

111TH CONGRESS
2D SESSION

S. 3052

To address the establishment and maintenance of the Systemic Resolution Fund of the Federal Deposit Insurance Corporation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 1, 2010

Mr. MENENDEZ introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To address the establishment and maintenance of the Systemic Resolution Fund of the Federal Deposit Insurance Corporation, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Ending Taxpayer Bail-
5 outs by Making Wall Street Pay Act of 2010”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “Corporation” means the Federal
9 Deposit Insurance Corporation;

1 (2) the term “Fund” means the Systemic Reso-
2 lution Fund established under this Act;

3 (3) the terms “financial company” and “cov-
4 ered financial company” have the same meanings as
5 in section 2 of the Restoring American Financial
6 Stability Act of 2010; and

7 (4) the term “off-balance-sheet activity” in-
8 cludes—

9 (A) any contractual arrangement to which
10 an unconsolidated entity is a party, under
11 which the registrant has—

12 (i) any obligation under certain guar-
13 antee contracts;

14 (ii) a retained or contingent interest
15 in assets transferred to an unconsolidated
16 entity or similar arrangement that serves
17 as credit, liquidity, or market risk support
18 to that entity for such assets;

19 (iii) any obligation under certain de-
20 rivative instruments; and

21 (iv) any obligation under a material
22 variable interest held by the registrant in
23 an unconsolidated entity that provides fi-
24 nancing, liquidity, market risk, or credit
25 risk support to the registrant, or engages

- 1 in leasing, hedging, or research and devel-
2 opment services with the registrant; and
3 (B) transactions that are or involve—
- 4 (i) direct credit substitutes, in which a
5 bank substitutes its own credit for a third
6 party, including standby letters of credit;
 - 7 (ii) irrevocable letters of credit that
8 guarantee repayment of commercial paper
9 or tax-exempt securities;
 - 10 (iii) risk participations in bankers' ac-
11 ceptances;
 - 12 (iv) sale and repurchase agreements;
 - 13 (v) asset sales with recourse against
14 the seller;
 - 15 (vi) interest rate swaps;
 - 16 (vii) credit swaps;
 - 17 (viii) commodity contracts;
 - 18 (ix) forward contracts;
 - 19 (x) securities contracts;
 - 20 (xi) lease obligations, including obliga-
21 tions from synthetic leases;
 - 22 (xii) obligations existing in an invest-
23 ment accounted for by the equity method;
 - 24 (xiii) obligations arising from struc-
25 tured investment vehicles; and

1 (xiv) such other activities or trans-
2 actions as the Agency may, by rule, define.

3 **SEC. 3. SYSTEMIC RESOLUTION FUND.**

4 (a) ESTABLISHMENT.—There is established the Sys-
5 temic Resolution Fund, which the Corporation shall—

6 (1) maintain and administer;

7 (2) use to facilitate the resolution of a covered
8 financial company, as provided in subsection (b), or
9 take such other actions as are authorized for the
10 Corporation; and

11 (3) invest in accordance with section 13(a) of
12 the Federal Deposit Insurance Act.

13 (b) USES OF THE FUND.—The Fund shall be avail-
14 able to the Corporation for use with respect to a covered
15 financial company—

16 (1) to cover the costs incurred by the Corpora-
17 tion, including as receiver, in exercising its rights,
18 authorities, and powers and fulfilling its obligations
19 and responsibilities;

20 (2) to repay initial capitalization appropriations
21 under this section; and

22 (3) to cover the costs of systemic stabilization
23 purposes.

24 (c) PROHIBITIONS.—Notwithstanding any other pro-
25 vision of law amounts in the Fund may not be used to

1 convert or maintain a financial company that is insolvent
2 or in receivership, except to the extent necessary to insure
3 systemic stabilization in the resolution of such financial
4 company.

5 (d) DEPOSITS TO THE FUND.—All amounts assessed
6 against a financial company under this section shall be
7 deposited into the Fund.

8 **SEC. 4. ASSESSMENTS.**

9 (a) MINIMUM SIZE OF THE FUND.—The Corporation
10 shall, by rule, establish the minimum size of the Fund,
11 consistent with subsections (a) and (b), but amounts
12 maintained in the Fund shall in no case exceed an amount
13 equal to 1 percent of the gross domestic product of the
14 United States.

15 (b) ASSESSMENTS TO MAINTAIN FUND.—The Cor-
16 poration shall impose assessments on financial companies
17 in such amounts and in such manner, and subject to such
18 terms and conditions as the Corporation, by regulation,
19 determines are necessary for the amount in the Fund to
20 be maintained at not less than the minimum size estab-
21 lished pursuant to subsection (a).

22 (c) ASSESSMENTS TO REPLENISH THE FUND.—If
23 the Fund falls below the minimum size established pursu-
24 ant to subsection (a) the Corporation shall impose assess-
25 ments on financial companies, in such amounts and such

1 manner, and subject to consideration of the factors set
2 forth in subsection (e), as are necessary for the Fund to
3 meet or exceed the minimum size established pursuant to
4 subsection (a) before the end of the 8-year period begin-
5 ning on the date on which the Fund first fell below the
6 minimum amount (or such longer period as the Corpora-
7 tion may determine to be necessary due to extraordinary
8 circumstances).

9 (d) MINIMUM ASSESSMENT THRESHOLD.—The Cor-
10 poration may not impose an assessment under this sub-
11 section on any financial company that the Corporation de-
12 termines does not pose a systemic risk to the United
13 States financial system.

14 (e) REALLOCATION REQUIRED.—The Corporation
15 shall, by rule, establish a mechanism whereby the systemic
16 risk regulator reallocates the assessments for the fund an-
17 nually among all the systemically risky financial compa-
18 nies, to include the authority to refund contributions, as
19 necessary or appropriate in the determination of the Cor-
20 poration.

21 (f) FACTORS FOR CONSIDERATION.—In taking ac-
22 tions and making determinations under this subsection,
23 the Corporation shall seek to prevent sharp swings in the
24 assessment rates for financial companies, and shall take
25 into account—

1 (1) the actual or expected risk of losses to the
2 Fund;

3 (2) economic conditions generally affecting fi-
4 nancial companies, so as to allow assessments and
5 the Fund to increase during more favorable condi-
6 tions and to decrease during less favorable economic
7 conditions;

8 (3) any assessments imposed on a financial
9 company or a subsidiary or affiliate of a financial
10 company that is—

11 (A) an insured depository institution, sub-
12 ject to assessments under section 7 or
13 13(c)(4)(G) of the Federal Deposit Insurance
14 Act;

15 (B) a member of the Securities Investor
16 Protection Corporation, subject to assessments
17 under section 4 of the Securities Investor Pro-
18 tection Act of 1970; or

19 (C) an insurance company, subject to as-
20 sessments pursuant to applicable State law to
21 cover (or reimburse payments made to cover)
22 the costs of the rehabilitation, liquidation, or
23 other State insolvency proceeding with respect
24 to one or more insurance companies;

1 (4) the risks presented by the financial com-
2 pany to the financial system and the extent to which
3 the financial company has, or likely would, benefit
4 from the resolution of a financial company;

5 (5) any off-balance-sheet activities of the finan-
6 cial company; and

7 (6) such other factors as the Corporation may
8 determine to be appropriate.

9 (g) PERMISSIBLE DISTINCTIONS FOR ASSESS-
10 MENTS.—In establishing the assessment system for the
11 Fund, the Corporation, by regulation, may differentiate
12 among financial companies based on size, complexity of
13 operations or organization, relationships, transactions, di-
14 rect or indirect activities, and any other factors that the
15 Corporation may deem appropriate.

16 (h) INITIAL CAPITALIZATION.—There are authorized
17 to be appropriated to the Secretary, for fiscal years 2010
18 and 2011, such sums as may be necessary to initially cap-
19 italize the Fund in accordance with this section.

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