regulatory  
8 agencies, as appropriate, to ensure that such actions  
9 are taken. The Corporation may, at any time, amend  
10 any orderly liquidation plan approved by the Sec-  
11 retary with the concurrence of the Secretary.

12 (10) IMPLEMENTATION EXPENSES.—

13 (A) IN GENERAL.—Reasonable implemen-  
14 tation expenses of the Corporation incurred  
15 after the date of enactment of this Act shall be  
16 treated as expenses of the Council.

17 (B) REQUESTS FOR REIMBURSEMENT.—  
18 The Corporation shall periodically submit a re-  
19 quest for reimbursement for implementation ex-  
20 penses to the Chairperson of the Council, who  
21 shall arrange for prompt reimbursement to the  
22 Corporation of reasonable implementation ex-  
23 penses.

24 (C) DEFINITION.—As used in this para-  
25 graph, the term “implementation expenses”—

← Insert  
text from  
following  
page

Page 313 insert:

authorized under paragraph (6)(B)

“(B) Mandatory repayment plan.

(i) In general. No amount may be provided by the Secretary of the Treasury to the Corporation under paragraph (5) unless an agreement is in effect between the Secretary and the Corporation that—

(I) provides a specific plan and schedule to achieve the repayment of the outstanding amount of any borrowing under paragraph (5); and

(II) demonstrates that income to the Corporation from the liquidated assets of the covered financial company and assessments under subsection (o) will be sufficient to amortize the outstanding balance within the period established in the repayment schedule and pay the interest accruing on such balance within the time provided in subsection (o)(1)(B).

(ii) Consultation with and report to Congress. The Secretary of the Treasury and the Corporation shall—

(I) consult with the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the terms of any repayment schedule agreement; and

(II) submit a copy of the repayment schedule agreement to the Committees described in subclause (I) before the end of the 30-day period beginning on the date any amount is provided by the Secretary of the Treasury to the Corporation under paragraph (5).”

1 to the Secretary within 60 months of the date  
2 of issuance of such obligations.

3 (C) EXTENSIONS AUTHORIZED.—The Cor-  
4 poration may, with the approval of the Sec-  
5 retary, extend the time period under subpara-  
6 graph ~~(C)(iii)~~, if the Corporation determines  
7 that an extension is necessary to avoid a serious  
8 adverse effect on the financial system of the  
9 United States.

10 (D) APPLICATION OF ASSESSMENTS.—To  
11 meet the requirements of subparagraph ~~(C)~~, the  
12 Corporation shall—

13 (i) impose assessments, as soon as  
14 practicable, on any claimant that received  
15 additional payments or amounts from the  
16 Corporation pursuant to subsection (b)(4),  
17 (d)(4), or (h)(5)(E), except for payments  
18 or amounts necessary to initiate and con-  
19 tinue operations essential to implementa-  
20 tion of the receivership or any bridge fi-  
21 nancial company, to recover on a cumu-  
22 lative basis, the entire difference be-  
23 tween—

24 (I) the aggregate value the claim-  
25 ant received from the Corporation on



1 a claim pursuant to this title (includ-  
2 ing pursuant to subsection (b)(4),  
3 (d)(4), and (h)(5)(E)), as of the date  
4 on which such value was received; and

5 (II) the value the claimant was  
6 entitled to receive from the Corpora-  
7 tion on such claim solely from the  
8 proceeds of the liquidation of the cov-  
9 ered financial company under this  
10 title; and

11 (ii) if the amounts to be recovered on  
12 a cumulative basis under clause (i) are in-  
13 sufficient to meet the requirements of sub-  
14 paragraph ~~(C)~~, after taking into account  
15 (B) the considerations set forth in paragraph  
16 (4), impose assessments on—

17 (I) eligible financial companies;  
18 and

19 (II) financial companies with  
20 total consolidated assets equal to or  
21 greater than \$50,000,000,000 that  
22 are not eligible financial companies.

23 (E) PROVISION OF FINANCING.—Payments  
24 or amounts necessary to initiate and continue  
25 operations essential to implementation of the

Strike page 317, line 16 through page 319, line 23, and replace with the following:

**(4) RISK-BASED ASSESSMENT CONSIDERATIONS.** – In imposing assessments under subparagraph (D)(ii), the Corporation shall use a risk matrix. The Council shall make a recommendation to the Corporation on the risk matrix to be used in imposing such assessments, and the Corporation shall take into account any such recommendation in the establishment of the risk matrix to be used to impose such assessments. In recommending or establishing such risk matrix, the Council and the Corporation, respectively, shall take into account–

[insert Rider A]

Rider A

p. 317-319  
insert ~~XXXXXX~~

1 ~~be used in establishing assessments that takes into~~  
2 ~~account—~~

3 (A) the actual or expected risk of losses to  
4 the Fund;

5 (B) economic conditions generally affecting  
6 A financial companies so as to allow assessments  
7 and the Fund to increase during more favorable  
8 economic conditions and to decrease during less  
9 favorable economic conditions;

10 B (C) any assessments imposed on a finan-  
11 cial company or an affiliate of a financial com-  
12 pany that—

13 (i) is an insured depository institu-  
14 tion, assessed pursuant to section 7 or  
15 13(c)(4)(G) of the Federal Deposit Insur-  
16 ance Act;

17 (ii) is a member of the Securities In-  
18 vestor Protection Corporation, assessed  
19 pursuant to section 4 of the Securities In-  
20 vestor Protection Act of 1970 (15 U.S.C.  
21 78ddd);

22 (iii) is an insured credit union, as-  
23 sessed pursuant to section 202(c)(1)(A)(i)  
24 of the Federal Credit Union Act (12  
25 U.S.C. 1782(c)(1)(A)(i)); or

1 (iv) is an insurance company, assessed  
2 pursuant to applicable State law to cover  
3 (or reimburse payments made to cover) the  
4 costs of the rehabilitation, liquidation or  
5 other State insolvency proceeding with re-  
6 spect to 1 or more insurance companies;

7 (C) (D) the risks presented by the financial  
8 company to the financial system and the extent  
9 to which the financial company has benefitted,  
10 or likely would benefit, from the ~~dissolution~~ of orderly  
11 a financial company under this title, includ- liquidation  
12 ing—

13 (i) the amount, different categories,  
14 and concentrations of assets of the finan-  
15 cial company and its affiliates, including  
16 both on-balance sheet and off-balance sheet  
17 assets;

18 (ii) the activities of the financial com-  
19 pany and its affiliates;

20 (iii) the relevant market share of the  
21 financial company and its affiliates;

22 (iv) the extent to which the financial  
23 company is leveraged;

~~14~~

1 (v) the potential exposure to sudden  
2 calls on liquidity precipitated by economic  
3 distress;

4 (vi) the amount, maturity, volatility,  
5 and stability of the company's financial ob-  
6 ligations to, and relationship with, other fi-  
7 nancial companies;

8 (vii) the amount, maturity, volatility,  
9 and stability of the company's liabilities,  
10 including the degree of reliance on short-  
11 term funding, taking into consideration ex-  
12 isting systems for measuring a company's  
13 risk-based capital;

14 (viii) the stability and variety of the  
15 company's sources of funding;

16 (ix) the company's importance as a  
17 source of credit for households, businesses,  
18 and State and local governments and as a  
19 source of liquidity for the financial system;

20 (x) the extent to which assets are sim-  
21 ply managed and not owned by the finan-  
22 cial company and the extent to which own-  
23 ership of assets under management is dif-  
24 fuse; and

1 (xi) the amount, different categories,  
 2 and concentrations of liabilities, both in-  
 3 sured and uninsured, contingent and non-  
 4 contingent, including both on-balance sheet  
 5 and off-balance sheet liabilities, of the fi-  
 6 nancial company and its affiliates; and

Insert  
Rider B

risk-related

7 (E) such other factors as the Corporation,  
 8 in consultation with the Council, may determine  
 9 to be appropriate.

or the  
Council  
as applicable

10 ~~The Corporation shall, based on the consideration of~~  
 11 ~~all the factors in such risk matrix, determine which~~  
 12 ~~companies are and are not in the high-risk category~~  
 13 ~~for purposes of the sequential assessments required~~  
 14 ~~under paragraph (6)(C).~~

**Rider B**

**“(D) any risks presented by the financial company during the 10-year period immediately prior to the appointment of the Corporation as receiver for the covered financial company that contributed to the failure of the covered financial company; and”**

New amend-  
ment  
S.L.C

Amend pages 257,  
1 265, +  
2 266 of  
3 ball  
4 text  
5 as  
6 follows:

re length  
of stay  
on counter-  
party rights

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(i) IN GENERAL.—Notwithstanding the provisions of subparagraph (A) of this paragraph and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a covered financial company in default.

(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time at which the Corporation is appointed as receiver until the earlier of—

(I) the time at which such party receives notice that such contract has been transferred pursuant to paragraph (10)(A); or

(II) 5:00 p.m. (eastern time) on the 3<sup>rd</sup> business day following the date of the appointment of the Corporation as receiver.



1 the Federal Deposit Insurance Corporation  
2 Improvement Act of 1991.

3 (10) NOTIFICATION OF TRANSFER.—

4 (A) IN GENERAL.—

5 (i) NOTICE.—The Corporation shall  
6 provide notice in accordance with clause  
7 (ii), if—

8 (I) the Corporation as receiver  
9 for a covered financial company in de-  
10 fault or in danger of default transfers  
11 any assets or liabilities of the covered  
12 financial company; and

13 (II) the transfer includes any  
14 qualified financial contract.

15 (ii) TIMING.—The Corporation as re-  
16 ceiver for a covered financial company  
17 shall notify any person who is a party to  
18 any contract described in clause (i) of such  
19 transfer not later than 5:00 p.m. (eastern  
20 time) on the ~~3<sup>rd</sup>~~ business day following the  
21 date of the appointment of the Corporation  
22 as receiver.

23 (B) CERTAIN RIGHTS NOT ENFORCE-  
24 ABLE.—

1 (i) RECEIVERSHIP.—A person who is  
2 a party to a qualified financial contract  
3 with a covered financial company may not  
4 exercise any right that such person has to  
5 terminate, liquidate, or net such contract  
6 under paragraph (8)(A) solely by reason of  
7 or incidental to the appointment under this  
8 section of the Corporation as receiver for  
9 the covered financial company (or the in-  
10 solvency or financial condition of the cov-  
11 ered financial company for which the Cor-  
12 poration has been appointed as receiver)—

13 (I) until 5:00 p.m. (eastern time)  
14 on the ~~3<sup>rd</sup>~~ business day following the  
15 date of the appointment; or

16 (II) after the person has received  
17 notice that the contract has been  
18 transferred pursuant to paragraph  
19 (9)(A).

20 (ii) NOTICE.—For purposes of this  
21 paragraph, the Corporation as receiver for  
22 a covered financial company shall be  
23 deemed to have notified a person who is a  
24 party to a qualified financial contract with  
25 such covered financial company, if the Cor-