



House Passes Legislation Allowing Financial Institutions to Seek Chapter 11 Protection

On April 5 and June 8, 2017, the U.S. House of Representatives passed bills (the [Financial Institution Bankruptcy Act of 2017](#) ("FIBA") and the [Financial CHOICE Act of 2017](#)) that would allow financial institutions to seek protection under Chapter 11 of the Bankruptcy Code. Among other key provisions, both bills call for the creation of a new subchapter V to Chapter 11 of the Bankruptcy Code. However, unlike FIBA, the CHOICE Act would repeal Title II of Dodd-Frank Wall Street Reform and Consumer Protection Act, stripping the Federal Deposit Insurance Corporation's ("FDIC") receivership of failing financial institutions. Instead, subchapter V would serve as the sole method for managing distressed financial institutions.

Under subchapter V, financial institutions would have the opportunity to reorganize and continue operations simultaneously. First, the financial institution's unsecured debt would remain with the holding company, the estate of which would be managed in Chapter 11 by a court-appointed trustee. Meanwhile, the bankruptcy court would transfer the institution's assets (including qualified financial contracts) and secured debts to a new bridge company free and clear of liens. The bridge company would operate outside of bankruptcy, preventing a run on institutions and promoting financial stability.

Other key provisions of subchapter V include:

- Imposing a 48-hour temporary stay on counterparties' ability to terminate or modify contracts (including qualified financial contracts) with the debtor;
- Shielding the debtors' board of directors from liability to shareholders and creditors for a good-faith filing;
- Vesting the Securities and Exchange Commission, FDIC, and Commodity Futures Trading Commission with standing in the Chapter 11 case;
- Requiring the Chief Justice of the Supreme Court to designate at least 10 bankruptcy judges to hear these cases; and
- Obligating financial institutions to provide advance notice of a filing to the court, federal regulators, and major creditors.

CONTACTS



Kevyn D. Orr
Washington



Dan T. Moss
Washington



Anna M. Wetzel
Washington

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