

## HOUSE PROPOSED AMENDMENTS TO TITLE XI

[Page and line #s refer to Base text of proposed conference report]

Page 1724, line 16, strike “and”.

Page 1724, line 18, strike “losses and” and insert “losses,”.

Page 1724, line 19, strike “orderly fashion.” and insert “orderly fashion, and that the Board and the Secretary of the Treasury would have reasonable cause to believe that the security or other collateral policies for any emergency lending program or facility provide 99 percent confidence that funds disbursed under the facility or program will be fully repaid, and interest thereon will be paid, to the Federal Reserve System”.

Page 1730, strike line 7 and insert the following:

- 1           (1) DEFINITIONS.—For purposes of this sub-
- 2           section, the following definitions shall apply:
- 3           (A) CREDIT FACILITY.—The term

Page 1730, after line 15, insert the following new subparagraph:

1 (B) COVERED TRANSACTION.—The term  
2 “covered transaction” means any open market  
3 transaction or discount window advance that  
4 meets the definition of “covered transaction” in  
5 section 11(s) of the Federal Reserve Act .

Page 1731, line 2, insert “or a covered transaction”  
after “credit facility”.

Page 1731, line 4, strike “of” and insert “gov-  
erning”.

Page 1731, line 5, insert “or covered transaction”  
after “credit facility”.

Page 1731, line 7, insert “or covered transaction”  
after “the facility”.

Page 1731, line 10, insert “or the conduct of a cov-  
ered transaction” after “credit facility”.

Page 1731, line 16, insert “or to conduct any cov-  
ered transaction” after “credit facility”.

Page 1732, line 15, insert “or covered transaction”  
after “credit facility”.

Page 1732, line 16, insert “or transferred by or to”  
after “by”.

Page 1732, line 17, insert “or covered transaction” after “facility”.

Page 1732, line 18, insert “or transferred” after “held”.

Page 1732, line 19, insert “or covered transaction” after “credit facility”.

Page 1733, line 5, strike “assets or collateral” and insert “assets, collateral, or transaction”.

Page 1733, line 22, strike the closing quotation marks and the 2nd period.

Page 1733, after line 22, insert the following new clause:

1                   “(v) RELEASE OF COVERED TRANS-  
2                   ACTION INFORMATION.—The Comptroller  
3                   General shall release a nonredacted version  
4                   of any report regarding covered trans-  
5                   actions upon the release of the information  
6                   regarding such covered transactions by the  
7                   Board of Governors of the Federal Reserve  
8                   System as provided in section 11(s) of the  
9                   Federal Reserve Act.”.

Page 1734, strike line 19, and insert the following:

1       (a) IN GENERAL.—Section 2B of the Federal Reserve  
2 Act (12 U.S.C.

Page 1735, after line 17 insert the following new  
subsection:

3       (b) FEDERAL RESERVE TRANSPARENCY AND RE-  
4 LEASE OF INFORMATION.—Section 11 of the Federal Re-  
5 serve Act (12 U.S.C. 248) the following new subsection:

6       “(s) FEDERAL RESERVE TRANSPARENCY AND RE-  
7 LEASE OF INFORMATION.—

8               “(1) IN GENERAL.—In order to ensure the dis-  
9 closure in a timely manner consistent with the pur-  
10 poses of this Act of information concerning the bor-  
11 rowers and counterparties participating in emer-  
12 gency credit facilities, discount window lending pro-  
13 grams and open market operations authorized or  
14 conducted by the Board or a Federal reserve bank,  
15 the Board of Governors of the Federal Reserve Sys-  
16 tem shall disclose, as provided in paragraph (2)—

17               “(A) the names and identifying details of  
18 each borrower, participant or counterparty in  
19 any credit facility or covered transaction;

20               “(B) the amount borrowed by or trans-  
21 ferred by or to a specific borrower, participant  
22 or counterparty in any credit facility or covered  
23 transaction;

1 “(C) the interest rate or discount paid by  
2 each borrower, participant or counterparty in  
3 any credit facility or covered transaction; and

4 “(D) information identifying the types and  
5 amounts of collateral pledged or assets trans-  
6 ferred in connection with participation in any  
7 credit facility or covered transaction.

8 “(2) MANDATORY RELEASE DATE.—In the case  
9 of—

10 “(A) a credit facility, the Board shall dis-  
11 close the information described in paragraph  
12 (1) on the date that is 1 year after the effective  
13 date of the termination by the Board of the au-  
14 thorization of the credit facility; and

15 “(B) a covered transaction, the Board  
16 shall disclose the information described in para-  
17 graph (1) on the last day of the eighth calendar  
18 quarter following the calendar quarter in which  
19 the covered transaction was conducted.

20 “(3) EARLIER RELEASE DATE AUTHORIZED.—  
21 The Chairman of the Board may publicly release the  
22 information described in paragraph (1) before the  
23 relevant date specified in paragraph (2) if the Chair-  
24 man determines that such disclosure would be in the  
25 public interest and would not harm the effectiveness

1 of the relevant credit facility or the purpose or con-  
2 duct of covered transactions.

3 “(4) DEFINITIONS.—For purposes of this sub-  
4 section, the following definitions shall apply:

5 “(A) CREDIT FACILITY.—The term ‘credit  
6 facility’ has the same meaning as in section  
7 714(f)(1)(A) of title 31, United States Code.

8 “(B) COVERED TRANSACTION.—The term  
9 ‘covered transaction’ means—

10 “(i) any open market transaction with  
11 a nongovernmental third party conducted  
12 under the first undesignated paragraph of  
13 section 14 or subparagraph (a), (b), or (c)  
14 of the 2nd undesignated paragraph of such  
15 section, after the date of the enactment of  
16 the Restoring American Financial Stability  
17 Act of 2010; and

18 “(ii) any advance made under section  
19 10B after the date of the enactment of  
20 such Act.

21 “(5) TERMINATION OF CREDIT FACILITY BY OP-  
22 ERATION OF LAW.—A credit facility shall be deemed  
23 to have terminated as of the end of the 24-month  
24 period beginning on the date on which the credit fa-  
25 cility ceases to make extensions of credit and loans,

1        unless the credit facility is otherwise terminated by  
2        the Board before such date.

3            “(6) CONSISTENT TREATMENT OF INFORMA-  
4        TION.—Except as provided in this subsection or sec-  
5        tion 13(3)(D), or in section 714(f)(3)(C) of title 31,  
6        United States Code, the information described in  
7        paragraph (1) and information concerning the trans-  
8        actions described in section 714(f) of such title, shall  
9        be confidential, including for purposes of section  
10       552(b)(3) of title 5 of such Code, unless the Board  
11       determines that disclosure of such information would  
12       be in the public interest and would not harm the ef-  
13       fectiveness of the relevant credit facility or the pur-  
14       pose of conduct of the relevant transactions.

15           “(7) PROTECTION OF PERSONAL PRIVACY.—  
16        This subsection and section 13(3)(C), section  
17       714(f)(3)(C) of title 31, United States Code, and  
18       section 1109(a) or (c) of the Restoring American Fi-  
19       nancial Stability Act of 2010 shall not be construed  
20       as requiring any disclosure of nonpublic personal in-  
21       formation (as defined for purposes of section 502 of  
22       the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) con-  
23       cerning any individual who is referenced in collateral  
24       pledged or assets transferred in connection with a  
25       credit facility or covered transaction unless the per-

1 son is a borrower, participant, or counterparty under  
2 the credit facility or covered transaction.”.

Page 1735, strike line 18 and all that follows  
through page 1751, line 7, and insert the following new  
sections:

3 **SEC. 1104. EMERGENCY FINANCIAL STABILIZATION.**

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

20 (b) POLICIES AND PROCEDURES.—Prior to exercising  
21 any authority under this section, the Corporation shall es-  
22 tablish policies and procedures governing the issuance of



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

7 (c) CAP FOR GUARANTEED AMOUNT.—

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

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

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

5 (d) FUNDING.—

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

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

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

1 Fund established under section 11(a) of the Federal  
2 Deposit Insurance Act.

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; and

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.

18 (5) BACK-UP SPECIAL ASSESSMENT.—To the  
19 extent that the funds collected pursuant to para-  
20 graph (2) are insufficient to cover any losses or ex-  
21 penses (including monies borrowed pursuant to  
22 paragraph (4)) arising from a program established  
23 pursuant to this section, the Corporation shall im-  
24 pose a special assessment solely on participants in  
25 the program.

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

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

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

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

19 (1) CORPORATION.—The term “Corporation”  
20 means the Federal Deposit Insurance Corporation.

21 (2) DEPOSITORY INSTITUTION HOLDING COM-  
22 PANY.—The term “depository institution holding  
23 company” has the meaning given the term in section  
24 3 of the Federal Deposit Insurance Act (12 U.S.C.  
25 1813).

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

5           (4) SOLVENT.—The term “solvent” means as-  
6           sets are more than the obligations to creditors.

7   **SEC. 1105. ADDITIONAL RELATED AMENDMENTS.**

8           (a) FEDERAL DEPOSIT INSURANCE ACT RELATED  
9           AMENDMENTS.—Effective upon the date of the enactment  
10          of this section, the Corporation may not exercise its au-  
11          thority under section 13(c)(4)(G)(i) of the Federal De-  
12          posit Insurance Act (12 U.S.C. 1823(c)(4)(G)(i)) to estab-  
13          lish any widely-available debt guarantee program for  
14          which section 1104 would provide authority.

15          (b) EFFECT OF DEFAULT ON AN FDIC GUAR-  
16          ANTEE.—If an insured depository institution or depository  
17          institution holding company participating in a program  
18          under section 1104 or any participant in a debt guarantee  
19          program established pursuant to section 13(c)(4)(G)(i) of  
20          the Federal Deposit Insurance Act defaults on any obliga-  
21          tion guaranteed by the Corporation after the date of en-  
22          actment of this Act, the Corporation, unless such default  
23          is cured within 60 days, or the Corporation determines  
24          that such action would have serious adverse effects on eco-  
25          nomic conditions or financial stability, shall—

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

3           (2) with respect to any other participating com-  
4       pany that is not an insured depository institution  
5       that defaults—

6           (A) require consideration of whether a de-  
7       termination shall be made as provided in sec-  
8       tion 1603 to resolve the company under subtitle  
9       G; and

10          (B) if the Corporation is not appointed re-  
11       ceiver pursuant to title II within 30 days of the  
12       date of default, require the company to file a  
13       petition for bankruptcy under section 301 of  
14       title 11, United States Code, or file a petition  
15       for bankruptcy against the company under sec-  
16       tion 303 of title 11, United States Code.

17       (c) **AUTHORITY TO FILE INVOLUNTARY PETITION**  
18 **FOR BANKRUPTCY.**—Section 303 of title 11, United  
19 States Code, is amended by adding at the end the fol-  
20 lowing:

21       “(m) Notwithstanding subsections (a) and (b), an in-  
22 voluntary case may be commenced by the Federal Deposit  
23 Insurance Corporation against a depository institution  
24 holding company as defined in section 3 of the Federal  
25 Deposit Insurance Act (12 U.S.C. 1813) or other company

1 participating in a guarantee program established by the  
2 Corporation on the ground that the company has defaulted  
3 on a debt or obligation guaranteed by the Corporation.”.

4 (d) BANKRUPTCY PRIORITY FOR DEFAULTS ON  
5 DEBT GUARANTEED PURSUANT TO SECTION 1104.—Sec-  
6 tion 507(a)(9) of title 11, United States Code, is amended  
7 by inserting before the period at the end the following:  
8 “and allowed unsecured claims based upon any debt to  
9 the Federal Deposit Insurance Corporation that arose  
10 prior to the commencement of the case under this title,  
11 as a result of the debtor’s default on a guarantee provided  
12 by the Corporation pursuant to section 1104 of the Re-  
13 storing American Financial Stability Act of 2010 or the  
14 Federal Deposit Insurance Act, under a program estab-  
15 lished by the Corporation after the date of the enactment  
16 of the Restoring American Financial Stability Act of  
17 2010”.

18 **SEC. 1106. CORPORATION MAY RECEIVE WARRANTS WHEN**  
19 **PAYING OR RISKING TAXPAYER FUNDS.**

20 (a) IN GENERAL.—In connection with any payment,  
21 credit extension, or guarantee or any commitment under  
22 section 1104, the Corporation may obtain from the in-  
23 sured depository institution, depository institution holding  
24 company (including any affiliates thereof), or covered fi-  
25 nancial company, as the case may be—

1           (1) in the case of an insured depository institu-  
2           tion, depository institution holding company (includ-  
3           ing any affiliates thereof), or covered financial com-  
4           pany, the securities of which are traded on a na-  
5           tional securities exchange, a warrant giving the right  
6           to the Corporation to receive nonvoting common  
7           stock or preferred stock in such financial institution,  
8           or voting stock with respect to which, the Corpora-  
9           tion agrees not to exercise voting power, as the Cor-  
10          poration determines appropriate; or

11          (2) in the case of any insured depository insti-  
12          tution, depository institution holding company (in-  
13          cluding any affiliates thereof), or covered financial  
14          company other than one described in paragraph (1),  
15          a warrant for common or preferred stock, or a sen-  
16          ior debt instrument from such financial institution,  
17          as described in subsection (b)(3).

18          (b) TERMS AND CONDITIONS.—The terms and condi-  
19          tions of any warrant or senior debt instrument required  
20          under subsection (a) shall meet the following require-  
21          ments:

22                (1) PURPOSES.—Such terms and conditions  
23                shall, at a minimum, be designed—

24                        (A) to provide for reasonable participation  
25                        by the Corporation, for the benefit of taxpayers,



1 in equity appreciation in the case of a warrant  
2 or other equity security, or a reasonable interest  
3 rate premium, in the case of a debt instrument;  
4 and

5 (B) to provide additional protection for the  
6 taxpayer against losses from such payment, ex-  
7 tension of credit, or guarantee by the Corpora-  
8 tion under this title.

9 (2) AUTHORITY TO SELL, EXERCISE, OR SUR-  
10 RENDER.—The Corporation may sell, exercise, or  
11 surrender a warrant or any senior debt instrument  
12 received under this subsection, based on the condi-  
13 tions established under paragraph (1).

14 (3) CONVERSION.—The warrant shall provide  
15 that if, after the warrant is received by the Corpora-  
16 tion under this subsection, the financial company  
17 that issued the warrant is no longer listed or traded  
18 on a national securities exchange or securities asso-  
19 ciation, as described in subsection (a)(1), such war-  
20 rants shall convert to senior debt, or contain appro-  
21 priate protections for the Corporation to ensure that  
22 the Corporation is appropriately compensated for the  
23 value of the warrant, in an amount determined by  
24 the Corporation.

1           (4) PROTECTIONS.—Any warrant representing  
2 securities to be received by the Corporation under  
3 this subsection shall contain anti-dilution provisions  
4 of the type employed in capital market transactions,  
5 as determined by the Corporation. Such provisions  
6 shall protect the value of the securities from market  
7 transactions such as stock splits, stock distributions,  
8 dividends, and other distributions, mergers, and  
9 other forms of reorganization or recapitalization.

10           (5) EXERCISE PRICE.—The exercise price for  
11 any warrant issued pursuant to this subsection shall  
12 be set by the Corporation, in the interest of the tax-  
13 payers.

14           (6) SUFFICIENCY.—The financial company  
15 shall guarantee to the Corporation that it has au-  
16 thorized shares of nonvoting stock available to fulfill  
17 its obligations under this subsection. Should the fi-  
18 nancial company not have sufficient authorized  
19 shares, including preferred shares that may carry  
20 dividend rights equal to a multiple number of com-  
21 mon shares, the Corporation may, to the extent nec-  
22 essary, accept a senior debt note in an amount, and  
23 on such terms as will compensate the Corporation  
24 with equivalent value, in the event that a sufficient

1       shareholder vote to authorize the necessary addi-  
2       tional shares cannot be obtained.

3       (c) EXCEPTIONS.—The Corporation shall establish  
4       an exception to the requirements of this section and appro-  
5       priate alternative requirements for any participating fi-  
6       nancial company that is legally prohibited from issuing se-  
7       curities and debt instruments, so as not to allow cir-  
8       cumvention of the requirements of this section.

Page 1751, line 10, strike “The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended in section 4” and all that follows through page 1752, line 6, and insert “The 5th subparagraph of the 4th undesignated paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 341) is amended by striking the 2nd sentence and inserting ‘The president shall be the chief executive officer of the bank and shall be appointed by the Class B and Class C directors of the bank, with the approval of the Board of Governors of the Federal Reserve System, for a term of 5 years; and all other executive officers and all employees of the bank shall be directly responsible to the President.’”.

Page 1754, after line 17, insert the following new subsection:

9       (e) EXERCISE OF FEDERAL RESERVE AUTHORITY.—

1           (1) NO DECISIONS BY FEDERAL RESERVE BANK  
2       PRESIDENTS.—No provision of title I relating to the  
3       authority of the Board of Governors shall be con-  
4       strued as conferring any decision-making authority  
5       on presidents of Federal reserve banks.

6           (2) VOTING DECISIONS BY BOARD.—The Board  
7       of Governors shall not delegate the authority to  
8       make any voting decision that the Board of Gov-  
9       ernors is authorized or required to make under this  
10      title I in contravention of section 11(k) of the Fed-  
11      eral Reserve Act.

Page 1761, after line 14, insert the following new  
section:

12   **SEC. 1110. CERTAIN RESTRICTIONS RELATED TO FOREIGN**  
13                   **CURRENCY SWAP AUTHORITY.**

14      Section 14 of the Federal Reserve Act is amended  
15   by adding at the end the following new subsection:

16      “(h) CERTAIN RESTRICTIONS RELATED TO FOREIGN  
17   CURRENCY SWAP AUTHORITY.—A Federal reserve bank  
18   may not take any action pursuant to the authority pro-  
19   vided under this section with respect to foreign currency  
20   swaps unless—

21           “(1) such action is approved in advance by the  
22      affirmative vote of not less than five members of the

1 Board of Governors of the Federal Reserve System;  
2 and  
3 “(2) such action is taken with the written con-  
4 currence of the Secretary of the Treasury.”.

