

115TH CONGRESS
2D SESSION

S. 3542

To break up large financial entities.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3 (legislative day, SEPTEMBER 28), 2018

Mr. SANDERS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To break up large financial entities.

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. TOO BIG TO FAIL, TOO BIG TO EXIST.**

4 (a) DEFINITIONS.—In this section—

5 (1) the term “covered entity”—

6 (A) means a financial institution, as de-
7 fined in section 803 of the Payment, Clearing,
8 and Settlement Supervision Act of 2010 (12
9 U.S.C. 5462); and

10 (B) does not include—

11 (i) a Farm Credit System institution
12 chartered under and subject to the provi-

1 sions of the Farm Credit Act of 1971 (12
2 U.S.C. 2001 et seq.);

3 (ii) a governmental entity; or

4 (iii) a regulated entity, as defined in
5 section 1303 of the Federal Housing En-
6 terprises Financial Safety and Soundness
7 Act of 1992 (12 U.S.C. 4502); and

8 (2) the term “gross domestic product” means
9 gross domestic product as calculated by the Bureau
10 of Economic Analysis of the Department of Com-
11 merce.

12 (b) TOTAL EXPOSURE.—

13 (1) TOTAL EXPOSURE.—

14 (A) IN GENERAL.—On February 1, May 1,
15 August 1, and November 1 of each year, no
16 covered entity may have a total exposure, as re-
17 ported by the covered entity on the Federal Re-
18 serve form required to monitor the systemic
19 risk profile of financial institutions for the pre-
20 vious reporting period, equal to or greater than
21 3 percent of the most recent estimate for an-
22 nual gross domestic product of the United
23 States (in current dollars) for the previous cal-
24 endar year.

1 (B) OTHER REPORTING.—If a covered en-
2 tity is not required to complete a Federal Re-
3 serve form required to monitor the systemic
4 risk profile of financial institutions, the Finan-
5 cial Stability Oversight Council shall design and
6 assign a quarterly reporting form as appro-
7 priate for each covered entity with total assets
8 greater than \$50,000,000,000 that reflects the
9 total risk exposures of the financial institution,
10 including off-balance sheet exposures and de-
11 rivatives exposure within 18 months of the date
12 of enactment of this Act. Once designated a re-
13 porting form, on February 1, May 1, August 1,
14 and November 1 no covered entity may have a
15 total exposure, as reported by the covered entity
16 for the previous reporting period, equal to or
17 greater than 3 percent of the most recent esti-
18 mate for annual gross domestic product of the
19 United States (in current dollars) for the pre-
20 vious calendar year.

21 (2) RESTRUCTURING.—

22 (A) IN GENERAL.—

23 (i) DESIGNATION.—Any covered enti-
24 ty that violates paragraph (1) shall imme-
25 diately be designated as a “Too Big to

1 Exist Institution” by the Financial Sta-
2 bility Oversight Council.

3 (ii) SUPERVISION.—The Vice Chair
4 for Supervision of the Board of Governors
5 of the Federal Reserve System, or during
6 any period in which that position is vacant,
7 the Chair of the Board of Governors of the
8 Federal Reserve System, shall require and
9 supervise a “Too Big to Exist Institution”
10 to restructure to comply with paragraph
11 (1) not later than 2 years after the date on
12 which the first violation arises.

13 (B) SUBSEQUENT REQUIREMENTS.—After
14 the date on which a covered entity is required
15 to restructure under subparagraph (A), the
16 Vice Chair for Supervision of the Board of Gov-
17 ernors of the Federal Reserve System or, dur-
18 ing any period in which that position is vacant,
19 the Chair of the Board of Governors of the
20 Federal Reserve System, shall require and su-
21 pervise any “Too Big to Exist Institution” to
22 restructure to comply with paragraph (1) not
23 later than 1 year after the institution is again
24 found to be in excess of the threshold specified
25 in paragraph (1).

1 (c) PROHIBITION AGAINST USE OF FEDERAL RE-
2 SERVE FINANCING.—Notwithstanding any other provision
3 of law (including regulations), any “Too Big to Exist In-
4 stitution” may not use or otherwise have access to ad-
5 vances from any Federal Reserve credit facility, the Fed-
6 eral Reserve discount window, or any other program or
7 facility made available under the Federal Reserve Act (12
8 U.S.C. 221 et seq.), including any asset purchases, tem-
9 porary or bridge loans, government investments in debt
10 or equity, or capital injections from any Federal institu-
11 tion.

12 (d) PROHIBITION ON USE OF INSURED DEPOSITS.—

13 (1) IN GENERAL.—Any “Too Big to Exist In-
14 stitution” that is an insured depository institution,
15 or owns such an institution, may not use any in-
16 sured deposit amounts to fund—

17 (A) any activity relating to hedging that is
18 not directly related to commercial banking ac-
19 tivity at the insured bank;

20 (B) any creation or use of derivatives for
21 speculative purposes;

22 (C) any activity related to the dealing of
23 derivatives;

24 (D) any creation of, or lending against,
25 new or existing forms of structured or struc-

1 tured derivatives products, including collateral-
2 ized debt obligations, collateralized loan obliga-
3 tions, and synthetic derivatives of collateralized
4 debt obligations and collateralized loan obliga-
5 tions; or

6 (E) any other form of speculative activity
7 that regulators specify.

8 (2) RISK OF LOSS.—A “Too Big to Exist Insti-
9 tution” may not conduct any activity listed in para-
10 graph (1) in such a manner that—

11 (A) puts insured deposits at risk; or

12 (B) creates a risk of loss to the Deposit
13 Insurance Fund.

14 (e) REPORT; TESTIMONY.—The Vice Chair for Su-
15 pervision of the Board of Governors of the Federal Re-
16 serve System, or during any period in which that position
17 is vacant, the Chair of the Board of Governors of the Fed-
18 eral Reserve System, and the Chair of the Financial Sta-
19 bility Oversight Council shall annually testify before the
20 Committee on Banking, Housing, and Urban Affairs of
21 the Senate and the Committee on Financial Services of
22 the House of Representatives and submit to those commit-
23 tees an annual report the restructuring and designation
24 under subsection (b)(2).

1 (f) EFFECTIVE DATE.—Subsections (c) and (d) shall
2 apply to a covered entity 90 days after the date on which
3 a covered entity is designated as a “Too Big to Exist Insti-
4 tution”.

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