

**** House Counteroffer ****

Title: II
Matter: Orderly Liquidation Authority

The Senate proposed the following counteroffer to the House's offer regarding Title II. The House's response to the Senate is indicated below.

The Senate:

1. **Does not accept the House offer to strike Senate provision** containing the definition of "financial company" and related text **and replace with House provision. THE HOUSE RECEDES TO THE SENATE'S DEFINITION, WITH THE ATTACHED AMENDMENT DESCRIBED IN ITEM 6 BELOW.**
2. **Does not accept the House offer to amend Senate provision** regarding invoking the Orderly Liquidation Authority to provide for involvement of the an insurance professional in connection with a decision to liquidate an insurance company, and to clarify that assets of the insurance company are used for the protection of policy holders. **THE HOUSE COUNTEROFFERS WITH THE ATTACHED AMENDMENT TO ITS ORIGINAL OFFER THAT SUBSTITUTES THE FEDERAL INSURANCE OFFICE FOR THE RELEVANT STATE INSURANCE COMMISSIONER AS THE TRIGGERING AUTHORITY.**
3. **Does not accept striking Senate provisions** regarding an ex post funding mechanism for orderly liquidation (except for the provision requiring an orderly liquidation plan) and replace with House provisions that provide for an ex ante funding mechanism. **THE HOUSE RECEDES TO THE SENATE'S EX POST FUNDING MECHANISM, WITH THE ATTACHED AMENDMENTS.**
4. **Does not accept the House offer to add House provision** that requires the FDIC to establish a separate subcorporation to handle orderly liquidations under title II. **THE HOUSE INSISTS ON ITS ORIGINAL OFFER, WITH THE ATTACHED AMENDMENTS.**
5. **Does not accept the House offer to replace the ex ante judicial review process with an ex post judicial review process. THE HOUSE INSISTS ON ITS ORIGINAL OFFER.**
6. **Does not accept the House offer to include Fannie Mae and Freddie Mac in the definition of "financial company" for purposes of the Orderly Liquidation Authority. THE HOUSE INSISTS ON THE SUBSTANCE OF ITS ORIGINAL OFFER, AS REFLECTED IN THE ATTACHED AMENDMENT.**

7. **Accepts with modification the House offer adding a provision** that requires the FDIC to study the impact of secured creditor haircuts. The modification is that the Council, rather than the FDIC, would conduct the study. **THE HOUSE RECEDES TO THE SENATE'S MODIFICATION.**
8. **Added new sections** requiring the Federal Reserve, in consultation with the Administrative office of the United States Courts, to conduct studies on (1) whether the bankruptcy process could be made more effective for resolving systemic financial companies and (2) ways to increase international coordination relating to resolution of such companies. **THE HOUSE RECEDES TO THE SENATE ON THE ADDITION OF THESE SECTIONS.**

In addition to the foregoing, the House offers the following new amendment:

1. **Strike Senate provisions** that provide for a 3-business-day stay on the rights of counterparties to qualified financial contracts **and recede to the House position** of providing for a one-business-day stay (Senate bill/base text sections 210(c)(8)(F)(II), 210(c)(10)(A)(ii), and 210(c)(10)(B)(i)(I) – Page 257 line 23, Page 265 line 20, and Page 266 line 14, respectively).

Items 1+6

S.L.C

"financial company" definition

1 (A) means a financial company for which
2 a determination has been made under section
3 203(b); and

4 (B) does not include an insured depository
5 institution.

6 (9) COVERED SUBSIDIARY.—The term "covered
7 subsidiary" means a subsidiary of a covered finan-
8 cial company, other than—

9 (A) an insured depository institution;

10 (B) an insurance company; or

11 (C) a covered broker or dealer.

12 (10) DEFINITIONS RELATING TO COVERED BRO-
13 KERS AND DEALERS.—The terms "customer", "cus-
14 tomer name securities", "customer property", and
15 "net equity" in the context of a covered broker or
16 dealer, have the same meanings as in section 16 of
17 the Securities Investor Protection Act of 1970 (15
18 U.S.C. 78ll).

19 (11) FINANCIAL COMPANY.—The term "finan-
20 cial company" means any company that—

21 (A) is incorporated or organized under any
22 provision of Federal law or the laws of any
23 State;

24 (B) is—



Recede to
Senate defini-
tion but
insist on
inclusion
of Fannie
Mae +
Freddie Mae
by amending
base text as
follows:

1 (i) a bank holding company, as de-
2 fined in section 2(a) of the Bank Holding
3 Company Act of 1956 (12 U.S.C.
4 1841(a)), and including any company de-
5 scribed in paragraph (5);

6 (ii) a nonbank financial company su-
7 pervised by the Board of Governors;

8 (iii) any company that is predomi-
9 nantly engaged in activities that the Board
10 of Governors has determined are financial
11 in nature or incidental thereto for purposes
12 of section 4(k) of the Bank Holding Com-
13 pany Act of 1956 (12 U.S.C. 1843(k))
14 other than a company described in clause
15 (i) or (ii); ~~or~~

16 (iv) any subsidiary of any company
17 described in any of clauses (i) through (iii)
18 that is predominantly engaged in activities
19 that the Board of Governors has deter-
20 mined are financial in nature or incidental
21 thereto for purposes of section 4(k) of the
22 Bank Holding Company Act of 1956 (12
23 U.S.C. 1843(k)) (other than a subsidiary
24 that is an insured depository institution or
25 an insurance company); ~~and~~

(v) the Federal National
Mortgage Association or the
Federal Home Loan Mortgage
Corporation, and

1 (C) is not a Farm Credit System institu-
 2 tion chartered under and subject to the provi-
 3 sions of the Farm Credit Act of 1971, as
 4 amended (12 U.S.C. 2001 et seq.), ~~a govern-~~
 5 ~~mental entity, or a regulated entity, as defined~~
 6 ~~under section 1303(20) of the Federal Housing~~
 7 ~~Enterprises Financial Safety and Soundness~~
 8 ~~Act of 1992 (12 U.S.C. 4502(20)).~~

*or a
Federal
Home Loan
Bank*

9 (12) FUND.—The term “Fund” means the Or-
 10 derly Liquidation Fund established under section
 11 210(n).

12 (13) INSURANCE COMPANY.—The term “insur-
 13 ance company” means any entity that is—

14 (A) engaged in the business of insurance;

15 (B) subject to regulation by a State insur-
 16 ance regulator; and

17 (C) covered by a State law that is designed
 18 to specifically deal with the rehabilitation, liq-
 19 uidation, or insolvency of an insurance com-
 20 pany.

21 (14) NONBANK FINANCIAL COMPANY.—The
 22 term “nonbank financial company” has the same
 23 meaning as in section 102(a)(4)(C).

24 (15) NONBANK FINANCIAL COMPANY SUPER-
 25 VISIED BY THE BOARD OF GOVERNORS.—The term

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 COMPANIES.—In the case of an insurance company, or
5
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 - *W*
S.L.C post fund

*Recede to
Senate
§ 210(c)-(
co), with
the following
amendment!
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 ~~(6)~~⁵, 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 ~~(6)~~⁵, 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:

“(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)~~^(B)(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

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

(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this title; and

(ii) if the amounts to be recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (C), after taking into account the considerations set forth in paragraph (4), impose assessments on—

(I) eligible financial companies; and

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

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

“(D) APPLICATION OF ASSESSMENTS.—To meet the requirements of subparagraph (B), the Corporation shall—

(i) before assessing any financial company, impose assessments, as soon as practicable, on any claimant that received additional payments or amounts from the Corporation pursuant to subsection (b)(4), (d)(4), or (h)(5)(E), except for payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company, to recover on a cumulative basis, the entire difference between—

(I) the aggregate value the claimant received from the Corporation on a claim pursuant to this title (including pursuant to subsection (b)(4), (d)(4), and (h)(5)(E)), as of the date on which such value was received; and

(II) the value the claimant was entitled to receive from the Corporation on such claim solely from the proceeds of the liquidation of the covered financial company under this title; and

(ii) if the amounts recovered on a cumulative basis under clause (i) are insufficient to meet the requirements of subparagraph (B), after taking into account the considerations set forth in paragraph (4), impose assessments on those eligible financial companies and those financial companies with total consolidated assets equal to or greater than \$50,000,000,000 that are not eligible financial companies that the Corporation determines to be in the high-risk category in accordance with paragraph (4); and

(iii) if the amounts recovered on a cumulative basis under clauses (i) and (ii) are insufficient to meet the requirements of subparagraph (B), after taking into account the considerations set forth in paragraph (4), impose assessments on those eligible financial companies and those financial companies with total consolidated assets equal to or greater than \$50,000,000,000 that are not eligible financial companies that the Corporation determines not to be in the high-risk category in accordance with paragraph (4).”

1 receivership or any bridge financial company
2 described in subparagraph (E)(i) shall not in-
3 clude the provision of financing, as defined by
4 rule of the Corporation, to third parties.

5 (2) GRADUATED ASSESSMENT RATE.—The Cor-
6 poration shall impose assessments on a graduated
7 basis, with financial companies having greater assets
8 and risk being assessed at a higher rate.

9 (3) NOTIFICATION AND PAYMENT.—The Cor-
10 poration shall notify each financial company of that
11 company's assessment under this subsection. Any fi-
12 nancial company subject to assessment under this
13 subsection shall pay such assessment in accordance
14 with the regulations prescribed pursuant to para-
15 graph (6).

16 (4) RISK-BASED ASSESSMENT CONSIDER-
17 ATIONS.—In imposing assessments under this sub-
18 section, the Corporation shall—

19 (A) take into account economic conditions
20 generally affecting financial companies, so as to
21 allow assessments to be lower during less favor-
22 able economic conditions;

23 (B) take into account any assessments im-
24 posed on—

*Replace
w/insert
following
p319*

1 (i) an insured depository institution
2 subsidiary of a financial company pursuant
3 to section 7 or section 13(c)(4)(G) of the
4 Federal Deposit Insurance Act (12 U.S.C.
5 1817, 1823(c)(4)(G));

6 (ii) a financial company or subsidiary
7 of such company that is a member of SIPC
8 pursuant to section 4 of the Securities In-
9 vestor Protection Act of 1970 (15 U.S.C.
10 78ddd); and

11 (iii) a financial company or subsidiary
12 of such company that is an insurance com-
13 pany pursuant to applicable State law to
14 cover (or reimburse payments made to
15 cover) the costs of rehabilitation, liquida-
16 tion, or other State insolvency proceeding
17 with respect to one or more insurance com-
18 panies;

19 (C) take into account the financial condi-
20 tion of the financial company, including the ex-
21 tent and type of off-balance-sheet exposures of
22 the financial company;

23 (D) take into account the risks presented
24 by the financial company to the financial sta-
25 bility of the United States economy;

*Replace
w/ insert
following
p. 319*

1 (E) take into account the extent to which
 2 the financial company or group of financial
 3 companies has benefitted, or likely would ben-
 4 efit, from the orderly liquidation of a covered fi-
 5 nancial company and the use of the Fund under
 6 this title;

7 (F) distinguish among different classes of
 8 assets or different types of financial companies
 9 (including distinguishing among different types
 10 of financial companies, based on their levels of
 11 capital and leverage) in order to establish com-
 12 parable assessment bases among financial com-
 13 panies subject to this subsection;

14 (G) take into account the extent to which
 15 assets are managed rather than owned by the
 16 financial company and the extent to which own-
 17 ership of assets under management is diffuse;

18 (H) establish the parameters for the grad-
 19 uated assessment requirement in paragraph (2);
 20 and

21 (I) take into account such other risk-re-
 22 lated factors as the Corporation, in consultation
 23 with the Secretary, deems appropriate.

24 (5) COLLECTION OF INFORMATION.—The Cor-
 25 poration may impose on covered financial companies

*replace
w/ insert
on
following
page*

Insert that
replaces p. 317
line 16 - p. 319
line 23

New ¶ (4), to replace ¶ (4) beginning
on p. 317

23 **A** FACTORS.—The Corporation, in consulta-
24 tion with the Council shall establish a risk matrix to

P. 317-319
insert, cont'd

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 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 (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

P. 37-39
insert, cont'd

~~15~~

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 (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
11 a financial company under this title, includ-
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;

~~13~~

- 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

~~11~~

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

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).

insist on House offer to insert a new § at the end of title II, orderly

Item 4

Separate liquidation authority as amended

1 **SEC. 215. SYSTEMIC LIQUIDATION AUTHORITY.**

2 The Federal Deposit Insurance Act (12 U.S.C. 1811
3 et seq.) is amended by inserting after section 11A the fol-
4 lowing new section:

5 **"SEC. 11B. ~~SYSTEMIC DISSOLUTION~~ AUTHORITY AND FUND.**

6 "(a) ~~SYSTEMIC DISSOLUTION~~ AUTHORITY.—The
7 Corporation shall establish a ~~Systemic Dissolution~~ Author-
8 ity, which shall function as a subsidiary of the Corpora-
9 tion *for orderly liquidation purposes.*

orderly liquidation

10 "(b) ~~SYSTEMIC DISSOLUTION~~ FUND.—Any fund es-
11 tablished for the purpose of facilitating the dissolution of
12 a financial company under title II of the Restoring Amer-
13 ican Financial Stability Act of 2010 shall be called the
14 ~~Systemic Dissolution~~ Fund, which shall be managed by
15 the Corporation, through the ~~Systemic Dissolution~~ Au-
16 thority.

17 "(c) MANAGEMENT OF FUND.—

18 "(1) SEPARATE MAINTENANCE.—The ~~Systemic~~
19 ~~Dissolution~~ Fund shall be separately maintained and
20 not commingled with any other fund of the Corpora-
21 tion.

22 "(2) TREATMENT OF AND ACCOUNTING FOR AS-
23 SETS.—The assets and liabilities of the ~~Systemic~~
24 ~~Dissolution~~ Fund—

25 "(A) shall be the assets and liabilities of
26 the Fund and not of the Corporation; and

1 “(B) shall not be consolidated with the as-
2 sets and liabilities of the Deposit Insurance
3 Fund or the Corporation for accounting, report-
4 ing, or any other purpose.

5 “(d) RIGHTS, POWERS, AND DUTIES.—

6 “(1) IN GENERAL.—The Corporation, in addi-
7 tion to any rights, powers, and duties under this Act
8 or any other law, shall, through the ~~Systemic Dis-~~
9 ~~solution~~ Authority, have all rights, powers, and du-
10 ties necessary to implement and maintain the ~~Sys-~~
11 ~~temic Dissolution~~ Fund in accordance with title II of
12 the Restoring American Financial Stability Act of
13 2010.

14 “(2) POWERS AS RECEIVER FOR COVERED FI-
15 NANCIAL COMPANY.—When acting as receiver with
16 respect to any covered financial company, as defined
17 in title II of the Restoring American Financial Sta-
18 bility Act of 2010, the Corporation, through the ~~Sys-~~
19 ~~temic Dissolution~~ Authority, shall have all rights,
20 powers, and duties that the Corporation has as re-
21 ceiver under such subtitle.

22 “(3) SPECIFIC AND INCIDENTAL POWERS.—The
23 Corporation, through the ~~Systemic Dissolution~~ Au-
24 thority, or any duly authorized officer or agent of
25 the Authority, may exercise all powers specifically

*Orderly
Liquidation*

1 granted by the provisions of this Act and title II of
2 the Restoring American Financial Stability Act of
3 2010 and such incidental powers as shall be nec-
4 essary to carry out the powers so granted and ac-
5 complish the purposes of title II of the Restoring
6 American Financial Stability Act of 2010.

7 “(e) STAFF AND RESOURCES.—

8 “(1) IN GENERAL.—The Corporation shall as-
9 sign such staff, and provide such administrative and
10 other support services to the ~~Systemic Dissolution~~
11 Authority as is necessary to fulfill the statutory re-
12 sponsibilities of the Authority.

13 “(2) ADMINISTRATIVE EXPENSES.—The cost
14 of all personnel, services, and resources provided on
15 behalf of the ~~Systemic Dissolution~~ Authority shall be
16 paid from the ~~Systemic Dissolution~~ Fund.”

*Orderly
Liquidation*

Item 5

*Insert on House offer
regarding judicial
process*

*Replace ix ante
judicial review
with post
judicial review*

AMENDMENT TO THE HOUSE PROPOSED

AMENDMENTS TO TITLE II

OFFERED BY Mr. Watt

Insert at the appropriate place in the proposal the following new instructions:

Page 129, strike lines 14 through 16 (and redesignate subsequent paragraphs accordingly).

Page 133, strike line 21 and all that follows through page 140, line 25, and insert the following (and redesignate subsequent subsections accordingly):

**1 SEC. 202. JUDICIAL REVIEW; DURATION OF RECEIVERSHIP;
2 STUDIES.**

3 (a) JUDICIAL REVIEW.—If a receiver is appointed,
4 the covered financial company may, not later than 30 days
5 thereafter, bring an action in the United States district
6 court for the judicial district in which the home office of
7 such covered financial company is located, or in the United
8 States District Court for the District of Columbia, for an
9 order requiring that the receiver be removed, and the court
10 shall, upon the merits, dismiss such action or direct the
11 receiver to be removed. Review of such an action shall be

1 limited to the appointment of a receiver under section
2 203(b).

Page 145, beginning on line 1, strike “shall each monitor the activities of the Court, and each such Office”.

Page 145, line 15, insert “and” after the semicolon.

Page 145, strike lines 16 through 17 (and redesignate the subsequent clause accordingly).

Page 151, beginning on line 19, strike “take action in accordance with section 202(a)(1)(A)” and insert “appoint the Corporation as receiver, and the Corporation shall act in accordance with section 204(b)”.

Page 160, line 7, strike “section 202(a)” and insert “section 203(b)”.

Page 161, line 17, strike “section 202” and insert “section 203(b)”.

Page 173, line 20, strike “section 202” and insert “section 203(b)”.

Page 178, line 15, strike “section 202” and insert “section 203(b)”.

Page 201, line 22, strike “section 202” and insert “section 203(b)”.

Page 269, beginning on line 7, strike “, the filing of the petition pursuant to section 202(a)(1)”.



New amend-
ment
S.L.C

Amend pages 257,
265, +
266 of
base
text
as
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~~rd 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 ~~3rd~~² 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~~²rd 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-