



## **Industrial Energy Consumers of America**

*The Voice of the Industrial Energy Consumers*

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April 27, 2010

The Honorable Christopher Dodd  
Chairman  
Committee on Banking, Housing and Urban Affairs

The Honorable Richard Shelby  
Ranking Member  
Committee on Banking, Housing and Urban Affairs

Re: Amendment to Prevent Manufacturers from Being Regulated as a Financial Company Under “Financial Activities” Definition – Federal Reserve

Dear Chairman Dodd and Ranking Member Shelby:

On behalf of the Industrial Energy Consumers of America (IECA) we urge you to ensure that provisions of S.3217, the Restoring American Financial Stability Act of 2010 does not impose bank-like regulation on companies that pose no systemic risk to the financial system. Because the definition of “financial activities” is broadly defined, routine practices could sweep non-bank manufacturing and retail companies into regulation by the Federal Reserve. We urge you to support changes to clarify that S. 3217 applies only to companies that are “predominantly engaged” in financial activities. We have attached draft legislation for your consideration.

The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with \$800 billion in annual sales and with more than 750,000 employees nationwide that has a long record of consistent support for reforming financial markets to eliminate excessive speculation, fraud, manipulation and market power. IECA has testified five times before the Congress and Commodity Futures Trading Commission.

Section 102 of the bill gives the Federal Reserve the authority to oversee bank holding companies and “nonbank financial companies” that are deemed to be of systemic importance. A “nonbank financial company” is defined as any business “substantially engaged in activities in the United States that are financial in nature, (as defined in section 4(k) of the Bank Holding Company Act of 1956)”.

While “substantially” would be defined by the Federal Reserve, it is important to note the term “financial activities” is broadly defined under the Bank Holding Company Act and includes lending money, offering guarantees, factoring, and even managing a company's own portfolio. Under the current version of the legislation, there is a danger that systemic risk regulation could be applied to America's manufacturers, retailers and other businesses that had nothing to do with the financial crisis.

We do not believe it is the intent of the Senate to include a wide swath of American companies under the financial services reform legislation. The predominance test is well defined and understood under existing law (see section 4(n) of the Bank Holding Company Act of 1956), and would ensure that America's builders, innovators and employers are not inappropriately brought under the Federal Reserve's regulatory authority.

We are asking for your help on this urgent matter. Thank you in advance for your support for this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul N. Cicio". The signature is written in a cursive, flowing style.

Paul N. Cicio  
President

Attached: Legislative language  
Cc: Senate

**Amendment Clarifying No Federal Reserve Regulation of Non-Financial Companies  
Like Manufacturers and Retailers.**

On page 20, Line 3: After “.” insert the following new sentence: **"Such regulation shall specify that "substantially" means the predominant share of the activities of a company and its affiliates together on a consolidated basis."**

Section 102(b) of the bill would thus read as follows (new language is in bold):

“(b) DEFINITIONAL CRITERIA.—The Board of Governors shall establish, by regulation, the criteria to determine whether a company is substantially engaged in activities in the United States that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) for purposes of the definitions of the terms “U.S. nonbank financial company” and “foreign nonbank financial company” under subsection (a)(4). **Such regulation shall specify that "substantially" means the predominant share of the activities of a company and its affiliates together on a consolidated basis."**

Explanation:

This amendment would clarify that the intent of the systemic risk provision is not to bring commercial companies like manufacturers and retailers under the regulation of the Federal Reserve. Currently the bill states that “nonbank financial companies” may be made subject to Federal Reserve regulation if the systemic risk council votes to do so. Whether or not a company is “financial” turns on whether the business is engaged in activities that are “financial in nature” as defined in section 4(k) of the Bank Holding Company Act of 1956. Unfortunately this definition is so broad as to include things like extending credit or offering guarantees to a customer, holding down payments in trust, and other activities that are part of routine commerce for companies that are not engaged in the financial services business.

This amendment would leave the ability of the Federal Reserve to regulate non-bank financial companies intact but clarify that a company that is not predominantly engaged in these types of activities will not be regulated like a bank holding company. This is consistent with the intent of the provision as noted in the staff section-by-section explanation of the bill which states: *“It is intended that commercial companies, such as manufacturers, retailers, and others, would not be considered to be nonbank financial companies generally, and this provision is intended to provide certainty by mandating the establishment of the criteria through the public notice and comment process required for rulemaking.”*