

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 6547
OFFERED BY MR. FLOOD OF NEBRASKA

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Least Cost Exception
3 Act”.

4 SEC. 2. LEAST COST RESOLUTION EXCEPTION TO AVOID
5 FURTHER CONCENTRATION AMONG GLOBAL
6 SYSTEMICALLY IMPORTANT BANKING ORGA-
7 NIZATIONS.

8 (a) IN GENERAL.—Section 13(c)(4) of the Federal
9 Deposit Insurance Act (12 U.S.C. 1823(c)(4)) is amend-
10 ed—

11 (1) in subparagraph (A)(ii), by inserting “ex-
12 cept as provided in subparagraph (I),” before “the
13 total amount”;

14 (2) in subparagraph (E)(i), by inserting “and
15 except as provided in subparagraph (I),” after “ap-
16 propriate,”; and

17 (3) by adding at the end the following:

1 “(I) LEAST COST RESOLUTION EXCEP-
2 TION.—

3 “(i) IN GENERAL.—With respect to an
4 exercise of authority by the Corporation
5 described in subparagraph (A), the Cor-
6 poration may, at the discretion of the Cor-
7 poration, select an alternative method of
8 exercising such authority that is not the
9 least costly to the Deposit Insurance Fund,
10 if—

11 “(I) the Corporation determines
12 that the selected alternative complies
13 with the requirements of clause (iii);
14 and

15 “(II) the Corporation and the
16 Board of Governors of the Federal
17 Reserve System, after consultation
18 with the Secretary of the Treasury,
19 determine that the potential addi-
20 tional risks to the Deposit Insurance
21 Fund of the selected alternative are
22 outweighed by the reasonably expected
23 benefits of limiting further concentra-
24 tion of the United States banking sys-

1 tem in global systemically important
2 banking organizations.

3 “(ii) MAXIMUM COST TO THE DEPOSIT
4 INSURANCE FUND.—Not later than 1 year
5 after the date of enactment of this sub-
6 paragraph, the Corporation, by rule, shall
7 establish criteria for determining on a
8 case-by-case basis the maximum allowable
9 cost against the net worth of the Deposit
10 Insurance Fund that may be utilized to ac-
11 count for any determination under clause
12 (i).

13 “(iii) REQUIREMENTS DESCRIBED.—
14 The requirements for the selected alter-
15 native described in clause (i) are as fol-
16 lows:

17 “(I) The selected alternative is
18 least costly to the Deposit Insurance
19 Fund of all alternatives that do not
20 involve a transaction with a global
21 systemically important banking orga-
22 nization and that do not exceed the
23 cost of liquidating the insured deposi-
24 tory institution.

1 “(II) The difference between the
2 cost of the selected alternative and the
3 cost of a covered alternative is less
4 than the maximum cost to the Deposit
5 Insurance Fund specified pursuant to
6 the rule adopted under clause (ii).

7 “(III) In the case of a selected
8 alternative that involves another per-
9 son purchasing assets of the insured
10 depository institution or assuming de-
11 posit liabilities of the insured deposi-
12 tory institution, such person agrees to
13 pay an assessment to the Corporation
14 comprised of payments—

15 “(aa) made over a period to
16 be determined by the Corpora-
17 tion, but which may not be less
18 than 5 years; and

19 “(bb) in an amount that
20 takes into account, on a case-by-
21 case basis, criteria the Corpora-
22 tion, by rule, shall establish, in-
23 cluding a realistic discount rate,
24 the aggregate amount equal to
25 the difference calculated in sub-

1 clause (II), and any bid incon-
2 sistent with the purposes of this
3 Act, with such rule to be estab-
4 lished by the Corporation not
5 later than 1 year after the date
6 of enactment of this subpara-
7 graph.

8 “(iv) REPORT TO CONGRESS.—Not
9 later than 30 days after selecting an alter-
10 native described in clause (i), the Corpora-
11 tion shall issue a report to the Committee
12 on Financial Services of the House of Rep-
13 resentatives and the Committee on Bank-
14 ing, Housing, and Urban Affairs of the
15 Senate containing an analysis of the eco-
16 nomic difference between the cost to the
17 Deposit Insurance Fund of the selected al-
18 ternative and the cost to the Deposit In-
19 surance Fund of the least costly alternative
20 that would have been selected absent the
21 application of this subparagraph.

22 “(v) COST DETERMINATIONS.—All
23 cost determinations required under this
24 subparagraph shall be made in accordance
25 with subparagraphs (B) and (C).

1 “(vi) DEFINITIONS.—In this subpara-
2 graph:

3 “(I) COVERED ALTERNATIVE.—
4 The term ‘covered alternative’ means
5 a method of exercising authority de-
6 scribed in subparagraph (A) that is
7 the least costly to the Deposit Insur-
8 ance Fund of all such methods that
9 involve a sale of all or substantially all
10 assets of the insured depository insti-
11 tution to, and assumption of all or
12 substantially all deposit liabilities of
13 the insured depository institution by,
14 a global systemically important bank-
15 ing organization.

16 “(II) GLOBAL SYSTEMICALLY IM-
17 PORTANT BANKING ORGANIZATION.—
18 The term ‘global systemically impor-
19 tant banking organization’ means a
20 global systemically important BHC
21 (as such term is defined in section
22 217.402 of title 12, Code of Federal
23 Regulations, or any successor thereto)
24 and any affiliate thereof.”.

1 (b) RULE OF CONSTRUCTION.—Section 13(c)(4)(H)
2 of the Federal Deposit Insurance Act (12 U.S.C.
3 1823(c)(4)(H)) does not apply to the amendments made
4 by subsection (a).

