114TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { 114–870

TAKING ACCOUNT OF INSTITUTIONS WITH LOW OPERATION RISK ACT OF 2015

DECEMBER 12, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 2896]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2896) to require the Federal financial institutions regulatory agencies to take risk profiles and business models of institutions into account when taking regulatory actions, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 2896 directs the federal financial institutions regulatory agencies to tailor their rulemakings in consideration of the risk profiles and business models of institutions that would be subject to such rules. H.R. 2896 also directs such agencies to annually report to Congress and testify regarding the specific actions taken to tailor their regulatory actions.

BACKGROUND AND NEED FOR LEGISLATION

The growing weight and complexity of regulation for community financial institutions affects their ability to provide the products and services necessary to allow small businesses to grow and consumers to access credit to realize their financial and personal goals. The regulatory burden falls into three major categories: (1) addi-

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tional operational costs associated with compliance; (2) restrictions on fees, interest rates, or other revenue; and (3) unintentional barriers to offering a service due to regulatory complexity.

Smaller institutions are disproportionately affected by increased regulation because they are less able to absorb additional costs.

Although many financial regulations are designed and intended for large, complex U.S. financial institutions, they are also being applied to small community financial institutions, often in the form of bank examiners identifying those regulations as "best practices" that should be followed by institutions regardless of their size. Federal Reserve Board Governor Daniel Tarullo acknowledged this concern in a May 8, 2014 speech, stating:

> "Even where regulatory frameworks try to place a lesser burden on smaller banks, there may be some risk of supervisory trickle-down, where supervisors informally, and perhaps not wholly intentionally, create compliance expectations for smaller banks that resemble expectations for larger institutions."

H.R. 2896 requires the federal financial institution regulatory agencies (the Federal Reserve, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, and Consumer Financial Protection Bureau) to tailor any regulatory action occurring after enactment to appropriately apply to banks and credit unions. The agencies would be required to consider the risk profile and business model of the institutions and determine the necessity, appropriateness, and impact of applying such regulatory action to those institutions.

By allowing the federal regulators to weigh the compliance impact, cost, liability risk, and the unintended consequences of regulations in the aggregate, community financial institutions will be allowed to focus their time and resources on the communities they serve.

In a letter of support for H.R. 2896 dated July 7, 2015, the Independent Community Bankers of America wrote:

> A primary challenge facing community banks today is the sharply increasing burden of compliance with regulations intended for larger, more complex, and riskier banks. These regulations disproportionately burden community banks because they don't have dedicated legal and compliance departments and they have a smaller asset base over which to spread compliance costs. Tiered regulation would ensure that rules are calibrated to the size, risk profile, and complexity of a bank.

HEARINGS

The Committee on Financial Services' Subcommittee on Financial Institutions held a hearing examining matters relating to H.R. 2896 on October 21, 2015.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 2, 2016, and ordered H.R. 2896 to be reported favorably to

the House without amendment by a recorded vote of 34 yeas to 22 nays (recorded vote no. FC–97), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 34 yeas to 22 nays (Record vote no. FC–97), a quorum being present.

Record vote no. FC-97

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)	X			Mrs. Maloney (NY)		X	
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman		X	
Mr. Garrett	X			Mr. Meeks		X	
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa			
Mr. Pearce	X			Mr. Clay		X	
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland				Mr. Al Green (TX)		X	
Mr. Luetkemeyer	X			Mr. Cleaver		X	
Mr. Huizenga (MI)	X			Ms. Moore		X	
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter	X		
Mr. Stivers	X			Mr. Himes		X	
Mr. Fincher	X			Mr. Carney		X	
Mr. Stutzman				Ms. Sewell (AL)		X	
Mr. Mulvaney				Mr. Foster		X	
Mr. Hultgren	X			Mr. Kildee		X	
Mr. Ross	X			Mr. Murphy (FL)		X	
Mr. Pittenger	X			Mr. Delaney		X	
Mrs. Wagner	X			Ms. Sinema		X	
Mr. Barr	X			Mrs. Beatty		X	
Mr. Rothfus	X			Mr. Heck (WA)	X		
Mr. Messer	X			Mr. Vargas		X	
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 2896 will reduce regulatory burden on main street job creators by providing for regulators to tailor their regulations to specific financial institutions.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 6, 2016.

Hon. JEB HENSARLING,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2896, the TAILOR Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sarah Puro.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 2896—TAILOR Act

Summary: H.R. 2896 would require the federal banking regulators—the Federal Deposit Insurance Commission (FDIC), the Office of the Comptroller of the Currency (OCC), the National Credit Union Administration (NCUA) and the Federal Reserve Bank—to

tailor their regulatory actions to the specific risk profile and business model of financial institutions subject to regulation. That requirement would apply to any new regulatory action and also would require the federal banking regulators to review and revise regulatory actions from the last five years, including those written pursuant to the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The provision requiring review of previously adopted regulations would probably require additional work by the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC).

CBO estimates that enacting the legislation would increase direct spending by $20 million in 2017, although spending over the 2017–2026 period would be insignificant. CBO also estimates that enacting H.R. 2896 would reduce revenues by $24 million over the 2017–2026 period. Because enacting the bill would affect direct spending and revenues, pay-as-you-go procedures apply. Finally, CBO estimates that reviewing rules issued by the SEC and the CFTC would cost $10 million over the 2017–2021 period; such spending would be subject to the availability of appropriated funds.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2027.

H.R. 2896 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local or tribal governments.

CBO expects that the financial regulators (FDIC, OCC, NCUA, and SEC) would increase premiums or fees to offset the costs of implementing the additional regulatory activities required by the bill. Doing so would increase the cost of the existing mandate on entities required to pay those assessments. Based on information from the federal banking regulators and the SEC, CBO estimates that the incremental cost of the mandate would fall well below the annual threshold established in UMRA for private-sector mandates ($154 million in 2016, adjusted for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 2896 is shown in the following table. The spending effects of this legislation fall within budget function 370 (advancement of commerce).

	By fiscal year, in millions of dollars—											
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017–2021	2017–2026
INCREASES OR DECREASES (−) IN DIRECT SPENDING [a]												
Estimated Budget Authority ..	20	10	−10	−10	−5	−3	−2	*	*	*	5	*
Estimated Outlays	20	10	−10	−10	−5	−3	−2	*	*	*	5	*
DECREASES IN REVENUES												
Estimated Revenues	−2	−3	−3	−3	−2	−2	−2	−2	−2	−2	−12	−24
NET INCREASE OR DECREASE (−) IN DEFICITS FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Impact on Deficit	22	13	−7	−7	−3	−1	*	2	2	2	17	24

Notes: * = between zero and $500,000; components may not sum to totals because of rounding.
[a] In addition, CBO estimates that implementing H.R. 2896 would have a net discretionary cost of $10 million over the 2017–2021 period.

Basis of estimate: H.R. 2896 would require the federal banking regulators to consider the risk profile and business model of financial institutions when deciding which institutions are subject to regulatory action and to tailor regulations to the characteristics of individual financial institutions. The agencies would be required to review all regulations adopted during the last five years, apply the requirements in H.R. 2896, and revise those regulations if necessary.

Costs incurred by the FDIC, the NCUA and the OCC are recorded in the budget as increases in direct spending. Those agencies are authorized to collect premiums and fees from insured depository institutions to cover administrative expenses. CBO expects that, over time, they would do so to recover any costs associated with the administrative costs of enacting the bill. Costs to the Federal Reserve System reduce remittances to the Treasury (which are recorded in the budget as revenues). To develop this estimate, CBO consulted with the federal financial regulators about the number of people needed to review and revise regulations and the number of regulations adopted over the past five years.

Direct Spending and Revenues

The financial regulators have completed more than 50 rules over the past five years, many of which are associated with the Dodd-Frank Act. The bill would require the financial regulators to review and possibly revise those rulemakings. In addition, CBO expects that H.R. 2896 could increase the amount of litigation that those regulators are subject to under the Administrative Procedures Act because regulated institutions would have additional grounds to challenge the application of financial regulations.

CBO estimates that each of the financial regulators would need to increase its legal staff by 5 percent to 10 percent and other staff by 1 percent to 2 percent over the next few years to complete the additional rulemakings required by the bill. In total, the financial regulators have about 6,000 full-time equivalent employees in Washington D.C. CBO expects that staffing would increase by 100 to 200 employees over the 2017–2020 period to review past actions.

After 2020, CBO expects that spending by the financial regulators for rulemaking and litigation activities would be higher than we would expect under current law. Across the agencies, CBO expects that total staffing would increase by 25 to 50 employees per year. However, CBO expects that the FDIC, the OCC, and the NCUA would eventually recover any costs associated with the bill's enactment by increasing assessments on the institutions they regulate. CBO estimates those assessments would total about $150 million over the 2018–2026 period. Because those fees would be based on spending in the prior year, CBO estimates that enacting the legislation would increase net direct spending by $20 million in 2017 and by an insignificant amount over the 2017–2026 period.

In addition, CBO estimates that H.R. 2896 would reduce the Federal Reserve's remittances to the Treasury, and therefore revenues, by $24 million over the 2017–2026 period.

Spending Subject to Appropriation

Implementing H.R. 2896 would probably require the CFTC and the SEC to review regulations adopted under the Dodd-Frank Act.

CBO estimates that each agency would need around a dozen additional employees over the 2017–2020 period. Under current law, the SEC is authorized to collect fees sufficient to offset its annual appropriation; therefore, we estimate that the net costs to the SEC would be negligible. CBO expects that costs to the CFTC would total $10 million over the 2017–2021 period; such spending would be subject to the availability of appropriated funds.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 2896, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON MARCH 9, 2016

	By fiscal year, in millions of dollars—												
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2016–2021	2016–2026
NET INCREASE OR DECREASE (−) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	22	13	−7	−7	−3	−1	0	2	2	2	17	24
Memorandum:													
Changes in Outlays	0	20	10	−10	−10	−5	−3	−2	0	0	0	5	0
Changes in Revenues	0	−2	−3	−3	−3	−2	−2	−2	−2	−2	−2	−12	−24

Note: Components may not sum to totals because of rounding.

Increase in long-term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2027.

Estimated impact on state, local, and tribal governments: H.R. 2896 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local or tribal governments.

Estimated impact on the private sector: CBO expects that the financial regulators would increase premiums or fees to offset the costs of implementing the additional regulatory activities required by the bill. Any increase in premiums or fees would increase the cost of the existing mandate on entities required to pay those assessments. Based on information from the federal banking regulators and the SEC, CBO estimates that the incremental cost to comply with the mandate would amount to about $25 million in 2017 and fall in subsequent years. Those annual costs would fall well below the threshold established in UMRA for private-sector mandates ($154 million in 2016, adjusted for inflation).

Estimate prepared by: Federal costs: Sarah Puro; Revenues: Nathaniel Frentz; Impact on state, local, and tribal governments: Rachel Austin; Impact on the private sector: Logan Smith.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 2896 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 2896 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 2896 contains a directed rulemaking. no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 2896 as the "Taking Account of Institutions with Low Operation Risk Act of 2015" or the "Tailor Act of 2015".

Section 2. Regulations appropriate to business models

This section directs federal financial institutions regulatory agencies to: take into consideration the risk profile and business models of institutions subject to regulatory action; determine the necessity, appropriateness, and impact of applying that action to such institutions; and tailor regulatory action so as to limit the burden of regulatory compliance as befits the risk profile and business model involved. This section also requires the federal financial institutions regulatory agencies to consider: the impact that their regulatory actions have upon the ability of institutions to flexibly serve evolving and diverse customer needs, the potential unintended impact of examination manuals or other regulatory directives that work in conflict with the tailoring of such regulatory actions, and the underlying policy objectives of the regulatory action and statutory scheme involved. Finally this section requires agencies to disclose how their rulemakings apply to this Act, and requires the FFIEC

to report to Congress on the differences in regulation resulting from this bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 2896 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by clause 3(e)(1)(B) of rule XIII of the House of Representatives.

MINORITY VIEWS

H.R. 2896 represents a step backwards in the progress we have made in ensuring that our financial markets are stronger, more resilient, and more protective of consumers. If enacted, this bill would provide every bank and financial institution overseen by agencies like the Federal Deposit Insurance Corporation or the Consumer Financial Protection Bureau with an additional opportunity to challenge rulemakings in court if they felt a regulation was not "uniquely tailored" to their business needs.

H.R. 2896 requires financial agencies to ignore the requirements of all other laws passed by Congress and subject all new regulations to a vague and impossible standard. This includes an undefined standard of "appropriateness," a vague standard of "ability to flexibly serve evolving and diverse customer needs" as well as an evaluation of "potential unintended impact." This set of standards not only applies to all future guidance and rulemaking, but also retroactively to all of the rulemakings under the Dodd-Frank Wall Street Reform and Consumer Protection Act. Moreover, the legislation includes no mandate that regulators consider the benefits of certain rulemakings, including the promotion of financial stability or the protection of consumers.

The purpose of this bill is clear—by preempting all other financial law with this set of vague standards, proponents of H.R. 2896 are creating a system where every financial rule can potentially be challenged and overturned. That result would have an enormous impact on important aspects of financial regulation and consumer protection.

For example, under this law banks could challenge the minimum capital requirements put in place under section 171 of the Dodd-Frank Act—meaning capital requirements would have to be set on a bank-by-bank basis. Banks could argue under this law that they should not be subject to fair lending or Community Reinvestment Act rules. This bill also undermines the ability of the CFPB to regulate consumer markets on a product basis, as an institution could argue that consumer protection standards for payday loans or mortgages are "not appropriate" for their business model, or their "ability to flexibly serve evolving and diverse customer needs."

Additionally, we are concerned that this level of institution-by-institution tailoring could result in a severe weakening of the nation's anti-money laundering and bank secrecy act rules. By requiring that compliance costs and liability risk be considered at a higher priority than protecting the integrity of the financial system, the bill could create a class of institutions with lowered compliance standards that might become an ideal target for drug cartel money laundering or terrorist financing.

Finally, the TAILOR Act ignores the substantial amount of work regulatory agencies have done to ensure that rules are adopted in

a way that considers the needs of smaller financial institutions. The CFPB has been very responsive to these concerns, granting myriad exemptions and alternative compliance opportunities for smaller, less risky institutions. The FDIC and the OCC have also both worked to minimize supervision and compliance burden for Dodd-Frank rulemakings—with the FDIC specifically benefitting small institutions by significantly reducing premiums for small banks.

We share the belief that regulators must take into account the diverse needs of smaller institutions when regulating financial markets. Unfortunately, this objective is not the end goal of the TAILOR Act. Instead, H.R. 2896 would only serve to put consumers and the financial system at risk by subjecting important regulations to endless litigation.

For the foregoing reasons, the Minority opposes H.R. 2896.

MAXINE WATERS.
WM. LACY CLAY.
RUBÉN HINOJOSA.
KEITH ELLISON.
AL GREEN.