

AMENDMENT TO H.R. 4173**OFFERED BY MR. SHERMAN OF CALIFORNIA**

Strike section 1109 and insert the following new section:

1 SEC. 1109. EMERGENCY FINANCIAL STABILIZATION.

2 (a) IN GENERAL.—Upon the written determination
3 of the Council that a liquidity event exists that could de-
4 stabilize the financial system (which determination shall
5 be made upon a vote of not less than two-thirds of the
6 members of the Council then serving) and with the written
7 consent of the Secretary of the Treasury (after certifi-
8 cation by the President that an emergency exists), the
9 Corporation may create a widely-available program de-
10 signed to avoid or mitigate adverse effects on systemic eco-
11 nomic conditions or financial stability by guaranteeing ob-
12 ligations of solvent insured depository institutions or sol-
13 vent depository institution holding companies (including
14 any affiliates thereof), if necessary to prevent systemic fi-
15 nancial instability during times of severe economic dis-
16 tress, except that a guarantee of obligations under this
17 section may not include provision of equity in any form.

18 (b) POLICIES AND PROCEDURES.—Prior to exercising
19 any authority under this section, the Corporation shall es-

1 tablish policies and procedures governing the issuance of
2 guarantees. The terms and conditions of any guarantees
3 issued shall be established by the Corporation with the ap-
4 proval of the Secretary of the Treasury and the Financial
5 Stability Oversight Council. Such terms and conditions
6 may include the Corporation requiring collateral as a con-
7 dition of any such guarantee.

8 (c) CAP FOR GUARANTEED AMOUNT.—

9 (1) IN GENERAL.—In connection with any pro-
10 gram established pursuant to subsection (a) and
11 subject to paragraph (2), the Corporation may not
12 have guaranteed debt outstanding at any time of
13 more than \$500,000,000,000 (as indexed to reflect
14 growth in assets of insured depository institutions
15 and depository institution holding companies as de-
16 termined by the Corporation).

17 (2) ADDITIONAL DEBT GUARANTEE AUTHOR-
18 ITY.—If the Corporation, with the concurrence of
19 the Council and the Secretary (in consultation with
20 the President), determines that the Corporation
21 must guarantee debt in excess of \$500,000,000,000
22 (as indexed pursuant to paragraph (1)) to prevent
23 systemic financial instability, the Corporation may
24 transmit to the Congress a request for authority to
25 guarantee debt in excess of \$500,000,000,000 (as

1 indexed pursuant to paragraph (1)). Such request
2 shall be considered granted by Congress upon adop-
3 tion of a joint resolution approving such request.
4 Such joint resolution shall be considered in the Sen-
5 ate under expedited procedures.

6 (d) FUNDING.—

7 (1) ADMINISTRATIVE EXPENSES AND COST OF
8 GUARANTEES.—A program established pursuant to
9 this section shall require funding only for the pur-
10 poses of paying administrative expenses and for pay-
11 ing a guarantee in the event that a guaranteed loan
12 defaults.

13 (2) FEES AND OTHER CHARGES.—The Corpora-
14 tion shall charge fees or other charges to all partici-
15 pants in such program established pursuant to this
16 section to offset projected losses and administrative
17 expenses. To the extent that a program established
18 pursuant to this section has expenses or losses, the
19 program will be funded entirely through fees or
20 other charges assessed on participants in such pro-
21 gram.

22 (3) EXCESS FUNDS.—If at the conclusion of
23 such program there are any excess funds collected
24 from the fees associated with such program, the

1 funds will be deposited into the Systemic Dissolution
2 Fund established pursuant to section 1609(n).

3 (4) AUTHORITY OF CORPORATION.—For pur-
4 poses of conducting a program established pursuant
5 to this section, the Corporation—

6 (A) may borrow funds from the Secretary
7 of the Treasury, which shall be repaid in full
8 with interest through fees and charges paid by
9 participants in accordance with paragraph (2),
10 and there shall be available to the Corporation
11 amounts in the Treasury not otherwise appro-
12 priated, including for the payment of reasonable
13 administrative expenses;

14 (B) may not borrow funds from the De-
15 posit Insurance Fund established pursuant to
16 section 11(a)(4) of the Federal Deposit Insur-
17 ance Act; and

18 (C) may not borrow funds from the Sys-
19 temic Dissolution Fund established pursuant to
20 section 1609(n).

21 (5) BACK-UP SPECIAL ASSESSMENT.—To the
22 extent that the funds collected pursuant to para-
23 graph (2) are insufficient to cover any losses or ex-
24 penses (including monies borrowed pursuant to
25 paragraph (4)) arising from a program established

1 pursuant to this section, the Corporation shall im-
2 pose a special assessment solely on participants in
3 the program.

4 (e) PLAN FOR MAINTENANCE OR INCREASE OF
5 LENDING.—In connection with any application or request
6 to participate in such program authorized pursuant to this
7 section, a solvent entity seeking to participate in such pro-
8 gram shall be required to submit to the Corporation a plan
9 detailing how the use of such guaranteed funds will facili-
10 tate the increase or maintenance of such solvent com-
11 pany's level of lending to consumers or small businesses.

12 (f) SUNSET OF CORPORATION'S AUTHORITY.—The
13 Corporation's authority under subsections (a) and (d) and
14 the authority to borrow funds from the Treasury under
15 section 1609(o) shall expire on December 31, 2013.

16 (g) RULE OF CONSTRUCTION.—For purposes of this
17 section, a guarantee of deposits held by insured depository
18 institutions shall not be treated as a debt guarantee pro-
19 gram.

20 (h) DEFINITIONS.—For purposes of this section, the
21 following definitions apply:

22 (1) CORPORATION.—The term "Corporation"
23 means the Federal Deposit Insurance Corporation.

24 (2) DEPOSITORY INSTITUTION HOLDING COM-
25 PANY.—The term "depository institution holding

1 company' has the meaning given the term in section
2 3 of the Federal Deposit Insurance Act (12 U.S.C.
3 1813).

4 (3) INSURED DEPOSITORY INSTITUTION.—The
5 term "insured depository institution" has the mean-
6 ing given the term in section 3 of the Federal De-
7 posit Insurance Act (12 U.S.C. 1813).

8 (4) SOLVENT.—The term "solvent" means as-
9 sets are more than the obligations to creditors.

Page 110, after line 7, insert the following new sec-
tion (and redesignate the subsequent sections accord-
ingly):

10 **SEC. 1110. ADDITIONAL RELATED AMENDMENTS.**

11 (a) FEDERAL DEPOSIT INSURANCE ACT RELATED
12 AMENDMENTS.—

13 (1) SUSPENSION OF PARALLEL FEDERAL DE-
14 POSIT INSURANCE ACT AUTHORITY.—Effective upon
15 the date of the enactment of this section through
16 December 31, 2013, the Corporation may not exer-
17 cise its authority under section 13(e)(4)(G)(i) of the
18 Federal Deposit Insurance Act (12 U.S.C.
19 1823(e)(4)(G)(i)) to establish any widely-available
20 debt guarantee program for which section 1109
21 would provide authority.

1 (2) FEDERAL DEPOSIT INSURANCE ACT AU-
2 THORITY PRESERVED.—Effective December 31,
3 2013, the Corporation shall have the same authority
4 pursuant to section 13(c)(4)(G)(i) of the Federal
5 Deposit Insurance Act as the Corporation had prior
6 to the date of enactment of this Act.

7 (b) EFFECT OF DEFAULT ON AN FDIC GUAR-
8 ANTEE.—If an insured depository institution or depository
9 institution holding company participating in a program
10 under section 1109 or any participant in a debt guarantee
11 program established pursuant to section 13(c)(4)(G)(i) of
12 the Federal Deposit Insurance Act defaults on any obliga-
13 tion guaranteed by the Corporation after the date of en-
14 actment of this Act, the Corporation may—

15 (1) appoint itself as receiver for the insured de-
16 pository institution that defaults;

17 (2) with respect to any other participating com-
18 pany that is not an insured depository institution
19 that defaults—

20 (A) require consideration of whether a de-
21 termination shall be made as provided in sec-
22 tion 1603 to resolve the company under subtitle
23 G; and

24 (B) if the Corporation is not appointed re-
25 ceiver pursuant to subtitle G within 30 days of

1 the date of default, require the company to file
2 a petition for bankruptcy under section 301 of
3 title 11, United States Code, or file a petition
4 for bankruptcy against the company under sec-
5 tion 303 of title 11, United States Code.

6 (c) AUTHORITY TO FILE INVOLUNTARY PETITION
7 FOR BANKRUPTCY.—Section 303 of title 11, United
8 States Code, is amended by adding at the end the fol-
9 lowing:

10 “(m) Notwithstanding subsections (a) and (b), an in-
11 voluntary case may be commenced by the Federal Deposit
12 Insurance Corporation against a depository institution
13 holding company as defined in section 3 of the Federal
14 Deposit Insurance Act (12 U.S.C. 1813) or other company
15 participating in a guarantee program established by the
16 Corporation on the ground that the company has defaulted
17 on a debt or obligation guaranteed by the Corporation.”.

18 (d) BANKRUPTCY PRIORITY FOR DEFAULTS ON
19 DEBT GUARANTEED PURSUANT TO SECTION 1109.—Sec-
20 tion 507(a)(9) of title 11, United States Code, is amended
21 by inserting before the period at the end the following:
22 “and allowed unsecured claims based upon any debt to
23 the Federal Deposit Insurance Corporation that arose
24 prior to the commencement of the case under this title,
25 as a result of the debtor’s default on a guarantee provided

1 by the Corporation pursuant to section 1109 of the Finan-
2 cial Stability Improvement Act of 2009 or the Federal De-
3 posit Insurance Act, under a program established by the
4 Corporation after the date of enactment of the Financial
5 Stability Improvement Act of 2009”.

Page 110, line 8, strike “**MUST**” and insert “**MAY**”.

Page 110, strike line 10 and all that follows through
line 18 and insert the following:

6 (a) IN GENERAL.—In connection with any payment,
7 credit extension, or guarantee or any commitment under
8 section 1109 or 1604, the Corporation may obtain from
9 the insured depository institution, depository institution
10 holding company (including any affiliates thereof), or cov-
11 ered financial company, as the case may be—

Page 110, line 19, strike “financial company” and
insert “insured depository institution, depository institu-
tion holding company (including any affiliates thereof), or
covered financial company”.

Page 111, line 3, strike “financial company” and in-
sert “insured depository institution, depository institution
holding company (including any affiliates thereof), or cov-
ered financial company”.

Strike section 1614 and insert the following new section:

1 **SEC. 1614. APPLICATION OF EXECUTIVE COMPENSATION**
2 **LIMITATIONS.**

3 At any time that the Corporation has borrowed from
4 the Treasury pursuant to section 1609(o) to resolve a cov-
5 ered financial company, the Corporation shall apply the
6 executive compensation limits under section 111 of the
7 Emergency Economic Stabilization Act of 2008 to such
8 company for so long as such company is in receivership.

Page 436, after line 11, insert the following new section:

9 **SEC. 1615. PRIORITY OF CLAIMS IN FEDERAL DEPOSIT IN-**
10 **SURANCE ACT.**

11 Section 11(d)(11)(A) of the Federal Deposit Insur-
12 ance Act (12 U.S.C. 1821(d)(11)(A)) is amended—

13 (1) by redesignating clauses (iii) through (v) as
14 clauses (iv) through (vi), respectively; and

15 (2) by inserting after clause (ii) the following
16 new clause (iii):

17 “(iii) Any obligation of the institution
18 owed to the Corporation as a result of the

1 institution's default on a Corporation-guar-
2 anted debt.”

