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June 16, 2010

Dear Fellow Conferee:

I write to strongly urge you to support the **ex-ante dissolution fund**, adopted by the House as part of the Wall Street Reform bill, and now an essential component of the House offer to the Senate conferees.

Among others, the ex-ante dissolution fund has the support of the Federal Deposit Insurance Corporation (FDIC), the Independent Community Bankers of America (ICBA) which represents some 5,000 community banks, the 69-Member strong New Democrat Coalition, and Americans for Financial Reform, a coalition of over 250 consumer, employee, investor, community, small business and civil rights groups.

As Chairman of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit, I authored the ex-ante dissolution fund amendment and offered it along with other subcommittee chairs. It garnered widespread support as a vitally important resolution function that would provide for the orderly winding down of systemically significant institutions while avoiding a taxpayer bailout.

The pre-funded dissolution fund would operate in a manner similar to the FDIC's Deposit Insurance Fund. The fund would be pre-paid by the largest and riskiest financial firms with assets over $50 billion and would be used as a "funeral fund" to dissolve a failed systemically significant institution that could not be wound-down with the current tools available under the bankruptcy code without creating systemic contagion in the financial system. Regulators would first use the failing firm's assets to shut it down, fire leadership and wipe out shareholders, and then use money from the financial industry obtained through pre-funded risk-based assessments on systemically risky institutions to protect taxpayers from additional losses.

The ex-ante dissolution fund was voted down in the Senate but as part of a larger amendment. The Senate never took a vote against the ex-ante fund proposal on its own merits. Instead of an ex-ante fund, the Senate version would put the FDIC in the position of borrowing money as needed while unwinding a failing firm and ***later*** try to recoup those funds from the financial industry. This resolution mechanism creates pro-cyclical assessments that would threaten the health of surviving financial institutions.

The Senate's post-funded mechanism is clearly an inferior alternative to the ex-ante dissolution fund. The removal of the ex-ante dissolution fund by the Senate has ironically created a CBO score of nearly $20 billion, a significant cost to the government and the people of this country. The Senate alternative has considerable pay-go problems that cannot be ignored. While taxpayers are protected by the ex-ante dissolution fund, they are exposed to pay for the failures of big firms through the Senate post-funded mechanism.

As aptly put by professor Arthur E. Wilmarth Jr. of George Washington University Law School in his defense of the ex-ante dissolution fund, published in last Friday's *American Banker*: "It is hardly surprising that big banks made the House bill's prefunded systemic resolution fund their top priority for removal from the Senate bill. Megabanks have never paid for the costs of TBTF bailouts, and they don't want to start now. If Congress lets financial giants keep shifting the costs of TBTF rescue to taxpayers, **it will be a shameful dereliction of duty**."

You now have a historic opportunity to side with the American taxpayers and make Wall Street, and not Main Street, pay for the costs of the failure of systemically risky institutions. I urge you to accept the House offer and include the ex-ante dissolution fund as a vital part of the Wall Street Reform bill.

Sincerely,

Luis V. Gutierrez
Chairman
Subcommittee on Financial Institutions and Consumer Credit