

SA 3827. Mr. SHELBY (for himself and Mr. *Dodd*) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. *Reid* (for Mr. *Dodd* (for himself and Mrs. *Lincoln*)) to the bill 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; as follows:

On page 111, line 7, insert "(a) *In General.*—" before "In".

On page 114, line 14, after "(iii)" insert "that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k))".

On page 114, line 21, after "(12 U.S.C. 2001 et seq.)" insert ", a governmental entity, or a regulated entity, as defined under section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20))".

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

(15) **COURT.**--The term "Court" means the United States District Court for the District of Columbia.

On page 115, between lines 22 and 23, insert the following:

(b) *Definitional Criteria.*--For purpose of the definition of the term "financial company" under subsection (a)(10), no company shall be deemed to be predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)), if the consolidated revenues of such company from such activities constitute less than 85 percent of the total consolidated revenues of such company, as the Corporation, in consultation with the Secretary, shall establish by regulation. In determining whether a company is a financial company under this title, the consolidated revenues derived from the ownership or control of a depository institution shall be included.

On page 115, line 23, strike "

ORDERLY LIQUIDATION AUTHORITY PANEL" and insert "JUDICIAL REVIEW".

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

On page 116, line 17, strike "(b)" and insert "(a)".

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

(1) **PETITION TO DISTRICT COURT.**--

(A) DISTRICT COURT REVIEW.--

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

(i) **PETITION TO DISTRICT COURT.**--Subsequent to a determination by the Secretary under section 203 that a financial company satisfies the criteria in section 203(b), the Secretary shall notify the Corporation and the covered financial company. If the board of directors (or body performing similar functions) of the covered financial company acquiesces or consents to the appointment of the Corporation as a receiver, the Secretary shall appoint the Corporation as a receiver. If the board of directors (or body performing similar functions) of the covered financial company does not acquiesce or consent to the appointment of the Corporation as receiver, the Secretary shall petition the United States District Court for the District of Columbia for an order authorizing the Secretary to appoint the Corporation as a receiver.

On page 117, line 9, strike "Panel" and insert "Court".

On page 117, line 13, strike "Panel" and insert "Court".

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

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

On page 117, line 24, strike "Panel" and insert "Court".

On page 118, line 2, insert "and satisfies the definition of a financial company under section 201(10)" after "danger of default".

On page 118, lines 3 and 4, strike "is supported by substantial evidence" and insert "is not arbitrary and capricious".

On page 118, line 4, strike "Panel" and insert "Court".

On page 118, lines 9 and 10, strike "is not supported by substantial evidence" and insert "is arbitrary and capricious".

On page 118, line 10, strike "Panel" and insert "Court".

On page 118, between lines 16 and 17, insert the following:

(v) **PETITION GRANTED BY OPERATION OF LAW.**--If the Court does not make a determination within 24 hours of receipt of the petition--

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

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

(III) liquidation under this title shall automatically and without further notice or action be commenced and the Corporation may immediately take all actions authorized under this title.

On page 118, line 18, strike ``Panel" and insert ``Court".

On page 118, line 23, strike ``Panel" and insert ``Court".

On page 119, line 1, strike ``Panel" and insert ``Court".

On page 119, line 12, strike ``**PANEL**" and insert ``**DISTRICT COURT**".

On page 119, line 16, strike ``Third Circuit" and insert ``District of Columbia Circuit".

On page 119, line 17, strike ``Panel" and insert ``Court".

On page 119, line 23, strike ``Panel" and insert ``Court".

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

On page 121, lines 19 and 20, strike ``is supported by substantial evidence" and insert ``and satisfies the definition of a financial company under section 201(10) is arbitrary and capricious".

On page 121, line 21, strike ``(c)" and insert ``(b)".

On page 121, line 24, strike ``Panel" and insert ``Court".

On page 122, line 5, strike ``subsection (b)(1)" and all that follows through line 9, and insert ``subsection (a)(1)".

On page 122, strike lines 14 through 16.

On page 122, line 17, strike ``(C)" and insert ``(A)".

On page 122, line 19, strike ``(D)" and insert ``(B)".

On page 122, line 21, strike ``(E)" and insert ``(C)".

On page 122, line 23, strike ``(F)" and insert ``(D)".

On page 123, line 1, strike ``(d)" and insert ``(c)".

On page 123, between lines 14 and 15, insert the following:

(d) *Time Limit on Receivership Authority.*--

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

(2) **EXTENSION OF TIME LIMIT.**--The time limit established in paragraph (1) may be extended by the Corporation for up to 1 additional year, if the Chairperson of the Corporation determines and certifies in writing to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that continuation of the receivership is necessary--

(A) to--

(i) maximize the net present value return from the sale or other disposition of the assets of the covered financial company; or

(ii) minimize the amount of loss realized upon the sale or other disposition of the assets of the covered financial company; and

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

(3) **SECOND EXTENSION OF TIME LIMIT.**--

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

(B) **ADDITIONAL REPORT REQUIRED.**--Not later than 30 days after the date of commencement of the extension under subparagraph (A), the Corporation shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives describing the need for the extension and the specific plan of the Corporation to conclude the receivership before the end of the second extension.

(4) **ONGOING LITIGATION.**--The time limit under this subsection, as extended under paragraph (3), may be further extended solely for the purpose of completing ongoing litigation in which the Corporation as receiver is a party, provided that the appointment of the Corporation as receiver shall terminate not later than 90 days after the date of completion of such litigation, if--

(A) the Council determines that the Corporation used its best efforts to conclude the receivership in accordance with its plan before the end of the time limit described in paragraph (3);

(B) the Council determines that the completion of longer-term responsibilities in the form of ongoing litigation justifies the need for an extension; and

(C) the Corporation submits a report approved by the Council not later than 30 days after the date of the determinations by the Council under subparagraphs (A) and (B) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, describing--

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

(ii) the specific plan of the Corporation to complete the litigation and conclude the receivership.

[Page: S3224]

(5) **REGULATIONS.**--The Corporation may issue regulations governing the termination of receiverships under this title.

(6) **NO LIABILITY.**--The Corporation and the Deposit Insurance Fund shall not be liable for unresolved claims arising from the receivership after the termination of the receivership.

On page 123, line 21, strike ``Panel" and insert ``Court".

On page 124, line 11, strike ``Panel" and insert ``Court".

On page 126, between lines 9 and 10, insert the following:

(g) *Study of Prompt Corrective Action Implementation by the Appropriate Federal Agencies.*--

(1) **STUDY.**--The Comptroller General of the United States shall conduct a study regarding the implementation of prompt corrective action by the appropriate Federal banking agencies.

(2) **ISSUES TO BE STUDIED.**--In conducting the study under paragraph (1), the Comptroller General shall evaluate--

(A) the effectiveness of implementation of prompt corrective action by the appropriate Federal banking agencies and the resolution of insured depository institutions by the Corporation; and

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

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

(4) **COUNCIL REPORT OF ACTION.**--Not later than 6 months after the date of receipt of the report from the Comptroller General under paragraph (3), the Council shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on actions taken in response to the report, including any recommendations made to the Federal primary financial regulatory agencies under section 120.

On page 128, line 9, strike ``and".

On page 128, line 12, strike the period at the end and insert ``; and".

On page 128, between lines 12 and 13, insert the following:

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

On page 128, line 16, strike ``202(b)(1)(A)" and insert ``202(a)(1)(A)".

On page 129, line 17, strike ``and".

On page 129, line 21, strike the period at the end and insert ``; and".

On page 129, between lines 21 and 22, insert the following:

(7) the company satisfies the definition of a financial company under section 201.

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

(A) **IN GENERAL.**--Not later than 60 days after the date of appointment of the Corporation as receiver for a covered financial company, the Corporation shall file a report with the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives--

(i) setting forth information on the financial condition of the covered financial company as of the date of the appointment, including a description of its assets and liabilities;

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

(iii) explaining each instance in which the Corporation waived any applicable requirements of part 366 of title 12, Code of Federal Regulations (or any successor thereto) with respect to conflicts of interest by any person in the private sector who was retained to provide services to the Corporation in connection with such receivership;

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

(v) setting forth the expected costs of the orderly liquidation of the covered financial company;

(vi) setting forth the identity of any claimant that is treated in a manner different from other similarly situated claimants under subsection (b)(4), (d)(4), or (h)(5)(E), the amount of any additional payment to such claimant under subsection (d)(4), and the reason for any such action; and

(vii) which report the Corporation shall publish on an online website maintained by the Corporation, subject to maintaining appropriate confidentiality.

On page 132, between lines 22 and 23, insert the following:

(C) CONGRESSIONAL TESTIMONY.--The Corporation and the primary financial regulatory agency, if any, of the financial company for which the Corporation was appointed receiver under this title shall appear before Congress, if requested, not later than 30 days after the date on which the Corporation first files the reports required under subparagraph (A).

On page 135, line 15, strike ``section 202(b)" and insert ``section 202(a)".

On page 136, line 9, strike ``with the strong presumption" and insert ``so".

On page 138, line 16, insert after the period the following: ``All funds provided by the Corporation under this subsection shall have a priority of claims under subparagraph (A) or (B) of section 210(b)(1), as applicable, including funds used for--

``(1) making loans to, or purchasing any debt obligation of, the covered financial company or any covered subsidiary;

``(2) purchasing or guaranteeing against loss the assets of the covered financial company or any covered subsidiary, directly or through an entity established by the Corporation for such purpose;

``(3) assuming or guaranteeing the obligations of the covered financial company or any covered subsidiary to 1 or more third parties;

``(4) taking a lien on any or all assets of the covered financial company or any covered subsidiary, including a first priority lien on all unencumbered assets of the covered financial company or any covered subsidiary to secure repayment of any transactions conducted under this subsection;

``(5) selling or transferring all, or any part, of such acquired assets, liabilities, or obligations of the covered financial company or any covered subsidiary; and

``(6) making payments pursuant to subsections (b)(4), (d)(4), and (h)(5)(E) of section 210.".

On page 138, line 15, strike ``section 210(n)(13)" and insert ``section 210(n)(11)".

On page 147, line 3, insert before the period the following: `` , and address the potential for conflicts of interest between or among individual receiverships established under this title or under the Federal Deposit Insurance Act".

On page 187, line 18, strike ``(B), and (C)" and insert ``(B), (C), and (D)".

On page 187, line 20, strike ``(D)" and insert ``(E)".

On page 192, insert before line 1 the following:

(C) Wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual (other than an individual described in subparagraph (G)), but only to the extent of \$11,725 for each individual (as indexed for inflation, by regulation of the Corporation) earned not later than 180 days before the date of appointment of the Corporation as receiver.

(D) Contributions owed to employee benefit plans arising from services rendered not later than 180 days before the date of appointment of the Corporation as receiver, to the extent of the number of employees covered by each such plan, multiplied by \$11,725 (as indexed for inflation, by regulation of the Corporation), less the aggregate amount paid to such employees under subparagraph (C), plus the aggregate amount paid by the receivership on behalf of such employees to any other employee benefit plan.

On page 192, line 1, strike ``(C)" and insert ``(E)".

On page 192, beginning on line 3, strike ``(D) or (E)" and insert ``(F), (G), or (H)".

On page 192, line 5, strike ``(D)" and insert ``(F)".

On page 192, between lines 7 and 8, insert the following:

(G) Any wages, salaries, or commissions including vacation, severance, and sick leave pay earned, owed to senior executives and directors of the covered financial company.

On page 192, line 7, strike ``subparagraph (E))." and insert ``subparagraph (G) or (H)).".

On page 192, line 8, strike ``(E)" and insert ``(H)".

On page 193, line 18, strike ``(ii)" and insert the following:

``(ii) to initiate and continue operations essential to implementation of the receivership or any bridge financial company;

``(iii)".

On page 228, line 17, strike ``5th" and insert ``3rd".

On page 236, line 20, strike ``5th" and insert ``3rd".

On page 237, line 14, strike ``5th" and insert ``3rd".

On page 240, line 8, strike ``section 202(c)(1)" and insert ``section 202(a)(1)".

On page 246, strike line 21 and all the follows through page 247, line 5, and insert the following:

(B) LIMITATIONS.--

(i) **PROHIBITION.**--The Corporation shall not make any payments or credit amounts to any claimant or category of claimants that would result in any claimant receiving more than the face value amount of any claim that is proven to the satisfaction of the Corporation.

(ii) **NO OBLIGATION.**--Notwithstanding any other provision of Federal or State law, or the Constitution of any State, the Corporation shall not be obligated, as a result of having made any payment under subparagraph (A) or credited any amount described in subparagraph (A) to or with respect to, or for the account, of any claimant or category of claimants, to make payments to any other claimant or category of claimants.

On page 254, line 24, strike ``(13)" and insert ``(11)".

On page 260, line 4, strike ``subsection (o)(1)(E)(ii)" and insert ``subsection (o)(1)(D)(ii)".

On page 263, line 16, strike ``(13)" and insert ``(11)".

On page 278, line 5, strike ``(9)" and insert ``(6)".

On page 278, line 10, strike ``(9)" and insert ``(6)".

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

On page 279, line 21, strike ``(8)" and insert ``(4)".

On page 280, line 5, strike ``(9)" and insert ``(5)".

On page 281, line 6, strike the period and insert the following: `` , plus an interest rate surcharge to be determined by the Secretary,

[Page: S3225]

which shall be greater than the difference between--

``(i) the current average rate on an index of corporate obligations of comparable maturity; and

“(ii) the current average rate on outstanding marketable obligations of the United States of comparable maturity.”.

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

(6) MAXIMUM OBLIGATION LIMITATION.--The Corporation may not, in connection with the orderly liquidation of a covered financial company, issue or incur any obligation, if, after issuing or incurring the obligation, the aggregate amount of such obligations outstanding under this subsection for each covered financial company would exceed--

(A) an amount that is equal to 10 percent of the total consolidated assets of the covered financial company, based on the most recent financial statement available, during the 30-day period immediately following the date of appointment of the Corporation as receiver (or a shorter time period if the Corporation has calculated the amount described under subparagraph (B)); and

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

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

On page 282, strike lines 14 through 19.

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

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

(i) the authorities of the Corporation contained in this title shall not be used to assist the Deposit Insurance Fund or to assist any financial company under applicable law other than this Act;

(ii) the authorities of the Corporation relating to the Deposit Insurance Fund, or any other responsibilities of the Corporation under applicable law other than this title, shall not be used to assist a covered financial company pursuant to this title; and

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

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

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

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

On page 284, between lines 10 and 11, insert the following:

(10) IMPLEMENTATION EXPENSES.--

(A) IN GENERAL.--Reasonable implementation expenses of the Corporation incurred after the date of enactment of this Act shall be treated as expenses of the Council.

(B) REQUESTS FOR REIMBURSEMENT.--The Corporation shall periodically submit a request for reimbursement for implementation expenses to the Chairperson of the Council, who shall arrange for prompt reimbursement to the Corporation of reasonable implementation expenses.

(C) DEFINITION.--As used in this paragraph, the term "implementation expenses"--

(i) means costs incurred by the Corporation beginning on the date of enactment of this Act, as part of its efforts to implement this title that do not relate to a particular covered financial company; and

(ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the Corporation consistent with carrying out this title.

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

On page 285, line 3, strike "(B)" and insert "(A)".

On page 285, line 10, strike "(C)" and insert "(B)".

On page 285, line 10, strike "ADDITIONAL".

On page 285, line 13, strike "(E)" and insert "(D)".

On page 285, strike lines 14 through 23.

On page 285, line 24, strike "(iii)".

On page 285, line 21, strike "during the initial capitalization period".

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

(D) APPLICATION OF ASSESSMENTS.--To meet the requirements of subparagraph (C), the Corporation shall--

(i) 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 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.

(E) **PROVISION OF FINANCING.**--Payments or amounts necessary to initiate and continue operations essential to implementation of the receivership or any bridge financial company described in subparagraph (E)(i) shall not include the provision of financing, as defined by rule of the Corporation, to third parties.

On page 287, strike lines 3 through 10.

On page 289, strike line 25, and insert ``the Corporation, in consultation with the Secretary, deems appropriate.".

On page 290, beginning on line 9, strike ``, in consultation with the Secretary and the Council,".

On page 290, line 11, insert after the period the following: ``The Corporation shall consult with the Secretary in the development and finalization of such regulations.".

On page 295, between lines 19 and 20, insert the following:

(s) *Recoupment of Compensation From Senior Executives and Directors.*--

(1) **IN GENERAL.**--The Corporation, as receiver of a covered financial company, may recover from any current or former senior executive or director substantially responsible for the failed condition of the covered financial company any compensation received during the 2-year period preceding the date on which the Corporation was appointed as the receiver of the covered financial company, except that, in the case of fraud, no time limit shall apply.

(2) **COST CONSIDERATIONS.**--In seeking to recover any such compensation, the Corporation shall weigh the financial and deterrent benefits of such recovery against the cost of executing the recovery.

(3) **RULEMAKING.**--The Corporation shall promulgate regulations to implement the requirements of this subsection, including defining the term "compensation" to mean any financial remuneration, including salary, bonuses, incentives, benefits, severance, deferred compensation, or golden parachute benefits, and any profits realized from the sale of the securities of the covered financial company.

On page 296, between lines 15 and 16, insert the following:

(d) *FDIC Inspector General Reviews.*--

(1) **SCOPE.**--The Inspector General of the Corporation shall conduct, supervise, and coordinate audits and investigations of the liquidation of any covered financial company by the Corporation as receiver under this title, including collecting and summarizing--

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

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

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

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

(E) an evaluation of the overall performance of the Corporation in liquidating the covered financial company, including administrative costs, timeliness of liquidation process, and impact on the financial system.

(2) **FREQUENCY.**--Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Corporation shall conduct the audit and investigation described in paragraph (1).

(3) **REPORTS AND TESTIMONY.**--The Inspector General of the Corporation shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and evaluations under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) **FUNDING.**--

(A) **INITIAL FUNDING.**--The expenses of the Inspector General of the Corporation in carrying out this subsection shall be considered administrative expenses of the receivership.

(B) **ADDITIONAL FUNDING.**--If the maximum amount available to the Corporation as receiver under this title is insufficient to enable the Inspector General of the Corporation to carry out the duties under this subsection, the Corporation shall pay such additional amounts from assessments imposed under section 210.

(5) **TERMINATION OF RESPONSIBILITIES.**--The duties and responsibilities of the Inspector General of the Corporation under this subsection shall terminate 1 year after the date of termination of the receivership under this title.

(e) *Treasury Inspector General Reviews.*--

(1) **SCOPE.**--The Inspector General of the Department of the Treasury shall conduct, supervise, and coordinate audits and investigations of actions taken by the Secretary related to the liquidation of any covered financial company under this title, including collecting and summarizing--

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

(B) an analysis of the approval by the Secretary of the policies and procedures of the

[Page: S3226]

Corporation under section 203 and acceptance of the orderly liquidation plan of the Corporation under section 210; and

(C) an assessment of the terms and conditions underlying the purchase by the Secretary of obligations of the Corporation under section 210.

(2) **FREQUENCY.**--Not later than 6 months after the date of appointment of the Corporation as receiver under this title and every 6 months thereafter, the Inspector General of the Department of the Treasury shall conduct the audit and investigation described in paragraph (1).

(3) **REPORTS AND TESTIMONY.**--The Inspector General of the Department of the Treasury shall include in the semiannual reports required by section 5(a) of the Inspector General Act of 1978 (5 U.S.C. App.), a summary of the findings and assessments under paragraph (1), and shall appear before the appropriate committees of Congress, if requested, to present each such report.

(4) **TERMINATION OF RESPONSIBILITIES.**--The duties and responsibilities of the Inspector General of the Department of the Treasury under this subsection shall terminate 1 year after the date on which the obligations purchased by the Secretary from the Corporation under section 210 are fully redeemed.

(f) *Primary Financial Regulatory Agency Inspector General Reviews.*--

(1) **SCOPE.**--Upon the appointment of the Corporation as receiver for a covered financial company supervised by a Federal primary financial regulatory agency or the Board of Governors

under section 165, the Inspector General of the agency or the Board of Governors shall make a written report reviewing the supervision by the agency or the Board of Governors of the covered financial company, which shall--

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

(B) identify any acts or omissions on the part of agency or Board of Governors officials that contributed to the covered financial company being in default or in danger of default;

(C) identify any actions that could have been taken by the agency or the Board of Governors that would have prevented the company from being in default or in danger of default; and

(D) recommend appropriate administrative or legislative action.

(2) **REPORTS AND TESTIMONY.**--Not later than 1 year after the date of appointment of the Corporation as receiver under this title, the Inspector General of the Federal primary financial regulatory agency or the Board of Governors shall provide the report required by paragraph (1) to such agency or the Board of Governors, and along with such agency or the Board of Governors, as applicable, shall appear before the appropriate committees of Congress, if requested, to present the report required by paragraph (1). Not later than 90 days after the date of receipt of the report required by paragraph (1), such agency or the Board of Governors, as applicable, shall provide a written report to Congress describing any actions taken in response to the recommendations in the report, and if no such actions were taken, describing the reasons why no actions were taken.

SEC. 212. PROHIBITION OF CIRCUMVENTION AND PREVENTION OF CONFLICTS OF INTEREST.

(a) *No Other Funding.*--Funds for the orderly liquidation of any covered financial company under this title shall only be provided as specified under this title.

(b) *Limit on Governmental Actions.*--No governmental entity may take any action to circumvent the purposes of this title.

(c) *Conflict of Interest.*--In the event that the Corporation is appointed receiver for more than 1 covered financial company or is appointed receiver for a covered financial company and receiver for any insured depository institution that is an affiliate of such covered financial company, the Corporation shall take appropriate action, as necessary to avoid any conflicts of interest that may arise in connection with multiple receiverships.

SEC. 213. BAN ON SENIOR EXECUTIVES AND DIRECTORS.

(a) *Prohibition Authority.*--The Board of Governors or, if the covered financial company was not supervised by the Board of Governors, the Corporation, may exercise the authority provided by this section.

(b) *Authority To Issue Order.*--The appropriate agency described in subsection (a) may take any action authorized by subsection (c), if the agency determines that--

(1) a senior executive or a director of the covered financial company, prior to the appointment of the Corporation as receiver, has, directly or indirectly--

(A) violated--

(i) any law or regulation;

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

(iii) any condition imposed in writing by a Federal agency in connection with any action on any application, notice, or request by such company or senior executive; or

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

(B) engaged or participated in any unsafe or unsound practice in connection with any financial company; or

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

(2) by reason of the violation, practice, or breach described in any clause of paragraph (1), such senior executive or director has received financial gain or other benefit by reason of such violation, practice, or breach and such violation, practice, or breach contributed to the failure of the company; and

(3) such violation, practice, or breach--

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

(B) demonstrates willful or continuing disregard by such senior executive or director for the safety or soundness of such company.

(c) *Authorized Actions.*--

(1) **IN GENERAL.**--The appropriate agency for a financial company, as described in subsection (a), may serve upon a senior executive or director described in subsection (b) a written notice of the intention of the agency to prohibit any further participation by such person, in any manner, in the conduct of the affairs of any financial company for a period of time determined by the appropriate agency to be commensurate with such violation, practice, or breach, provided such period shall be not less than 2 years.

(2) **PROCEDURES.**--The due process requirements and other procedures under section 8(e) of the Federal Deposit Insurance Act shall apply to actions under this section as if the covered

financial company were an insured depository institution and the senior executive or director were an institution-affiliated party, as those terms are defined in that Act.

(d) *Regulations.*--The Corporation and the Board of Governors, in consultation with the Council, shall jointly prescribe rules or regulations to administer and carry out this section, including rules, regulations, or guidelines to further define the term senior executive for the purposes of this section.

On page 1522, line 11, strike "The third" and insert the following:

"(a) *Federal Reserve Act.*--The third".

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

"(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section 203 of the Restoring American Financial Stability Act of 2010, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under sections 210(n) and 210(o) of the Restoring American Financial Stability Act of 2010."

(b) *Conforming Amendment.*--Section 507(a)(2) of title 11, United States Code, is amended by inserting "claims of any Federal reserve bank related to loans made through programs or facilities authorized under the third undesignated paragraph of the Federal Reserve Act (12 U.S.C. 343)," after "this title,".

On page 1523, line 17, strike "of sufficient quality" and insert "sufficient".

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

On page 1523, line 19, strike "(ii)" and insert the following:

"(ii) The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the certification materially changes), that the borrower is not insolvent. A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy, resolution under title II of the Restoring American Financial Stability Act of 2010, or any other Federal or State insolvency proceeding.

“(iii) A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy, resolution under title II of the Restoring American Financial Stability Act of 2010, or any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.

“(iv)”.

On page 1523, line 18: insert “and that any such program is terminated in a timely and orderly fashion” before “losses”.

On page 1524, line 11, strike “assistance,” and all that follows through line 12 and insert “assistance.”.

On page 1525, strike line 21 and all that follows through page 1528, line 3, and insert the following:

“(D) The information submitted to Congress under subparagraph (C) related to--

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

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

“(iii) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility,

[Page: S3227]

shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons and Ranking Members of the Committees described in subparagraph (C).”.

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

On page 1537, line 23, strike “Upon” and all that follows through page 1538, line 6, and insert the following: “The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of approval, as provided in subsection (d). Absent such approval, the Corporation shall issue no such guarantees.”.

On page 1538, line 16, strike “Upon” and all that follows through page 1547, line 6 and insert the following: “The Corporation shall exercise the authority under this section to issue guarantees up to that specified maximum amount upon passage of the joint resolution of

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

“(d) *Resolution of Approval.*--

“(1) **ADDITIONAL DEBT GUARANTEE AUTHORITY.**--A request by the President under this section shall be considered granted by Congress upon adoption of a joint resolution approving such request. Such joint resolution shall be considered in the Senate under expedited procedures.

“(2) **FAST TRACK CONSIDERATION IN SENATE.**--

“(A) **RECONVENING.**--Upon receipt of a request under subsection (c), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this section, the Senate shall convene not later than the second calendar day after receipt of such message.

“(B) **PLACEMENT ON CALENDAR.**--Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

“(C) **FLOOR CONSIDERATION.**--

“(i) **IN GENERAL.**--Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the 4th day after the date on which Congress receives a request under subsection (c), and ending on the 7th day after that date (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

“(ii) **DEBATE.**--Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

“(iii) **VOTE ON PASSAGE.**--The vote on passage shall occur immediately following the conclusion of the debate on the joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

“(iv) **RULINGS OF THE CHAIR ON PROCEDURE.**--Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

“(3) **RULES.**--

“(A) **COORDINATION WITH ACTION BY HOUSE OF REPRESENTATIVES.**--If, before the passage by the Senate of a joint resolution of the Senate, the Senate receives a joint resolution, from the House of Representatives, then the following procedures shall apply:

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

“(ii) With respect to a joint resolution of the Senate--

“(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the other House; but

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

“(B) **TREATMENT OF JOINT RESOLUTION OF HOUSE OF REPRESENTATIVES.**--If the Senate fails to introduce or consider a joint resolution under this section, the joint resolution of the House of Representatives shall be entitled to expedited floor procedures under this subsection.

“(C) **TREATMENT OF COMPANION MEASURES.**--If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

“(D) **RULES OF THE SENATE.**--This subsection is enacted by Congress--

“(i) as an exercise of the rulemaking power of the Senate, and as such it is deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of a joint resolution, and it supersedes other rules, only to the extent that it is inconsistent with such rules; and

“(ii) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner, and to the same extent as in the case of any other rule of the Senate.

“(4) **DEFINITION.**--As used in this subsection, the term ‘joint resolution’ means only a joint resolution--

“(A) that is introduced not later than 3 calendar days after the date on which the request referred to in subsection (c) is received by Congress;

“(B) that does not have a preamble;

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

“(D) the matter after the resolving clause of which is as follows: ‘That Congress approves the obligation of any amount described in section 1155(c) of the Restoring American Financial Stability Act of 2010.’”.

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

(3) **LIQUIDITY EVENT**.--The term “liquidity event” means--

(A) an exceptional and broad reduction in the general ability of financial market participants--

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

(ii) to borrow using financial assets as collateral without an unusual and significant increase in margin; or

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

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

(b) *Federal Deposit Insurance Act*.--Section 13(c)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)) is amended--

(1) in clause (i)--

(A) in subclause (I), by inserting “for which the Corporation has been appointed receiver” before “would have serious”; and

(B) in the undesignated matter following subclause (II), by inserting “for the purpose of winding up the insured depository institution for which the Corporation has been appointed receiver” after “provide assistance under this section”; and

(2) in clause (v)(I), by striking “The” and inserting “Not later than 3 days after making a determination under clause (i), the”.