

AMENDMENT TO H.R. 4173
OFFERED BY MR. MILLER OF NORTH CAROLINA
AND MR. MOORE OF KANSAS

Page 277, line 22, strike the period and insert “; and”.

Page 277, after line 22, insert the following:

1 (C) is not an insured depository institution
2 (as defined in section 3(c) of the Federal De-
3 posit Insurance act), a Federal credit union or
4 a State-chartered credit union (as such terms
5 are defined in section 101 of the Federal Credit
6 Union Act), or a government-sponsored enter-
7 prise (as such term is defined in section 1004(f)
8 of the Financial Institutions Reform, Recovery
9 and Enforcement Act of 1989 (12 U.S.C. 1811
10 note)).

Page 305, beginning on line 25, strike “(that be-
came a legally enforceable or perfected security interest
after the date of the enactment of this clause) other than
a legally enforceable or perfected security interest of the
Federal Government,” and insert “in assets of the cov-
ered financial company arising under a qualified financial

contract (as defined under subsection (c)(8)(D)(i)) with an original term of 30 days or less (except that, for a contract for a term linked to a calendar month, the original term must be less than one calendar month), secured by collateral other than securities issued by the United States Treasury, the Board of Governors of the Federal Reserve System, any agency of the United States, any Federal Reserve bank, or any Government Sponsored Enterprise, that became a legally enforceable or perfected security interest after the date of the enactment of this clause, and that is not a security interest of the Federal Government”.

Page 306, beginning on line 7, strike “the amount of up to 20 percent” and insert “in the amount specified under clause (v)”.

Page 306, line 13, insert after the period the following sentence: “This clause shall not apply with respect to debt obligations secured by real property. This clause may only be implemented with respect to secured creditors if, as a result of the dissolution of the covered financial company, no funds are available to satisfy, in whole or in part, any claims of unsecured creditors or shareholders.”.

Page 306, after line 13, insert the following:

1 (v) AMOUNT SPECIFIED.—For pur-
2 poses of clause (iv), the amount specified
3 under this clause, in the case of a secured
4 creditor, is the amount of up to 10 per-
5 cent.

Page 318, after line 11, insert the following sub-
paragraphs (and redesignate subparagraphs (B) through
(E) as subparagraphs (J) through (M), respectively):

6 (B) PREFERENTIAL TRANSFERS.—The
7 Corporation as receiver for any covered finan-
8 cial company may avoid a transfer of an inter-
9 est of the covered financial company in property
10 that—

11 (i) was made to or for the benefit of
12 a creditor;

13 (ii) was made for or on account of an
14 antecedent debt that was owed by the cov-
15 ered financial company before the transfer
16 was made;

17 (iii) was made while the covered fi-
18 nancial company was insolvent;

19 (iv) was made—

20 (I) on or within 90 days before
21 the date on which the Corporation
22 was appointed receiver; or

1 (II) between 90 days and one
2 year before the date that the Corpora-
3 tion was appointed receiver, if such
4 creditor at the time of the transfer
5 was an insider, as that term is defined
6 in section 101(31) of title 11, United
7 States Code; and

8 (v) enables such creditor to receive
9 more than such creditor would receive in
10 the liquidation of the covered financial
11 company if—

12 (I) the transfer had not been
13 made; and

14 (II) such creditor received pay-
15 ment of such debt to the extent pro-
16 vided by the provisions of this sub-
17 title.

18 (C) POST-RECEIVERSHIP TRANSACTIONS.—
19 The Corporation as receiver for any covered fi-
20 nancial company may avoid a transfer of prop-
21 erty of the receivership that occurred after the
22 Corporation was appointed receiver that was
23 not authorized under this title.

24 (D) RIGHT OF RECOVERY.—To the extent
25 that a transfer is avoided under subparagraphs

1 (A), (B) or (C), the Corporation may recover,
2 for the benefit of the covered financial com-
3 pany, the property transferred or, if a court so
4 orders, the value of such property from—

5 (i) the initial transferee of such trans-
6 fer or the entity for whose benefit such
7 transfer was made; or

8 (ii) any immediate or mediate trans-
9 feree of any such initial transferee.

10 (E) RIGHTS OF TRANSFEREE OR OBLI-
11 GEE.—The Corporation may not recover under
12 subparagraph (D)(ii)—

13 (i) from a transferee that takes for
14 value, including satisfaction or securing of
15 a present or antecedent debt, in good faith,
16 and without knowledge of the violability of
17 the transfer avoided; or

18 (ii) any immediate or mediate good
19 faith transferee of such transferee.

20 (F) DEFENSES.—A transferee or obligee
21 from whom the Corporation seeks to recover a
22 transfer or avoid an obligation under subpara-
23 graphs (A), (B) or (C) shall have the same af-
24 firmative defenses and rights to liens on the
25 property transferred to the extent they would be

1 available to a transferee or obligee from whom
2 a trustee under title 11 seeks to recover a
3 transfer under sections 547, 548, and 549 of
4 title 11, United States Code.

5 (G) LIMITATIONS ON AVOIDING POWERS.—
6 The rights of the Corporation under subpara-
7 graphs (A), (B) or (C) are restricted to the
8 same extent as the rights of a trustee in bank-
9 ruptcy under section 546(b)(1) of the Bank-
10 ruptcy Code.

11 (H) PRESUMPTION OF INSOLVENCY.—For
12 purposes of subparagraph (B), the covered fi-
13 nancial company is presumed to have been in-
14 solvent on and during the 90 days immediately
15 preceding the date on which the Corporation is
16 appointed as receiver.

17 (I) RIGHTS UNDER THIS SUBSECTION.—
18 The rights of the Corporation as receiver for a
19 covered financial company under this subsection
20 shall be superior to any rights of a trustee or
21 any other party (other than any party which is
22 a Federal agency of a Federal Home Loan
23 Bank) under title 11, United States Code.

