

## [H.R. 2947, Financial Institution Bankruptcy Act of 2016](#)

### FLOOR SITUATION

On Tuesday, April 12, 2016, the House will consider [H.R. 2947](#), the Financial Institution Bankruptcy Act, under suspension of the rules. H.R. 2947 was introduced on July 7, 2015 by Rep. David Trott (R-MI), and was referred to the Committee on Judiciary, which ordered the bill reported, as amended, by a vote of 25 to 0 on February 11, 2016.

### SUMMARY

H.R. 2947 amends chapter 11 of Title 11 of the United States Code to better address the unique challenges presented by the insolvency of a financial institution and better allow such an institution to be resolved through the bankruptcy process.<sup>1</sup>

More specifically, the bill amends federal bankruptcy law with respect to a “covered financial corporation” incorporated or organized under any federal or state law that is: a bank holding company; or a corporation that exists for the primary purpose of owning, controlling and financing its subsidiaries, has total consolidated assets of \$50 billion or greater, and whose annual gross revenues meet specified tests.

The bill also sets forth requirements and prohibitions regarding: (1) commencement of a case concerning a covered financial corporation; (2) a special trustee and bridge company; (3) special transfer of the property of the estate in bankruptcy; (4) treatment of qualified financial contracts and affiliate contracts; (5) licenses, permits, and registrations; (6) exemption from securities laws; and (7) inapplicability of certain avoiding powers.

### BACKGROUND

Chapter 11 of the Bankruptcy Code is designed primarily 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 each of its assets valued independently.<sup>2</sup> Preservation of a business through

<sup>1</sup> See [House Report 114-477](#)

<sup>2</sup> *Id.*

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, who benefit from the ability to continue their business operations.<sup>3</sup>

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, [t]he U.S. would prefer that large financial organizations be resolvable through ordinary bankruptcy.<sup>4</sup>

According to the committee, The U.S. bankruptcy process is not optimally designed for the orderly resolution of financial institutions for many reasons, including these institutions' interconnectedness and, in the case of larger and more interconnected institutions, a potential to pose systemic risk to the broader financial system. H.R. 2947, the Financial Institution Bankruptcy Act of 2016, amends chapter 11 of Title 11 of the United States 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.<sup>5</sup>

According to the bill's sponsor, "we are all pleased to see a bipartisan coalition within the House Judiciary Committee come together to approve this bill to strengthen our nation's bankruptcy laws so that the process will be well-equipped to administer bankruptcy cases related to financial institutions."<sup>6</sup>

## **COST**

The Congressional Budget Office (CBO) [estimates](#) that enacting the legislation would have no significant effect on the federal budget. Pay-as-you-go procedures apply because enacting the legislation could affect direct spending and revenues related to bankruptcy proceedings and other programs aimed at resolving the failure of banks and other financial firms. However, CBO estimates that those effects would not be significant.

## **STAFF CONTACT**

For questions or further information please contact [Robert Goad](#) with the House Republican Policy Committee by email or at 6-1831.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See [Goodlatte, Conyers, Marino and Trott Praise House Judiciary Committee Approval of FIBA](#)