This gives a disadvantage to legal Americans and citizens and also legal immigrants who deserve a job. Sadly, we are seeing yet another example of how the President has pushed failed policies instead of working with House Republicans to help American families find jobs.

In conclusion, God bless our troops, and the President should take actions, never forgetting September the 11th in the global war on terrorism.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 4 p.m. today.

Accordingly (at 2 o'clock and 5 minutes p.m.), the House stood in recess.

□ 1600

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. PETRI) at 4 p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken later.

FINANCIAL INSTITUTION BANKRUPTCY ACT OF 2014

Mr. GOODLATTE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5421) to amend title 11 of the United States Code in order to facilitate the resolution of an insolvent financial institution in bankruptcy, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 5421

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Financial Institution Bankruptcy Act of 2014''.

SEC. 2. GENERAL PROVISIONS RELATING TO COVERED FINANCIAL CORPORATIONS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting the following after paragraph (9):

''(9A) The term 'covered financial corporation' means any corporation incorporated or organized under any Federal or State law, other than a stockbroker, a commodity broker, or an entity of the kind specified in paragraph (2) or (3) of section 109(b), that is—

''(A) a bank holding company, as defined in section 2(a) of the Bank Holding Company Act of 1956; or

''(B) a corporation that exists for the primary purpose of owning, controlling and financing its subsidiaries, that has total consolidated assets of $50,000,000,000 or greater, and for which, in its most recently completed fiscal year—

''(i) annual gross revenues derived by the corporation and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the corporation; or

''(ii) the consolidated assets of the corporation and all of its subsidiaries related to activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the corporation.''.

(b) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended by adding at the end the following:

''(l) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 concerning a covered financial corporation.''.

(c) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2), by striking ''or'' at the end;

(B) in paragraph (3)(B), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(4) a covered financial corporation.''; and

(2) in subsection (d)—

(A) by striking ''and'' before ''an uninsured State member bank'';

(B) by striking ''or'' before ''a corporation''; and

(C) by inserting '', or a covered financial corporation'' after ''Federal Deposit Insurance Corporation Improvement Act of 1991''.

(d) CONVERSION TO CHAPTER 7.—Section 1112 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding section 109(b), the court may convert a case under subchapter V to a case under chapter 7 if—

''(1) a transfer approved under section 1185 has been consummated;

''(2) the court has ordered the appointment of a special trustee under section 1186; and

''(3) the court finds, after notice and a hearing, that conversion is in the best interest of the creditors and the estate.''.

(e)(1) Section 726(a)(1) of title 11, United States Code, is amended by inserting after ''first,'' the following: ''in payment of any unpaid fees, costs, and expenses of a special trustee appointed under section 1186, and then''.

(2) Section 1129(a) of title 11, United States Code, is amended by inserting after paragraph (16) the following:

''(17) In a case under subchapter V, all payable fees, costs, and expenses of the special trustee have been paid or the plan provides for the payment of all such fees, costs, and expenses on the effective date of the plan.

''(18) In a case under subchapter V, confirmation of the plan is not likely to cause serious adverse effects on financial stability in the United States.''.

(f) Section 322(b)(2) of title 11, United States Code, is amended by striking ''The'' and inserting ''In cases under subchapter V, the United States trustee shall recommend to the court, and in all other cases, the''.

SEC. 3. LIQUIDATION, REORGANIZATION, OR RECAPITALIZATION OF A COVERED FINANCIAL CORPORATION.

Chapter 11 of title 11, United States Code, is amended by adding at the end the following:

''SUBCHAPTER V—LIQUIDATION, REORGANIZATION, OR RECAPITALIZATION OF A COVERED FINANCIAL CORPORATION

''§ 1181. Inapplicability of other sections

''Sections 303 and 321(c) do not apply in a case under this subchapter concerning a covered financial corporation.

''§ 1182. Definitions for this subchapter

''In this subchapter, the following definitions shall apply:

''(1) The term 'Board' means the Board of Governors of the Federal Reserve System.

''(2) The term 'bridge company' means a newly formed corporation to which property of the estate may be transferred under section 1185(a) and the equity securities of which may be transferred to a special trustee under section 1186(a).

''(3) The term 'capital structure debt' means all unsecured debt of the debtor for borrowed money for which the debtor is the primary obligor, other than a qualified financial contract and other than debt secured by a lien on property of the estate that is to be transferred to a bridge company pursuant to an order of the court under section 1185(a).

''(4) The term 'contractual right' means a contractual right of a kind defined in section 555, 556, 559, 560, or 561.

''(5) The term 'qualified financial contract' means any contract of a kind defined in paragraph (25), (38A), (47), or (53B) of section 101, section 741(7), or paragraph (4), (5), (11), or (13) of section 761.

''(6) The term 'special trustee' means the trustee of a trust formed under section 1186(a)(1).

''§ 1183. Commencement of a case concerning a covered financial corporation

''(a) A case under this subchapter concerning a covered financial corporation may be commenced by the filing of a petition with the court—

''(1) by the debtor under section 301 only if the debtor states to the best of its knowledge under penalty of perjury in the petition that it is a covered financial corporation; or

''(2) by the Board only if the Board states to the best of its knowledge under penalty of perjury in the petition that—

''(A) the debtor is a covered financial corporation that—

''(i) has incurred losses that will deplete all or substantially all of the capital of the covered financial corporation, and there is no reasonable prospect for the covered financial corporation to avoid such depletion;

''(ii) is insolvent;

''(iii) is not paying, or is unable to pay, the debts of the covered financial corporation (other than debts subject to a bona fide dispute as to liability or amount) as they become due; or

''(iv) is likely to be in a financial condition specified in clause (i), (ii), or (iii) sufficiently soon such that the immediate commencement of a case under this subchapter is necessary to prevent serious adverse effects on financial stability in the United States; and

''(B) the commencement of a case under this title and effecting a transfer under section 1185 is necessary to prevent serious adverse effects on financial stability in the United States.

''(b)(1) Unless the debtor consents to an order for relief, the court shall hold a hearing on the Board's petition under subsection (a)(2) as soon as practicable but not later than 16 hours after the Board files such a petition, with notice only to—

''(A) the covered financial corporation;

''(B) the Federal Deposit Insurance Corporation;

''(C) the Office of the Comptroller of the Currency of the Department of the Treasury; and

''(D) the Secretary of the Treasury.

''(2) Only the Board and the entities specified in paragraph (1) and their counsel may participate in a hearing described in this subsection. The Board or the trustee may request that pleadings, hearings, transcripts, and orders in connection with a hearing described in this subsection be sealed if their disclosure could create financial instability in the United States.

''(3) All pleadings, hearings, transcripts, and orders sealed under paragraph (2) shall be available to only the court, the appellate panel, the covered financial corporation, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency of the Department of the Treasury, the Secretary of the Treasury, and the Board. Notwithstanding paragraph (2), if the case is dismissed, all court documents, including pleadings, hearings, transcripts, and orders, shall be permanently sealed.

''(c)(1) The commencement of a case under subsection (a)(1) constitutes an order for relief under this subchapter.

''(2) In a case commenced under subsection (a)(2), after notice and hearing required under subsection (b) and not later than 18 hours after the filing of the Board's petition, the court shall enter—

''(A) an order for relief—

''(i) if the Board has shown at the hearing under this subsection that the requirements under subsection (a)(2) are supported by a preponderance of the evidence; or

''(ii) if the debtor consents to the Board's petition under subsection (a)(2); or

''(B) an order dismissing the case.

''(d)(1) The covered financial corporation or the Board may appeal to the court of appeals from an order entered by the court under subsection (c)(2) not later than 1 hour after the court enters such order, with notice only to the entities specified in subsection (b)(1) and the Board. Such order shall be stayed pending such appeal.

''(2) The appellate panel specified under section 298(c)(1) of title 28 for the judicial circuit in which the case is pending shall hear the appeal under paragraph (1) within 12 hours of the filing of the notice of appeal under this subsection. The standard of review shall be abuse of discretion. The appellate panel shall enter an order determining the matter that is the subject of the appeal not later than 14 hours after the notice of appeal is filed.

''(3) The court may not, on account of an appeal from an order for relief under section 1183(d)(1), delay any proceeding under section 1185, except that the court shall not authorize a transfer under section 1185 before the determination of the appeal.

''(e) The members of the board of directors (or body performing similar functions) of a covered financial company shall have no liability to shareholders, creditors or other parties in interest for a good faith filing or consenting in good faith to a petition with respect to a case under this subchapter, or for any reasonable action taken in good faith in contemplation of or in connection with such a petition or a transfer under section 1185 or section 1186, whether prior to or after commencement of the case.

''(f) Counsel to the debtor or the Board shall provide, to the greatest extent practicable, sufficient confidential notice to the Office of Court Services of the Administrative Office of the United States Courts regarding the potential commencement of a subchapter V case without disclosing the identity of the potential debtor in order to allow such office to randomly designate and ensure the ready availability of one of the bankruptcy judges designated under section 298(b)(1) of title 28 to be available to preside over such subchapter V case.

''§ 1184. Regulators

''The Board, the Securities Exchange Commission, the Office of the Comptroller of the Currency of the Department of the Treasury, and the Federal Deposit Insurance Corporation may raise and may appear and be heard on any issue in any case or proceeding under this subchapter.

''§ 1185. Special transfer of property of the estate

''(a) On request of the trustee or the Board, and after notice and a hearing that shall occur not less than 24 hours after the order for relief, the court may order a transfer under this section of property of the estate, and the assignment of executory contracts, unexpired leases, and qualified financial contracts of the debtor, to a bridge company. Upon the entry of an order approving such transfer, any property transferred, and any executory contracts, unexpired leases, and qualified financial contracts assigned under such order shall no longer be property of the estate. Except as provided under this section, the provisions of sections 363 and 365 shall apply to a transfer and assignment under this section.

''(b) Unless the court orders otherwise, notice of a request for an order under subsection (a) shall consist of electronic or telephonic notice of not less than 24 hours to—

''(1) the debtor;

''(2) the holders of the 20 largest secured claims against the debtor;

''(3) the holders of the 20 largest unsecured claims against the debtor;

''(4) counterparties to any debt, executory contract, unexpired lease, and qualified financial contract requested to be transferred under this section;

''(5) the Board;

''(6) the Federal Deposit Insurance Corporation;

''(7) the Secretary of the Treasury and the Office of the Comptroller of the Currency of the Treasury;

''(8) the Securities and Exchange Commission;

''(9) the United States trustee or bankruptcy administrator; and

''(10) each primary financial regulatory agency, as defined in section 2(12) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, with respect to any affiliate the equity securities of which are proposed to be transferred under this section.

''(c) The court may not order a transfer under this section unless the court determines, based upon a preponderance of the evidence, that—

''(1) the transfer under this section is necessary to prevent serious adverse effects on financial stability in the United States;

''(2) the transfer does not provide for the assumption of any capital structure debt by the bridge company;

''(3) the transfer does not provide for the transfer to the bridge company of any property of the estate that is subject to a lien securing a debt, executory contract, unexpired lease or agreement of the debtor unless—

''(A)(i) the bridge company assumes such debt, executory contract, unexpired lease or agreement, including any claims arising in respect thereof that would not be allowed secured claims under section 506(a)(1) and after giving effect to such transfer, such property remains subject to the lien securing such debt, executory contract, unexpired lease or agreement; and

''(ii) the court has determined that assumption of such debt, executory contract, unexpired lease or agreement by the bridge company is in the best interests of the estate; or

''(B) such property is being transferred to the bridge company in accordance with the provisions of section 363;

''(4) the transfer does not provide for the assumption by the bridge company of any debt, executory contract, unexpired lease or agreement of the debtor secured by a lien on property in which the estate has an interest unless the transfer provides for such property to be transferred to the bridge company in accordance with paragraph (3)(A) of this subsection;

''(5) the transfer does not provide for the transfer of the equity of the debtor;

''(6) the party requesting the transfer under this subsection has demonstrated that the bridge company is not likely to fail to meet the obligations of any debt, executory contract, qualified financial contract, or unexpired lease assumed and assigned to the bridge company;

''(7) the transfer provides for the transfer to a special trustee all of the equity securities in the bridge company and appointment of a special trustee in accordance with section 1186;

''(8) after giving effect to the transfer, adequate provision has been made for the fees, costs, and expenses of the estate and special trustee; and

''(9) the bridge company will have governing documents, and initial directors and senior officers, that are in the best interest of creditors and the estate.

''(d) Immediately before a transfer under the section, the bridge company that is the recipient of the transfer shall—

''(1) not have any property, executory contracts, unexpired leases, or debts, other than any property acquired or executory contracts, unexpired leases, or debts assumed when acting as a transferee of a transfer under this section; and

''(2) have equity securities that are property of the estate, which may be sold or distributed in accordance with this title.

''§ 1186. Special trustee

''(a)(1) An order approving a transfer under section 1185 shall require the trustee to transfer to a qualified and independent special trustee, who is appointed by the court, all of the equity securities in the bridge company that is the recipient of a transfer under section 1185 to hold in trust for the sole benefit of the estate, subject to satisfaction of the special trustee's fees, costs, and expenses. The trust of which the special trustee is the trustee shall be a newly formed trust governed by a trust agreement approved by the court as in the best interests of the estate, and shall exist for the sole purpose of holding and administering, and shall be permitted to dispose of, the equity securities of the bridge company in accordance with the trust agreement.

''(2) In connection with the hearing to approve a transfer under section 1185, the trustee shall confirm to the court that the Board has been consulted regarding the identity of the proposed special trustee and advise the court of the results of such consultation.

''(b) The trust agreement governing the trust shall provide—

''(1) for the payment of the fees, costs, expenses, and indemnities of the special trustee from the assets of the debtor's estate;

''(2) that the special trustee provide—

''(A) quarterly reporting to the estate, which shall be filed with the court; and

''(B) information about the bridge company reasonably requested by a party in interest to prepare a disclosure statement for a plan providing for distribution of any securities of the bridge company if such information is necessary to prepare such disclosure statement;

''(3) that for as long as the equity securities of the bridge company are held by the

trust, the special trustee shall file a notice with the court in connection with—

''(A) any change in a director or senior officer of the bridge company;

''(B) any modification to the governing documents of the bridge company; and

''(C) any material corporate action of the bridge company, including—

''(i) recapitalization;

''(ii) a material borrowing;

''(iii) termination of an intercompany debt or guarantee;

''(iv) a transfer of a substantial portion of the assets of the bridge company; or

''(v) the issuance or sale of any securities of the bridge company;

''(4) that any sale of any equity securities of the bridge company shall not be consummated until the special trustee consults with the Federal Deposit Insurance Corporation and the Board regarding such sale and discloses the results of such consultation with the court;

''(5) that, subject to reserves for payments permitted under paragraph (1) provided for in the trust agreement, the proceeds of the sale of any equity securities of the bridge company by the special trustee be held in trust for the benefit of or transferred to the estate;

''(6) the process and guidelines for the replacement of the special trustee; and

''(7) that the property held in trust by the special trustee is subject to distribution in accordance with subsection (c).

''(c)(1) The special trustee shall distribute the assets held in trust—

''(A) if the court confirms a plan in the case, in accordance with the plan on the effective date of the plan; or

''(B) if the case is converted to a case under chapter 7, as ordered by the court.

''(2) As soon as practicable after a final distribution under paragraph (1), the office of the special trustee shall terminate, except as may be necessary to wind up and conclude the business and financial affairs of the trust.

''(d) After a transfer to the special trustee under this section, the special trustee shall be subject only to applicable nonbankruptcy law, and the actions and conduct of the special trustee shall no longer be subject to approval by the court in the case under this subchapter.

''§ 1187. Temporary and supplemental automatic stay; assumed debt

''(a)(1) A petition filed under section 1183 operates as a stay, applicable to all entities, of the termination, acceleration, or modification of any debt, contract, lease, or agreement of the kind described in paragraph (2), or of any right or obligation under any such debt, contract, lease, or agreement, solely because of—

''(A) a default by the debtor under any such debt, contract, lease, or agreement; or

''(B) a provision in such debt, contract, lease, or agreement, or in applicable nonbankruptcy law, that is conditioned on—

''(i) the insolvency or financial condition of the debtor at any time before the closing of the case;

''(ii) the commencement of a case under this title concerning the debtor;

''(iii) the appointment of or taking possession by a trustee in a case under this title concerning the debtor or by a custodian before the commencement of the case; or

''(iv) a credit rating agency rating, or absence or withdrawal of a credit rating agency rating—

''(I) of the debtor at any time after the commencement of the case;

''(II) of an affiliate during the period from the commencement of the case until 48 hours after such order is entered;

''(III) of the bridge company while the trustee or the special trustee is a direct or indirect beneficial holder of more than 50 percent of the equity securities of—

''(aa) the bridge company; or

''(bb) the affiliate, if all of the direct or indirect interests in the affiliate that are property of the estate are transferred under section 1185; or

''(IV) of an affiliate while the trustee or the special trustee is a direct or indirect beneficial holder of more than 50 percent of the equity securities of—

''(aa) the bridge company; or

''(bb) the affiliate, if all of the direct or indirect interests in the affiliate that are property of the estate are transferred under section 1185.

''(2) A debt, contract, lease, or agreement described in this paragraph is—

''(A) any debt (other than capital structure debt), executory contract, or unexpired lease of the debtor (other than a qualified financial contract);

''(B) any agreement under which the debtor issued or is obligated for debt (other than capital structure debt);

''(C) any debt, executory contract, or unexpired lease of an affiliate (other than a qualified financial contract); or

''(D) any agreement under which an affiliate issued or is obligated for debt.

''(3) The stay under this subsection terminates—

''(A) for the benefit of the debtor, upon the earliest of—

''(i) 48 hours after the commencement of the case;

''(ii) assumption of the debt, contract, lease, or agreement by the bridge company under an order authorizing a transfer under section 1185;

''(iii) a final order of the court denying the request for a transfer under section 1185; or

''(iv) the time the case is dismissed; and

''(B) for the benefit of an affiliate, upon the earliest of—

''(i) the entry of an order authorizing a transfer under section 1185 in which the direct or indirect interests in the affiliate that are property of the estate are not transferred under section 1185;

''(ii) a final order by the court denying the request for a transfer under section 1185;

''(iii) 48 hours after the commencement of the case if the court has not ordered a transfer under section 1185; or

''(iv) the time the case is dismissed.

''(4) Subsections (d), (e), (f), and (g) of section 362 apply to a stay under this subsection.

''(b) A debt, executory contract (other than a qualified financial contract), or unexpired lease of the debtor, or an agreement under which the debtor has issued or is obligated for any debt, may be assumed by a bridge company in a transfer under section 1185 notwithstanding any provision in an agreement or in applicable nonbankruptcy law that—

''(1) prohibits, restricts, or conditions the assignment of the debt, contract, lease, or agreement; or

''(2) accelerates, terminates, or modifies, or permits a party other than the debtor to terminate or modify, the debt, contract, lease, or agreement on account of—

''(A) the assignment of the debt, contract, lease, or agreement; or

''(B) a change in control of any party to the debt, contract, lease, or agreement.

''(c)(1) A debt, contract, lease, or agreement of the kind described in subparagraph (A) or (B) of subsection (a)(2) may not be accelerated, terminated, or modified, and any right or obligation under such debt, contract, lease, or agreement may not be accelerated, terminated, or modified, as to the bridge company solely because of a provision in the debt, contract, lease, or agreement or in applicable nonbankruptcy law—

''(A) of the kind described in subsection (a)(1)(B) as applied to the debtor;

''(B) that prohibits, restricts, or conditions the assignment of the debt, contract, lease, or agreement; or

''(C) that accelerates, terminates, or modifies, or permits a party other than the debtor to terminate or modify, the debt, contract, lease or agreement on account of—

''(i) the assignment of the debt, contract, lease, or agreement; or

''(ii) a change in control of any party to the debt, contract, lease, or agreement.

''(2) If there is a default by the debtor under a provision other than the kind described in paragraph (1) in a debt, contract, lease or agreement of the kind described in subparagraph (A) or (B) of subsection (a)(2), the bridge company may assume such debt, contract, lease, or agreement only if the bridge company—

''(A) shall cure the default;

''(B) compensates, or provides adequate assurance in connection with a transfer under section 1185 that the bridge company will promptly compensate, a party other than the debtor to the debt, contract, lease, or agreement, for any actual pecuniary loss to the party resulting from the default; and

''(C) provides adequate assurance in connection with a transfer under section 1185 of future performance under the debt, contract, lease, or agreement, as determined by the court under section 1185(c)(4).

''§ 1188. Treatment of qualified financial contracts and affiliate contracts

''(a) Notwithstanding sections 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 362(o), 555, 556, 559, 560, and 561, a petition filed under section 1183 operates as a stay, during the period specified in section 1187(a)(3)(A), applicable to all entities, of the exercise of a contractual right—

''(1) to cause the modification, liquidation, termination, or acceleration of a qualified financial contract of the debtor or an affiliate;

''(2) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a qualified financial contract of the debtor or an affiliate; or

''(3) under any security agreement or arrangement or other credit enhancement forming a part of or related to a qualified financial contract of the debtor or an affiliate.

''(b)(1) During the period specified in section 1187(a)(3)(A), the trustee or the affiliate shall perform all payment and delivery obligations under such qualified financial contract of the debtor or the affiliate, as the case may be, that become due after the commencement of the case. The stay provided under subsection (a) terminates as to a qualified financial contract of the debtor or an affiliate immediately upon the failure of the trustee or the affiliate, as the case may be, to perform any such obligation during such period.

''(2) Any failure by a counterparty to any qualified financial contract of the debtor or any affiliate to perform any payment or delivery obligation under such qualified financial contract, including during the pendency of the stay provided under subsection (a), shall constitute a breach of such qualified financial contract by the counterparty.

''(c) Subject to the court's approval, a qualified financial contract between an entity and the debtor may be assigned to or assumed by the bridge company in a transfer under section 1185 if and only if—

''(1) all qualified financial contracts between the entity and the debtor are assigned to and assumed by the bridge company in the transfer under section 1185;

''(2) all claims of the entity against the debtor under any qualified financial contract between the entity and the debtor (other than any claim that, under the terms of the qualified financial contract, is subordinated to the claims of general unsecured creditors) are assigned to and assumed by the bridge company;

''(3) all claims of the debtor against the entity under any qualified financial contract between the entity and the debtor are assigned to and assumed by the bridge company; and

''(4) all property securing or any other credit enhancement furnished by the debtor for any qualified financial contract described in paragraph (1) or any claim described in paragraph (2) or (3) under any qualified financial contract between the entity and the debtor is assigned to and assumed by the bridge company.

''(d) Notwithstanding any provision of a qualified financial contract or of applicable nonbankruptcy law, a qualified financial contract of the debtor that is assumed or assigned in a transfer under section 1185 may not be accelerated, terminated, or modified, after the entry of the order approving a transfer under section 1185, and any right or obligation under the qualified financial contract may not be accelerated, terminated, or modified, after the entry of the order approving a transfer under section 1185 solely because of a condition described in section 1187(c)(1), other than a condition of the kind specified in section 1187(b) that occurs after property of the estate no longer includes a direct beneficial interest or an indirect beneficial interest through the special trustee, in more than 50 percent of the equity securities of the bridge company.

''(e) Notwithstanding any provision of any agreement or in applicable nonbankruptcy law, an agreement of an affiliate (including an executory contract, an unexpired lease, qualified financial contract, or an agreement under which the affiliate issued or is obligated for debt) and any right or obligation under such agreement may not be accelerated, terminated, or modified, solely because of a condition described in section 1187(c)(1), other than a condition of the kind specified in section 1187(b) that occurs after the bridge company is no longer a direct or indirect beneficial holder of more than 50 percent of the equity securities of the affiliate, at any time after the commencement of the case if—

''(1) all direct or indirect interests in the affiliate that are property of the estate are transferred under section 1185 to the bridge company within the period specified in subsection (a);

''(2) the bridge company assumes—

''(A) any guarantee or other credit enhancement issued by the debtor relating to the agreement of the affiliate; and

''(B) any right of setoff, netting arrangement, or debt of the debtor that directly arises out of or directly relates to the guarantee or credit enhancement; and

''(3) any property of the estate that directly serves as collateral for the guarantee or credit enhancement is transferred to the bridge company.

''§ 1189. Licenses, permits, and registrations

''(a) Notwithstanding any otherwise applicable nonbankruptcy law, if a request is made under section 1185 for a transfer of property of the estate, any Federal, State, or local license, permit, or registration that the debtor or an affiliate had immediately before the commencement of the case and that is proposed to be transferred under section 1185 may not be accelerated, terminated, or modified at any time after the request solely on account of—

''(1) the insolvency or financial condition of the debtor at any time before the closing of the case;

''(2) the commencement of a case under this title concerning the debtor;

''(3) the appointment of or taking possession by a trustee in a case under this title concerning the debtor or by a custodian before the commencement of the case; or

''(4) a transfer under section 1185.

''(b) Notwithstanding any otherwise applicable nonbankruptcy law, any Federal, State, or local license, permit, or registration that the debtor had immediately before the commencement of the case that is included in a transfer under section 1185 shall be valid and all rights and obligations thereunder shall vest in the bridge company.

''§ 1190. Exemption from securities laws

''For purposes of section 1145, a security of the bridge company shall be deemed to be a security of a successor to the debtor under a plan if the court approves the disclosure statement for the plan as providing adequate information (as defined in section 1125(a)) about the bridge company and the security.

''§ 1191. Inapplicability of certain avoiding powers

''A transfer made or an obligation incurred by the debtor to an affiliate prior to or after the commencement of the case, including any obligation released by the debtor or the estate to or for the benefit of an affiliate, in contemplation of or in connection with a transfer under section 1185 is not avoidable under section 544, 547, 548(a)(1)(B), or 549, or under any similar nonbankruptcy law.

''§ 1192. Consideration of financial stability

''The court may consider the effect that any decision in connection with this subchapter may have on financial stability in the United States.''.

SEC. 4. AMENDMENTS TO TITLE 28, UNITED STATES CODE.

(a) AMENDMENT TO CHAPTER 13.—Chapter 13 of title 28, United States Code, is amended by adding at the end the following:

''§ 298. Judge for a case under subchapter V of chapter 11 of title 11

''(a) Notwithstanding section 295, the Chief Justice of the United States shall designate not fewer than 3 judges of the courts of appeals in not fewer than 4 circuits to serve on an appellate panel to be available to hear an appeal under section 1183 of title 11 in a case under such title concerning a covered financial corporation. Appellate judges may request to be considered by the Chief Justice of the United States for such designation.

''(b)(1) Notwithstanding section 295, the Chief Justice of the United States shall designate not fewer than 10 bankruptcy judges to be available to hear a case under subchapter V of chapter 11 of title 11. Bankruptcy judges may request to be considered by the Chief Justice of the United States for such designation.

''(2) Notwithstanding section 155, a case under subchapter V of chapter 11 of title 11 shall be heard under section 157 by a bankruptcy judge designated under paragraph (1), who shall be assigned to hear such case by the chief judge of the court of appeals for the circuit embracing the district in which the case is pending. To the greatest extent practicable, the approvals required under section 155 should be obtained.

''(3) If the bankruptcy judge assigned to hear a case under paragraph (2) is not assigned to the district in which the case is pending, the bankruptcy judge shall be temporarily assigned to the district.

''(c)(1) The court of appeals shall have jurisdiction of appeals from all orders for relief and orders of dismissal under section 1183 of title 11.

''(2) Notwithstanding section 295, in an appeal under paragraph (1) in a case under title 11 concerning a covered financial corporation shall be heard by—

''(A) 3 judges selected from the appellate panel designated under subsection (a); or

''(B) if the 3 judges of such panel are not immediately available to hear the case, 3 judges designated under subsection (a) from another circuit and assigned by the Chief Justice of the United States to hear the case.

''(3) If any of the judges of the appellate panel specified in paragraph (2) is not assigned to the circuit in which the appeal is pending, the judges shall be temporarily assigned to the circuit.

''(4) A case under subchapter V of chapter 11 of title 11, and all proceedings in the case, shall take place in the district in which the case is pending.

''(d) In this section, the term 'covered financial corporation' has the meaning given that term in section 101(9A) of title 11.''.

(b) AMENDMENT TO SECTION 1334.—Section 1334 of title 28, United States Code, is amended by adding at the end the following:

''(f) This section does not grant jurisdiction to the district court after a transfer pursuant to an order under section 1185 of title 11 of any proceeding related to a special trustee appointed, or to a bridge company formed, in connection with a case under subchapter V of chapter 11 of title 11.''.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 13 of title 28, United States Code, is amended by adding at the end the following:

''298. Judge for a case under subchapter V of chapter 11 of title 11.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. GOODLATTE) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H.R. 5421, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

Today, we take an important step toward preventing the taxpayer-funded bailouts that characterized the 2008 financial crisis. The legislation before us, the Financial Institution Bankruptcy Act, enhances the Bankruptcy Code to facilitate the resolution of a failing financial institution through the bankruptcy process. In doing so, this will help to ensure that private creditors, not taxpayers, bear the losses related to a failing financial institution.

The Financial Institution Bankruptcy Act is the culmination of years of review and research by the Judiciary Committee; other committees; and experts from the financial, regulatory, legal, and academic communities who helped to examine how best to prevent another financial crisis from occurring

and avert the use of taxpayer moneys to bail out failing firms.

The Judiciary Committee has participated in and promoted this review with the aim of examining whether the bankruptcy laws could be improved to enhance the prospects of resolving a financial institution through the bankruptcy process.

During the course of two oversight hearings this Congress, the Subcommittee on Regulatory Reform, Commercial, and Antitrust Law received testimony that the Bankruptcy Code could be improved to better facilitate a resolution of a financial firm and that an amendment to chapter 11 to provide for a specialized subchapter would be the most efficient approach to that goal.

Following these hearings, the committee worked in a bipartisan fashion to draft legislation that built on this record and integrated witnesses' and leading experts' recommendations. These efforts culminated in a discussion draft of the Financial Institution Bankruptcy Act of 2014, which was the subject of a legislative hearing on July 15, 2014. All witnesses at the hearing testified that, subject to a few modifications, the Financial Institution Bankruptcy Act should be enacted into law.

In connection with the July 15 hearing, the committee circulated the draft legislation to a number of interested parties, including the Federal Reserve, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Administrative Office of the United States Courts, the National Conference of Bankruptcy Judges, the National Bankruptcy Conference, and the International Swaps and Derivatives Association.

The committee again, in a bipartisan fashion, received, reviewed, and incorporated multiple comments submitted by these and other parties. The bill was introduced and approved by the committee by voice vote on September 10 of this year.

The bill on the floor today is a reflection of the careful, deliberate, thorough, and bipartisan process the bill received and is the product of a diverse range of views from a variety of interested parties.

The Financial Institution Bankruptcy Act makes several improvements to the Bankruptcy Code in order to enhance the prospect of an efficient resolution of a financial firm through the bankruptcy process. The bill allows for a speedy transfer of the operating assets of a financial firm over the course of a weekend.

This quick transfer allows the financial firm to continue operating in the normal course, which preserves the value of the enterprise for the firm's creditors without having a significant impact on the firm's employees, suppliers, and customers.

The bill also requires an expedited judicial review by judges designated in advance and selected by the chief justice for their experience, expertise, and willingness to preside over these complex cases; furthermore, the legislation provides for key input from the financial institution's regulators during the process.

The Financial Institution Bankruptcy Act is a bipartisan, balanced approach that increases transparency and predictability in the resolution of a financial firm.

I am pleased that the ranking member of the House Judiciary Committee, Mr. CONYERS, joined in introducing this important legislation, and I want to thank him and his staff for working hand in hand with us during the development of this bill.

I also would like to thank the chairman of the Subcommittee on Regulatory Reform, Commercial, and Antitrust Law, Mr. BACHUS, for introducing the Financial Institution Bankruptcy Act.

It is no mistake that the former chairman of the Financial Services Committee is the lead sponsor of this legislation. Mr. BACHUS has been a longstanding champion of the bankruptcy process, and that was reflected in the multiple subcommittee hearings he chaired on this issue.

This legislation is a tribute to his many years dedicated to financial services and bankruptcy issues, and he will be sorely missed next Congress. I wish him all the best during the next chapter of his life.

I urge my colleagues to support this important legislation, and I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Ladies and gentlemen of the House, I rise in strong support of H.R. 5421, as amended, the Financial Institution Bankruptcy Act of 2014.

It is intended to ensure that the resolution of large, complex financial institutions on the verge of insolvency can be better facilitated under the Bankruptcy Code. I support this legislation for several reasons.

First, it addresses a real need, which is recognized by the regulatory agencies, bankruptcy experts, and the private sector, that the bankruptcy law must be amended, so that it can expeditiously restore trust in the financial marketplace after the collapse of a major financial institution.

Such was the case with the failure of Lehman Brothers in 2008, for example, which caused a worldwide freeze on the availability of credit, wreaking havoc on Wall Street, as well as on Main Street. The near collapse of our Nation's economy that resulted from Lehman's failure revealed that current bankruptcy law is, unfortunately, ill-equipped to deal with complex financial institutions that are in economic distress.

This legislation, accordingly, creates a court-supervised, orderly liquidation mechanism that will be guided by the regulators.

In sum, this process will allow a failing financial institution to transfer its assets to a newly-formed bridge company over a single weekend, which will promote confidence in the financial marketplace.

The institution's equity and debt will remain in the bankruptcy case to be administered by a trustee under court supervision. As a result, value assets will be maximized for the benefit of creditors, and the marketplace will be stabilized.

Additionally, I support the legislation because it appropriately recognizes the important role the Dodd-Frank Act has in the regulation of large financial institutions. Without a doubt, the Great Recession was a direct result of the regulatory equivalent of the Wild West.

The Dodd-Frank Act goes a long way toward reinvigorating a regulatory system that makes the financial marketplace more accountable and, hopefully, more resilient. The act also institutes long-needed consumer protections that have up until now not been available.

Title II of the Dodd-Frank Act establishes a mandatory administratively-driven resolution process to wind down large financial institutions. Title II is a critical enforcement tool for bank regulators to facilitate compliance with the act's heightened regulatory requirements for large companies.

Nevertheless, the Dodd-Frank Act clearly recognizes that bankruptcy should be a first resort and that the title II's orderly liquidation process should be a last resort.

In fact, title I of the act explicitly requires these companies to write so-called ''living wills'' that must explain how they will resolve their financial difficulties in a hypothetical bankruptcy scenario. This is because bankruptcy law has, for more than 100 years, enabled some of the Nation's largest companies to regain their financial footing.

I am from Detroit, and I remember that General Motors and the Chrysler Corporation were major beneficiaries. H.R. 5421 will ensure that bankruptcy is a truly viable alternative to the Dodd-Frank Act's resolution process.

I am pleased to note, as has been referenced by the chairman of the Judiciary Committee, that this legislation is the product of a very collaborative, bipartisan, and deliberate process, which should be the norm, not the exception, when it comes to drafting legislation, so a tip of my hat to Chairman GOODLATTE and to the subcommittee chairman for the work that they have done in bringing this legislation to this point.

For example, this bill, unlike similar legislation in the Senate, doesn't include any controversial provisions aimed at undoing the important protections of the Dodd-Frank Act.

I should also note, however, that H.R. 5421 does not include any provision allowing companies to have access to lenders of last resort. Nearly every expert recognizes that such access, even if it is the Federal Government, is a

necessary element to ensure financial stability.

I want to acknowledge the excellent level of cooperation on both sides of the aisle on the Judiciary Committee in producing the legislation that is pending before us today, and I urge my colleagues to support this measure.

I would like to just add that my friend, SPENCER BACHUS of Alabama, is a longtime Member who has been particularly active over the years in the areas of administrative law, as well as immigration and criminal justice.

I find him an individual of principle who has worked on many bipartisan initiatives. I understand Representative BACHUS' father often used the adage, ''If you can't say anything nice about a person, don't say anything at all.''

Mr. BACHUS has certainly adhered to that advice, as he was a consummate gentleman who wielded the gavel with fairness at all times when it was his turn to sit in the chair.

Mr. Speaker, I reserve the balance of my time.

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Mr. GOODLATTE. Mr. Speaker, at this time, it is my pleasure to yield 5 minutes to the gentleman from Alabama (Mr. BACHUS), the chairman of the Subcommittee on Regulatory Reform, Commercial and Antitrust Law, and the chief sponsor of this legislation.

Mr. BACHUS. Mr. Speaker, first let me thank Chairman GOODLATTE and Ranking Member CONYERS—former Chairman CONYERS—for those kind remarks. I have been fortunate to associate with both of you gentlemen over the past years and appreciate the confidence you have entrusted in me, and I take those kind words to heart.

I want to thank both of you for this legislation because, as we know in the legislative process, this went by regular order, which is how all bills should proceed. And the gentleman from Tennessee (Mr. COHEN), who was then my subcommittee ranking member, and now the gentleman from Georgia (Mr. JOHNSON) were both very cooperative.

We also know that good legislation has to have a good staff, and on the subcommittee, we were blessed by three fine individuals and their support staffs: Anthony Grossi and Daniel Flores on the majority side, and sitting over there next to Mr. CONYERS is Susan Jensen. And they worked together. They worked for what was best. I saw no partisanship, no gamesmanship. It was a group effort.

They were also backed by the National Bankruptcy Conference, the Administrative Office of Courts, the Bankruptcy Judicial Conference, as well as the attorneys bar both for creditors and debtors, both for consumers and for the institution. They all came together. We had many people from the academic world, experts in bankruptcy, and they pretty much identified how it ought to go.

The history of all of this really is the financial crisis of 2008, which none of us want to go through again. Now, we may go through something similar, but we want to do everything we can do to avoid that, and that is what this bill is all about. It is to proceed under an established procedure rule of law, which separates the United States from many, many countries. This bill follows the rule of law.

If you look at Bear Stearns and Lehman Brothers and you see the total different paths that were taken, if you see in other bankruptcies where people were put out of jobs unnecessarily—and there were tremendous job losses—there was a consensus, in looking back, that that could have been avoided, much of that, except that bankruptcy didn't give us the tools to address it.

Now, there were two reasons, things that we have heard often during the financial crisis. One was that term ''derivatives,'' credit default swaps, straddles, a lot of these new financial instruments. The Bankruptcy Code simply had not been updated to address derivatives.

And then the global economy. You have almost every large bank holding company, almost every large financial company which have both foreign subsidiaries and domestic subsidiaries, so you have got multiple jurisdictions trying to handle pieces of this. And through, really, a consensus, we came together and said we are going to let the U.S. operating subsidiaries and the foreign operating subsidiaries—and that is where 99 percent of your employees work and probably where 99 percent of the transactions with customers, creditors, debtors, the general public, that is where they transact. We allow that to continue.

We put the bank holding company alone, through a single point of entry, goes into bankruptcy. So there are not these tremendous disruptions that we saw first with Bear Stearns and then in a cascading effect. We hopefully can avoid a lot of that.

I see my time has almost expired, but let me close by saying this: Dodd-Frank said let's go to GAO, let's go to the Federal Reserve.

The SPEAKER pro tempore. The time of the gentleman has expired.

Mr. GOODLATTE. Mr. Speaker, I am happy to yield an additional 2 minutes to the gentleman from Alabama.

Mr. BACHUS. I thank the gentleman from Virginia.

They actually called for us to have this procedure. And that part of Dodd-Frank—I have sometimes said ''the good, the bad, and the ugly''—that was a good part. We needed to structure bankruptcy where it could handle these situations if at all possible.

We consulted with the Comptroller of the Currency, with the Federal Reserve, with the FDIC, and this is a rare consensus. There is a bill over in the Senate by Senator CORNYN of Texas and Senator PAT TOOMEY of Pennsylvania that is similar to this bill. Hopefully we will have a conference with the Senate and get this done.

Some people may say, well, it is not enough. Well, we need to do what we can do in a consensus way and do what we can. It is probably never enough. Sometimes it is too much. But at least this is in our general agreement.

With that, I would like to now introduce a memorandum on this bill which includes the section-by-section comments for the RECORD. This is basically a detailed narrative for the courts and those that would look at this to give illumination to exactly how this works.

H.R. 5421. THE ''FINANCIAL INSTITUTION BANKRUPTCY ACT OF 2014''

The orderly resolution of financial companies presents unique challenges to the U.S. Bankruptcy Code for many reasons, including these institutions' interconnectedness and, in the case of larger institutions, a potential to pose ''systemic risk.'' H.R. 5421, the ''Financial Institution Bankruptcy Act of 2014,'' amends chapter 11 of the Bankruptcy Code to address better the unique challenges presented by the insolvency of a financial institution and better allow such an institution to be resolved through the bankruptcy process.

I. BACKGROUND

A. Brief Overview of Chapter 11

Chapter 11 of the Bankruptcy Code primarily is designed to allow a business to restructure its debt obligations while maintaining its operations. The underlying principle is that a business in its entirety is more valuable than its assets each valued independently. Preservation of a business through chapter 11, and in turn its enterprise value, can benefit both creditors, who should receive a higher recovery as a result of a debtor's restructuring than they would otherwise obtain through a liquidation, and debtors, which benefit from the ability to remain in business. Employees, suppliers, customers, and others can also benefit if the debtor remains in business.

A chapter 11 case begins by the filing of a petition for relief with the relevant bankruptcy court. Once the petition is filed, an ''automatic stay'' is put into place that prevents, with some exceptions, creditors of the debtors from taking actions to recover their debts. The automatic stay allows a debtor the breathing room necessary to organize its operations, negotiate with creditors, and achieve consensus on a chapter 11 plan. The inflection point of a chapter 11 case is the chapter 11 plan, which dictates what each of the creditors will receive as a recovery. The chapter 11 plan must be approved by the debtor's creditors and the Bankruptcy Court. Once a chapter 11 plan is approved, creditors of the debtor may only pursue recoveries as provided by the chapter 11 plan, and the reorganized company is treated as a new corporate entity.

There are generally two primary paths for a debtor to restructure under chapter 11. The first path is a traditional reorganization of a debtor's capital structure. A simple example of this type of reorganization would involve a debtor's shareholders not receiving any recovery on account of their shares, and the debtor's secured creditors becoming the new equity holders of the reorganized company. The second path is a sale of a debtor's primary business, with the proceeds of the sale used to provide recoveries to the debtor's creditors. The sale of a business as a whole is distinct from a liquidation, in that the enterprise typically will continue to run in substantially the same manner under new, third party ownership. In a liquidation, the

debtor's assets are sold in piecemeal fashion or simply handed over to secured creditors.

B. The Existing Bankruptcy Code and Addressing Financial Institution Insolvencies

The bankruptcy process has been the traditional mechanism for handling the orderly resolution of distressed companies in the U.S. because of bankruptcy's established history of laws, precedent and impartial administration. According to a report by the Federal Deposit Insurance Corporation (FDIC) and the Bank of England (Resolving Globally Active, Systemically Important, Financial Institutions, December 2012), ''[t]he U.S. would prefer that large financial organizations be resolvable through ordinary bankruptcy.'' However, the report added that ''the U.S. bankruptcy process may not be able to handle the failure of a systemic financial institution without significant disruption to the financial system.'' Smaller financial companies are also eligible to restructure their operations under the Bankruptcy Code in the event of material financial distress or failure.

In the wake of the 2008 financial crisis, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, directed the Federal Reserve and the Governmental Accountability Office (GAO) to study the Bankruptcy Code and international issues related to the insolvency of financial institutions as part of an overall goal of reducing systemic risk within the financial sector. The studies identified a number of issues specific to the resolution of insolvent financial institutions and discussed theories regarding how to address such issues, without offering specific recommendations or independent opinions regarding potential revisions to the Bankruptcy Code.

One of the concepts discussed in the Federal Reserve and GAO reports is the resolution of a financial institution through a ''single point of entry.'' This resolution approach relies on placing a parent holding company into receivership while maintaining the operations and solvency of its operating subsidiaries. The ''single point of entry'' approach is also the FDIC's intended method for implementing its resolution/orderly liquidation authority under Title II of the Dodd-Frank Act, a non-bankruptcy resolution process the Dodd-Frank legislation made available for large, systemically important financial institutions. Under this approach, the FDIC would be appointed receiver of the parent holding company and could transfer the parent company's assets into a bridge financial holding company, impose losses on the shareholders and creditors of the parent company, and eventually transition ownership of the bridge financial company into private hands.

Some commentators have suggested that the single point of entry approach should also be made available in the Bankruptcy Code. There are two principal proposals to amend the Bankruptcy Code to facilitate use of this approach. The first proposal is referred to as ''chapter 14'' and would introduce an entirely new chapter to the Bankruptcy Code. On December 19, 2013, Senators Cornyn and Toomey introduced legislation that would, among other things, create a chapter 14 of the Bankruptcy Code. The second proposal is referred to as ''Subchapter V'' and would create an entirely new subchapter within chapter 11.

As explained in additional detail below, both the chapter 14 and subchapter V proposals are designed to address the unique issues presented by a financial institution's bankruptcy. chapter 14 and subchapter V would, among other elements: apply to financial institutions; allow not just the debtor or institution, but also the financial institution's primary regulator, to initiate and have standing in the institution's bankruptcy proceeding; designate a select group of appellate and bankruptcy judges to oversee these bankruptcies; and, provide specialized treatment for derivative contracts. Advocates of these approaches argue that a transparent judicial process that allows for the reorganization, rather than liquidation, of a large financial institution is a preferable resolution strategy.

The Committee has conducted two separate hearings on the topic of enhancing the Bankruptcy Code to address the resolution of a financial institution through the bankruptcy process. On December 3, 2013, the Subcommittee on Regulatory Reform, Commercial and Antitrust Law conducted a hearing entitled ''The Bankruptcy Code and Financial Institution Insolvencies.'' At the hearing, witnesses testified that a financial institution's bankruptcy presents unique issues that the existing Bankruptcy Code could be equipped better to address. On March 26, 2014, the Subcommittee the Subcommittee on Regulatory Reform, Commercial and Antitrust Law conducted a hearing entitled ''Exploring Chapter 11 Reform: Corporate and Financial Institution Insolvencies; Treatment of Derivatives.'' During this hearing, there was testimony in support of amending the Bankruptcy Code to create a subchapter V under chapter 11 to allow the resolution of a financial institution through the bankruptcy process. In addition, as detailed below, on July 15, 2014, the Subcommittee on Regulatory Reform, Commercial and Antitrust Law conducted a hearing on a discussion draft of the Financial Institution Bankruptcy Act.

C. The Challenges Presented by a Financial Institution Insolvency and How the Financial Institution Bankruptcy Act Addresses These Challenges

There are a number of challenges posed by the insolvency of a financial institution, particularly the insolvency of a large, multi-national financial institution. A resolution of a financial institution must be swift, transparent, and account for the potential impact on the general financial system, due to the typically liquid and quickly transferable assets of a financial institution. While the existing Bankruptcy Code possesses many of the provisions necessary to resolve a large, failing firm, commentators have suggested that improvements are necessary to resolve effectively a financial institution.

As explained above, commentators generally agree that the ''single point of entry'' approach is the most efficient proposal to provide for an expeditious resolution of a financial firm. There are several provisions contained in H.R. _____, the ''Financial Institution Bankruptcy Act of 2014'' (referred to herein as ''Subchapter V'') to allow the ''single point of entry'' approach to be utilized in the bankruptcy process. Subchapter V allows the debtor holding company that sits atop the financial firm's corporate structure to transfer its assets, including the equity in all of its operating subsidiaries, to a newly-formed bridge company over a single weekend. The debt and equity held at the holding company will remain in the bankruptcy process and absorb the losses of the financial institution. Identifying the debt and equity to remain in the bankruptcy process allows existing creditors of the debtor to price appropriately their dealings and investment with the debtor prior to any bankruptcy proceeding.

Furthermore, the Subchapter V ''single point of entry'' approach allows all of the financial institution's operating subsidiaries to remain out of the bankruptcy process. Keeping these entities out of an insolvency proceeding is particularly helpful for multinational firms that otherwise could be required to comply with multiple, and potentially, conflicting insolvency jurisdictions.

To account for the potential of a financial firm's insolvency to impact the general financial markets, Subchapter V allows the Federal Reserve to initiate a bankruptcy case. In order to commence a case over the objection of the subject financial institution, the Federal Reserve must demonstrate to the presiding bankruptcy court, which must agree with the Federal Reserve's assessment, that initiating a Subchapter V case is ''necessary to prevent serious adverse effects on financial stability in the United States.'' By allowing the Federal Reserve to commence a Subchapter V case, subject to careful judicial oversight, a near-failing financial firm may be resolved quickly and potentially in advance of its losses spreading to the financial markets.

Subchapter V also includes provisions designed to deal with the types of transactions that financial institutions engage in routinely—derivative and similarly-structured transactions. Currently, the Bankruptcy Code contains exemptions for counterparties to derivative and similarly-structured transactions to collect on outstanding debts notwithstanding the commencement of a chapter 11 case and the consequent ''automatic stay.'' This exemption stands in contrast to the treatment of other contracts and debts under the Bankruptcy Code, which typically requires creditors to wait until a chapter 11 plan is approved before they receive a recovery on account of their relationship with the debtor. Subchapter V overrides the exemption for derivative and similarly-structured transactions contained in the Bankruptcy Code for two days to allow for the effective transfer of the financial institution's operations to a bridge company. Without overriding the existing exemptions, counterparties to derivatives and similarly-structured transactions could terminate their relationships with the debtor upon the commencement of a bankruptcy case, which likely would endanger the successful transfer and continued operation of the bridge company and potentially threaten other entities within the broader financial system.

The draft bill also recognizes that overseeing a Subchapter V case requires a presiding bankruptcy judge or a judge sitting on appeal in such a case to have a certain level of expertise and experience with either financial industry cases or large corporate reorganizations. To that end, Subchapter V contains provisions that require the advance designation of select bankruptcy and appellate judges who can be available to hear these cases and appeals from them.

II. THE HEARING ON A DISCUSSION DRAFT OF THE FINANCIAL INSTITUTION BANKRUPTCY ACT AND ENSUING LEGISLATIVE REFINEMENT PROCESS

On July 15, 2014, the Subcommittee on Regulatory Reform, Commercial and Antitrust Law conducted a hearing on a discussion draft of the Financial Institution Bankruptcy Act. The witnesses at the hearing were: Donald S. Bernstein, Esq., partner and head of Davis Polk & Wardwell LLP's Insolvency and Restructuring Practice; Stephen E. Hessler, Esq., Partner, Kirkland & Ellis, LLP; Professor Thomas H. Jackson, Simon Business School, University of Rochester; and, Professor Stephen J. Lubben, Seton Hall Law School. All four witnesses, including the Minority witness, testified that they believed the Financial Institution Bankruptcy Act, subject to certain technical modifications, should be enacted into law.

Following the hearing, the Committee received comments on the Financial Institution Bankruptcy Act from, among others,

the Federal Reserve, the FDIC, the Office of the Comptroller of the Currency, the Administrative Office of the U.S. Courts, the National Conference of Bankruptcy Judges, the National Bankruptcy Conference, and the International Swaps and Derivatives Association. The comments received from these parties served as the basis for the revisions to the discussion draft that was the subject of the July 15 Subcommittee hearing.

Mr. BACHUS. Again, I thank the chairmen, the ranking members, and their staff for putting this together.

The resolution process for financial institutions is one of the pieces of unfinished business from the 2008 financial crisis, and we will finish some of that business hopefully before the year is out. The American people are hungry for us to do some good things in a spirit of bipartisanship, and they are getting that today.

Mr. CONYERS. Mr. Speaker, I yield back the balance of my time.

Mr. GOODLATTE. Mr. Speaker, I urge my colleagues to support this important legislation, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Virginia (Mr. GOODLATTE) that the House suspend the rules and pass the bill, H.R. 5421, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

BILL WILLIAMS RIVER WATER RIGHTS SETTLEMENT ACT OF 2014

Mr. HASTINGS of Washington. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4924) to direct the Secretary of the Interior to enter into the Big Sandy River-Planet Ranch Water Rights Settlement Agreement and the Hualapai Tribe Bill Williams River Water Rights Settlement Agreement, to provide for the lease of certain land located within Planet Ranch on the Bill Williams River in the State of Arizona to benefit the Lower Colorado River Multi-Species Conservation Program, and to provide for the settlement of specific water rights claims in the Bill Williams River watershed in the State of Arizona.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 4924

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Bill Williams River Water Rights Settlement Act of 2014''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to achieve a fair, equitable, and final settlement of certain claims among certain parties to water rights in the Bill Williams River watershed in the State of Arizona for—

(A) the Hualapai Tribe (acting on behalf of the Tribe and members of the Tribe); and

(B) the Department of the Interior, acting on behalf of the Department and, as specified, the United States as trustee for the Hualapai Tribe, the members of the Tribe, and the allottees;

(2) to approve, ratify, and confirm—

(A) the Big Sandy River-Planet Ranch Water Rights Settlement Agreement entered into among the Hualapai Tribe, the United States as trustee for the Tribe, the members of the Tribe and allottees, the Secretary of the Interior, the Arizona department of water resources, Freeport Minerals Corporation, and the Arizona Game and Fish Commission, to the extent the Big Sandy River-Planet Ranch Agreement is consistent with this Act; and

(B) the Hualapai Tribe Bill Williams River Water Rights Settlement Agreement entered into among the Tribe, the United States as trustee for the Tribe, members of the Tribe, the allottees, and the Freeport Minerals Corporation, to the extent the Hualapai Tribe Agreement is consistent with this Act;

(3) to authorize and direct the Secretary—

(A) to execute the duties and obligations of the Secretary under the Big Sandy River-Planet Ranch Agreement, the Hualapai Tribe Agreement, and this Act;

(B)(i) to remove objections to the applications for the severance and transfer of certain water rights, in partial consideration of the agreement of the parties to impose certain limits on the extent of the use and transferability of the severed and transferred water right and other water rights; and

(ii) to provide confirmation of those water rights; and

(C) to carry out any other activity necessary to implement the Big Sandy River-Planet Ranch Agreement and the Hualapai Tribe Agreement in accordance with this Act;

(4) to advance the purposes of the Lower Colorado River Multi-Species Conservation Program;

(5) to secure a long-term lease for a portion of Planet Ranch, along with appurtenant water rights primarily along the Bill Williams River corridor, for use in the Conservation Program;

(6) to bring the leased portion of Planet Ranch into public ownership for the long-term benefit of the Conservation Program; and

(7) to secure from the Freeport Minerals Corporation non-Federal contributions—

(A) to support a tribal water supply study necessary for the advancement of a settlement of the claims of the Tribe for rights to Colorado River water; and

(B) to enable the Tribe to secure Colorado River water rights and appurtenant land, increase security of the water rights of the Tribe, and facilitate a settlement of the claims of the Tribe for rights to Colorado River water.

SEC. 3. DEFINITIONS.

In this Act:

(1) ADWR.—The term ''ADWR'' means the Arizona department of water resources, established pursuant to title 45 of the Arizona Revised Statutes (or a successor agency or entity).

(2) ALLOTMENT.—The term ''allotment'' means the 4 off-reservation parcels held in trust by the United States for individual Indians in the Big Sandy River basin in Mohave County, Arizona, under the patents numbered 1039995, 1039996, 1039997, and 1019494.

(3) ALLOTTEE.—The term ''allottee'' means any Indian owner of an allotment under a patent numbered 1039995, 1039996, 1039997, or 1019494.

(4) ARIZONA GAME AND FISH COMMISSION.—The term ''Arizona Game and Fish Commission'' means the entity established pursuant to title 17 of the Arizona Revised Statutes to control the Arizona game and fish department (or a successor agency or entity).

(5) BAGDAD MINE COMPLEX AND BAGDAD TOWNSITE.—The term ''Bagdad Mine Complex and Bagdad Townsite'' means the geographical area depicted on the map attached as exhibit 2.9 to the Big Sandy River-Planet Ranch Agreement.

(6) BIG SANDY RIVER-PLANET RANCH AGREEMENT.—The term ''Big Sandy River-Planet Ranch Agreement'' means the Big Sandy River-Planet Ranch Water Rights Settlement Agreement dated July 2, 2014, and any amendment or exhibit (including exhibit amendments) to that Agreement that is—

(A) made in accordance with this Act; or

(B) otherwise approved by the Secretary and the parties to the Big Sandy River-Planet Ranch Agreement.

(7) BILL WILLIAMS RIVER WATERSHED.—The term ''Bill Williams River watershed'' means the watershed drained by the Bill Williams River and the tributaries of that river, including the Big Sandy and Santa Maria Rivers.

(8) CONSERVATION PROGRAM.—The term ''Conservation Program'' has the meaning given the term ''Lower Colorado River Multi-Species Conservation Program'' in section 9401 of the Omnibus Public Land Management Act of 2009 (Public Law 111–11; 123 Stat. 1327).

(9) CORPORATION.—

(A) IN GENERAL.—The term ''Corporation'' means the Freeport Minerals Corporation, incorporated in the State of Delaware.

(B) INCLUSIONS.—The term ''Corporation'' includes all subsidiaries, affiliates, successors, and assigns of the Freeport Minerals Corporation (such as Byner Cattle Company, incorporated in the State of Nevada).

(10) DEPARTMENT.—The term ''Department'' means the Department of the Interior and all constituent bureaus of that Department.

(11) ENFORCEABILITY DATE.—The term ''enforceability date'' means the date described in section 9.

(12) FREEPORT GROUNDWATER WELLS.—

(A) IN GENERAL.—The term ''Freeport Groundwater Wells'' means the 5 wells identified by ADWR well registration numbers—

(i) 55–592824;

(ii) 55–595808;

(iii) 55–595810;

(iv) 55–200964; and

(v) 55–908273.

(B) INCLUSIONS.—The term ''Freeport Groundwater Wells'' includes any replacement of a well referred to in subparagraph (A) drilled by or for the Corporation to supply water to the Bagdad Mine Complex and Bagdad Townsite.

(C) EXCLUSIONS.—The term ''Freeport Groundwater Wells'' does not include any other well owned by the Corporation at any other location.

(13) HUALAPAI TRIBE AGREEMENT.—The term ''Hualapai Tribe Agreement'' means the Hualapai Tribe Bill Williams River Water Rights Settlement Agreement dated July 2, 2014, including any amendment or exhibit (including exhibit amendments) to that Agreement that is—

(A) made in accordance with this Act; or

(B) otherwise approved by the Secretary and the parties to the Agreement.

(14) HUALAPAI TRIBE WATER RIGHTS SETTLEMENT AGREEMENT.—The term ''Hualapai Tribe Water Rights Settlement Agreement'' means the comprehensive settlement agreement in the process of negotiation as of the date of enactment of this Act to resolve the claims of the Tribe for rights to Colorado River water and Verde River water with finality.

(15) INJURY.—