



1. [H.R. 1667 – Financial Institution Bankruptcy Act of 2017](#)
2. [S. 544 – To amend the Veterans Access, Choice, and Accountability Act of 2014 to modify the termination date for the Veterans Choice Program, and for other purposes](#)



H.R. 1667 - Financial Institution Bankruptcy Act (Rep. Marino, R-PA)

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FLOOR SCHEDULE:

Expected to be considered on April 5, 2017 under suspension of the rules, which requires a 2/3 vote for passage.

TOPLINE SUMMARY:

[H.R. 1667](#) would establish a new subchapter in the bankruptcy code to cover large financial institutions, imposing losses on shareholders and creditors rather than on taxpayers as under a Dodd-Frank proceeding.

COST:

The Congressional Budget Office (CBO) [estimates](#) that “enacting H.R. 1667 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year period beginning in 2028.”

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

H.R. 1667 would add a new subchapter, Subchapter V, to [Chapter 11 of Title 11 of United States Code](#) (the bankruptcy code). Subchapter V would apply to financial institutions with assets in excess of \$50 billion and with at least 85% of revenues derived from financial activities.

Under the provisions of the bill, pursuant to a petition for bankruptcy from a covered financial institution, the operations, assets, contracts and secured debt of the institution would be transferred to a bridge company, which would continue in operation. The unsecured debt and equity, as well as any contracts or property subject to a lien under an obligation that the bridge company is, in the opinion of the court, unlikely to be able to be fulfilled, would remain with the legacy estate to be resolved under standard bankruptcy proceedings.

The bill also provides for an automatic 48-hour stay against any legal action from creditors seeking to recover against the institution while assets are transferred to the bridge company. After 48 hours, the stay is lifted against the bridge company, but would remain in force covering the operating subsidiaries of the institution. Unlike a traditional automatic stay under Chapter 11, derivative contracts would be covered

under the 48-hour stay, though it would be terminated in the event the bridge company failed to perform on the derivative contract.

The bill would also require the Chief Justice of the U.S. Supreme Court to designate at least 10 bankruptcy judges who are able to hear Subchapter V cases.

A similar bill was passed in the 114th Congress by voice vote. The past legislative bulletin can be found [here](#).

COMMITTEE ACTION:

H.R. 1667 was introduced on March 22, 2017 and was referred to the House Committee on the Judiciary.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not yet available.

CONSTITUTIONAL AUTHORITY:

According to the sponsor, Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, clause 3 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause "to regulate Commerce with foreign Nations, and among the several States, and with Indian tribes;" Article I, Section 8, clause 4 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause "to establish . . . uniform Laws on the subject of Bankruptcies throughout the United States;" Article I, Section 8, clause 9 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause "to constitute Tribunals inferior to the Supreme Court;" Article I, Section 8, clause 18 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof;" and, Article III of the United States Constitution, in that the legislation defines or affects powers of the Judiciary that are subject to legislation by Congress.

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*



S. 544 – To amend the Veterans Access, Choice, and Accountability Act of 2014 to modify the termination date for the Veterans Choice Program, and for other purposes (Tester, D-MT)

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FLOOR SCHEDULE:

April 5, 2017 under a suspension of the rules, which requires a 2/3 majority for passage.

TOPLINE SUMMARY:

[S. 544](#) would eliminate the sunset date of the Veterans Choice Program (Choice) to ensure that existing appropriated mandatory funds can continue to be used on veterans' health care until exhausted. The bill would also require the VA to act as the primary payer for care provided under the Choice program, as well as authorize the disclosure of certain veteran medical records.

COST:

The [Congressional Budget Office \(CBO\)](#) estimates that the House companion, H.R. 369, would increase direct spending by \$200 million between 2017-2027. This is because CBO estimates that by August 7, 2017, VA would obligate all but \$200 million of the \$10 billion originally appropriated for VCP. CBO notes that since the baseline was prepared, VA has indicated that as much as \$1 billion could remain unobligated by August 7. If unobligated funds are higher than CBO's estimate, direct spending would increase proportionally.

CONSERVATIVE CONCERNS:

Some conservatives may be concerned that the bill eliminates the existing sunset for the VA Choice program and does not replace it with a future sunset. This is in violation of the [Majority Leader's scheduling protocol](#) requiring all measures to include a sunset of not later than seven years from enactment.

While the existing mandatory appropriation for the VA Choice program will be exhausted well within seven years of the enactment of S. 544, some conservatives may be concerned that eliminating the program's sunset will increase the incentive to appropriate additional mandatory funding without reauthorization or other adequate oversight.

- **Expand the Size and Scope of the Federal Government?** The bill would allow for the VA choice program to continue beyond its original August 7, 2017 sunset. No new funding is appropriated for the program, however the original \$10 billion appropriation from 2014 would be allowed to be used until exhausted, resulting in additional spending that would otherwise not occur.

- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** The bill would direct the Secretary of the VA to collect reimbursement for care provided to veterans that would otherwise be the responsibility of a third party and directs that the funds from such collections should be deposited in the Medical Community Care account and be available without further appropriation from Congress. OMB estimated that in FY2016, such automatically appropriated fee and offsetting collection accounts across the federal government accounted for \$525 billion in federal spending without direct appropriation from Congress.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

The Veterans Choice Program (Choice) allows certain eligible veterans to receive medical care in the community rather than through Veterans Administration (VA) providers, and was established as a temporary program under the Veterans Access, Choice, and Accountability Act of 2014. In general, Veterans are eligible to access care through Choice if they are live more than 40 miles from a VA medical facility or are unable to get an appointment within 30 days.

By law, Choice is scheduled to expire on August 7, 2017, or at such time as the \$10 billion appropriated to the Veterans Choice Fund are exhausted, whichever comes first. Given the upcoming program expiration, VA has stopped referring some veterans to Choice, including in instances where the care they are seeking would likely need to be continued beyond the sunset date. VA expects, however, that when Choice is scheduled to end on August 7, somewhere between \$800 million and \$1.2 billion of the original appropriation will remain available.

S. 544 would eliminate the sunset date so that these unspent funds would be available to be used to allow eligible veterans to continue to receive community care through Choice. Some conservatives may have concerns that although there is no new money authorized for the Veterans Choice Fund, eliminating the sunset date would effectively make Choice a permanent program. The committee report for an identical House bill, H.R. 369, acknowledges that Choice is “flawed and in need of improvement to ensure its optimal functioning for veterans, VA, community providers, and taxpayers alike.”

The bill would also eliminate a requirement in the law that VA serve as secondary payer for non-service connected care provided under Choice, meaning that other health insurance should be billed first. VA is the primary payer for service-connected and non-service connected care in its other community care programs, and VA claims that the secondary payer requirement has created confusion for veterans and community providers that may impede timely payment processing. The bill would also require the VA to seek reimbursement from liable third parties for care provided to veterans and would make funds from such collections eligible for expenditure without further appropriation.

Finally, the bill would allow the VA to share medical records with other federal or private health care providers when VA patients are seeking care in the community.

COMMITTEE ACTION:

S. 544 was introduced in the Senate on March 7, 2017, and passed by voice vote on April 3.

An identical House bill was introduced by Representative Roe (R-TN) on January 9, 2017 and referred to the House Committee on Veterans Affairs, where a mark-up was held on March 29 and the bill was reported by voice vote. Read the committee report [here](#).

ADMINISTRATION POSITION:

No Statement of Administration Policy is available at this time.

CONSTITUTIONAL AUTHORITY:

Constitutional Authority statements are not required for Senate bills.