

*As passed by
the Senate Conference*

**** Senate Counteroffer ****
Title II

The House proposed the following amendments to Title II.

The Senate:

1. **Does not accept the House offer to strike Senate provision** containing the definition of "financial company" and related text **and replace with House provision.**
2. **Does not accept the House offer to amend Senate provision** regarding invoking the Orderly Liquidation Authority to provide for involvement of the relevant state insurance commissioner in connection with a decision to liquidate an insurance company, and to clarify that assets of the insurance company are used for the protection of policy holders (Senate bill § 203(a), Page 150 after line 10 and § 203(e), Page 159, line 15 – Page 160, line 2).
3. **Does not accept striking Senate provisions** regarding an ex post funding mechanism for orderly liquidations (except for the provision requiring an orderly liquidation plan) and replace with House provisions that provide for an ex ante funding mechanism.
4. **Does not accept the House offer to add House provision** that requires the FDIC to establish a separate subcorporation to handle orderly liquidations under title II.
5. **Does not accept the House offer to replace the ex ante judicial review process with an ex post judicial review process.**
6. **Does not accept the House offer to include Fannie Mae and Freddie Mac in the definition of "financial company"** for purpose of the orderly liquidation authority.
7. **Accepts with modification the House offer adding a provision** that requires the FDIC to study the impact of secured creditor haircuts. The modification is that the Council, rather than the FDIC, would conduct the study.

SENATE COUNTERPART TO:

HOUSE PROPOSED AMENDMENTS TO TITLE II

Page 128, line 6, strike "(a) IN GENERAL.—"

Page 130, strike line 19 and all that follows through page 132, line 8, and insert the following:

- 1 (11) FINANCIAL COMPANY.—The term "finan-
- 2 cial company" means any company that—
- 3 (A) is incorporated or organized under
- 4 Federal law or the laws of any State;
- 5 (B) is—
- 6 (i) any bank holding company as de-
- 7 fined in section 2(a) of the Bank Holding
- 8 Company Act of 1956 (12 U.S.C.
- 9 1841(a));
- 10 (ii) any company that has been sub-
- 11 jected to stricter prudential regulation
- 12 under section 124;
- 13 (iii) any insurance company;
- 14 (iv) any company predominantly en-
- 15 gaged in activities that are financial in na-
- 16 ture or incidental thereto for purposes of
- 17 section 4(k) of the Bank Holding Company
- 18 Act of 1956 (12 U.S.C. 1843(k)) or activi-

1 granted by the provisions of this Act and title II of
2 the Restoring American Financial Stability Act of
3 2010 and such incidental powers as shall be nec-
4 essary to carry out the powers so granted and ac-
5 complish the purposes of title II of the Restoring
6 American Financial Stability Act of 2010.

7 "(e) STAFF AND RESOURCES.—

8 "(1) IN GENERAL.—The Corporation shall as-
9 sign such staff, and provide such administrative and
10 other support services to the Systemic Dissolution
11 Authority as is necessary to fulfill the statutory re-
12 sponsibilities of the Authority.

13 "(2) ADMINISTRATIVE EXPENSES.—The cost
14 of all personnel, services, and resources provided on
15 behalf of the Systemic Dissolution Authority shall be
16 paid from the Systemic Dissolution Fund."

17 **SEC. 216. STUDY ON SECURED CREDITOR HAIRCUTS.**

18 (a) STUDY REQUIRED.—The Corporation shall con-
19 duct a study evaluating the importance of maximizing
20 United States taxpayer protections and promoting market
21 discipline with respect to the treatment of fully secured
22 creditors in the utilization of the Orderly Liquidation Au-
23 thority authorized by this Act. In carrying out such study,
24 the Corporation shall—

(Council)

1 (1) not be prejudicial to current or past laws or
2 regulations with respect to secured creditor treat-
3 ment in a resolution process;

4 (2) study the similarities and differences be-
5 tween the resolution mechanisms authorized by the
6 United States Bankruptcy Code, the Federal De-
7 posit Insurance Corporation Improvement Act of
8 1991, and the Orderly Liquidation Authority author-
9 ized by this Act;

10 (3) determine how various secured creditors are
11 treated in these resolution mechanisms and examine
12 how a haircut (of various degrees) on secured credi-
13 tors could improve market discipline and protect tax-
14 payers;

15 (4) compare the benefits and dynamics of pru-
16 dent lending practices by depository institutions in
17 secured loans for consumers and small businesses to
18 the lending practices of secured creditors to large,
19 interconnected financial firms;

20 (5) consider whether credit differs according to
21 different types of collateral and different terms and
22 timing of the extension of credit;

23 (6) include an examination of stakeholders who
24 were unsecured or under-collateralized and seek col-
25 lateral when a firm is failing, and the impact this

1 behavior has on financial stability and an orderly
2 resolution that protects taxpayers if the firm fails.

3 (b) REPORT.—Not later than the end of the 1-year
4 period beginning on the date of the enactment of this Act,

5 the ~~Corporation~~ shall issue a report to the Congress con-

6 taining all findings and conclusions made by the ~~Corpora-~~

7 ~~tion~~ in carrying out the study required under subsection

8 (a).



TECHNICAL / MANAGERS AMENDMENT TO TITLE II

Page 141, line 8, insert before the period the following: “, except as expressly provided in this title”.

Page 148, line 14, strike “years” and insert “year”.

Page 149, line 19, strike “COVERED”.

Page 149, line 20, strike “covered”.

Page 149, line 24, strike “covered”.

Page 173, line 5, strike “and”.

Page 173, after line 5, insert the following new paragraph (and redesignate the subsequent paragraph accordingly):

- 1 (5) ensure that the members of the board of di-
- 2 rectors (or body performing similar functions) re-
- 3 sponsible for the failed condition of the covered fi-
- 4 nancial company are removed (if such members have
- 5 not already been removed at the time the Corpora-
- 6 tion is appointed as receiver; and

Page 177, line 7, strike “(i) IN GENERAL.—”.

Page 177, strike lines 13 through 18.

Page 245, line 19, strike "10" and insert "2".



Corker Amendment 1 to Title 2 ~~##~~ 1

*Amendment
passed by UC*

~~SEC. xxx. SUNSET.~~

~~On December 31, 2013, this title is repealed.~~

**SEC. xxx. STUDY OF BANKRUPTCY PROCESS FOR FINANCIAL AND
NON-BANK FINANCIAL INSTITUTIONS.**

(a) STUDY-

(1) **IN GENERAL.**—Upon enactment of this legislation, the Federal Reserve, in consultation with the Administrative Office of the United States Courts, shall conduct a study regarding the resolution (Chapter 7 or 11) of financial companies under the Bankruptcy Code.

(2) **ISSUES TO BE STUDIED.**—

(A) The effectiveness of chapter 7 and/or chapter 11 of the Bankruptcy Code in facilitating the orderly resolution or reorganization of systemic financial companies;

(B) Whether a special financial resolution court or panel of special masters or judges should be established to oversee cases involving financial companies to provide for the resolution of such companies under the Bankruptcy Code in a manner that minimizes adverse impacts on financial markets without creating moral hazard; and

(C) Whether amendments to the Bankruptcy Code should be adopted to enhance the ability of the Code to resolve financial companies in a manner that minimizes adverse impacts on financial markets without creating moral hazard.

(D) Whether amendments should be made to the Bankruptcy Code, the Federal Deposit Insurance Act, and other insolvency laws to address the manner in which qualified financial contracts of financial companies are treated.

(E) The implications, challenges, and benefits to creating a new chapter or subchapter of the code to deal with financial companies

(b) REPORT- Not later than 1 year after the date of enactment of this Act, and in each successive year until the fifth year after the date of enactment,

the Administrative Office of the United States Courts shall submit to the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. xxx. STUDY OF INTERNATIONAL COORDINATION RELATING TO BANKRUPTCY PROCESS FOR NON-BANK FINANCIAL INSTITUTIONS.

(a) STUDY.—

(1) **IN GENERAL.**—The Federal Reserve, in consultation with the Administrative Office of the United States Courts shall conduct a study regarding international coordination relating to the resolution of systemic financial companies under the U.S. Bankruptcy Code and applicable foreign law.

(2) **ISSUES TO BE STUDIED.**—With respect to the bankruptcy process for financial companies—

- (A) The extent to which international coordination currently exists;
- (B) Current mechanisms and structures for facilitating international cooperation;
- (C) Barriers to effective international coordination; and
- (D) Ways to increase and make more effective international coordination of the resolution of financial companies so as to minimize the impact on the financial system without creating moral hazard.

(b) **REPORT.**—Not later than 1 year after the date of enactment of this Act, the Administrative Office of the United States Courts shall submit to the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate and the Committees on Financial Services and the Judiciary of the House of Representatives a report summarizing the results of the study conducted under subsection (a).