

AMENDMENT NO. _____ Calendar No. _____

Purpose: To prohibit all future bailouts of financial companies, and for other purposes.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

S. 3217

To promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

Strike title II and insert the following:

1 **TITLE II—NO MORE BAILOUTS**

2 **ACT**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “No More Bailouts Act

5 of 2010”.

1 **SEC. 202. AMENDMENTS TO TITLE 28 OF THE UNITED**
2 **STATES CODE.**

3 Title 28, United States Code, is amended—

4 (1) in section 1408, by striking “section 1410”
5 and inserting “sections 1409A and 1410”;

6 (2) by inserting after section 1409 the fol-
7 lowing:

8 **“§ 1409A. Venue of cases involving non-bank financial**
9 **institutions**

10 “A case under chapter 14 may be commenced in the
11 district court of the United States for the district—

12 “(1) in which the debtor has its principal place
13 of business in the United States, principal assets in
14 the United States, or in which there is pending a
15 case under title 11 concerning the debtor’s affiliate
16 or subsidiary, if a Federal Reserve Bank is located
17 in that district;

18 “(2) if venue does not exist under paragraph
19 (1), in which there is a Federal Reserve Bank and
20 in a Federal Reserve district in which the debtor has
21 its principal place of business in the United States,
22 principal assets in the United States, or in which
23 there is pending a case under title 11 concerning the
24 debtor’s affiliate or subsidiary; or

25 “(3) if venue does not exist under paragraph
26 (1) or (2), in which there is a Federal Reserve Bank

1 and in a Federal circuit adjacent to the Federal cir-
2 cuit in which the debtor has its principal place of
3 business or principal assets in the United States.”,
4 and

5 (3) by amending the table of sections for chap-
6 ter 87, by inserting after the item relating to section
7 1408 the following:

“1409A. Venue of cases involving non-bank financial institutions.”.

8 **SEC. 203. AMENDMENTS TO TITLE 11 OF THE UNITED**
9 **STATES CODE.**

10 (a) DEFINITIONS.—Section 101 of title 11, United
11 States Code, is amended—

12 (1) by inserting after paragraph (26) the fol-
13 lowing:

14 “(26A) The term ‘functional regulator’ means
15 the Federal regulatory agency with the primary Fed-
16 eral regulatory authority over the debtor, such as an
17 agency listed in section 509 of the Gramm-Leach-
18 Bliley Act.”;

19 (2) by redesignating paragraphs (38A) and
20 (38B) as paragraphs (38B) and (38C), respectively;

21 (3) by inserting after paragraph (38) the fol-
22 lowing:

23 “(38A) the term ‘Financial Stability Oversight
24 Council’ means the entity established in section 111

1 of the Restoring American Financial Stability Act of
2 2010”; and

3 (4) by inserting after paragraph (40) the fol-
4 lowing:

5 “(40A) The term ‘non-bank financial institu-
6 tion’ means an institution the business of which is
7 primarily engaged in financial activities that is not
8 an insured depository institution.”.

9 (b) APPLICABILITY OF CHAPTERS.—Section 103 of
10 title 11, United States Code, is amended—

11 (1) in subsection (a) by striking “13” and in-
12 serting “13, and 14”;

13 (2) by redesignating subsection (k) as sub-
14 section (l); and

15 (3) by inserting after subsection (j) the fol-
16 lowing:

17 “(k) Chapter 14 applies only in a case under such
18 chapter.”.

19 (c) WHO MAY BE A DEBTOR.—Section 109 of title
20 11, United States Code, is amended—

21 (1) in subsection (b)—

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

24 (B) in paragraph (3), by striking the pe-
25 riod at the end and inserting “; or”; and

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

2 “(4) a non-bank financial institution that has
3 not been a debtor under chapter 14 of this title.”;
4 and

5 (2) in subsection (d), by striking “or commodity
6 broker” and inserting “, commodity broker, or a
7 non-bank financial institution”.

8 (d) INVOLUNTARY CASES.—Section 303 of title 11,
9 the United States Code, is amended—

10 (1) in subsection (a) by striking “or 11” and
11 inserting “, 11, or 14”; and

12 (2) in subsection (b) by striking “or 11” and
13 inserting “, 11, or 14”.

14 (e) OBTAINING CREDIT.—Section 364 of title 11,
15 United States Code, is amended by adding at the end the
16 following:

17 “(g) Notwithstanding any other provision of this sec-
18 tion, the trustee may not, and the court may not authorize
19 the trustee to, obtain credit, if the source of that credit
20 either directly or indirectly is the United States. Nor shall
21 any Federal funds be made available through the Federal
22 Reserve System, including through the authority of the
23 third undesignated paragraph of section 13 of the Federal
24 Reserve Act (12 U.S.C. 343).”.

1 (f) CHAPTER 14.—Title 11, United States Code, is
2 amended—

3 (1) by inserting the following after chapter 13:

4 **“CHAPTER 14—ADJUSTMENT TO THE**
5 **DEBTS OF A NON-BANK FINANCIAL IN-**
6 **STITUTION**

“1401. Inapplicability of other sections.

“1402. Applicability of chapter 11 to cases under this chapter.

“1403. Prepetition consultation.

“1404. Appointment of trustee.

“1405. Right to be heard.

“1406. Right to communicate.

“1407. Exemption with respect to certain contracts or agreements.

“1408. Conversion or dismissal.

7 **“§ 1401. Inapplicability of other sections**

8 “Except as provided in section 1407, sections
9 362(b)(6), 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g),
10 555, 556, 559, 560, and 561 do not apply in a case under
11 this chapter.

12 **“§ 1402. Applicability of chapter 11 to cases under**
13 **this chapter**

14 “With the exception of sections 1104(d), 1109,
15 1112(a), 1115, and 1116, subchapters I, II, and III of
16 chapter 11 apply in a case under this chapter.

17 **“§ 1403. Prepetition consultation**

18 “(a) Subject to subsection (b)—

19 “(1) a non-bank financial institution may not
20 be a debtor under this chapter unless that institu-
21 tion has, at least 10 days prior to the date of the

1 filing of the petition by such institution, taken part
2 in the consultation described in subsection (c); and

3 “(2) a creditor may not commence an involun-
4 tary case under this chapter unless, at least 10 days
5 prior to the date of the filing of the petition by such
6 creditor, the creditor notifies the non-bank financial
7 institution, the functional regulator, and the Finan-
8 cial Stability Oversight Council of its intent to file
9 a petition and requests a consultation as described
10 in subsection (c).

11 “(b) If the non-bank financial institution, the func-
12 tional regulator, and the Financial Stability Oversight
13 Council, in consultation with any agency charged with ad-
14 ministering a nonbankruptcy insolvency regime for any
15 component of the debtor, certify that the immediate filing
16 of a petition under section 301 or 303 is necessary, or
17 that an immediate filing would be in the interests of jus-
18 tice, a petition may be filed notwithstanding subsection
19 (a).

20 “(c) The non-bank financial institution, the func-
21 tional regulator, the Financial Stability Oversight Council,
22 and any agency charged with administering a nonbank-
23 ruptcy insolvency regime for any component of the debtor
24 shall engage in prepetition consultation in order to at-
25 tempt to avoid the need for the non-bank financial institu-

1 tion’s liquidation or reorganization in bankruptcy, to make
2 any liquidation or reorganization of the non-bank financial
3 institution under this title more orderly, or to aid in the
4 nonbankruptcy resolution of any of the non-bank financial
5 institution’s components under its nonbankruptcy insol-
6 vency regime. Such consultation shall specifically include
7 the attempt to negotiate forbearance of claims between the
8 non-bank financial institution and its creditors if such for-
9 bearance would likely help to avoid the commencement of
10 a case under this title, would make any liquidation or reor-
11 ganization under this title more orderly, or would aid in
12 the nonbankruptcy resolution of any of the non-bank fi-
13 nancial institution’s components under its nonbankruptcy
14 insolvency regime. Additionally, the consultation shall con-
15 sider whether, if a petition is filed under section 301 or
16 303, the debtor should file a motion for an exemption au-
17 thorized by section 1407.

18 “(d) The court may allow the consultation process to
19 continue for 30 days after the petition, upon motion by
20 the debtor or a creditor. Any post-petition consultation
21 proceedings authorized should be facilitated by the court’s
22 mediation services, under seal, and exclude ex parte com-
23 munications.

24 “(e) The Financial Stability Oversight Council and
25 the functional regulator shall publish and transmit to Con-

1 gress a report documenting the course of any consultation.
2 Such report shall be published and transmitted to Con-
3 gress within 30 days of the conclusion of the consultation.

4 “(f) Nothing in this section shall be interpreted to
5 set aside any of the limitations on the use of Federal funds
6 set forth in the No More Bailouts Act of 2010 or the
7 amendments made by such Act. Nor shall any Federal
8 funds be made available through the Federal Reserve Sys-
9 tem, including through the authority of the third undesig-
10 nated paragraph of section 13 of the Federal Reserve Act
11 (12 U.S.C. 343).

12 **“§ 1404. Appointment of trustee**

13 “In applying section 1104 to a case under this chap-
14 ter, if the court orders the appointment of a trustee or
15 an examiner, if the trustee or an examiner dies or resigns
16 during the case or is removed under section 324, or if a
17 trustee fails to qualify under section 322, the functional
18 regulator, in consultation with the Financial Stability
19 Oversight Council, shall submit a list of five disinterested
20 persons that are qualified and willing to serve as trustees
21 in the case and the United States trustee shall appoint,
22 subject to the court’s approval, one of such persons to
23 serve as trustee in the case.

1 **“§ 1405. Right to be heard**

2 “(a) The functional regulator, the Financial Stability
3 Oversight Council, the Federal Reserve, the Department
4 of the Treasury, the Securities and Exchange Commission,
5 and any domestic or foreign agency charged with admin-
6 istering a nonbankruptcy insolvency regime for any com-
7 ponent of the debtor may raise and may appear and be
8 heard on any issue in a case under this chapter, but may
9 not appeal from any judgment, order, or decree entered
10 in the case.

11 “(b) A party in interest, including the debtor, the
12 trustee, a creditors’ committee, an equity security holders’
13 committee, a creditor, an equity security holder, or any
14 indenture trustee may raise, and may appear and be heard
15 on, any issue in a case under this chapter.

16 **“§ 1406. Right to communicate**

17 “‘The court is entitled to communicate directly with,
18 or to request information or assistance directly from, the
19 functional regulator, the Financial Stability Oversight
20 Council, the Board of Governors of the Federal Reserve
21 System, the Department of the Treasury, or any agency
22 charged with administering a nonbankruptcy insolvency
23 regime for any component of the debtor, subject to the
24 rights of a party in interest to notice and participation.

1 **“§ 1407. Exemption with respect to certain contracts**
2 **or agreements**

3 “(a) Subject to subsection (b)—

4 “(1) upon motion of the debtor, consented to by
5 the Financial Stability Oversight Council—

6 “(A) the debtor and the estate shall be ex-
7 empt from the operation of sections 362(b)(6),
8 362(b)(7), 362(b)(17), 546(e), 546(f), 546(g),
9 555, 556, 559, 560, and 561;

10 “(B) if the Financial Stability Oversight
11 Council consents to the filing of such motion by
12 the debtor, the Board shall inform the court of
13 its reasons for consenting; and

14 “(C) the debtor may limit its motion, or
15 the board may limit its consent, to exempt the
16 debtor and the estate from the operation of sec-
17 tion 362(b)(6), 362(b)(7), 362(b)(17), 546(e),
18 546(f), 546(g), 555, 556, 559, 560, or 561, or
19 any combination thereof; and

20 “(2) if the Financial Stability Oversight Council
21 does not consent to the filing of a motion by the
22 debtor under paragraph (1), the debtor may file a
23 motion to exempt the debtor and the estate from the
24 operation of sections 362(b)(6), 362(b)(7),
25 362(b)(17), 546(e), 546(f), 546(g), 555, 556, 559,
26 560, and 561, or any combination thereof.

1 “(b) The court shall commence a hearing on a motion
2 under subsection (a) not later than 5 days after the filing
3 of the motion to determine whether to maintain, termi-
4 nate, annul, modify, or condition the exemption under sub-
5 section (a)(1) or, in the case of a motion under subsection
6 (a)(2), grant the exemption. The court shall request the
7 filing or briefs by the functional regulator and the Finan-
8 cial Stability Oversight Council. The court shall decide the
9 motion not later than 5 days after commencing such hear-
10 ing unless—

11 “(1) the parties in interest consent to a exten-
12 sion for a specific period of time; or

13 “(2) except with respect to an exemption from
14 the operation of section 559, the court sua sponte
15 extends for 5 additional days the period for decision
16 if such extension would be in the interests of justice
17 or is required by compelling circumstances.

18 “(c) The court shall maintain, terminate, annul, mod-
19 ify, or condition the exemption under subsection (a)(1),
20 or, in the case of a motion under subsection (a)(2), grant
21 the exemption only upon showing of good cause. In deter-
22 mining whether good cause has been shown, the court
23 shall balance the interests of both debtor and creditors
24 while attempting to preserve the debtor’s assets for repay-

1 ment and reorganization of the debtors obligations, or to
2 provide for a more orderly liquidation.

3 “(d) For purposes of timing under section 562 of this
4 title, if a motion is filed under subsection (a)(1) or if a
5 motion is granted under subsection (a)(2), the date or
6 dates of liquidation, termination, or acceleration shall be
7 measured from the earlier of—

8 “(1) the actual date or dates of liquidation, ter-
9 mination, or acceleration; or

10 “(2) the date on which a forward contract mer-
11 chant, stockbroker, financial institution, securities
12 clearing agency, repo participant, financial partici-
13 pant, master netting agreement participant, or swap
14 participant files a notice with the court that it would
15 have liquidated, terminated, or accelerated a con-
16 tract or agreement covered by section 562 of this
17 title had a stay under this section not been in place.

18 “(e) The provisions of this section shall apply only
19 with respect to contracts and agreements covered by this
20 section entered into on or after the date of enactment of
21 this chapter.

22 **“§ 1408. Conversion or dismissal**

23 “In applying section 1112 to a case under this chap-
24 ter, the debtor may convert a case under this chapter to
25 a case under chapter 7 of this title if the debtor may be

1 a debtor under such chapter unless the debtor is not a
2 debtor in possession.”, and

3 (2) by amending the table of chapters of such
4 title by adding at the end the following:

“14. Adjustment to the Debts of a Non-Bank Financial Institution 1401”.