

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R.4894
OFFERED BY MS. MOORE OF WISCONSIN**

Strike all after the enacting clause and insert the following:

1 SEC. 1. EX ANTE ASSESSMENTS.

2 (a) IN GENERAL.—Section 210 of the Dodd-Frank
3 Wall Street Reform and Consumer Protection Act (12
4 U.S.C. 5390) is amended—

5 (1) in subsection (n)—

6 (A) in paragraph (1), by striking “pay-
7 ment of principal and interest by the Corpora-
8 tion on obligations issued under paragraph (5)”
9 and inserting “repayment of amounts borrower
10 under subsection (o)”;

11 (B) in paragraph (2), by striking “assess-
12 ments received under subsection (o), proceeds
13 of obligations issued under paragraph (5)” and
14 inserting “amounts received under this sub-
15 section and subsection (o)”;

16 (C) by striking paragraphs (5) through
17 (10) and inserting the following:

1 “(5) SIZE OF FUND.—The Corporation shall, by
2 rule, establish the minimum size of the Fund con-
3 sistent with subparagraphs (C) and (D) of para-
4 graph (6).

5 “(6) ASSESSMENTS.—

6 “(A) ASSESSMENTS TO MAINTAIN FUND.—
7 The Corporation shall impose risk-based assess-
8 ments on financial companies in such amount
9 and manner and subject to such terms and con-
10 ditions that the Corporation determines, by reg-
11 ulation and in consultation with the Council,
12 are necessary for the amount in the Fund to at
13 least equal the minimum size established pursu-
14 ant to paragraph (5).

15 “(B) ASSESSMENTS TO REPLENISH THE
16 FUND.—If the Fund falls below the minimum
17 size established pursuant to paragraph (5), the
18 Corporation shall impose assessments on finan-
19 cial companies in such amounts and manner
20 and subject to such terms and conditions as the
21 Corporation determines, by regulation and in
22 consultation with the Council, are necessary to
23 replenish the fund subject to the limitations in
24 subparagraph (D).

1 “(C) MINIMUM ASSESSMENT THRESH-
2 OLD.—

3 “(i) IN GENERAL.—The Corporation
4 shall not assess financial companies with
5 less than \$50,000,000,000, adjusted for in-
6 flation, of assets on a consolidated basis,
7 subject to any differentiation as permitted
8 in paragraph (8) and shall assess financial
9 companies with \$50,000,000,000, adjusted
10 for inflation, or more in assets in accord-
11 ance with paragraphs (7) and (8).

12 “(ii) HEDGE FUNDS.—The Corpora-
13 tion shall not assess financial companies
14 that manage hedge funds (as defined by
15 the Corporation for the purpose of this sec-
16 tion, in consultation with the Securities
17 and Exchange Commission) with less than
18 \$10,000,000,000, adjusted for inflation, of
19 assets, under management on a consoli-
20 dated basis, subject to any differentiation
21 as permitted in paragraph (8) and shall
22 assess any financial companies that man-
23 age hedge funds with \$10,000,000,000 or
24 more of assets under management in ac-
25 cordance with paragraphs (7) and (8).

1 “(D) MAXIMUM SIZE OF FUND VIA ASSESS-
2 MENTS.—

3 “(i) IN GENERAL.—The Corporation
4 shall suspend assessments on financial
5 companies on the day after the date on
6 which the total of the assessments, exclud-
7 ing interest or other earnings from invest-
8 ments made pursuant to paragraph (4),
9 equals \$150,000,000,000.

10 “(ii) EXCEPTIONS.—Any suspension
11 of assessments under clause (i)—

12 “(I) may be set aside if the Fund
13 falls below \$150,000,000,000; and

14 “(II) shall be set aside if the
15 Fund falls below the minimum level
16 established in subparagraph (C).

17 “(E) ADDITIONAL AUTHORIZED ASSESS-
18 MENTS.—The Corporation is authorized to con-
19 duct risk-based assessments on financial compa-
20 nies in such amount and manner and subject to
21 terms and conditions that the Corporation de-
22 termines, with the concurrence of the Secretary
23 of the Treasury and the Board of Governors,
24 are necessary to pay any shortfall in the Trou-
25 bled Asset Relief Program established by the

1 Emergency Economic Stabilization Act of 2008
2 that would add to the deficit or national debt,
3 as identified by the Director of the Office of
4 Management and Budget, in consultation with
5 the Director of the Congressional Budget Office
6 pursuant to section 134 of such Act (12 U.S.C.
7 5239).

8 “(7) FACTORS.—The Corporation, in consulta-
9 tion with the Council shall establish a risk matrix to
10 be used in establishing assessments that takes into
11 account—

12 “(A) the actual or expected risk of losses
13 to the Fund;

14 “(B) economic conditions generally affect-
15 ing financial companies so as to allow assess-
16 ments and the Fund to increase during more
17 favorable economic conditions and to decrease
18 during less favorable economic conditions;

19 “(C) any assessments imposed on a finan-
20 cial company or an affiliate of a financial com-
21 pany that—

22 “(i) is an insured depository institu-
23 tion, assessed pursuant to section 7 or
24 13(c)(4)(G) of the Federal Deposit Insur-
25 ance Act;

1 “(ii) is a member of the Securities In-
2 vestor Protection Corporation, assessed
3 pursuant to section 4 of the Securities In-
4 vestor Protection Act of 1970 (15 U.S.C.
5 78ddd);

6 “(iii) is an insured credit union, as-
7 sessed pursuant to section 202(c)(1)(A)(i)
8 of the Federal Credit Union Act (12
9 U.S.C. 1782(c)(1)(A)(i)); or

10 “(iv) is an insurance company, as-
11 sessed pursuant to applicable State law to
12 cover (or reimburse payments made to
13 cover) the costs of the rehabilitation, liq-
14 uidation or other State insolvency pro-
15 ceeding with respect to 1 or more insur-
16 ance companies;

17 “(D) the risks presented by the financial
18 company to the financial system and the extent
19 to which the financial company has benefitted,
20 or likely would benefit, from the dissolution of
21 a financial company under this title, includ-
22 ing—

23 “(i) the amount, different categories,
24 and concentrations of assets of the finan-
25 cial company and its affiliates, including

1 both on-balance sheet and off-balance sheet
2 assets;

3 “(ii) the activities of the financial
4 company and its affiliates;

5 “(iii) the relevant market share of the
6 financial company and its affiliates;

7 “(iv) the extent to which the financial
8 company is leveraged;

9 “(v) the potential exposure to sudden
10 calls on liquidity precipitated by economic
11 distress;

12 “(vi) the amount, maturity, volatility,
13 and stability of the company’s financial ob-
14 ligations to, and relationship with, other fi-
15 nancial companies;

16 “(vii) the amount, maturity, volatility,
17 and stability of the company’s liabilities,
18 including the degree of reliance on short-
19 term funding, taking into consideration ex-
20 isting systems for measuring a company’s
21 risk-based capital;

22 “(viii) the stability and variety of the
23 company’s sources of funding;

24 “(ix) the company’s importance as a
25 source of credit for households, businesses,

1 and State and local governments and as a
2 source of liquidity for the financial system;

3 “(x) the extent to which assets are
4 simply managed and not owned by the fi-
5 nancial company and the extent to which
6 ownership of assets under management is
7 diffuse; and

8 “(xi) the amount, different categories,
9 and concentrations of liabilities, both in-
10 sured and uninsured, contingent and non-
11 contingent, including both on-balance sheet
12 and off-balance sheet liabilities, of the fi-
13 nancial company and its affiliates; and

14 “(E) such other factors as the Corpora-
15 tion, in consultation with the Council, may de-
16 termine to be appropriate.

17 “(8) REQUIREMENT FOR EQUITABLE TREAT-
18 MENT IN ASSESSMENTS.—In establishing the assess-
19 ment system for the Fund, the Corporation, by regu-
20 lation and in consultation with the Council, shall dif-
21 ferentiate among financial companies based on com-
22 plexity of operations or organization, interconnected-
23 ness, size, direct or indirect activities, and any other
24 factors the Corporation or the Council may deem ap-
25 propriate to ensure that the assessments charged eq-

1 uitably reflect the risk posed to the Fund by par-
2 ticular classes of financial companies.

3 “(9) MINIMUM COMMENT PERIOD.—In order to
4 ensure sufficient opportunity for public and congress-
5 sional review and evaluation of any assessment sys-
6 tem, any proposed regulations regarding the imple-
7 mentation of the assessment system under this sub-
8 title shall provide an opportunity for public comment
9 during a period of not less than 60 days.”; and

10 (2) by amending subsection (o) to read as fol-
11 lows:

12 “(o) BORROWING AUTHORITY.—

13 “(1) BORROWING FROM TREASURY.—

14 “(A) IN GENERAL.—The Corporation may
15 borrow from the Treasury, and the Secretary of
16 the Treasury is authorized to lend to the Cor-
17 poration on such terms as may be fixed by the
18 Corporation and the Secretary, such funds as in
19 the judgment of the Board of Directors of the
20 Corporation are required, in addition to the
21 funds available in the Orderly Liquidation
22 Fund, to permit the orderly dissolution of 1 or
23 more covered financial companies.

24 “(B) RATE OF INTEREST.—The rate of in-
25 terest to be charged in connection with any loan

1 made pursuant to this subsection shall not be
2 less than an amount determined by the Sec-
3 retary of the Treasury, taking into consider-
4 ation current market yields on outstanding
5 marketable obligations of the United States of
6 comparable maturities.

7 “(2) PUBLIC DEBT ISSUANCES.—For the pur-
8 poses described in subsection (1), the Secretary of
9 the Treasury may use as a public-debt transaction
10 the proceeds of the sale of any securities hereafter
11 issued under chapter 31 of title 31, and the pur-
12 poses for which securities may be issued under chap-
13 ter 31 of title 31 are extended to include such loans.
14 All loans and repayments under this subsection shall
15 be treated as public-debt transactions of the United
16 States.

17 “(3) PROCEEDS FROM LIQUIDATION, REPAY-
18 MENT OF FUNDS.—

19 “(A) IN GENERAL.—The Corporation shall
20 take such measures as may be appropriate to
21 maximize the amount of funds from any dis-
22 solution that may be available for repayment
23 under subparagraph (B) consistent with sys-
24 temic concerns.

1 “(B) REPAYMENT PRIORITY.—Amounts re-
2 alized from the dissolution of any financial com-
3 pany under this title that are not otherwise uti-
4 lized by the Corporation to dissolve a financial
5 company shall be paid—

6 “(i) first, to repay any costs incurred
7 in exercising the borrowing authority
8 granted in paragraph (1); and

9 “(ii) second, to recapitalize the Fund..

10 “(4) REPAYMENT PLAN AND SCHEDULES RE-
11 QUIRED FOR ANY BORROWING.—

12 “(A) IN GENERAL.—No amount may be
13 provided by the Secretary of the Treasury to
14 the Corporation under paragraph (1) unless an
15 agreement is in effect between the Secretary
16 and the Corporation which—

17 “(i) provides a specific plan and
18 schedule for assessments under (n)(6) to
19 achieve the repayment of the outstanding
20 amount of any borrowing under such sub-
21 section; and

22 “(ii) demonstrates that income to the
23 Corporation from assessments under this
24 section will be sufficient to amortize the
25 outstanding balance within the period es-

1 tablished in the repayment schedule and
2 pay the interest accruing on such balance.

3 “(B) CONSULTATION WITH AND REPORT
4 TO CONGRESS.—The Secretary of the Treasury
5 and the Corporation shall—

6 “(i) consult with the Committee on
7 Financial Services of the House of Rep-
8 resentatives and the Committee on Bank-
9 ing, Housing, and Urban Affairs of the
10 Senate on the terms of any repayment
11 schedule agreement; and

12 “(ii) submit a copy of each repayment
13 schedule agreement to the Committee on
14 Financial Services of the House of Rep-
15 representatives and the Committee on Bank-
16 ing, Housing, and Urban Affairs of the
17 Senate before the end of the 30-day period
18 beginning on the date any amount is pro-
19 vided by the Secretary of the Treasury to
20 the Corporation under paragraph (1).”.

21 (b) CONFORMING AMENDMENTS.—Section 210 of the
22 Dodd-Frank Wall Street Reform and Consumer Protec-
23 tion Act (12 U.S.C. 5390) is amended—

24 (1) in subsection (b)(4), by striking “, subject
25 to subsection (o)(1)(D)(i)”;

1 (2) in subsection (d)(4), by striking “Subject to
2 subsection (o)(1)(D)(i), the” and inserting “The”;

3 (3) in subsection (h)(5)(E), by striking “, sub-
4 ject to subsection (o)(1)(D)(i)”;

5 (4) in subsection (n)(9)(B)(i)(II), by striking
6 “subsection (o)(1)(B)” and inserting “subsection
7 (o)(1)”.

