

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 2609
OFFERED BY MR. ROYCE OF CALIFORNIA**

*AND Ms BEAN
OF ILLINOIS*

Page 2, strike line 1 and insert the following:

1 “(b) LEADERSHIP AND EMPLOYEES.—

2 “(1) LEADERSHIP.—The Office shall be headed
3 by a”.

Page 2, after line 4, insert the following:

4 “(2) EMPLOYEES.—

5 “(A) NUMBER AND COMPENSATION.—The
6 Director shall fix number of employees of the
7 Office, and the compensation of such employ-
8 ees, as necessary to carry out the provisions of
9 this section without regard to chapter 51 or
10 subchapter III of chapter 53 of title 5, United
11 States Code.

12 “(B) ADDITIONAL COMPENSATION AND
13 BENEFITS.—Notwithstanding subparagraph
14 (A), the Director may provide additional com-
15 pensation and benefits if the same type of com-
16 pensation or benefits are then being provided by
17 any Federal banking agency or, if not then

1 being provided, could be provided by any such
2 agency under applicable provisions of law or
3 regulation.”.

Page 3, lines 3 and 4, strike “representation as appropriate in” and inserting “representing the United States as appropriate before international regulatory and standard setting bodies, including”.

Page 3, after line 7, insert the following new subparagraph (and redesignate the succeeding subparagraphs and any references to such subparagraphs, accordingly):

4 “(E) to establish and operate within the
5 Office of National Insurance an Office of Insurance
6 Supervision for the purposes of licensing
7 and regulating entities as national financial
8 guarantee insurers in accordance with subsection (d);”.

Page 3, after line 21, insert the following new subsection (and redesignate the succeeding subsections and any references to such subsections, accordingly):

10 “(d) OFFICE OF INSURANCE SUPERVISION.—
11 “(1) IN GENERAL.—In carrying out its functions
12 under subparagraph (E) of subsection (c)(1),
13 the Office of Insurance Supervision shall—

1 “(A) establish criteria necessary for licens-
2 ing and operation of national financial guar-
3 antee insurer, which shall provide that—

4 “(i) an entity shall be eligible to apply
5 for a license to transact the business of fi-
6 nancial guarantee insurance under this
7 section upon demonstration to the Director
8 that it meets the definition of financial
9 guarantee insurer under subsection (o) and
10 all other criteria established by the Direc-
11 tor; and

12 “(ii) a non-United States entity may
13 obtain a license to transact the business of
14 financial guarantee insurance through the
15 establishment of a United States branch
16 which meets the eligibility requirements in
17 clause (i) of this subparagraph and such
18 regulations as the Director may prescribe;

19 “(B) license entities to transact the busi-
20 ness of financial guarantee insurance as a na-
21 tional financial guarantee insurer in accordance
22 with the criteria established;

23 “(C) take such reasonable corrective action
24 as necessary, including revocation, suspension
25 or restriction of a license of a national financial

1 guarantee insurer, when the Office of Insurance
2 Supervision determines that the national finan-
3 cial guarantee insurer is no longer operating in
4 a manner consistent with the criteria estab-
5 lished;

6 “(D) assess and collect reasonable fees
7 from authorized foreign financial guarantee in-
8 surers for the reimbursement of costs incurred
9 by the Director related to international insur-
10 ance agreements on prudential measures; and

11 “(E) assess and collect reasonable fees
12 from national financial guarantee insurers for
13 the reimbursement of costs incurred by the Di-
14 rector for the licensing and examination of such
15 insurers.

16 “(2) AUTHORIZED FOREIGN FINANCIAL GUAR-
17 ANTEE INSURERS.—An authorized foreign financial
18 guarantee insurer shall be permitted to transact the
19 business of financial guarantee insurance to the ex-
20 tent authorized by the applicable international insur-
21 ance agreement on prudential measures.

22 “(3) DELINQUENCY PROCEEDINGS.—

23 “(A) APPLICABILITY OF BANKRUPTCY
24 CODE.—A delinquency proceeding for the liq-
25 uidation or reorganization of a United States

1 entity licensed as a national financial guarantee
2 insurer shall proceed under the provisions of
3 title 11, United States Code.

4 “(B) AUTHORITY OF DIRECTOR.—The Di-
5 rector shall have the sole authority to determine
6 the grounds for and commence any delinquency
7 proceeding under subparagraph (A) and shall
8 be appointed in such proceeding as the receiver,
9 trustee, or debtor in possession, as applicable.

10 “(4) CONVERSION TO STATE LICENSE.—A na-
11 tional financial guarantee insurer may convert to a
12 State-licensed financial guarantee insurer in accord-
13 ance with applicable State law if—

14 “(A) such national financial guarantee in-
15 surer notifies the Director of its intention to
16 convert in accordance with such procedures as
17 the Director may prescribe by regulation; and

18 “(B) after conducting an appropriate re-
19 view, the Director approves the conversion.

20 “(5) IMPLEMENTATION.—

21 “(A) LICENSING.—The Office of Insurance
22 Supervision shall commence licensing of na-
23 tional financial guarantee insurers after pro-
24 mulgation of final rules and regulations under
25 this subsection, which shall occur not later than

1 the expiration of the 2-year period beginning on
2 the date of the enactment of this Act.

3 “(B) APPLICABILITY.—The provisions of
4 this subsection shall apply only to financial
5 guarantee insurance agreements and inter-
6 national insurance agreements on prudential
7 measures entered into on or after the date of
8 the enactment of this Act.”.

Page 6, line 21, before the period insert the following: “, or contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of the Office, a State insurance regulator, or other Federal or State regulatory agency responsible for the insurer or affiliate’s regulation or supervision”.

Page 6, after line 21, insert the following:

9 “(e) Any non-publicly available data and
10 information received or collected by the Office
11 pursuant to this subsection shall be considered
12 trade secrets and commercial or financial information that is privileged and confidential pursuant to section 5 U.S.C. 552(b)(4).”.

Page 7, line 3, insert “(i)” after “(A)”.

Page 7, line 6, before “less” insert “more or”.

Page 7, line 7, after “United States insurer” insert the following: “or, in the case of an authorized foreign financial guarantee insurer, a United States financial guarantee insurer,”.

Page 7, line 10, strike “(B)” and insert “(ii)”.

Page 7, line 13, strike the period and insert a semi-colon.

Page 7, after line 13, insert the following:

1 “(B) is contrary to or inconsistent with the
2 purposes of this section as applied to national
3 financial guarantee insurers or authorized for-
4 eign financial guarantee insurers, or to their fi-
5 nancial guarantee insurance agreements;

6 “(C) directly or indirectly interferes with
7 an entity applying for a license or operating as
8 a national financial guarantee insurer;

9 “(D) directly or indirectly interferes with a
10 United States insurer or reinsurer ceding insur-
11 ance to a national financial guarantee insurer
12 for any purpose;

13 “(E) directly or indirectly treats a national
14 financial guarantee insurer more or less favor-
15 ably than a State licensed financial guarantee

1 insurer solely on the basis of an entity's status
2 as a national financial guarantee insurer; or
3 "(F) denies credit either as an asset or a
4 reduction of liabilities on account of reinsurance
5 ceded to a national financial guarantee in-
6 surer."

Page 10, line 18, strike "The" and insert the fol-
lowing:

7 "(1) AUTHORITY.—The".

Page 10, after line 19, insert the following:

8 "(2) CONSIDERATIONS FOR FINANCIAL GUAR-
9 ANTEE INSURANCE.—The rules and regulations pre-
10 scribed to carry out subsection (d) shall give due
11 consideration to—

12 "(A) promoting financially secure financial
13 guarantee insurers that provide capacity to
14 issuers of municipal and other securities sold in
15 domestic and international markets;

16 "(B) the need for a competitive and
17 healthy financial guarantee insurance market
18 that provides sufficient capacity to meet the
19 needs of municipal and other issuers;

20 "(C) global capital and risk management,
21 taking into account capital adequacy, assess-

1 ment of internal controls, recognition of quali-
2 fied internal capital models, and effective cor-
3 porate governance;

4 “(D) financial transparency including in-
5 formation regarding national financial guar-
6 antee insurers’ financial conditions and national
7 financial guarantee insurers’ performance in
8 paying covered claims;

9 “(E) access to all necessary financial infor-
10 mation with appropriate provision for the con-
11 fidentiality of that information; and

12 “(F) harmonization with international
13 standards for the prudential regulation of the
14 business of financial guarantee insurance.”.

Page 12, line 1, after “industry,” insert “the advis-
ability of Federal regulation of the business of financial
guarantee insurance, including whether such regulation is
adequately harmonized with international regulation to
maximize competing benefits to the consuming public,”.

Page 12, line 4, before “deemed” insert “or rec-
ommendations”.

Page 12, after line 15, insert the following new
paragraph (and redesignate succeeding paragraphs ac-
cordingly):

1 “(2) AUTHORIZED FOREIGN FINANCIAL GUAR-
2 ANTEE INSURER.—The term ‘authorized foreign fi-
3 nancial guarantee insurer’ means a financial guar-
4 antee insurer that is domiciled in and subject to the
5 regulation of a non-United States jurisdiction’s su-
6 pervisory authority that has entered into a super-
7 visory arrangement with the Director.”.

Page 12, after line 19, insert the following new paragraphs (and redesignate succeeding paragraphs accordingly):

8 “(4) FINANCIAL GUARANTEE INSURANCE.—
9 “(A) IN GENERAL.—The term ‘financial
10 guarantee insurance’ means a surety bond, an
11 insurance policy or, when issued by an insurer,
12 an indemnity contract, and any guaranty simi-
13 lar to the foregoing types, under which loss is
14 payable, upon proof of occurrence of financial
15 loss, to an insured claimant, obligee, or
16 indemnitee as a result of any of the following
17 events:
18 “(i) Failure of any obligor on or
19 issuer of any debt instrument or other
20 monetary obligation (including equity secu-
21 rities guaranteed under a surety bond, in-
22 surance policy or indemnity contract) to

1 pay when due to be paid by the obligor or
2 scheduled at the time insured to be re-
3 ceived by the holder of the obligation, prin-
4 cipal, interest, premium, dividend, or pur-
5 chase price of or on, or other amounts due
6 or payable with respect to, such instrument
7 or obligation, when such failure is the re-
8 sult of a financial default or insolvency or
9 any other failure to make payment, regard-
10 less of whether such obligation is incurred
11 directly or as guarantor by or on behalf of
12 another obligor that has also defaulted.

13 “(ii) Other events that the Office of
14 Insurance Supervision determines are sub-
15 stantially similar to an event described in
16 clause (i).

17 “(B) EXCLUSIONS.—Notwithstanding sub-
18 paragraph (A), such term shall not include any
19 of the following:

20 “(i) Insurance of any loss resulting
21 from any event described in subparagraph
22 (A) if the loss is payable only upon the oc-
23 currence of any of the following, as speci-
24 fied in a surety bond, insurance policy, or
25 indemnity contract:

- 1 “(I) A fortuitous physical event.
- 2 “(II) Failure of or deficiency in
- 3 the operation of equipment.
- 4 “(III) An inability to extract or
- 5 recover a natural resource.
- 6 “(ii) Fidelity and surety insurance.
- 7 “(iii) Credit insurance.
- 8 “(iv) Credit unemployment insurance.
- 9 “(v) Residual value insurance.
- 10 “(vi) Mortgage guaranty insurance.
- 11 “(vii) Guaranteed investment con-
- 12 tracts issued by life insurance companies
- 13 that provide that the life insurer itself will
- 14 make specified payments in exchange for
- 15 specific premiums or contributions.
- 16 “(viii) Indemnity contracts or similar
- 17 guaranties—
- 18 “(I) in which a life insurer or an
- 19 insurer guaranties its obligations or
- 20 indebtedness or the obligations or in-
- 21 debtedness of a subsidiary, other than
- 22 a financial guaranty insurance cor-
- 23 poration: *Provided*, That—
- 24 “(aa) to the extent that any
- 25 such obligations or indebtedness

1 are backed by specific assets,
2 such assets must at all times be
3 owned by the insurer or the sub-
4 sidiary; and

5 “(bb) in the case of the
6 guaranty of the obligations or in-
7 debtedness of the subsidiary that
8 are not backed by specific assets
9 of such insurer, such guaranty
10 terminates once the subsidiary
11 ceases to be a subsidiary;

12 “(II) in which a life insurer guar-
13 anties obligations or indebtedness (in-
14 cluding the obligation to substitute as-
15 sets where appropriate) with respect
16 to specific assets acquired by such life
17 insurer in the course of its normal in-
18 vestment activities and not for the
19 purpose of resale with credit enhance-
20 ment, or guaranties obligations or in-
21 debtedness acquired by its subsidiary:
22 *Provided*, That the assets acquired
23 pursuant to this subclause (II) have
24 been—

1 “(aa) acquired by a special
2 purpose entity, whose sole pur-
3 pose is to acquire specific assets
4 of such life insurer or its sub-
5 sidiary and issue securities or
6 participation certificates backed
7 by such assets; or

8 “(bb) sold to an independent
9 third party; or

10 “(III) in which a life insurer
11 guaranties obligations or indebtedness
12 of an employee or insurance agent of
13 such life insurer; or—

14 “(ix) Guarantees of higher education
15 loans, unless written by a financial guar-
16 anty insurance corporation.

17 “(x) Guarantees of insurance con-
18 tracts, except for—

19 “(I) guarantees of contracts in-
20 suring against physical damage to
21 property in favor of mortgagees or
22 other loss payees named in the con-
23 tract;

24 “(II) financial guaranty insur-
25 ance policies insuring guaranteed in-

1 investment contracts issued by life in-
2 surers: *Provided*, That—
3 “(aa) the obligations under
4 such contracts are not dependent
5 on the continuance of human life;
6 “(bb) the financial guaranty
7 insurance policies do not guar-
8 anty death benefits provided by
9 such contracts;
10 “(cc) the obligations insured
11 by the financial guaranty insur-
12 ance policies are investment
13 grade based on the rating of the
14 life insurers or, in the case of
15 separate account guaranteed in-
16 vestment contracts, based on the
17 ratings of such separate ac-
18 counts;
19 “(dd) the financial guaranty
20 insurance policies shall not condi-
21 tion or delay payment of a claim
22 with respect to such contracts
23 upon the insured or beneficiary
24 making a claim on the contracts

1 with any insurance guaranty
2 fund; and

3 “(ee) the financial guaranty
4 insurance policies provide that if,
5 prior to payment by the insurer
6 under the financial guaranty in-
7 surance policies, the guaranty
8 fund has paid a claim under such
9 contracts for an amount that,
10 when added to the amount pay-
11 able under the financial guaranty
12 insurance policies, would exceed
13 the amount owed under such con-
14 tracts, then the financial guar-
15 anty insurer shall pay the portion
16 of the amount payable in excess
17 of the contract amounts to the
18 guaranty fund instead of to the
19 beneficiary under such contracts.

20 “(xi) Any other form of insurance cov-
21 ering risks that the Office of Insurance
22 Supervision determines to be substantially
23 similar to any of the foregoing.

24 “(5) FINANCIAL GUARANTEE INSURER.—The
25 term ‘financial guarantee insurer’ means an entity

1 that is, as determined by the Director, principally
2 engaged in the business of financial guarantee insur-
3 ance and not engaged on an ongoing basis in the
4 business of soliciting other types of insurance.”.

Page 13, after line 5, insert the following new para-
graph (and redesignate succeeding paragraphs accord-
ingly):

5 “(8) NATIONAL FINANCIAL GUARANTEE IN-
6 SURER.—The term ‘national financial guarantee in-
7 surer’ means an entity to which the Director has
8 issued a Federal license under subsection (d)(1) to
9 transact the business of financial guarantee insur-
10 ance.”.

Page 14, line 18, strike the closing quotations and
the last period.

Page 14, after line 18, insert the following:

11 “(b) EXCHANGE OF INFORMATION.—Before entering
12 into any international insurance agreement on prudential
13 measures, the Secretary shall exchange and evaluate rel-
14 evant information regarding the form and nature of regu-
15 lation in each such jurisdiction and the determination by
16 the Director of the Office of National Insurance that such
17 jurisdiction’s supervisory authority maintains and applies
18 legal standards and regulatory requirements substantially

1 equivalent to those applied by the Director and that the
2 awards of arbitration panels and judgments of appropriate
3 United States courts are enforceable and collectable in the
4 jurisdiction, pursuant to treaty, other agreement, or oper-
5 ation of that jurisdiction's law.

6 “(c) REQUIREMENTS FOR VALIDITY OF SUPER-
7 VISORY ARRANGEMENTS.—The Secretary may enter into
8 international insurance agreements on prudential meas-
9 ures only if the Secretary has determined that the require-
10 ments of subsection (b) have been satisfied and the ar-
11 rangement explicitly provides for all of the following:

12 “(1) Identification of areas of regulation that
13 will be the exclusive responsibility of the respective
14 jurisdictions.

15 “(2) The reciprocal treatment of financial guar-
16 antee insurance entities in accordance with each sub-
17 ject jurisdiction's rules and regulations.

18 “(3) A commitment to exchange relevant infor-
19 mation on an ongoing basis.

20 “(4) A process for resolving disputed issues.

21 “(5) The application of the provisions of chap-
22 ter 15 of title 11, United States Code, to cross-bor-
23 der insolvency cases involving entities from the sub-
24 ject jurisdiction.

1 “(6) The terms and conditions for terminating
2 the supervisory arrangement.”.

