

# Senate Passes Financial Reform Bill

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The Senate last night passed its long-awaited version of financial system regulatory reform legislation, the Restoring American Financial Stability Act. In the coming weeks, each congressional chamber will select a group of lawmakers to negotiate a final bill. That bill will then need to be voted on again in both chambers before going to the President for his signature or veto. The process is expected to take at least a month.

The following are a handful of the more significant amendments considered by the Senate.

- Federal Preemption – As written, the bill would have allowed states to enact consumer protection laws more strict than their federal counterparts. By amendment, the Senate preserved federal preemption of state consumer financial protection laws, with preemption standards being determined by the Office of the Comptroller of the Currency and reported to Congress. Also per this amendment, state attorneys general would be permitted to file civil lawsuits against state-chartered institutions to enforce consumer financial protections.
- Definitions of Non-bank Institutions – The Senate passed an amendment without opposition that revises important definitions of non-bank financial institutions. This amendment seeks to limit the reach of the new consumer protection regulator with regard to non-bank financial companies to those companies that are “predominantly engaged” in providing financial services. In contrast, the underlying bill included broad language that would have allowed for regulation of nearly any company engaged in financial activities. In the Senate version, the new consumer regulator would only have authority over non-bank firms that receive at least 85 percent of their revenue from financial activities.
- ATM Fee Cap – The proposed amendment to limit the fees banks could charge on ATM transactions (discussed in an [earlier post](#)) did not receive a vote and therefore is not included in the final Senate bill.
- Interchange Fee Cap – The Senate adopted an amendment to allow the Federal Reserve to set limits on the fees charged to retailers by credit card companies for the processing of credit card transactions. The specific language, if included in a final bill, would allow the Federal Reserve to set “reasonable and proportionate” interchange charges – a threshold sure to provoke additional future battles. Institutions with less than \$10 billion in assets would be exempt from such limits.
- Auto-dealer Exemption – An amendment proposed to exempt auto-dealers from the jurisdiction of the Senate’s proposed Consumer Financial Protection Bureau, strongly opposed by the Senate Banking Committee Chairman Chris Dodd and the White House did not receive a vote before adoption of the bill.
- FTC Authority Preservation – The Senate passed without opposition the proposed amendment to

revise the Consumer Protection Bureau provisions to allow the FTC to retain its existing rulemaking authority, carving it out of the new consumer protection regulator.

- Derivatives - The proposed provisions in the underlying bill that would require banks to spin off their derivative operations, strongly opposed by banks and the FDIC, was not taken up.
- Mortgage underwriting - This amendment, which would bar mortgage brokers and loan originators from receiving payments based on the terms of the loans they sell, was added to the bill. Under this amendment, lenders would be required to verify a borrower's ability to repay the loan from income and assets other than the home's value. Assessment of the ability to repay would have to be based on the maximum interest rate allowed in the first five years of the loan.