

## **Title I**

### **Senate Counteroffer**

The House proposed to strike Senate Title I, except for Section 171 as modified, and replace it with the House version of Title I.

The Senate counteroffers with the following provisions contained in the House offer, as modified as indicated by the attached legislative text:

- Add four additional nonvoting members to the Financial Stability Oversight Council, including the head of the Federal Insurance Office, a state insurance commissioner, a state banking supervisor, and a state securities commissioner;
- Add two additional duties to those already enumerated for the Financial Stability Oversight Council: (1) monitoring and advising the Congress on domestic and international regulatory developments, including insurance and accounting developments, and make recommendations that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets; and (2) identifying threats that arise outside the financial services marketplace;
- Require that the Council report to Congress on any dispute resolutions made under section 119;
- Add to the factors for the Council to consider in its determination under Section 113 the nature, scope, and mix of the company's activities;
- Allow the Board to apply to a company appropriately stringent risk controls as an alternative to the risk-based capital requirements and leverage limits under section 165 if such requirements and limits are not appropriate for the company's activities (such as investment company activities or assets under management) or structure. However, the Senate offer would modify the House offer by making such action subject to a Council recommendation;
- Clarify that resolution plans submitted under section 165 are not binding on bankruptcy courts or receivers;
- Give the FDIC Board back-up examination and enforcement authority for bank holding companies subject to heightened standards and nonbank financial companies supervised by the Board of Governors; and
- Modify the capital provisions of section 171 of the base text, but with some changes to the modifications proposed in subtitle E of the House offer.

The Senate also offers to amend the dispute resolution provision in Section 119 by making the Council's decision nonbinding.

The Senate does not accept the rest of the House offer.

**FINANCIAL REFORM CONFERENCE:  
FOR SENATE COUNTEROFFER FOR TITLE I**

[Page and line numbers refer to Conference Base Text]

On page 125, between lines 14 and 15, insert the following:

1           (3) DEFINITION OF DEPOSITORY INSTITUTION  
2           HOLDING COMPANY.—The term “depository institu-  
3           tion holding company” means a bank holding com-  
4           pany or a savings and loan holding company (as  
5           those terms are defined in section 3 of the Federal  
6           Deposit Insurance Act) that is organized in the  
7           United States, including any bank or savings and  
8           loan holding company that is owned or controlled by  
9           a foreign organization, but does not include the for-  
10          eign organization.

11          On page 125, beginning on line 21, strike “identified  
12 under section 113” and insert “supervised by the Board  
13 of Governors”.

14          On page 126, beginning on line 11, strike “identified  
15 under section 113” and insert “supervised by the Board  
16 of Governors”.

1 On page 126, line 21, strike "(3)" and insert the fol-  
2 lowing:

3 (3) INVESTMENTS IN FINANCIAL SUBSIDI-  
4 ARIES.—For purposes of this section, investments in  
5 financial subsidiaries that insured depository institu-  
6 tions are required to deduct from regulatory capital  
7 under section 5136A of the Revised Statutes of the  
8 United States or section 46(a)(2) of the Federal De-  
9 posit Insurance Act need not be deducted from regu-  
10 latory capital by depository institution holding com-  
11 panies or nonbank financial companies supervised by  
12 the Board of Governors, unless such capital deduc-  
13 tion is required by the Board of Governors or the  
14 primary financial regulatory agency in the case of  
15 nonbank financial companies supervised by the  
16 Board of Governors.

17 (4) EFFECTIVE DATES AND PHASE-IN PERI-  
18 ODS.—

19 (A) DEBT OR EQUITY INSTRUMENTS ON  
20 OR AFTER MAY 19, 2010.—For debt or equity in-  
21 struments issued on or after May 19, 2010, by  
22 depository institution holding companies or by  
23 nonbank financial companies supervised by the  
24 Board of Governors, this section shall be

1           deemed to have become effective as of May 19,  
2           2010.

3           (B) DEBT OR EQUITY INSTRUMENTS  
4           ISSUED BEFORE MAY 19, 2010.—For debt or eq-  
5           uity instruments issued before May 19, 2010,  
6           by depository institution holding companies or  
7           by nonbank financial companies supervised by  
8           the Board of Governors, any regulatory capital  
9           deductions required under this section shall be  
10          phased in incrementally over a period of 3  
11          years, with the phase-in period to begin on Jan-  
12          uary 1, 2013, except as set forth in subpara-  
13          graph (C).

14          (C) DEBT OR EQUITY INSTRUMENTS OF  
15          SMALLER INSTITUTIONS.—For debt or equity  
16          instruments issued before May 19, 2010, by de-  
17          pository institution holding companies with  
18          total consolidated assets of less than  
19          \$10,000,000,000 as of December 31, 2009, and  
20          by organizations that were mutual holding com-  
21          panies on May 19, 2010, the capital deductions  
22          that would be required for other institutions  
23          under this section are not required as a result  
24          of this section.

1 (D) DEPOSITORY INSTITUTION HOLDING  
2 COMPANIES NOT PREVIOUSLY SUPERVISED BY  
3 THE BOARD OF GOVERNORS.—For any deposi-  
4 tory institution holding company that was not  
5 supervised by the Board of Governors as of  
6 May 19, 2010, the requirements of this section,  
7 except as set forth in subparagraphs (A) and  
8 (B), shall be effective 5 years after the date of  
9 enactment of this Act

10 (E) CERTAIN BANK HOLDING COMPANY  
11 SUBSIDIARIES OF FOREIGN BANKING ORGANIZA-  
12 TIONS .—For bank holding company subsidi-  
13 aries of foreign banking organizations that have  
14 relied on Supervision and Regulation Letter  
15 SR-01-1 issued by the Board of Governors (as  
16 in effect on May 19, 2010), the requirements of  
17 this section, except as set forth in subparagraph  
18 (A), shall be effective 5 years after the date of  
19 enactment of this Act.

20 (5) EXCEPTIONS.—This section shall not apply  
21 to—

22 (A) debt or equity instruments issued to  
23 the United States or any agency or instrumen-  
24 tality thereof pursuant to the Emergency Eco-

1            nomic Stabilization Act of 2008, and prior to  
2            October 4, 2010;

3            (B) any Federal home loan bank; or

4            (C) any small bank holding company that  
5            is subject to the Small Bank Holding Company  
6            Policy Statement of the Board of Governors, as  
7            in effect on May 19, 2010.

8            (6) STUDY AND REPORT ON SMALL INSTITU-  
9            TION ACCESS TO CAPITAL.—

10            (A) STUDY REQUIRED.—The Comptroller  
11            General of the United States, after consultation  
12            with the Federal banking agencies, shall con-  
13            duct a study of access to capital by smaller in-  
14            sured depository institutions.

15            (B) SCOPE.—For purposes of this study  
16            required by subparagraph (A), the term “small-  
17            er insured depository institution” means an in-  
18            sured depository institution with total consoli-  
19            dated assets of \$5,000,000,000 or less.

20            (C) REPORT TO CONGRESS.—Not later  
21            than 18 months after the date of enactment of  
22            this Act, the Comptroller General of the United  
23            States shall submit to the Committee on Bank-  
24            ing, Housing, and Urban Affairs of the Senate  
25            and the Committee on Financial Services of the

1 House of Representatives a report summarizing  
2 the results of the study conducted under sub-  
3 paragraph (A), together with any recommenda-  
4 tions for legislative or regulatory action that  
5 would enhance the access to capital of smaller  
6 insured depository institutions, in a manner  
7 that is consistent with safe and sound banking  
8 operations.

9 (7)

10 On page 127, line 3, strike "all institutions covered  
11 by this section" and insert "insured depository institu-  
12 tions, depository institution holding companies, and  
13 nonbank financial companies supervised by the Board of  
14 Governors".



Additional Legislative Text of the Senate Counteroffer on Title I

On page 28, strike line 20 and all that follows through page 29, line 9, and insert:

(2) NONVOTING MEMBERS.—The nonvoting members, who shall serve in an advisory capacity as a nonvoting member of the Council and shall not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council; shall be:

- (A) the Director of the Office of Financial Research;
- (B) the Director of the Federal Insurance Office;
- (C) a state insurance commissioner, to be designated by a selection process determined by the state insurance commissioners;
- (D) a state banking supervisor, to be designated by a selection process determined by the state banking supervisors; and
- (E) a state securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such state securities commissioners.

(c) Terms; Vacancy.—

- (1) TERMS.—The independent member of the Council shall serve for a term of 6 years, and each nonvoting member described in subparagraphs (C), (D), and (E) shall serve for a term of 2 years.

On page 33, line 7, insert the following and re-designate subsequent subparagraphs accordingly:

“(D) to advise the Congress on domestic and international financial regulatory developments, including insurance and accounting developments, and make recommendations that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets;

“(E) to identify potential threats to the stability of the United States financial system that do not arise out of the financial services marketplace; ”.

On page 35, line 19, insert the following subclause and redesignate the subsequent subclause accordingly: “(iv) any dispute resolutions undertaken under section 119 and the result of such resolutions;”.

On page 40, move the subparagraphs at lines 5 through 9 to page 41, line 11, add the following new subparagraph at page 40, after line 24, and redesignate all subparagraphs accordingly:

- ( ) the nature, scope, and mix of the company’s activities;

On page 42, move the subparagraphs at lines 7 through 12 to page 43, line 11, add the following

new subparagraph at page 43, line 4, and redesignate all subparagraphs accordingly:

( ) the nature, scope, and mix of the company's activities;

On page 64, line 22, strike "REQUEST FOR DISPUTE RESOLUTION" and insert "REQUEST FOR COUNCIL RECOMMENDATION"

On page 64, line 23, insert "seek to" before "resolve"

On page 65, line 19, insert "seek to" before "resolve"

On page 65, line 21, strike "COUNCIL DECISION. – The Council shall resolve" and insert "COUNCIL RECOMMENDATION. – The Council shall seek to resolve"

On page 66, line 6, strike "FORM OF DECISION. – Any Council decision" and insert "FORM OF RECOMMENDATION. – Any Council recommendation"

On page 66, line 13, strike "BINDING EFFECT. – Any decision" and insert "NON-BINDING EFFECT. – Any recommendation"

On page 66, line 14, strike "shall be binding on all" and insert "shall not be binding on the"

On page 104, strike lines 15-16, insert the following, and re-designate subsequent clauses accordingly:

(i) risk-based capital requirements and leverage limits, unless the Council makes a recommendation pursuant to section 115(a) that such requirements are not appropriate because of such company's activities (such as investment company activities or assets under management) or structure, in which case the Board of Governors shall apply other standards consistent with such recommendation that result in appropriately stringent risk controls;

On page 111, after line 14 insert the following new paragraphs and redesignate the remaining paragraph accordingly:

"(6) No limiting effect. A resolution plan submitted in accordance with this subsection shall not be binding on a bankruptcy court, a receiver appointed under title II of this Act, or any other authority that is authorized or required to resolve the nonbank financial company supervised by the Board, any bank holding company, or any subsidiary or affiliate of the foregoing.

On p. 128, after line 2, insert the following new sections:

**SEC. 172. Examination and enforcement actions for insurance and resolution purposes.**

- (a) Examinations for insurance and resolution purposes. Section 10(b)(3) of the Federal Deposit Insurance Act (12 USC 1820(b)(3)) is amended by striking “whenever the board of directors determines” and all that follows through the period and inserting “or nonbank financial company supervised by the Board of Governors or a bank holding company described in section 165(a) of the Restoring American Financial Stability Act of 2010) whenever the board of directors determines a special examination of any such depository institution is necessary to determine the condition of such depository institution for insurance or such nonbank financial company supervised by the Board of Governors or bank holding company described in section 165(a) for purposes of exercising the Corporation’s authority under Title II.”
- (b) Enforcement authority. Section 8(t) of the Federal Deposit Insurance Act (12 USC 1818(t)) is amended—
- (1) In paragraph (2)—
- (A) at the end of subparagraph (B), by striking “or”;
- (B) at the end of subparagraph (C) , by striking the period and inserting “or”;  
and
- (C) by inserting at the end the following new subparagraph:
- “(D) the conduct or threatened conduct (including any acts or omissions) of the depository institution holding company poses a risk to the Deposit Insurance Fund.”; and
- (2) by adding at the end the following new paragraph”
- “(6) For purposes of this subsection:
- (A) the Corporation shall have the same powers with respect to a depository institution holding company and its affiliates as the appropriate federal banking agency has with respect to the holding company and its affiliates; and
- (B) the holding company and its affiliates shall have the same duties and obligations with respect to the Corporation as the holding company and its affiliates have with respect to the appropriate federal banking agency.

6/17/10

Amendment passed  
by UC

**Restoring American Financial Stability  
Conference Amendment  
Mr. Corker Amendment # 1, Title I**

**Title I**

~~On page 124, Strike Section 171 and replace with:~~

**“Studies and Reports on Holding Company Capital Requirements**

(a) Study of hybrid capital instruments. – The Comptroller General of the United States, in consultation with the Federal Reserve Board, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, shall conduct a study of the use of hybrid capital instruments as a component of Tier 1 capital for banking institutions and bank holding companies. The study shall consider –

- (1) the current use of hybrid capital instruments, such as trust preferred shares, as a component of tier 1 capital;
- (2) the differences between the components of capital permitted for insured depository institutions and those permitted for companies that control insured depository institutions;
- (3) the benefits and risks of allowing such instruments to be used to comply with tier 1 capital requirements;
- (4) the economic impact of prohibiting the use of these capital instruments for tier 1;
- (5) a review of the consequences of disqualifying trust preferred instruments, and whether it could lead to the failure or undercapitalization of existing banking organizations;

(6) the international competitive implications prohibiting hybrid capital instruments for tier 1;

(7) the impact on the cost and availability of credit in the United States from such a prohibition;

(8) the availability of capital for financial institutions with less than \$10 billion in total assets;

(9) any other relevant factors relating to the safety and soundness of our financial system and potential economic impact of such a prohibition.

(b) Study of foreign bank intermediate holding company capital requirements. -- The Comptroller General of the United States, in consultation with the Treasury Department, the Federal Reserve Board, Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, shall conduct a study of capital requirements applicable to U.S. intermediate holding companies of foreign banks that are bank holding companies or savings and loan holding companies. The study shall consider --

(1) current Federal Reserve Board policy regarding the treatment of intermediate holding companies;

(2) the principle of national treatment and equality of competitive opportunity for foreign banks operating in the United States;

(3) the extent to which foreign banks are subject on a consolidated basis to home country capital standards comparable to U.S. capital standards;

(4) potential effects on U.S. banking organizations operating abroad of changes to U.S. policy regarding intermediate holding companies;

(5) the impact on the cost and availability of credit in the United States from a change in U.S. policy regarding intermediate holding companies; and

(6) any other relevant factors relating to the safety and soundness of our financial system and potential economic impact of such a prohibition.

(c) Report. – Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit reports to the Committee on Financial Services of the House of Representatives and to the Committee on Banking, Finance and Urban Affairs of the Senate summarizing the results of the studies authorized under subsection (a). The reports shall include specific recommendations for legislative or regulatory action regarding the treatment of hybrid capital instruments, including trust preferred shares, and shall explain the basis for such recommendations.”

**Restoring American Financial Stability  
Conference Amendment  
Mr. Corker Amendment # 2  
to Senate Title I Counteroffer (Additional Legislative Text document)**

*Amendment  
passed by UC*

**Title I**

On p. 33, line 7, insert the following:

“(D) to monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and to advise Congress and make recommendations in these areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets.”

**Restoring American Financial Stability  
Conference Amendment  
Mr. Corker Amendment # 4, Title I**

*Amendment  
passed by UC*

**Title I**

On page 106, between lines 18 and 19, insert the following:

“(4) CONSULTATION. – Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.”