

Union Calendar No. 46

115TH CONGRESS
1ST SESSION

H. R. 1667

[Report No. 115–80]

To amend title 11 of the United States Code in order to facilitate the resolution of an insolvent financial institution in bankruptcy.

IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2017

Mr. MARINO (for himself, Mr. GOODLATTE, Mr. CONYERS, and Mr. CICILLINE) introduced the following bill; which was referred to the Committee on the Judiciary

APRIL 5, 2017

Additional sponsor: Mr. SCHNEIDER

APRIL 5, 2017

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend title 11 of the United States Code in order to facilitate the resolution of an insolvent financial institution in bankruptcy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Institution
5 Bankruptcy Act of 2017”.

6 **SEC. 2. GENERAL PROVISIONS RELATING TO COVERED FI-**
7 **NANCIAL CORPORATIONS.**

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

11 “(9A) The term ‘covered financial corporation’
12 means any corporation incorporated or organized
13 under any Federal or State law, other than a stock-
14 broker, a commodity broker, or an entity of the kind
15 specified in paragraph (2) or (3) of section 109(b),
16 that is—

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

20 “(B) a corporation that exists for the pri-
21 mary purpose of owning, controlling and financ-
22 ing its subsidiaries, that has total consolidated
23 assets of \$50,000,000,000 or greater, and for
24 which, in its most recently completed fiscal
25 year—

1 “(i) annual gross revenues derived by
2 the corporation and all of its subsidiaries
3 from activities that are financial in nature
4 (as defined in section 4(k) of the Bank
5 Holding Company Act of 1956) and, if ap-
6 plicable, from the ownership or control of
7 one or more insured depository institu-
8 tions, represents 85 percent or more of the
9 consolidated annual gross revenues of the
10 corporation; or

11 “(ii) the consolidated assets of the
12 corporation and all of its subsidiaries re-
13 lated to activities that are financial in na-
14 ture (as defined in section 4(k) of the
15 Bank Holding Company Act of 1956) and,
16 if applicable, related to the ownership or
17 control of one or more insured depository
18 institutions, represents 85 percent or more
19 of the consolidated assets of the corpora-
20 tion.”.

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

1 “(l) Subchapter V of chapter 11 of this title applies
2 only in a case under chapter 11 concerning a covered fi-
3 nancial corporation.”.

4 (c) WHO MAY BE A DEBTOR.—Section 109 of title
5 11, United States Code, is amended—

6 (1) in subsection (b)—

7 (A) in paragraph (2), by striking “or” at
8 the end;

9 (B) in paragraph (3)(B), by striking the
10 period at the end and inserting “; or”; and

11 (C) by adding at the end the following:

12 “(4) a covered financial corporation.”; and

13 (2) in subsection (d)—

14 (A) by striking “and” before “an unin-
15 sured State member bank”;

16 (B) by striking “or” before “a corpora-
17 tion”; and

18 (C) by inserting “, or a covered financial
19 corporation” after “Federal Deposit Insurance
20 Corporation Improvement Act of 1991”.

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

1 “(g) Notwithstanding section 109(b), the court may
2 convert a case under subchapter V to a case under chapter
3 7 if—

4 “(1) a transfer approved under section 1185
5 has been consummated;

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

8 “(3) the court finds, after notice and a hearing,
9 that conversion is in the best interest of the credi-
10 tors and the estate.”.

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

15 (2) Section 1129(a) of title 11, United States Code,
16 is amended by inserting after paragraph (16) the fol-
17 lowing:

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

23 “(18) In a case under subchapter V, confirma-
24 tion of the plan is not likely to cause serious adverse
25 effects on financial stability in the United States.”.

1 (f) Section 322(b)(2) of title 11, United States Code,
 2 is amended by striking “The” and inserting “In cases
 3 under subchapter V, the United States trustee shall rec-
 4 ommend to the court, and in all other cases, the”.

5 **SEC. 3. LIQUIDATION, REORGANIZATION, OR RECAPITAL-**
 6 **IZATION OF A COVERED FINANCIAL COR-**
 7 **PORATION.**

8 Chapter 11 of title 11, United States Code, is amend-
 9 ed by adding at the end the following:

10 “SUBCHAPTER V—LIQUIDATION, REORGANIZA-
 11 TION, OR RECAPITALIZATION OF A COV-
 12 ERED FINANCIAL CORPORATION

13 **“§ 1181. Inapplicability of other sections**

14 “Sections 303 and 321(c) do not apply in a case
 15 under this subchapter concerning a covered financial cor-
 16 poration. Section 365 does not apply to a transfer under
 17 section 1185, 1187, or 1188.

18 **“§ 1182. Definitions for this subchapter**

19 “In this subchapter, the following definitions shall
 20 apply:

21 “(1) The term ‘Board’ means the Board of
 22 Governors of the Federal Reserve System.

23 “(2) The term ‘bridge company’ means a newly
 24 formed corporation to which property of the estate
 25 may be transferred under section 1185(a) and the

1 equity securities of which may be transferred to a
 2 special trustee under section 1186(a).

3 “(3) The term ‘capital structure debt’ means all
 4 unsecured debt of the debtor for borrowed money for
 5 which the debtor is the primary obligor, other than
 6 a qualified financial contract and other than debt se-
 7 cured by a lien on property of the estate that is to
 8 be transferred to a bridge company pursuant to an
 9 order of the court under section 1185(a).

10 “(4) The term ‘contractual right’ means a con-
 11 tractual right of a kind defined in section 555, 556,
 12 559, 560, or 561.

13 “(5) The term ‘qualified financial contract’
 14 means any contract of a kind defined in paragraph
 15 (25), (38A), (47), or (53B) of section 101, section
 16 741(7), or paragraph (4), (5), (11), or (13) of sec-
 17 tion 761.

18 “(6) The term ‘special trustee’ means the trust-
 19 ee of a trust formed under section 1186(a)(1).

20 **“§ 1183. Commencement of a case concerning a cov-**
 21 **ered financial corporation**

22 “(a) A case under this subchapter concerning a cov-
 23 ered financial corporation may be commenced by the filing
 24 of a petition with the court by the debtor under section
 25 301 only if the debtor states to the best of its knowledge

1 under penalty of perjury in the petition that it is a covered
2 financial corporation.

3 “(b) The commencement of a case under subsection
4 (a) constitutes an order for relief under this subchapter.

5 “(c) The members of the board of directors (or body
6 performing similar functions) of a covered financial cor-
7 poration shall have no liability to shareholders, creditors,
8 or other parties in interest for a good faith filing of a peti-
9 tion to commence a case under this subchapter, or for any
10 reasonable action taken in good faith in contemplation of
11 such a petition or a transfer under section 1185 or section
12 1186, whether prior to or after commencement of the case.

13 “(d) Counsel to the debtor shall provide, to the great-
14 est extent practicable without disclosing the identity of the
15 potential debtor, sufficient confidential notice to the chief
16 judge of the court of appeals for the circuit embracing the
17 district in which such counsel intends to file a petition to
18 commence a case under this subchapter regarding the po-
19 tential commencement of such case. The chief judge of
20 such court shall randomly assign to preside over such case
21 a bankruptcy judge selected from among the bankruptcy
22 judges designated by the Chief Justice of the United
23 States under section 298 of title 28.

1 **“§ 1184. Regulators**

2 “The Board, the Securities Exchange Commission,
3 the Office of the Comptroller of the Currency of the De-
4 partment of the Treasury, the Commodity Futures Trad-
5 ing Commission, and the Federal Deposit Insurance Cor-
6 poration may raise and may appear and be heard on any
7 issue in any case or proceeding under this subchapter.

8 **“§ 1185. Special transfer of property of the estate**

9 “(a) On request of the trustee, and after notice and
10 a hearing that shall occur not less than 24 hours after
11 the order for relief, the court may order a transfer under
12 this section of property of the estate, and the assignment
13 of executory contracts, unexpired leases, and qualified fi-
14 nancial contracts of the debtor, to a bridge company.
15 Upon the entry of an order approving such transfer, any
16 property transferred, and any executory contracts, unex-
17 pired leases, and qualified financial contracts assigned
18 under such order shall no longer be property of the estate.
19 Except as provided under this section, the provisions of
20 section 363 shall apply to a transfer and assignment under
21 this section.

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

26 “(1) the debtor;

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

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

5 “(4) counterparties to any debt, executory con-
6 tract, unexpired lease, and qualified financial con-
7 tract requested to be transferred under this section;

8 “(5) the Board;

9 “(6) the Federal Deposit Insurance Corpora-
10 tion;

11 “(7) the Secretary of the Treasury and the Of-
12 fice of the Comptroller of the Currency of the Treas-
13 ury;

14 “(8) the Commodity Futures Trading Commis-
15 sion;

16 “(9) the Securities and Exchange Commission;

17 “(10) the United States trustee or bankruptcy
18 administrator; and

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

1 “(c) The court may not order a transfer under this
2 section unless the court determines, based upon a prepon-
3 derance of the evidence, that—

4 “(1) the transfer under this section is necessary
5 to prevent serious adverse effects on financial sta-
6 bility in the United States;

7 “(2) the transfer does not provide for the as-
8 sumption of any capital structure debt by the bridge
9 company;

10 “(3) the transfer does not provide for the trans-
11 fer to the bridge company of any property of the es-
12 tate that is subject to a lien securing a debt, execu-
13 tory contract, unexpired lease or agreement (includ-
14 ing a qualified financial contract) of the debtor un-
15 less—

16 “(A)(i) the bridge company assumes such
17 debt, executory contract, unexpired lease or
18 agreement (including a qualified financial con-
19 tract), including any claims arising in respect
20 thereof that would not be allowed secured
21 claims under section 506(a)(1) and after giving
22 effect to such transfer, such property remains
23 subject to the lien securing such debt, executory
24 contract, unexpired lease or agreement (includ-
25 ing a qualified financial contract); and

1 “(ii) the court has determined that as-
2 sumption of such debt, executory contract, un-
3 expired lease or agreement (including a quali-
4 fied financial contract) by the bridge company
5 is in the best interests of the estate; or

6 “(B) such property is being transferred to
7 the bridge company in accordance with the pro-
8 visions of section 363;

9 “(4) the transfer does not provide for the as-
10 sumption by the bridge company of any debt, execu-
11 tory contract, unexpired lease or agreement (includ-
12 ing a qualified financial contract) of the debtor se-
13 cured by a lien on property of the estate unless the
14 transfer provides for such property to be transferred
15 to the bridge company in accordance with paragraph
16 (3)(A) of this subsection;

17 “(5) the transfer does not provide for the trans-
18 fer of the equity of the debtor;

19 “(6) the trustee has demonstrated that the
20 bridge company is not likely to fail to meet the obli-
21 gations of any debt, executory contract, qualified fi-
22 nancial contract, or unexpired lease assumed and as-
23 signed to the bridge company;

24 “(7) the transfer provides for the transfer to a
25 special trustee all of the equity securities in the

1 bridge company and appointment of a special trustee
2 in accordance with section 1186;

3 “(8) after giving effect to the transfer, ade-
4 quate provision has been made for the fees, costs,
5 and expenses of the estate and special trustee; and

6 “(9) the bridge company will have governing
7 documents, and initial directors and senior officers,
8 that are in the best interest of creditors and the es-
9 tate.

10 “(d) Immediately before a transfer under this section,
11 the bridge company that is the recipient of the transfer
12 shall—

13 “(1) not have any property, executory con-
14 tracts, unexpired leases, qualified financial contracts,
15 or debts, other than any property acquired or execu-
16 tory contracts, unexpired leases, or debts assumed
17 when acting as a transferee of a transfer under this
18 section; and

19 “(2) have equity securities that are property of
20 the estate, which may be sold or distributed in ac-
21 cordance with this title.

22 **“§ 1186. Special trustee**

23 “(a)(1) An order approving a transfer under section
24 1185 shall require the trustee to transfer to a qualified
25 and independent special trustee, who is appointed by the

1 court, all of the equity securities in the bridge company
2 that is the recipient of a transfer under section 1185 to
3 hold in trust for the sole benefit of the estate, subject to
4 satisfaction of the special trustee's fees, costs, and ex-
5 penses. The trust of which the special trustee is the trust-
6 ee shall be a newly formed trust governed by a trust agree-
7 ment approved by the court as in the best interests of the
8 estate, and shall exist for the sole purpose of holding and
9 administering, and shall be permitted to dispose of, the
10 equity securities of the bridge company in accordance with
11 the trust agreement.

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

17 “(b) The trust agreement governing the trust shall
18 provide—

19 “(1) for the payment of the fees, costs, ex-
20 penses, and indemnities of the special trustee from
21 the assets of the debtor's estate;

22 “(2) that the special trustee provide—

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

1 “(B) information about the bridge com-
2 pany reasonably requested by a party in inter-
3 est to prepare a disclosure statement for a plan
4 providing for distribution of any securities of
5 the bridge company if such information is nec-
6 essary to prepare such disclosure statement;

7 “(3) that for as long as the equity securities of
8 the bridge company are held by the trust, the special
9 trustee shall file a notice with the court in connec-
10 tion with—

11 “(A) any change in a director or senior of-
12 ficer of the bridge company;

13 “(B) any modification to the governing
14 documents of the bridge company; and

15 “(C) any material corporate action of the
16 bridge company, including—

17 “(i) recapitalization;

18 “(ii) a material borrowing;

19 “(iii) termination of an intercompany
20 debt or guarantee;

21 “(iv) a transfer of a substantial por-
22 tion of the assets of the bridge company;
23 or

24 “(v) the issuance or sale of any secu-
25 rities of the bridge company;

1 “(4) that any sale of any equity securities of
2 the bridge company shall not be consummated until
3 the special trustee consults with the Federal Deposit
4 Insurance Corporation and the Board regarding
5 such sale and discloses the results of such consulta-
6 tion with the court;

7 “(5) that, subject to reserves for payments per-
8 mitted under paragraph (1) provided for in the trust
9 agreement, the proceeds of the sale of any equity se-
10 curities of the bridge company by the special trustee
11 be held in trust for the benefit of or transferred to
12 the estate;

13 “(6) the process and guidelines for the replace-
14 ment of the special trustee; and

15 “(7) that the property held in trust by the spe-
16 cial trustee is subject to distribution in accordance
17 with subsection (c).

18 “(c)(1) The special trustee shall distribute the assets
19 held in trust—

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

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

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

5 “(d) After a transfer to the special trustee under this
 6 section, the special trustee shall be subject only to applica-
 7 ble nonbankruptcy law, and the actions and conduct of
 8 the special trustee shall no longer be subject to approval
 9 by the court in the case under this subchapter.

10 **“§ 1187. Temporary and supplemental automatic stay;**
 11 **assumed debt**

12 “(a)(1) A petition filed under section 1183 operates
 13 as a stay, applicable to all entities, of the termination, ac-
 14 celeration, or modification of any debt, contract, lease, or
 15 agreement of the kind described in paragraph (2), or of
 16 any right or obligation under any such debt, contract,
 17 lease, or agreement, solely because of—

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

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

23 “(i) the insolvency or financial condition of
 24 the debtor at any time before the closing of the
 25 case;

1 “(ii) the commencement of a case under
2 this title concerning the debtor;

3 “(iii) the appointment of or taking posses-
4 sion by a trustee in a case under this title con-
5 cerning the debtor or by a custodian before the
6 commencement of the case; or

7 “(iv) a credit rating agency rating, or ab-
8 sence or withdrawal of a credit rating agency
9 rating—

10 “(I) of the debtor at any time after
11 the commencement of the case;

12 “(II) of an affiliate during the period
13 from the commencement of the case until
14 48 hours after such order is entered;

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

19 “(aa) the bridge company; or

20 “(bb) the affiliate, if all of the di-
21 rect or indirect interests in the affil-
22 iate that are property of the estate
23 are transferred under section 1185; or

24 “(IV) of an affiliate while the trustee
25 or the special trustee is a direct or indirect

1 beneficial holder of more than 50 percent
2 of the equity securities of—

3 “(aa) the bridge company; or

4 “(bb) the affiliate, if all of the di-
5 rect or indirect interests in the affil-
6 iate that are property of the estate
7 are transferred under section 1185.

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

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

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

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

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

21 “(3) The stay under this subsection terminates—

22 “(A) for the benefit of the debtor, upon the ear-
23 liest of—

24 “(i) 48 hours after the commencement of
25 the case;

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

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

7 “(iv) the time the case is dismissed; and

8 “(B) for the benefit of an affiliate, upon the
9 earliest of—

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

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

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

20 “(iv) the time the case is dismissed.

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

23 “(b) A debt, executory contract (other than a quali-
24 fied financial contract), or unexpired lease of the debtor,
25 or an agreement under which the debtor has issued or is

1 obligated for any debt, may be assumed by a bridge com-
2 pany in a transfer under section 1185 notwithstanding
3 any provision in an agreement or in applicable nonbank-
4 ruptcy law that—

5 “(1) prohibits, restricts, or conditions the as-
6 signment of the debt, contract, lease, or agreement;
7 or

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

12 “(A) the assignment of the debt, contract,
13 lease, or agreement; or

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

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

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

1 “(B) that prohibits, restricts, or conditions the
2 assignment of the debt, contract, lease, or agree-
3 ment; or

4 “(C) that accelerates, terminates, or modifies,
5 or permits a party other than the debtor to termi-
6 nate or modify, the debt, contract, lease or agree-
7 ment on account of—

8 “(i) the assignment of the debt, contract,
9 lease, or agreement; or

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

12 “(2) If there is a default by the debtor under a provi-
13 sion other than the kind described in paragraph (1) in
14 a debt, contract, lease or agreement of the kind described
15 in subparagraph (A) or (B) of subsection (a)(2), the
16 bridge company may assume such debt, contract, lease,
17 or agreement only if the bridge company—

18 “(A) shall cure the default;

19 “(B) compensates, or provides adequate assur-
20 ance in connection with a transfer under section
21 1185 that the bridge company will promptly com-
22 pensate, a party other than the debtor to the debt,
23 contract, lease, or agreement, for any actual pecu-
24 niary loss to the party resulting from the default;
25 and

1 “(C) provides adequate assurance in connection
2 with a transfer under section 1185 of future per-
3 formance under the debt, contract, lease, or agree-
4 ment, as determined by the court under section
5 1185(c)(4).

6 **“§ 1188. Treatment of qualified financial contracts**
7 **and affiliate contracts**

8 “(a) Notwithstanding sections 362(b)(6), 362(b)(7),
9 362(b)(17), 362(b)(27), 362(o), 555, 556, 559, 560, and
10 561, a petition filed under section 1183 operates as a stay,
11 during the period specified in section 1187(a)(3)(A), ap-
12 plicable to all entities, of the exercise of a contractual
13 right—

14 “(1) to cause the modification, liquidation, ter-
15 mination, or acceleration of a qualified financial con-
16 tract of the debtor or an affiliate;

17 “(2) to offset or net out any termination value,
18 payment amount, or other transfer obligation arising
19 under or in connection with a qualified financial con-
20 tract of the debtor or an affiliate; or

21 “(3) under any security agreement or arrange-
22 ment or other credit enhancement forming a part of
23 or related to a qualified financial contract of the
24 debtor or an affiliate.

1 “(b)(1) During the period specified in section
2 1187(a)(3)(A), the trustee or the affiliate shall perform
3 all payment and delivery obligations under such qualified
4 financial contract of the debtor or the affiliate, as the case
5 may be, that become due after the commencement of the
6 case. The stay provided under subsection (a) terminates
7 as to a qualified financial contract of the debtor or an
8 affiliate immediately upon the failure of the trustee or the
9 affiliate, as the case may be, to perform any such obliga-
10 tion during such period.

11 “(2) Any failure by a counterparty to any qualified
12 financial contract of the debtor or any affiliate to perform
13 any payment or delivery obligation under such qualified
14 financial contract, including during the pendency of the
15 stay provided under subsection (a), shall constitute a
16 breach of such qualified financial contract by the
17 counterparty.

18 “(c) Subject to the court’s approval, a qualified finan-
19 cial contract between an entity and the debtor may be as-
20 signed to or assumed by the bridge company in a transfer
21 under, and in accordance with, section 1185 if and only
22 if—

23 “(1) all qualified financial contracts between
24 the entity and the debtor are assigned to and as-

1 sumed by the bridge company in the transfer under
2 section 1185;

3 “(2) all claims of the entity against the debtor
4 in respect of any qualified financial contract between
5 the entity and the debtor (other than any claim that,
6 under the terms of the qualified financial contract,
7 is subordinated to the claims of general unsecured
8 creditors) are assigned to and assumed by the bridge
9 company;

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

14 “(4) all property securing or any other credit
15 enhancement furnished by the debtor for any quali-
16 fied financial contract described in paragraph (1) or
17 any claim described in paragraph (2) or (3) under
18 any qualified financial contract between the entity
19 and the debtor is assigned to and assumed by the
20 bridge company.

21 “(d) Notwithstanding any provision of a qualified fi-
22 nancial contract or of applicable nonbankruptcy law, a
23 qualified financial contract of the debtor that is assumed
24 or assigned in a transfer under section 1185 may not be
25 accelerated, terminated, or modified, after the entry of the

1 order approving a transfer under section 1185, and any
2 right or obligation under the qualified financial contract
3 may not be accelerated, terminated, or modified, after the
4 entry of the order approving a transfer under section 1185
5 solely because of a condition described in section
6 1187(c)(1), other than a condition of the kind specified
7 in section 1187(b) that occurs after property of the estate
8 no longer includes a direct beneficial interest or an indi-
9 rect beneficial interest through the special trustee, in more
10 than 50 percent of the equity securities of the bridge com-
11 pany.

12 “(e) Notwithstanding any provision of any agreement
13 or in applicable nonbankruptcy law, an agreement of an
14 affiliate (including an executory contract, an unexpired
15 lease, qualified financial contract, or an agreement under
16 which the affiliate issued or is obligated for debt) and any
17 right or obligation under such agreement may not be ac-
18 celerated, terminated, or modified, solely because of a con-
19 dition described in section 1187(c)(1), other than a condi-
20 tion of the kind specified in section 1187(b) that occurs
21 after the bridge company is no longer a direct or indirect
22 beneficial holder of more than 50 percent of the equity
23 securities of the affiliate, at any time after the commence-
24 ment of the case if—

1 “(1) all direct or indirect interests in the affil-
2 iate that are property of the estate are transferred
3 under section 1185 to the bridge company within the
4 period specified in subsection (a);

5 “(2) the bridge company assumes—

6 “(A) any guarantee or other credit en-
7 hancement issued by the debtor relating to the
8 agreement of the affiliate; and

9 “(B) any obligations in respect of rights of
10 setoff, netting arrangement, or debt of the debt-
11 or that directly arises out of or directly relates
12 to the guarantee or credit enhancement; and

13 “(3) any property of the estate that directly
14 serves as collateral for the guarantee or credit en-
15 hancement is transferred to the bridge company.

16 **“§ 1189. Licenses, permits, and registrations**

17 “(a) Notwithstanding any otherwise applicable non-
18 bankruptcy law, if a request is made under section 1185
19 for a transfer of property of the estate, any Federal, State,
20 or local license, permit, or registration that the debtor or
21 an affiliate had immediately before the commencement of
22 the case and that is proposed to be transferred under sec-
23 tion 1185 may not be accelerated, terminated, or modified
24 at any time after the request solely on account of—

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

3 “(2) the commencement of a case under this
4 title concerning the debtor;

5 “(3) the appointment of or taking possession by
6 a trustee in a case under this title concerning the
7 debtor or by a custodian before the commencement
8 of the case; or

9 “(4) a transfer under section 1185.

10 “(b) Notwithstanding any otherwise applicable non-
11 bankruptcy law, any Federal, State, or local license, per-
12 mit, or registration that the debtor had immediately before
13 the commencement of the case that is included in a trans-
14 fer under section 1185 shall be valid and all rights and
15 obligations thereunder shall vest in the bridge company.

16 **“§ 1190. Exemption from securities laws**

17 “For purposes of section 1145, a security of the
18 bridge company shall be deemed to be a security of a suc-
19 cessor to the debtor under a plan if the court approves
20 the disclosure statement for the plan as providing ade-
21 quate information (as defined in section 1125(a)) about
22 the bridge company and the security.

23 **“§ 1191. Inapplicability of certain avoiding powers**

24 “A transfer made or an obligation incurred by the
25 debtor to an affiliate prior to or after the commencement

1 of the case, including any obligation released by the debtor
 2 or the estate to or for the benefit of an affiliate, in con-
 3 templation of or in connection with a transfer under sec-
 4 tion 1185 is not avoidable under section 544, 547,
 5 548(a)(1)(B), or 549, or under any similar nonbankruptcy
 6 law.

7 **“§ 1192. Consideration of financial stability**

8 “The court may consider the effect that any decision
 9 in connection with this subchapter may have on financial
 10 stability in the United States.”.

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

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

15 **“§ 298. Judge for a case under subchapter V of chap-**
 16 **ter 11 of title 11**

17 “(a)(1) Notwithstanding section 295, the Chief Jus-
 18 tice of the United States shall designate not fewer than
 19 10 bankruptcy judges to be available to hear a case under
 20 subchapter V of chapter 11 of title 11. Bankruptcy judges
 21 may request to be considered by the Chief Justice of the
 22 United States for such designation.

23 “(2) Notwithstanding section 155, a case under sub-
 24 chapter V of chapter 11 of title 11 shall be heard under
 25 section 157 by a bankruptcy judge designated under para-

1 graph (1), who shall be randomly assigned to hear such
2 case by the chief judge of the court of appeals for the cir-
3 cuit embracing the district in which the case is pending.
4 To the greatest extent practicable, the approvals required
5 under section 155 should be obtained.

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

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

13 “(c) In this section, the term ‘covered financial cor-
14 poration’ has the meaning given that term in section
15 101(9A) of title 11.”.

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

19 “(f) This section does not grant jurisdiction to the
20 district court after a transfer pursuant to an order under
21 section 1185 of title 11 of any proceeding related to a spe-
22 cial trustee appointed, or to a bridge company formed, in
23 connection with a case under subchapter V of chapter 11
24 of title 11.”.

- 1 (c) TECHNICAL AND CONFORMING AMENDMENT.—
2 The table of sections for chapter 13 of title 28, United
3 States Code, is amended by adding at the end the fol-
4 lowing:

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

Union Calendar No. 46

115TH CONGRESS
1ST Session

H. R. 1667

[Report No. 115-80]

A BILL

To amend title 11 of the United States Code in order to facilitate the resolution of an insolvent financial institution in bankruptcy.

APRIL 5, 2017

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed