

AMENDMENT NO. _____ Calendar No. _____

Purpose: To improve the bill.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

S. 3217

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. SHELBY (for
himself and Mr. DODD)

Viz:

1 On page 111, line 7, insert “(a) IN GENERAL.—” be-
2 fore “In”.

3 On page 114, line 14, after “(iii)” insert “that is pre-
4 dominantly engaged in activities that the Board of Gov-
5 ernors has determined are financial in nature or incidental

1 thereto for purposes of section 4(k) of the Bank Holding
2 Company Act of 1956 (12 U.S.C. 1843(k))”.

3 On page 114, line 21, after “(12 U.S.C. 2001 et
4 seq.)” insert “, a governmental entity, or a regulated enti-
5 ty, as defined under section 1303 of the Federal Housing
6 Enterprises Financial Safety and Soundness Act of 1992
7 (12 U.S.C. 4502(20))”.

8 On page 115, strike lines 18 through 20, and insert
9 the following:

10 (15) COURT.—The term “Court” means the
11 United States District Court for the District of Co-
12 lumbia.

13 On page 115, between lines 22 and 23, insert the fol-
14 lowing:

15 (b) DEFINITIONAL CRITERIA.—For purpose of the
16 definition of the term “financial company” under sub-
17 section (a)(10), no company shall be deemed to be pre-
18 dominantly engaged in activities that the Board of Gov-
19 ernors has determined are financial in nature or incidental
20 thereto for purposes of section 4(k) of the Bank Holding
21 Company Act of 1956 (12 U.S.C. 1843(k)), if the consoli-
22 dated revenues of such company from such activities con-

1 stitute less than 85 percent of the total consolidated reve-
2 nues of such company, as the Corporation, in consultation
3 with the Secretary, shall establish by regulation. In deter-
4 mining whether a company is a financial company under
5 this title, the consolidated revenues derived from the own-
6 ership or control of a depository institution shall be in-
7 cluded.

8 On page 115, line 23, strike “**ORDERLY LIQUIDA-**
9 **TION AUTHORITY PANEL**” and insert “**JUDICIAL RE-**
10 **VIEW**”.

11 On page 115, strike line 24 and all that follows
12 through page 116, line 16.

13 On page 116, line 17, strike “(b)” and insert “(a)”.

14 On page 116, strike lines 18 through 20, and insert
15 the following:

16 (1) PETITION TO DISTRICT COURT.—

17 (A) DISTRICT COURT REVIEW.—

18 On page 116, strike line 21 and all that follows
19 through page 117, line 4, and insert the following:

1 (i) PETITION TO DISTRICT COURT.—
2 Subsequent to a determination by the Sec-
3 retary under section 203 that a financial
4 company satisfies the criteria in section
5 203(b), the Secretary shall notify the Cor-
6 poration and the covered financial com-
7 pany. If the board of directors (or body
8 performing similar functions) of the cov-
9 ered financial company acquiesces or con-
10 sents to the appointment of the Corpora-
11 tion as a receiver, the Secretary shall ap-
12 point the Corporation as a receiver. If the
13 board of directors (or body performing
14 similar functions) of the covered financial
15 company does not acquiesce or consent to
16 the appointment of the Corporation as re-
17 ceiver, the Secretary shall petition the
18 United States District Court for the Dis-
19 trict of Columbia for an order authorizing
20 the Secretary to appoint the Corporation
21 as a receiver.

22 On page 117, line 9, strike “Panel” and insert
23 “Court”.

1 On page 117, line 13, strike “Panel” and insert
2 “Court”.

3 On page 117, beginning on line 16, strike “, within
4 24 hours of receipt of the petition filed by the Secretary,”.

5 On page 117, line 21, strike “is supported” and all
6 that follows through line 22, and insert “and satisfies the
7 definition of a financial company under section 201(10)
8 is arbitrary and capricious.”.

9 On page 117, line 24, strike “Panel” and insert
10 “Court”.

11 On page 118, line 2, insert “and satisfies the defini-
12 tion of a financial company under section 201(10)” after
13 “danger of default”.

14 On page 118, lines 3 and 4, strike “is supported by
15 substantial evidence” and insert “is not arbitrary and ca-
16 pricious”.

17 On page 118, line 4, strike “Panel” and insert
18 “Court”.

1 On page 118, lines 9 and 10, strike “is not supported
2 by substantial evidence” and insert “is arbitrary and ca-
3 pricious”.

4 On page 118, line 10, strike “Panel” and insert
5 “Court”.

6 On page 118, between lines 16 and 17, insert the fol-
7 lowing:

8 (v) PETITION GRANTED BY OPER-
9 ATION OF LAW.—If the Court does not
10 make a determination within 24 hours of
11 receipt of the petition—

12 (I) the petition shall be granted
13 by operation of law;

14 (II) the Secretary shall appoint
15 the Corporation as receiver; and

16 (III) liquidation under this title
17 shall automatically and without fur-
18 ther notice or action be commenced
19 and the Corporation may immediately
20 take all actions authorized under this
21 title.

1 On page 118, line 18, strike “Panel” and insert
2 “Court”.

3 On page 118, line 23, strike “Panel” and insert
4 “Court”.

5 On page 119, line 1, strike “Panel” and insert
6 “Court”.

7 On page 119, line 12, strike “PANEL” and insert
8 “DISTRICT COURT”.

9 On page 119, line 16, strike “Third Circuit” and in-
10 sert “District of Columbia Circuit”.

11 On page 119, line 17, strike “Panel” and insert
12 “Court”.

13 On page 119, line 23, strike “Panel” and insert
14 “Court”.

15 On page 120, strike lines 16 through 17 and insert
16 “default and satisfies the definition of a financial company
17 under section 201(10) is arbitrary and capricious.”.

1 On page 121, lines 19 and 20, strike “is supported
2 by substantial evidence” and insert “and satisfies the defi-
3 nition of a financial company under section 201(10) is ar-
4 bitrary and capricious”.

5 On page 121, line 21, strike “(c)” and insert “(b)”.

6 On page 121, line 24, strike “Panel” and insert
7 “Court”.

8 On page 122, line 5, strike “subsection (b)(1)” and
9 all that follows through line 9, and insert “subsection
10 (a)(1).”.

11 On page 122, strike lines 14 through 16.

12 On page 122, line 17, strike “(C)” and insert “(A)”.

13 On page 122, line 19, strike “(D)” and insert “(B)”.

14 On page 122, line 21, strike “(E)” and insert “(C)”.

15 On page 122, line 23, strike “(F)” and insert “(D)”.

1 On page 123, line 1, strike “(d)” and insert “(e)”.

2 On page 123, between lines 14 and 15, insert the fol-
3 lowing:

4 (d) TIME LIMIT ON RECEIVERSHIP AUTHORITY.—

5 (1) BASELINE PERIOD.—Any appointment of
6 the Corporation as receiver under this section shall
7 terminate at the end of the 3-year period beginning
8 on the date on which such appointment is made.

9 (2) EXTENSION OF TIME LIMIT.—The time
10 limit established in paragraph (1) may be extended
11 by the Corporation for up to 1 additional year, if the
12 Chairperson of the Corporation determines and cer-
13 tifies in writing to the Committee on Banking,
14 Housing, and Urban Affairs of the Senate and the
15 Committee on Financial Services of the House of
16 Representatives that continuation of the receivership
17 is necessary—

18 (A) to—

19 (i) maximize the net present value re-
20 turn from the sale or other disposition of
21 the assets of the covered financial com-
22 pany; or

23 (ii) minimize the amount of loss real-
24 ized upon the sale or other disposition of

1 the assets of the covered financial com-
2 pany; and

3 (B) to protect the stability of the financial
4 system of the United States.

5 (3) SECOND EXTENSION OF TIME LIMIT.—

6 (A) IN GENERAL.—The time limit under
7 this subsection, as extended under paragraph
8 (2), may be extended for up to 1 additional
9 year, if the Chairperson of the Corporation,
10 with the concurrence of the Secretary, submits
11 the certifications described in paragraph (2).

12 (B) ADDITIONAL REPORT REQUIRED.—Not
13 later than 30 days after the date of commence-
14 ment of the extension under subparagraph (A),
15 the Corporation shall submit a report to the
16 Committee on Banking, Housing, and Urban
17 Affairs of the Senate and the Committee on Fi-
18 nancial Services of the House of Representa-
19 tives describing the need for the extension and
20 the specific plan of the Corporation to conclude
21 the receivership before the end of the second ex-
22 tension.

23 (4) ONGOING LITIGATION.—The time limit
24 under this subsection, as extended under paragraph
25 (3), may be further extended solely for the purpose

1 of completing ongoing litigation in which the Cor-
2 poration as receiver is a party, provided that the ap-
3 pointment of the Corporation as receiver shall termi-
4 nate not later than 90 days after the date of comple-
5 tion of such litigation, if—

6 (A) the Council determines that the Cor-
7 poration used its best efforts to conclude the re-
8 ceivership in accordance with its plan before the
9 end of the time limit described in paragraph
10 (3);

11 (B) the Council determines that the com-
12 pletion of longer-term responsibilities in the
13 form of ongoing litigation justifies the need for
14 an extension; and

15 (C) the Corporation submits a report ap-
16 proved by the Council not later than 30 days
17 after the date of the determinations by the
18 Council under subparagraphs (A) and (B) to
19 the Committee on Banking, Housing, and
20 Urban Affairs of the Senate and the Committee
21 on Financial Services of the House of Rep-
22 resentatives, describing—

23 (i) the ongoing litigation justifying the
24 need for an extension; and

1 (ii) the specific plan of the Corpora-
2 tion to complete the litigation and conclude
3 the receivership.

4 (5) REGULATIONS.—The Corporation may issue
5 regulations governing the termination of receiver-
6 ships under this title.

7 (6) NO LIABILITY.—The Corporation and the
8 Deposit Insurance Fund shall not be liable for unre-
9 solved claims arising from the receivership after the
10 termination of the receivership.

11 On page 123, line 21, strike “Panel” and insert
12 “Court”.

13 On page 124, line 11, strike “Panel” and insert
14 “Court”.

15 On page 126, between lines 9 and 10, insert the fol-
16 lowing:

17 (g) STUDY OF PROMPT CORRECTIVE ACTION IMPLE-
18 MENTATION BY THE APPROPRIATE FEDERAL AGEN-
19 CIES.—

20 (1) STUDY.—The Comptroller General of the
21 United States shall conduct a study regarding the

1 implementation of prompt corrective action by the
2 appropriate Federal banking agencies.

3 (2) ISSUES TO BE STUDIED.—In conducting the
4 study under paragraph (1), the Comptroller General
5 shall evaluate—

6 (A) the effectiveness of implementation of
7 prompt corrective action by the appropriate
8 Federal banking agencies and the resolution of
9 insured depository institutions by the Corpora-
10 tion; and

11 (B) ways to make prompt corrective action
12 a more effective tool to resolve the insured de-
13 pository institutions at the least possible long-
14 term cost to the Deposit Insurance Fund.

15 (3) REPORT TO COUNCIL.—Not later than 1
16 years after the date of enactment of this Act, the
17 Comptroller General shall submit a report to the
18 Council on the results of the study conducted under
19 this subsection.

20 (4) COUNCIL REPORT OF ACTION.—Not later
21 than 6 months after the date of receipt of the report
22 from the Comptroller General under paragraph (3),
23 the Council shall submit a report to the Committee
24 on Banking, Housing, and Urban Affairs of the Sen-
25 ate and the Committee on Financial Services of the

1 House of Representatives on actions taken in re-
2 sponse to the report, including any recommendations
3 made to the Federal primary financial regulatory
4 agencies under section 120.

5 On page 128, line 9, strike “and”.

6 On page 128, line 12, strike the period at the end
7 and insert “; and”.

8 On page 128, between lines 12 and 13, insert the fol-
9 lowing:

10 (G) an evaluation of whether the company
11 satisfies the definition of a financial company
12 under section 201.

13 On page 128, line 16, strike “202(b)(1)(A)” and in-
14 sert “202(a)(1)(A)”.

15 On page 129, line 17, strike “and”.

16 On page 129, line 21, strike the period at the end
17 and insert “; and”.

1 On page 129, between lines 21 and 22, insert the fol-
2 lowing:

3 (7) the company satisfies the definition of a fi-
4 nancial company under section 201.

5 On page 132, strike lines 3 through 17, and insert
6 the following:

7 (A) IN GENERAL.—Not later than 60 days
8 after the date of appointment of the Corpora-
9 tion as receiver for a covered financial company,
10 the Corporation shall file a report with the
11 Committee on Banking, Housing, and Urban
12 Affairs of the Senate and the Committee on Fi-
13 nancial Services of the House of Representa-
14 tives—

15 (i) setting forth information on the fi-
16 nancial condition of the covered financial
17 company as of the date of the appoint-
18 ment, including a description of its assets
19 and liabilities;

20 (ii) describing the plan of, and actions
21 taken by, the Corporation to wind down
22 the covered financial company;

23 (iii) explaining each instance in which
24 the Corporation waived any applicable re-

1 requirements of part 366 of title 12, Code of
2 Federal Regulations (or any successor
3 thereto) with respect to conflicts of interest
4 by any person in the private sector who
5 was retained to provide services to the Cor-
6 poration in connection with such receiver-
7 ship;

8 (iv) describing the reasons for the
9 provision of any funding to the receivership
10 out of the Fund;

11 (v) setting forth the expected costs of
12 the orderly liquidation of the covered fi-
13 nancial company;

14 (vi) setting forth the identity of any
15 claimant that is treated in a manner dif-
16 ferent from other similarly situated claim-
17 ants under subsection (b)(4), (d)(4), or
18 (h)(5)(E), the amount of any additional
19 payment to such claimant under subsection
20 (d)(4), and the reason for any such action;
21 and

22 (vii) which report the Corporation
23 shall publish on an online website main-
24 tained by the Corporation, subject to main-
25 taining appropriate confidentiality.

1 On page 132, between lines 22 and 23, insert the fol-
2 lowing:

3 (C) CONGRESSIONAL TESTIMONY.—The
4 Corporation and the primary financial regu-
5 latory agency, if any, of the financial company
6 for which the Corporation was appointed re-
7 ceiver under this title shall appear before Con-
8 gress, if requested, not later than 30 days after
9 the date on which the Corporation first files the
10 reports required under subparagraph (A).

11 On page 135, line 15, strike “section 202(b)” and
12 insert “section 202(a)”.

13 On page 136, line 9, strike “with the strong presump-
14 tion” and insert “so”.

15 On page 138, line 16, insert after the period the fol-
16 lowing: “All funds provided by the Corporation under this
17 subsection shall have a priority of claims under subpara-
18 graph (A) or (B) of section 210(b)(1), as applicable, in-
19 cluding funds used for—

20 “(1) making loans to, or purchasing any debt
21 obligation of, the covered financial company or any
22 covered subsidiary;

1 “(2) purchasing or guaranteeing against loss
2 the assets of the covered financial company or any
3 covered subsidiary, directly or through an entity es-
4 tablished by the Corporation for such purpose;

5 “(3) assuming or guaranteeing the obligations
6 of the covered financial company or any covered sub-
7 sidiary to 1 or more third parties;

8 “(4) taking a lien on any or all assets of the
9 covered financial company or any covered subsidiary,
10 including a first priority lien on all unencumbered
11 assets of the covered financial company or any cov-
12 ered subsidiary to secure repayment of any trans-
13 actions conducted under this subsection;

14 “(5) selling or transferring all, or any part, of
15 such acquired assets, liabilities, or obligations of the
16 covered financial company or any covered subsidiary;
17 and

18 “(6) making payments pursuant to subsections
19 (b)(4), (d)(4), and (h)(5)(E) of section 210.”.

20 On page 138, line 15, strike “section 210(n)(13)”
21 and insert “section 210(n)(11)”.

22 On page 147, line 3, insert before the period the fol-
23 lowing: “, and address the potential for conflicts of inter-

1 est between or among individual receiverships established
2 under this title or under the Federal Deposit Insurance
3 Act”.

4 On page 187, line 18, strike “(B), and (C)” and in-
5 sert “(B), (C), and (D)”.

6 On page 187, line 20, strike “(D)” and insert “(E)”.

7 On page 192, insert before line 1 the following:

8 (C) Wages, salaries, or commissions, in-
9 cluding vacation, severance, and sick leave pay
10 earned by an individual (other than an indi-
11 vidual described in subparagraph (G)), but only
12 to the extent of \$11,725 for each individual (as
13 indexed for inflation, by regulation of the Cor-
14 poration) earned not later than 180 days before
15 the date of appointment of the Corporation as
16 receiver.

17 (D) Contributions owed to employee ben-
18 efit plans arising from services rendered not
19 later than 180 days before the date of appoint-
20 ment of the Corporation as receiver, to the ex-
21 tent of the number of employees covered by
22 each such plan, multiplied by \$11,725 (as in-

1 dexed for inflation, by regulation of the Cor-
2 poration), less the aggregate amount paid to
3 such employees under subparagraph (C), plus
4 the aggregate amount paid by the receivership
5 on behalf of such employees to any other em-
6 ployee benefit plan.

7 On page 192, line 1, strike “(C)” and insert “(E)”.

8 On page 192, beginning on line 3, strike “(D) or (E)”
9 and insert “(F), (G), or (H)”.

10 On page 192, line 5, strike “(D)” and insert “(F)”.

11 On page 192, between lines 7 and 8, insert the fol-
12 lowing:

13 (G) Any wages, salaries, or commissions
14 including vacation, severance, and sick leave
15 pay earned, owed to senior executives and direc-
16 tors of the covered financial company.

17 On page 192, line 7, strike “subparagraph (E)).” and
18 insert “subparagraph (G) or (H)).”.

19 On page 192, line 8, strike “(E)” and insert “(H)”.

1 amount of any claim that is proven to the
2 satisfaction of the Corporation.

3 (ii) NO OBLIGATION.—Notwith-
4 standing any other provision of Federal or
5 State law, or the Constitution of any State,
6 the Corporation shall not be obligated, as
7 a result of having made any payment
8 under subparagraph (A) or credited any
9 amount described in subparagraph (A) to
10 or with respect to, or for the account, of
11 any claimant or category of claimants, to
12 make payments to any other claimant or
13 category of claimants.

14 On page 254, line 24, strike “(13)” and insert
15 “(11)”.

16 On page 260, line 4, strike “subsection
17 (o)(1)(E)(ii)” and insert “subsection (o)(1)(D)(ii)”.

18 On page 263, line 16, strike “(13)” and insert
19 “(11)”.

20 On page 278, line 5, strike “(9)” and insert “(6)”.

1 On page 278, line 10, strike “(9)” and insert “(6)”.

2 On page 278, strike line 18 and all that follows
3 through page 279, line 20.

4 On page 279, line 21, strike “(8)” and insert “(4)”.

5 On page 280, line 5, strike “(9)” and insert “(5)”.

6 On page 281, line 6, strike the period and insert the
7 following: “, plus an interest rate surcharge to be deter-
8 mined by the Secretary, which shall be greater than the
9 difference between—

10 “(i) the current average rate on an
11 index of corporate obligations of com-
12 parable maturity; and

13 “(ii) the current average rate on out-
14 standing marketable obligations of the
15 United States of comparable maturity.”.

16 On page 281, strike line 20 and all that follows
17 through page 282, line 8, and insert the following:

18 (6) MAXIMUM OBLIGATION LIMITATION.—The
19 Corporation may not, in connection with the orderly
20 liquidation of a covered financial company, issue or

1 incur any obligation, if, after issuing or incurring
2 the obligation, the aggregate amount of such obliga-
3 tions outstanding under this subsection for each cov-
4 ered financial company would exceed—

5 (A) an amount that is equal to 10 percent
6 of the total consolidated assets of the covered
7 financial company, based on the most recent fi-
8 nancial statement available, during the 30-day
9 period immediately following the date of ap-
10 pointment of the Corporation as receiver (or a
11 shorter time period if the Corporation has cal-
12 culated the amount described under subpara-
13 graph (B)); and

14 (B) the amount that is equal to 90 percent
15 of the fair value of the total consolidated assets
16 of each covered financial company that are
17 available for repayment, after the time period
18 described in subparagraph (A).

19 On page 282, line 9, strike “(11)” and insert “(7)”.

20 On page 282, strike lines 14 through 19.

21 On page 282, line 20, strike “(13)” and insert “(8)”.

1 On page 283, strike lines 5 through 14 and insert
2 the following:

3 (i) the authorities of the Corporation
4 contained in this title shall not be used to
5 assist the Deposit Insurance Fund or to
6 assist any financial company under appli-
7 cable law other than this Act;

8 (ii) the authorities of the Corporation
9 relating to the Deposit Insurance Fund, or
10 any other responsibilities of the Corpora-
11 tion under applicable law other than this
12 title, shall not be used to assist a covered
13 financial company pursuant to this title;
14 and

15 (iii) the Deposit Insurance Fund may
16 not be used in any manner to otherwise
17 circumvent the purposes of this title.

18 On page 283, line 24, strike “(14)” and insert “(9)”.

19 On page 284, line 6, insert “, including taking any
20 actions specified” before “under 204(d)”.

21 On page 284, line 7, insert before the period “, and
22 payments to third parties”.

1 On page 284, between lines 10 and 11, insert the fol-
2 lowing:

3 (10) IMPLEMENTATION EXPENSES.—

4 (A) IN GENERAL.—Reasonable implemen-
5 tation expenses of the Corporation incurred
6 after the date of enactment of this Act shall be
7 treated as expenses of the Council.

8 (B) REQUESTS FOR REIMBURSEMENT.—

9 The Corporation shall periodically submit a re-
10 quest for reimbursement for implementation ex-
11 penses to the Chairperson of the Council, who
12 shall arrange for prompt reimbursement to the
13 Corporation of reasonable implementation ex-
14 penses.

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

17 (i) means costs incurred by the Cor-
18 poration beginning on the date of enact-
19 ment of this Act, as part of its efforts to
20 implement this title that do not relate to a
21 particular covered financial company; and

22 (ii) includes the costs incurred in con-
23 nection with the development of policies,
24 procedures, rules, and regulations and

1 other planning activities of the Corporation
2 consistent with carrying out this title.

3 On page 284, strike line 13 and all that follows
4 through page 285, line 2.

5 On page 285, line 3, strike “(B)” and insert “(A)”.

6 On page 285, line 10, strike “(C)” and insert “(B)”.

7 On page 285, line 10, strike “ADDITIONAL”.

8 On page 285, line 13, strike “(E)” and insert “(D)”.

9 On page 285, strike lines 14 through 23.

10 On page 285, line 24, strike “(iii)”.

11 On page 285, line 21, strike “during the initial cap-
12 italization period”.

13 On page 286, strike line 11 and all that follows
14 through page 287, line 2, and insert the following:

1 (D) APPLICATION OF ASSESSMENTS.—To
2 meet the requirements of subparagraph (C), the
3 Corporation shall—

4 (i) impose assessments, as soon as
5 practicable, on any claimant that received
6 additional payments or amounts from the
7 Corporation pursuant to subsection (b)(4),
8 (d)(4), or (h)(5)(E), except for payments
9 or amounts necessary to initiate and con-
10 tinue operations essential to implementa-
11 tion of the receivership or any bridge fi-
12 nancial company, to recover on a cumu-
13 lative basis, the entire difference be-
14 tween—

15 (I) the aggregate value the claim-
16 ant received from the Corporation on
17 a claim pursuant to this title (includ-
18 ing pursuant to subsection (b)(4),
19 (d)(4), and (h)(5)(E)), as of the date
20 on which such value was received; and

21 (II) the value the claimant was
22 entitled to receive from the Corpora-
23 tion on such claim solely from the
24 proceeds of the liquidation of the cov-

1 ered financial company under this
2 title; and

3 (ii) if the amounts to be recovered on
4 a cumulative basis under clause (i) are in-
5 sufficient to meet the requirements of sub-
6 paragraph (C), after taking into account
7 the considerations set forth in paragraph
8 (4), impose assessments on—

9 (I) eligible financial companies;
10 and

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

15 (E) PROVISION OF FINANCING.—Payments
16 or amounts necessary to initiate and continue
17 operations essential to implementation of the
18 receivership or any bridge financial company
19 described in subparagraph (E)(i) shall not in-
20 clude the provision of financing, as defined by
21 rule of the Corporation, to third parties.

22 On page 287, strike lines 3 through 10.

1 On page 289, strike line 25, and insert “the Corpora-
2 tion, in consultation with the Secretary, deems appro-
3 priate.”.

4 On page 290, beginning on line 9, strike “, in con-
5 sultation with the Secretary and the Council,”.

6 On page 290, line 11, insert after the period the fol-
7 lowing: “The Corporation shall consult with the Secretary
8 in the development and finalization of such regulations.”.

9 On page 295, between lines 19 and 20, insert the fol-
10 lowing:

11 (s) RECOUPMENT OF COMPENSATION FROM SENIOR
12 EXECUTIVES AND DIRECTORS.—

13 (1) IN GENERAL.—The Corporation, as receiver
14 of a covered financial company, may recover from
15 any current or former senior executive or director
16 substantially responsible for the failed condition of
17 the covered financial company any compensation re-
18 ceived during the 2-year period preceding the date
19 on which the Corporation was appointed as the re-
20 ceiver of the covered financial company, except that,
21 in the case of fraud, no time limit shall apply.

1 (2) COST CONSIDERATIONS.—In seeking to re-
2 cover any such compensation, the Corporation shall
3 weigh the financial and deterrent benefits of such re-
4 covery against the cost of executing the recovery.

5 (3) RULEMAKING.—The Corporation shall pro-
6 mulgate regulations to implement the requirements
7 of this subsection, including defining the term “com-
8 pensation” to mean any financial remuneration, in-
9 cluding salary, bonuses, incentives, benefits, sever-
10 ance, deferred compensation, or golden parachute
11 benefits, and any profits realized from the sale of
12 the securities of the covered financial company.

13 On page 296, between lines 15 and 16, insert the fol-
14 lowing:

15 (d) FDIC INSPECTOR GENERAL REVIEWS.—

16 (1) SCOPE.—The Inspector General of the Cor-
17 poration shall conduct, supervise, and coordinate au-
18 dits and investigations of the liquidation of any cov-
19 ered financial company by the Corporation as re-
20 ceiver under this title, including collecting and sum-
21 marizing—

22 (A) a description of actions taken by the
23 Corporation as receiver;

1 (B) a description of any material sales,
2 transfers, mergers, obligations, purchases, and
3 other material transactions entered into by the
4 Corporation;

5 (C) an evaluation of the adequacy of the
6 policies and procedures of the Corporation
7 under section 203(d) and orderly liquidation
8 plan under section 210(n)(14);

9 (D) an evaluation of the utilization by the
10 Corporation of the private sector in carrying
11 out its functions, including the adequacy of any
12 conflict-of-interest reviews; and

13 (E) an evaluation of the overall perform-
14 ance of the Corporation in liquidating the cov-
15 ered financial company, including administra-
16 tive costs, timeliness of liquidation process, and
17 impact on the financial system.

18 (2) FREQUENCY.—Not later than 6 months
19 after the date of appointment of the Corporation as
20 receiver under this title and every 6 months there-
21 after, the Inspector General of the Corporation shall
22 conduct the audit and investigation described in
23 paragraph (1).

24 (3) REPORTS AND TESTIMONY.—The Inspector
25 General of the Corporation shall include in the semi-

1 annual reports required by section 5(a) of the In-
2 spector General Act of 1978 (5 U.S.C. App.), a sum-
3 mary of the findings and evaluations under para-
4 graph (1), and shall appear before the appropriate
5 committees of Congress, if requested, to present
6 each such report.

7 (4) FUNDING.—

8 (A) INITIAL FUNDING.—The expenses of
9 the Inspector General of the Corporation in car-
10 rying out this subsection shall be considered ad-
11 ministrative expenses of the receivership.

12 (B) ADDITIONAL FUNDING.—If the max-
13 imum amount available to the Corporation as
14 receiver under this title is insufficient to enable
15 the Inspector General of the Corporation to
16 carry out the duties under this subsection, the
17 Corporation shall pay such additional amounts
18 from assessments imposed under section 210.

19 (5) TERMINATION OF RESPONSIBILITIES.—The
20 duties and responsibilities of the Inspector General
21 of the Corporation under this subsection shall termi-
22 nate 1 year after the date of termination of the re-
23 ceivership under this title.

24 (e) TREASURY INSPECTOR GENERAL REVIEWS.—

1 (1) SCOPE.—The Inspector General of the De-
2 partment of the Treasury shall conduct, supervise,
3 and coordinate audits and investigations of actions
4 taken by the Secretary related to the liquidation of
5 any covered financial company under this title, in-
6 cluding collecting and summarizing—

7 (A) a description of actions taken by the
8 Secretary under this title;

9 (B) an analysis of the approval by the Sec-
10 retary of the policies and procedures of the Cor-
11 poration under section 203 and acceptance of
12 the orderly liquidation plan of the Corporation
13 under section 210; and

14 (C) an assessment of the terms and condi-
15 tions underlying the purchase by the Secretary
16 of obligations of the Corporation under section
17 210.

18 (2) FREQUENCY.—Not later than 6 months
19 after the date of appointment of the Corporation as
20 receiver under this title and every 6 months there-
21 after, the Inspector General of the Department of
22 the Treasury shall conduct the audit and investiga-
23 tion described in paragraph (1).

24 (3) REPORTS AND TESTIMONY.—The Inspector
25 General of the Department of the Treasury shall in-

1 clude in the semiannual reports required by section
2 5(a) of the Inspector General Act of 1978 (5 U.S.C.
3 App.), a summary of the findings and assessments
4 under paragraph (1), and shall appear before the
5 appropriate committees of Congress, if requested, to
6 present each such report.

7 (4) TERMINATION OF RESPONSIBILITIES.—The
8 duties and responsibilities of the Inspector General
9 of the Department of the Treasury under this sub-
10 section shall terminate 1 year after the date on
11 which the obligations purchased by the Secretary
12 from the Corporation under section 210 are fully re-
13 deemed.

14 (f) PRIMARY FINANCIAL REGULATORY AGENCY IN-
15 SPECTOR GENERAL REVIEWS.—

16 (1) SCOPE.—Upon the appointment of the Cor-
17 poration as receiver for a covered financial company
18 supervised by a Federal primary financial regulatory
19 agency or the Board of Governors under section
20 165, the Inspector General of the agency or the
21 Board of Governors shall make a written report re-
22 viewing the supervision by the agency or the Board
23 of Governors of the covered financial company,
24 which shall—

1 (A) evaluate the effectiveness of the agency
2 or the Board of Governors in carrying out its
3 supervisory responsibilities with respect to the
4 covered financial company;

5 (B) identify any acts or omissions on the
6 part of agency or Board of Governors officials
7 that contributed to the covered financial com-
8 pany being in default or in danger of default;

9 (C) identify any actions that could have
10 been taken by the agency or the Board of Gov-
11 ernors that would have prevented the company
12 from being in default or in danger of default;
13 and

14 (D) recommend appropriate administrative
15 or legislative action.

16 (2) REPORTS AND TESTIMONY.—Not later than
17 1 year after the date of appointment of the Corpora-
18 tion as receiver under this title, the Inspector Gen-
19 eral of the Federal primary financial regulatory
20 agency or the Board of Governors shall provide the
21 report required by paragraph (1) to such agency or
22 the Board of Governors, and along with such agency
23 or the Board of Governors, as applicable, shall ap-
24 pear before the appropriate committees of Congress,
25 if requested, to present the report required by para-

1 graph (1). Not later than 90 days after the date of
2 receipt of the report required by paragraph (1), such
3 agency or the Board of Governors, as applicable,
4 shall provide a written report to Congress describing
5 any actions taken in response to the recommenda-
6 tions in the report, and if no such actions were
7 taken, describing the reasons why no actions were
8 taken.

9 **SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVEN-**
10 **TION OF CONFLICTS OF INTEREST.**

11 (a) **NO OTHER FUNDING.**—Funds for the orderly liq-
12 uidation of any covered financial company under this title
13 shall only be provided as specified under this title.

14 (b) **LIMIT ON GOVERNMENTAL ACTIONS.**—No gov-
15 ernmental entity may take any action to circumvent the
16 purposes of this title.

17 (c) **CONFLICT OF INTEREST.**—In the event that the
18 Corporation is appointed receiver for more than 1 covered
19 financial company or is appointed receiver for a covered
20 financial company and receiver for any insured depository
21 institution that is an affiliate of such covered financial
22 company, the Corporation shall take appropriate action,
23 as necessary to avoid any conflicts of interest that may
24 arise in connection with multiple receiverships.

1 **SEC. 213. BAN ON SENIOR EXECUTIVES AND DIRECTORS.**

2 (a) PROHIBITION AUTHORITY.—The Board of Gov-
3 ernors or, if the covered financial company was not super-
4 vised by the Board of Governors, the Corporation, may
5 exercise the authority provided by this section.

6 (b) AUTHORITY TO ISSUE ORDER.—The appropriate
7 agency described in subsection (a) may take any action
8 authorized by subsection (c), if the agency determines
9 that—

10 (1) a senior executive or a director of the cov-
11 ered financial company, prior to the appointment of
12 the Corporation as receiver, has, directly or indi-
13 rectly—

14 (A) violated—

15 (i) any law or regulation;

16 (ii) any cease-and-desist order which
17 has become final;

18 (iii) any condition imposed in writing
19 by a Federal agency in connection with
20 any action on any application, notice, or
21 request by such company or senior execu-
22 tive; or

23 (iv) any written agreement between
24 such company and such agency;

1 (B) engaged or participated in any unsafe
2 or unsound practice in connection with any fi-
3 nancial company; or

4 (C) committed or engaged in any act,
5 omission, or practice which constitutes a breach
6 of the fiduciary duty of such senior executive or
7 director;

8 (2) by reason of the violation, practice, or
9 breach described in any clause of paragraph (1),
10 such senior executive or director has received finan-
11 cial gain or other benefit by reason of such violation,
12 practice, or breach and such violation, practice, or
13 breach contributed to the failure of the company;
14 and

15 (3) such violation, practice, or breach—

16 (A) involves personal dishonesty on the
17 part of such senior executive or director; or

18 (B) demonstrates willful or continuing dis-
19 regard by such senior executive or director for
20 the safety or soundness of such company.

21 (c) AUTHORIZED ACTIONS.—

22 (1) IN GENERAL.—The appropriate agency for
23 a financial company, as described in subsection (a),
24 may serve upon a senior executive or director de-
25 scribed in subsection (b) a written notice of the in-

1 tention of the agency to prohibit any further partici-
2 pation by such person, in any manner, in the con-
3 duct of the affairs of any financial company for a
4 period of time determined by the appropriate agency
5 to be commensurate with such violation, practice, or
6 breach, provided such period shall be not less than
7 2 years.

8 (2) PROCEDURES.—The due process require-
9 ments and other procedures under section 8(e) of
10 the Federal Deposit Insurance Act shall apply to ac-
11 tions under this section as if the covered financial
12 company were an insured depository institution and
13 the senior executive or director were an institution-
14 affiliated party, as those terms are defined in that
15 Act.

16 (d) REGULATIONS.—The Corporation and the Board
17 of Governors, in consultation with the Council, shall joint-
18 ly prescribe rules or regulations to administer and carry
19 out this section, including rules, regulations, or guidelines
20 to further define the term senior executive for the pur-
21 poses of this section.

22 On page 1522, line 11, strike “The third” and insert
23 the following:

24 “(a) FEDERAL RESERVE ACT.—The third”.

1 On page 1528, line 3, strike the end quotation marks
2 and the final period and insert the following:

3 “(E) If an entity to which a Federal re-
4 serve bank has provided a loan under this para-
5 graph becomes a covered financial company, as
6 defined in section 203 of the Restoring Amer-
7 ican Financial Stability Act of 2010, at any
8 time while such loan is outstanding, and the
9 Federal reserve bank incurs a realized net loss
10 on the loan, then the Federal reserve bank shall
11 have a claim equal to the amount of the net re-
12 alized loss against the covered entity, with the
13 same priority as an obligation to the Secretary
14 of the Treasury under sections 210(n) and
15 210(o) of the Restoring American Financial
16 Stability Act of 2010.”.

17 (b) CONFORMING AMENDMENT.—Section 507(a)(2)
18 of title 11, United States Code, is amended by inserting
19 “claims of any Federal reserve bank related to loans made
20 through programs or facilities authorized under the third
21 undesignated paragraph of the Federal Reserve Act (12
22 U.S.C. 343),” after “this title,”.

23 On page 1523, line 17, strike “of sufficient quality”
24 and insert “sufficient”.

1 On page 1523, line 18, insert after the period the
2 following: “The policies and procedures established by the
3 Board shall require that a Federal reserve bank assign,
4 consistent with sound risk management practices and to
5 ensure protection for the taxpayer, a lendable value to all
6 collateral for a loan executed by a Federal reserve bank
7 under this paragraph in determining whether the loan is
8 secured satisfactorily for purposes of this paragraph.”.

9 On page 1523, line 19, strike “(ii)” and insert the
10 following:

11 “(ii) The Board shall establish procedures
12 to prohibit borrowing from programs and facili-
13 ties by borrowers that are insolvent. Such pro-
14 cedures may include a certification from the
15 chief executive officer (or other authorized offi-
16 cer) of the borrower, at the time the borrower
17 initially borrows under the program or facility
18 (with a duty by the borrower to update the cer-
19 tification if the information in the certification
20 materially changes), that the borrower is not in-
21 solvent. A borrower shall be considered insol-
22 vent for purposes of this subparagraph, if the
23 borrower is in bankruptcy, resolution under title
24 II of the Restoring American Financial Sta-

1 “(i) the identity of the participants in
2 an emergency lending program or facility
3 commenced under this paragraph;

4 “(ii) the amounts borrowed by each
5 participant in any such program or facility;

6 “(iii) identifying details concerning
7 the assets or collateral held by, under, or
8 in connection with such a program or facil-
9 ity,

10 shall be kept confidential, upon the written re-
11 quest of the Chairman of the Board, in which
12 case such information shall be made available
13 only to the Chairpersons and Ranking Members
14 of the Committees described in subparagraph
15 (C).”.

16 On page 1537, line 23, insert before the period the
17 following: “and a request for approval of such plan”.

18 On page 1537, line 23, strike “Upon” and all that
19 follows through page 1538, line 6, and insert the following:
20 “The Corporation shall exercise the authority under this
21 section to issue guarantees up to that specified maximum
22 amount upon passage of the joint resolution of approval,

1 as provided in subsection (d). Absent such approval, the
2 Corporation shall issue no such guarantees.”.

3

4 On page 1538, line 16, strike “Upon” and all that
5 follows through page 1547, line 6 and insert the following:
6 “The Corporation shall exercise the authority under this
7 section to issue guarantees up to that specified maximum
8 amount upon passage of the joint resolution of approval,
9 as provided in subsection (d). Absent such approval, the
10 Corporation shall issue no such guarantees.

11 “(d) RESOLUTION OF APPROVAL.—

12 “(1) ADDITIONAL DEBT GUARANTEE AUTHOR-
13 ITY.—A request by the President under this section
14 shall be considered granted by Congress upon adop-
15 tion of a joint resolution approving such request.
16 Such joint resolution shall be considered in the Sen-
17 ate under expedited procedures.

18 “(2) FAST TRACK CONSIDERATION IN SEN-
19 ATE.—

20 “(A) RECONVENING.—Upon receipt of a
21 request under subsection (c), if the Senate has
22 adjourned or recessed for more than 2 days, the
23 majority leader of the Senate, after consultation
24 with the minority leader of the Senate, shall no-

1 tify the Members of the Senate that, pursuant
2 to this section, the Senate shall convene not
3 later than the second calendar day after receipt
4 of such message.

5 “(B) PLACEMENT ON CALENDAR.—Upon
6 introduction in the Senate, the joint resolution
7 shall be placed immediately on the calendar.

8 “(C) FLOOR CONSIDERATION.—

9 “(i) IN GENERAL.—Notwithstanding
10 Rule XXII of the Standing Rules of the
11 Senate, it is in order at any time during
12 the period beginning on the 4th day after
13 the date on which Congress receives a re-
14 quest under subsection (e), and ending on
15 the 7th day after that date (even though a
16 previous motion to the same effect has
17 been disagreed to) to move to proceed to
18 the consideration of the joint resolution,
19 and all points of order against the joint
20 resolution (and against consideration of
21 the joint resolution) are waived. The mo-
22 tion to proceed is not debatable. The mo-
23 tion is not subject to a motion to postpone.
24 A motion to reconsider the vote by which
25 the motion is agreed to or disagreed to

1 shall not be in order. If a motion to pro-
2 ceed to the consideration of the resolution
3 is agreed to, the joint resolution shall re-
4 main the unfinished business until dis-
5 posed of.

6 “(ii) DEBATE.—Debate on the joint
7 resolution, and on all debatable motions
8 and appeals in connection therewith, shall
9 be limited to not more than 10 hours,
10 which shall be divided equally between the
11 majority and minority leaders or their des-
12 ignees. A motion further to limit debate is
13 in order and not debatable. An amendment
14 to, or a motion to postpone, or a motion to
15 proceed to the consideration of other busi-
16 ness, or a motion to recommit the joint
17 resolution is not in order.

18 “(iii) VOTE ON PASSAGE.—The vote
19 on passage shall occur immediately fol-
20 lowing the conclusion of the debate on the
21 joint resolution, and a single quorum call
22 at the conclusion of the debate if requested
23 in accordance with the rules of the Senate.

24 “(iv) RULINGS OF THE CHAIR ON
25 PROCEDURE.—Appeals from the decisions

1 of the Chair relating to the application of
2 the rules of the Senate, as the case may
3 be, to the procedure relating to a joint res-
4 olution shall be decided without debate.

5 “(3) RULES.—

6 “(A) COORDINATION WITH ACTION BY
7 HOUSE OF REPRESENTATIVES.—If, before the
8 passage by the Senate of a joint resolution of
9 the Senate, the Senate receives a joint resolu-
10 tion, from the House of Representatives, then
11 the following procedures shall apply:

12 “(i) The joint resolution of the House
13 of Representatives shall not be referred to
14 a committee.

15 “(ii) With respect to a joint resolution
16 of the Senate—

17 “(I) the procedure in the Senate
18 shall be the same as if no joint resolu-
19 tion had been received from the other
20 House; but

21 “(II) the vote on passage shall be
22 on the joint resolution of the House of
23 Representatives.

24 “(B) TREATMENT OF JOINT RESOLUTION
25 OF HOUSE OF REPRESENTATIVES.—If the Sen-

1 ate fails to introduce or consider a joint resolu-
2 tion under this section, the joint resolution of
3 the House of Representatives shall be entitled
4 to expedited floor procedures under this sub-
5 section.

6 “(C) TREATMENT OF COMPANION MEAS-
7 URES.—If, following passage of the joint resolu-
8 tion in the Senate, the Senate then receives the
9 companion measure from the House of Rep-
10 resentatives, the companion measure shall not
11 be debatable.

12 “(D) RULES OF THE SENATE.—This sub-
13 section is enacted by Congress—

14 “(i) as an exercise of the rulemaking
15 power of the Senate, and as such it is
16 deemed a part of the rules of the Senate,
17 but applicable only with respect to the pro-
18 cedure to be followed in the Senate in the
19 case of a joint resolution, and it supersedes
20 other rules, only to the extent that it is in-
21 consistent with such rules; and

22 “(ii) with full recognition of the con-
23 stitutional right of the Senate to change
24 the rules (so far as relating to the proce-
25 dure of the Senate) at any time, in the

1 same manner, and to the same extent as in
2 the case of any other rule of the Senate.

3 “(4) DEFINITION.—As used in this subsection,
4 the term ‘joint resolution’ means only a joint resolu-
5 tion—

6 “(A) that is introduced not later than 3
7 calendar days after the date on which the re-
8 quest referred to in subsection (c) is received by
9 Congress;

10 “(B) that does not have a preamble;

11 “(C) the title of which is as follows: ‘Joint
12 resolution relating to the approval of a plan to
13 guarantee obligations under section 1155 of the
14 Restoring American Financial Stability Act of
15 2010’; and

16 “(D) the matter after the resolving clause
17 of which is as follows: ‘That Congress approves
18 the obligation of any amount described in sec-
19 tion 1155(c) of the Restoring American Finan-
20 cial Stability Act of 2010.’”.

21 On page 1550, strike lines 1 through 12, and insert
22 the following:

23 (3) LIQUIDITY EVENT.—The term “liquidity
24 event” means—

1 (A) an exceptional and broad reduction in
2 the general ability of financial market partici-
3 pants—

4 (i) to sell financial assets without an
5 unusual and significant discount; or

6 (ii) to borrow using financial assets as
7 collateral without an unusual and signifi-
8 cant increase in margin; or

9 (B) an unusual and significant reduction
10 in the ability of financial market participants to
11 obtain unsecured credit.

12 On page 1550, strike line 24 and all that follows
13 through page 1551, line 3, and insert the following:

14 (b) FEDERAL DEPOSIT INSURANCE ACT.—Section
15 13(c)(4)(G) of the Federal Deposit Insurance Act (12
16 U.S.C. 1823(c)(4)(G)) is amended—

17 (1) in clause (i)—

18 (A) in subclause (I), by inserting “for
19 which the Corporation has been appointed re-
20 ceiver” before “would have serious”; and

21 (B) in the undesignated matter following
22 subclause (II), by inserting “for the purpose of
23 winding up the insured depository institution
24 for which the Corporation has been appointed

1 receiver” after “provide assistance under this
2 section”; and

3 (2) in clause (v)(I), by striking “The” and in-
4 sserting “Not later than 3 days after making a deter-
5 mination under clause (i), the”.