

Insert at the end the following new title:

1     **TITLE XVI—FINANCIAL CRISIS**  
2             **ASSESSMENT AND FUND**

3     **SEC. 1601. FINANCIAL CRISIS SPECIAL ASSESSMENT.**

4             (a) SPECIAL ASSESSMENT.—The Council shall im-  
5     pose, and the Corporation shall collect on behalf of the  
6     Council, one or more special assessments on the financial  
7     companies identified in subsections (e) and (f) to collect,  
8     in the aggregate, the lesser of—

9                 (1) \$19,000,000,000; and

10                (2) the product of  $1 \frac{1}{3}$  and the amount nec-  
11     essary to fully offset the net deficit effects of the  
12     provisions of this Act (excluding the effects of sec-  
13     tions 1601 and 1602) for the period starting on the  
14     date of enactment of this Act and through Sep-  
15     tember 30, 2020, which amount shall be determined  
16     by the Director of the Office of Management and  
17     Budget—

18                     (A) by reference to the latest statement  
19     submitted for printing in the Congressional  
20     Record by the Chairmen of the House and Sen-  
21     ate Budget Committees titled “Budgetary Ef-  
22     fects of PAYGO Legislation” for this Act, ex-

1 including the net deficit effects of the special as-  
2 sessments imposed under sections 1601 and  
3 1602, provided that such statement has been  
4 submitted prior to the vote on passage in the  
5 House acting first on the conference report for  
6 that Act; or

7 (B) in all other circumstances, using the  
8 Director's estimate of such amount upon the  
9 enactment of this Act, provided that such esti-  
10 mate shall be based on the approaches to  
11 scorekeeping set forth in section 308 of the  
12 Congressional Budget Act of 1974, and section  
13 4(g)(4) of the Statutory Pay-As-You-Go Act of  
14 2010, and shall use the same economic and  
15 technical assumptions as used in the most re-  
16 cent budget submitted by the President under  
17 section 1105(a) of title 31 of the United States  
18 Code.

19 (b) TIMING OF PAYMENTS.—The special assessments  
20 described under subsection (a) shall be collected on an an-  
21 nual basis, with the first payment due no later than Sep-  
22 tember 30, 2012, and subsequent payments due no later  
23 than September 30, 2013, no later than September 30,  
24 2014, and no later than September 30, 2015, respectively.

1 (c) ASSESSMENTS PLACED IN THE FINANCIAL CRISIS  
2 SPECIAL ASSESSMENT FUND.—Special assessments col-  
3 lected pursuant to this section shall be deposited by the  
4 Corporation as follows:

5 (1) The first \$15,000,000 in special assess-  
6 ments collected pursuant to this section shall be de-  
7 posited in an account to be maintained by the Cor-  
8 poration for the payment of reasonable implementa-  
9 tion and administrative expenses of the Corporation  
10 associated with the collection of assessments for the  
11 Financial Crisis Special Assessment Fund estab-  
12 lished under section 1602; and

13 (2) the remainder of the special assessments  
14 shall be deposited into the Financial Crisis Special  
15 Assessment Fund established under section 1602.

16 (d) RULEMAKING REQUIREMENT.—The Chairperson  
17 of the Council shall prescribe regulations to carry out this  
18 section.

19 (e) COMPANIES SUBJECT TO ASSESSMENT.—The  
20 Council shall impose risk-based assessments on and the  
21 Corporation shall collect such assessments from financial  
22 companies in such amount and manner and subject to  
23 such terms and conditions that the Council determines are  
24 necessary in order to satisfy the requirements of sub-  
25 sections (a), (f), (g) and (h).

1 (f) MINIMUM ASSESSMENT THRESHOLD.—

2 (1) IN GENERAL.—The Council shall not assess  
3 financial companies with less than \$50,000,000,000,  
4 adjusted for inflation, in assets on a consolidated  
5 basis and shall assess financial companies with  
6 \$50,000,000,000, adjusted for inflation, or more in  
7 assets in accordance with subsections (g) and (h).

8 (2) HEDGE FUNDS.—The Council shall not as-  
9 sess financial companies that manage hedge funds  
10 (as defined by the Council, in consultation with the  
11 Securities and Exchange Commission, for purposes  
12 of this section) with less than \$10,000,000,000, ad-  
13 justed for inflation, of assets under management on  
14 a consolidated basis, and shall assess any financial  
15 companies that manage hedge funds with  
16 \$10,000,000,000 or more of assets under manage-  
17 ment in accordance with subsections (g) and (h).

18 (g) FACTORS.—The Council shall establish a risk ma-  
19 trix to be used in establishing the special assessment that  
20 takes into account—

21 (1) the need to satisfy the requirement of sub-  
22 section (a);

23 (2) any assessments imposed on a financial  
24 company or an affiliate of a financial company  
25 that—

1 (A) is an insured depository institution, as-  
2 sessed pursuant to section 7 or 13(c)(4)(G) of  
3 the Federal Deposit Insurance Act;

4 (B) is a member of the Securities Investor  
5 Protection Corporation, assessed pursuant to  
6 section 4 of the Securities Investor Protection  
7 Act of 1970 (15 U.S.C. 78ddd);

8 (C) is an insured credit union, assessed  
9 pursuant to section 202(c)(1)(A)(i) of the Fed-  
10 eral Credit Union Act (12 U.S.C.  
11 1782(c)(1)(A)(i)); or

12 (D) is an insurance company, assessed  
13 pursuant to applicable State law to cover (or re-  
14 imburse payments made to cover) the costs of  
15 the rehabilitation, liquidation, or other State in-  
16 solvency proceeding with respect to 1 or more  
17 insurance companies;

18 (3) the extent of the company's leverage;

19 (4) the extent and nature of the company's off  
20 balance sheet exposures;

21 (5) the extent and nature of the company's  
22 transactions and relationships with other financial  
23 companies;

24 (6) the company's importance as a source of  
25 credit for households, businesses, and State and

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

3 (7) the company's importance as a source of  
4 credit for low-income, minority, or underserved com-  
5 munities and the impact the failure of such company  
6 would have on the availability of credit in such com-  
7 munities;

8 (8) the extent to which assets are simply man-  
9 aged and not owned by the financial company and  
10 the extent to which ownership of assets under man-  
11 agement is diffuse;

12 (9) the nature, scope, and mix of the company's  
13 activities;

14 (10) the degree to which the company is already  
15 regulated by one or more Federal financial regu-  
16 latory agencies or, in the case of a foreign financial  
17 parent, the extent to which such foreign parent is  
18 subject to prudential standards on a consolidated  
19 basis in the home country of such financial parent  
20 that are administered and enforced by a comparable  
21 foreign supervisory authority;

22 (11) the amount and nature of the company's  
23 financial assets;

1           (12) the amount and nature of the company's  
2           liabilities, including the degree of reliance on short  
3           term funding; and

4           (13) such other risk-related factors as the  
5           Council may determine to be appropriate.

6           (h) REQUIREMENT FOR EQUITABLE TREATMENT IN  
7 ASSESSMENTS.—In establishing the special assessment  
8 system under this section, the Council shall consider dif-  
9 ferences among financial companies based on complexity  
10 of operations or organization, interconnectedness, size, di-  
11 rect or indirect activities, and any other risk-related fac-  
12 tors the Council may deem appropriate to ensure that the  
13 assessments charged take into account the risk posed to  
14 the financial system by particular classes of financial com-  
15 panies.

16           (i) INFORMATION GATHERING AND VERIFICATION;  
17 PAYMENTS.—

18           (1) IN GENERAL.—The Council may require  
19           each financial company to make available such infor-  
20           mation as the Council may require—

21                   (A) for purposes of—

22                           (i) determining the financial com-  
23                           pany's assessments under this section; and

24                           (ii) verifying the accuracy of informa-  
25                           tion; and

1 (B) for such other purposes as may be ap-  
2 propriate and necessary to determine appro-  
3 priate risk-based assessments in accordance  
4 with this section.

5 (2) USE OF EXISTING REPORTS.—The Council  
6 shall, to the fullest extent possible, accept—

7 (A) reports that a financial company has  
8 provided or been required to provide to other  
9 Federal or State supervisors or to appropriate  
10 self-regulatory organizations;

11 (B) information that is otherwise required  
12 to be reported publicly; and

13 (C) externally audited financial statements.

14 (3) AUTHORITY FOR ON-SITE INSPECTION.—  
15 The appropriate Federal supervisory agency (or the  
16 Board of Governors in the absence of any such agen-  
17 cy) may make on-site inspections of a financial com-  
18 pany's books and records as necessary to carry out  
19 the purposes of this subsection.

20 (4) RULEMAKING.—The Chairperson of the  
21 Council, in consultation with the Corporation, may  
22 promulgate such regulations as are necessary or ap-  
23 propriate to implement this subsection.

24 (5) PAYMENTS OF ASSESSMENTS REQUIRED.—

1           (A) IN GENERAL.—Any financial company  
2           subject to an assessment under this section  
3           shall pay to the Corporation such assessment.

4           (B) COLLECTION OF ASSESSMENTS.—The  
5           assessments required under this section shall be  
6           collected in such manner and at such time or  
7           times as the Corporation, in consultation with  
8           the Council, shall prescribe by regulation.

9           (6) PENALTY FOR FAILURE TO TIMELY PAY AS-  
10          SESSMENTS.—Any financial company that fails or  
11          refuses to pay any assessment under this section  
12          shall be subject to a penalty under section 18(h) of  
13          the Federal Deposit Insurance Act, as if that finan-  
14          cial company were an insured depository institution.

15          (j) DEFINITIONS.—For purposes of this section, the  
16          following definitions shall apply:

17               (1) COUNCIL.—The term “Council” means the  
18               Financial Stability Oversight Council established  
19               under section 111.

20               (2) FINANCIAL COMPANY.—The term “financial  
21               company” means any company that—

22                       (A) is incorporated or organized under  
23                       Federal law or the laws of any State;

24                       (B) is—

1 (i) any bank holding company as de-  
2 fined in section 2(a) of the Bank Holding  
3 Company Act of 1956 (12 U.S.C.  
4 1841(a));

5 (ii) any savings and loan holding com-  
6 pany as defined in section 10(a)(1)(D) of  
7 the Home Owners' Loan Act (12 U.S.C.  
8 1467a(a)(1)(D));

9 (iii) any nonbank financial company  
10 supervised by the Board of Governors of  
11 the Federal Reserve System, as defined in  
12 section 113;

13 (iv) any insurance company;

14 (v) any company predominantly en-  
15 gaged in activities that are financial in na-  
16 ture or incidental thereto for purposes of  
17 section 4(k) of the Bank Holding Company  
18 Act of 1956 (12 U.S.C. 1843(k)) or activi-  
19 ties that the Council identified as war-  
20 ranting new or heightened prudential  
21 standards under section 120; or

22 (vi) any subsidiary of companies de-  
23 scribed in clause (i), (ii), (iii), (iv), or (v)  
24 (other than an insured depository institu-  
25 tion or any broker or dealer registered with

1           the Securities and Exchange Commission  
2           under section 15(b) of the Securities Ex-  
3           change Act of 1934 (15 U.S.C. 78o(b))  
4           that is a member of the Securities Investor  
5           Protection Corporation);

6           (C) that is not a Farm Credit System in-  
7           stitution chartered under and subject to the  
8           provisions of the Farm Credit Act of 1971 (12  
9           U.S.C. 2001 et seq.);

10          (D) that is not a Federal home loan bank,  
11          the Federal National Mortgage Association, or  
12          the Federal Home Loan Mortgage Corporation;

13          (E) that is not an investment company  
14          registered with the Securities and Exchange  
15          Commission under the Investment Company  
16          Act of 1940;

17          (F) that is not a common trust fund de-  
18          scribed under section 3(c)(3) of the Investment  
19          Company Act of 1940;

20          (G) that is not a collective investment fund  
21          described under section 3(c)(3) of the Invest-  
22          ment Company Act of 1940; and

23          (H) is not an insured depository institution  
24          (as defined in section 3(c) of the Federal De-  
25          posit Insurance act), a Federal credit union or

1 a State-chartered credit union (as such terms  
2 are defined in section 101 of the Federal Credit  
3 Union Act), or a government-sponsored enter-  
4 prise (as such term is defined in section 1004(f)  
5 of the Financial Institutions Reform, Recovery  
6 and Enforcement Act of 1989 (12 U.S.C. 1811  
7 note)).

8 **SEC. 1602. FINANCIAL CRISIS SPECIAL ASSESSMENT FUND.**

9 (a) **ESTABLISHMENT.**—There is established in the  
10 Treasury of the United States a separate fund to be  
11 known as the Financial Crisis Special Assessment Fund  
12 (hereafter in this section referred to as the “Fund”).

13 (b) **SEPARATE HOLDING.**—Assessments deposited  
14 into the Fund—

15 (1) shall be assets of the Fund only; and

16 (2) may not be consolidated with any other  
17 funds within the Treasury of the United States.

18 (c) **SOURCE OF FUNDS.**—The Fund shall be funded  
19 from assessments in accordance with section 1601. Such  
20 assessments shall only be imposed and collected from fi-  
21 nancial companies as described in such section.

22 (d) **INVESTMENT OF FUNDS.**—Funds held in the  
23 Fund shall be invested in obligations of the United States  
24 issued directly to the Fund having suitable maturities and

1 paying suitable interest rates, as determined by the Sec-  
2 retary.

3 (e) RECORDKEEPING.—The Secretary of the Treas-  
4 ury shall establish books and records reflecting the assets  
5 attributable to the Fund, which shall include all earnings  
6 from investments and which shall be updated as appro-  
7 priate.

8 (f) LIMITATION.—The Fund shall not be used in con-  
9 nection with the liquidation of any financial company  
10 under title II or any financial stabilization action taken  
11 under this Act.

12 (g) TERMINATION OF FUND.—Amounts in the Fund  
13 shall not be utilized, expended, or otherwise made avail-  
14 able for any obligation or purpose for a period of 25 years  
15 from the date of the enactment of this Act and at the  
16 conclusion of such period shall only be used for the pur-  
17 pose of reducing the debt of the United States Govern-  
18 ment.

19 **SEC. 1603. CERTAIN SWAPS, ETC., NOT TREATED AS SEC-**  
20 **TION 1256 CONTRACTS.**

21 (a) IN GENERAL.—Subsection (b) of section 1256 of  
22 the Internal Revenue Code of 1986 is amended—

23 (1) by redesignating paragraphs (1) through  
24 (5) as subparagraphs (A) through (E), respectively,

1 and by indenting such subparagraphs (as so redesignated) accordingly,

2 (2) by striking “For purposes of” and inserting the following:

3 “(1) IN GENERAL.—For purposes of”, and

4 (3) by striking the last sentence and inserting the following new paragraph:

5 “(2) EXCEPTIONS.—The term ‘section 1256 contract’ shall not include—

6 “(A) any securities futures contract or option on such a contract unless such contract or option is a dealer securities futures contract, or

7 “(B) any interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap, equity index swap, credit default swap, or similar agreement.”.

8 (b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

