115TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
115–593

STRESS TEST IMPROVEMENT ACT OF 2017

MARCH 13, 2018.—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. 4293]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4293) to reform the Comprehensive Capital Analysis and Review process, the Dodd-Frank Act Stress Test process, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Stress Test Improvement Act of 2017".

SEC. 2. CCAR AND DFAST REFORMS.

Section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(i)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B)(i)—

(i) by striking "3 different" and inserting "2 different"; and

(ii) by striking ", adverse,"; and

(B) by adding at the end the following:

"(C) CCAR REQUIREMENTS.—

"(i) LIMITATION ON QUALITATIVE CAPITAL PLANNING OBJECTIONS.—In carrying out CCAR, the Board of Governors may not object to a company's capital plan on the basis of qualitative deficiencies in the company's capital planning process.

79–006

"(ii) CCAR DEFINED.—For purposes of this subparagraph and subparagraph (E), the term 'CCAR' means the Comprehensive Capital Analysis and Review established by the Board of Governors."; and

(2) in paragraph (2)—

(A) in subparagraph (A), by striking "semiannual" and inserting "annual"; and

(B) in subparagraph (C)(ii), by striking "3 different sets of conditions, including baseline, adverse," and inserting "2 different sets of conditions, including baseline".

SEC. 3. RULE OF CONSTRUCTION.

The amendments made by this Act may not be construed to prohibit an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) from—

(1) ensuring the safety and soundness of an entity regulated by such an appropriate Federal banking agency; and

(2) ensuring compliance with applicable laws, regulations, and supervisory policies, and the following of appropriate guidance, by an entity regulated by such an appropriate Federal banking agency.

PURPOSE AND SUMMARY

Introduced by Representative Lee Zeldin on November 7, 2017, H.R. 4293, the "Stress Test Improvement Act of 2017" improves the stress testing processes mandated by both Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") (P.L. 111–203) and the Federal Reserve for bank holding companies by requiring certain bank holding companies to conduct company-run stress tests once each year rather than semiannually. This bill would also reduce the number of supervisory scenarios from three to two—the baseline and severely adverse scenario, do away with mid-year stress tests, and prohibit the Federal Reserve's objection to a bank holding company's capital plan based solely on qualitative deficiencies.

BACKGROUND AND NEED FOR LEGISLATION

The Board of Governors of the Federal Reserve System ("Federal Reserve") administers a set of "stress tests" to determine the ability of U.S. bank holding companies to withstand periods of economic turmoil. The Federal Reserve administers contemporaneously two stress tests, the Comprehensive Capitol Analysis and Review (CCAR) and the Dodd-Frank Act Stress Tests (DFAST) which together constitute one of the greatest expansions of the Federal Reserve's powers in recent history.

The Federal Reserve's stress tests have become a type of "cat-and-mouse" exercise whereby Federal Reserve supervisory staff and bank compliance officers attempt to outwit one another in a game without either rules or transparency. The secrecy which surrounds the stress test regime makes it difficult for Congress and the public to assess either the effectiveness of the Federal Reserve's regulatory oversight or the integrity of the findings yielded by the tests.

Academics have identified multiple problems which arise from the lack of transparency in the stress-testing process. In testimony before the Financial Services Committee on July 23, 2015, Columbia University Professor Charles Calomiris described the stress test process as a "Kafkaesque Kabuki drama in which regulators punish banks for failing to meet standards that are never stated (either in advance or after the fact). This makes stress tests a source of uncertainty rather than a helpful guide against unanticipated risks." Professor Calomiris went on to question how such a secretive and opaque process could be squared with basic American constitutional precepts:

In addition to the stress test's economic costs and questionable contributions to financial stability, it is hard to believe that the stress tests' current structure could occur in a country like the United States, which prizes the rule of law and adherence to due process. The current stress test regime is objectionable as regulators at the Federal Reserve not only impose unstated quantitative standards for bank holding companies to meet certain stressed scenarios, but also retain the option of simply deciding that banks fail on the basis of a qualitative judgment unrelated even to their own model's criteria.

Former Senator and Senate Banking, Housing, and Urban Affairs Committee Chairman Phil Gramm, testified at a July 28, 2015, Financial Services Committee hearing, and echoed these concerns: "What does the stress test test? Not only does no one know, but the regulators see that as a virtue. The Fed's Vice Chairman has stated that giving banks a clear road map for compliance might make it easier to game the test.' But isn't the fact that compliance is easier when you know what the law says the whole point of the rule of law?"

Indeed, the non-partisan Government Accountability Office (GAO) agrees with former Senator Gramm. A November 2016 report by the GAO, commissioned by Financial Services Committee Chairman Jeb Hensarling, underscored these concerns. For example, the GAO found that: (1) the Federal Reserve has not always followed its own guidance or principles; (2) the Federal Reserve cannot be reasonably assured that small adjustments to its stress scenario variables would produce outcomes that neither amplify nor dampen economic cycles; and (3) the Federal Reserve has limited its perspective and has not always followed its own guidance for banking institutions on model-risk management practices. The report highlighted the lack of transparency in the process:

The fundamental flaws in the Federal Reserve's stress test methodology were also laid bare by an October 29, 2015, report issued by the Federal Reserve's own Office of Inspector General (OIG), which examined the extent to which the model risk management practices the Fed uses in its supervisory stress testing program are "consistent with supervisory guidance on model risk management" that the Fed applies to the banking organizations it oversees. The report found significant deficiencies related to the Federal Reserve's model validation and broader governance practices.

In addition, the OIG report noted that "similar findings identified at institutions supervised by the Federal Reserve have been characterized [by the Fed] as matters requiring immediate attention or as matters requiring attention." The stress tests thus perfectly encapsulate the double standard that is the hallmark of the modern regulatory state: one set of rules for the bureaucratic elites and another for the entities they regulate.

Transparency is a key feature of accountability and this limited disclosure about the stress tests may hinder understanding of the CCAR program, limit public and market confidence in the program, and the extent to which the Federal Reserve can be held accountable for its decisions in its conduct of the stress tests. The Federal Reserve also has not regularly updated guidance to firms about supervisory expectations and peer practices related to the qualitative assessment. Bank holding companies that must meet these expectations annually may face challenges from the irregular timing of communications, which could limit the Federal Reserve's achievement of its CCAR goals.

Not only academics, but regulators have recognized a need for many of the reforms set forth in this bill—most notably from the Federal Reserve itself. For example, in a June 16, 2017, letter to Rep. Blaine Luetkemeyer (MO), then-Federal Reserve Chair Janet Yellen committed to provide more details on how the Federal Reserve conducts the annual stress tests, to include the qualitative part of the tests. During testimony before the Senate Banking Committee on June 22, 2017, Federal Reserve Governor Jerome Powell stated "[t]he Federal Reserve is committed to increasing the transparency of the stress testing and CCAR processes. We will soon seek public feedback concerning possible forms of enhanced disclosure."

Other regulators have recognized the need for some form of regulatory reform regarding CCAR/DFAST stress tests, even if those reforms were only to reduce the number of financial institutions subject to the stress tests. For example, during testimony before the Senate Banking Committee on June 22, 2017, FDIC Chairman Martin Gruenberg stated:

> "[s]ome EGRPRA commenters suggested raising the $10 billion in total assets threshold for conducting annual stress tests set forth in Section 165(i)(2) of the Dodd-Frank Act. The FDIC agrees with these commenters, and supports legislative efforts to increase the threshold from $10 billion to $50 billion. However, the FDIC also believes it is important to retain supervisory authority to require stress testing if warranted by a banking organization's risk profile or condition."

And, as part of former Federal Reserve Governor Daniel Tarullo's departing remarks in April 2017, he acknowledged that:

> "there are clearly some changes that can be made without endangering financial stability. Foremost among these are the various bank size thresholds established in the Dodd-Frank Act or in agency regulations for the application of stricter prudential requirements . . . . Similarly, the $10 billion asset threshold for banks to conduct their own required stress tests seems too low. And the fact that community banks are subject at all to some of the Dodd-Frank Act rules seems unnecessary to protect safety and soundness, and quite burdensome on the very limited compliance capabilities of these small banks."

In fact, in following a 2016 public comment period, the Federal Reserve took steps to limit the reach of the qualitative element of CCAR. The law firm of Davis Polk analyzed the change to 2017 CCAR process and found:

> "while in previous years all U.S. BHCs subject to CCAR faced the possibility of a qualitative objection to their cap-

> ital plans, a Federal Reserve amendment to the capital plan and stress test rules issued in early 2017 has limited the qualitative assessment to the subset of CCAR BHCs with $250 billion or more in total consolidated assets, $75 billion or more of total nonbank assets or $10 billion or more in on-balance-sheet foreign exposures (large and complex BHCs), which currently comprises the 13 largest BHCs. For other BHCs subject to CCAR (large and noncomplex BHCs), the Federal Reserve will assess the qualitative aspects of these firms' capital planning processes as part of . . . its normal supervisory process, without the possibility of a qualitative objection, through a targeted Horizontal Capital Review."

While these modest changes made by the Federal Reserve do not go far enough to improve the stress test regime, the changes demonstrates that the regulators recognize the problems with qualitative assessments in stress testing.

In June 2017, the Treasury Department published a report entitled A Financial System That Creates Economic Opportunities: Banks and Credit Unions, that sets forth its recommendations for regulatory relief for banks and credit unions in furtherance of President Trump's February 3, 2017 Executive Order 13772 on Core Principles for Regulating the United States Financial System. The June 2017 report recommended reforms to the existing stress testing regime, which overlap with this bill's reforms in many significant regards. Like this legislation, the June 2017 report recommended the elimination of the mid-year DFAST cycle and the alteration of no longer allowing qualitative CCAR element to be the sole basis for the Federal Reserve's rejection of capital plans, and reducing the number of DFAST supervisory scenarios. The June 2017 report also suggested going further by raising the DFAST threshold from $10 billion to $50 billion, raising the CCAR threshold to match the revised enhanced prudential standards threshold, subjecting stress-testing and capital review to public notice and comment process, allowing leeway for the company to determine the appropriate number of models for DFAST, reassessing CCAR assumptions, modeling according to firms unique risk profiles, providing firms an accurate understanding of the capital buffers they would have under the severely adverse scenario.

On November 7, 2017, Federal Reserve Vice Chair of Supervision, Governor Randall Quarles, announced that the Federal Reserve will soon propose providing more granular information about the central bank's expectations for loss rates on particular portfolios of loans and will seek public comment on the proposal in the near future. In addition, the proposal will seek comment on the assumptions which underlie the stress tests.

In an effort to inject badly needed accountability, transparency, and targeted relief into the stress test processes, this legislation introduced by Congressman Zeldin, and amended by Congressman David Scott (D–GA), makes a number of important reforms. H.R. 4293 would overhaul the current regime for stress testing banks and would make the company-run stress test an annual exercise, reduce the number of supervisory scenarios from three to two—the baseline and severely adverse scenario,—and extend the Federal

Reserve's regulatory relief from CCAR's qualitative assessment to all banks.

Hearings

The Committee on Financial Services held a hearing examining matters relating to H.R. 4293 on April 26, 2017 and April 28, 2017.

Committee Consideration

The Committee on Financial Services met in open session on November 14, 2017, and November 15, 2017, and ordered H.R. 4293 to be reported favorably to the House as amended by a recorded vote of 38 yeas to 21 nays (Record vote no. FC–115), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment offered by Mr. Scott by voice vote.

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 first recorded vote was a Motion to Table Mr. Perlmutter's appeal of the ruling of the Chair on the question of germaneness on the Perlmutter amendment. The motion was agreed to 28 yeas to 14 nays. (Record vote no. FC–102), a quorum being present. The second and final recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House as amended. The motion was agreed to by a recorded vote of 38 yeas to 21 nays (Record vote no. FC–115), a quorum being present.

Present	Representative	Yeas	Nays
	Mr. HENSARLING, *Chairman*	✓	
	Mr. McHENRY	✓	
	Mr. KING		
	Mr. ROYCE	✓	
	Mr. LUCAS		
	Mr. PEARCE		
	Mr. POSEY	✓	
	Mr. LUETKEMEYER	✓	
	Mr. HUIZENGA	✓	
	Mr. DUFFY		
	Mr. STIVERS	✓	
	Mr. HULTGREN	✓	
	Mr. ROSS		
	Mr. PITTENGER	✓	
	Mrs. WAGNER	✓	
	Mr. BARR	✓	
	Mr. ROTHFUS	✓	
	Mr. MESSER		
	Mr. TIPTON	✓	
	Mr. WILLIAMS	✓	
	Mr. POLIQUIN	✓	
	Mrs. LOVE	✓	
	Mr. HILL	✓	
	Mr. EMMER	✓	
	Mr. ZELDIN	✓	
	Mr. TROTT	✓	
	Mr. LOUDERMILK	✓	
	Mr. MOONEY	✓	
	Mr. MacARTHUR	✓	
	Mr. DAVIDSON	✓	
	Mr. BUDD	✓	
	Mr. KUSTOFF	✓	
	Ms. TENNEY	✓	
	Mr. HOLLINGSWORTH	✓	
	Ms. WATERS, *Ranking Member*		✓
	Mrs. MALONEY		✓
	Ms. VELÁZQUEZ		
	Mr. SHERMAN		✓
	Mr. MEEKS		✓
	Mr. CAPUANO		✓
	Mr. CLAY		
	Mr. LYNCH		
	Mr. SCOTT		✓
	Mr. GREEN		✓
	Mr. CLEAVER		
	Ms. MOORE		
	Mr. ELLISON		
	Mr. PERLMUTTER		✓
	Mr. HIMES		✓
	Mr. FOSTER		
	Mr. KILDEE		✓
	Mr. DELANEY		✓
	Ms. SINEMA		
	Mrs. BEATTY		✓
	Mr. HECK		
	Mr. VARGAS		
	Mr. GOTTHEIMER		✓
	Mr. GONZALEZ		
	Mr. CRIST		✓
	Mr. KIHUEN		

Committee on Financial Services

115th Congress

DATE: 11/15/17

motion to table the appeal of the ruling of the chair

Measure __________

Amendment No. __________

Offered by: __________

Agreed To	Yes	No	Wdrn

Voice Vote	Yeas	Nays	Prsnt
	28	14	

Record vote no.	FC-102

Record vote no. FC-115

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)		X	
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)		X	
Mr. King	X			Ms. Velázquez		X	
Mr. Royce (CA)	X			Mr. Sherman		X	
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano		X	
Mr. Posey	X			Mr. Clay		X	
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)		X	
Mr. Stivers	X			Mr. Cleaver		X	
Mr. Hultgren	X			Ms. Moore		X	
Mr. Ross	X			Mr. Ellison		X	
Mr. Pittenger	X			Mr. Perlmutter		X	
Mrs. Wagner	X			Mr. Himes		X	
Mr. Barr	X			Mr. Foster		X	
Mr. Rothfus	X			Mr. Kildee		X	
Mr. Messer				Mr. Delaney		X	
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck		X	
Mrs. Love	X			Mr. Vargas		X	
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)		X	
Mr. Zeldin	X			Mr. Crist		X	
Mr. Trott	X			Mr. Kihuen		X	
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	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. 4293 will reform the living wills submission process to make it more transparent, responsive, and efficient for submitting bank holding companies.

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.

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, March 9, 2018.

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. 4293, the Stress Test Improvement Act of 2017.

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,
Director.

Enclosure.

H.R. 4293—Stress Test Improvement Act of 2017

Summary: Twice a year, large financial intuitions prepare reports for federal financial regulators regarding their ability to withstand financial stress. Under H.R. 4293 those institutions would prepare annual reports instead. The bill also would prohibit the Federal Reserve from using its qualitative assessment of a financial institution's ability to withstand financial stress as a basis for objecting to that institution's plan to draw down capital.

CBO estimates that enacting H.R. 4293 would increase the deficit by $14 million over the 2018–2027 period. That figure includes an increase in direct spending of $16 million and an increase in revenues of $2 million. Because enacting the bill would affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 4293 would not increase net direct spending or on-budget deficits by more than $2.5 billion in one or more of the four consecutive 10-year periods beginning in 2028.

H.R. 4293 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 4293 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018–2022	2018–2027
INCREASES IN DIRECT SPENDING												
Estimated Budget Authority	0	1	1	2	2	2	2	2	2	2	6	16
Estimated Outlays	0	1	1	2	2	2	2	2	2	2	6	16
INCREASES IN REVENUES												
Estimated Revenues	0	0	0	0	0	0	0	0	1	1	0	2
NET INCREASE IN THE DEFICIT FROM INCREASES IN DIRECT SPENDING AND REVENUES												
Effect on the Deficit	0	1	1	2	2	2	2	2	1	1	6	14

Basis of estimate: The estimated budgetary effects of H.R. 4293 stem from the small chance that the Federal Deposit Insurance Corporation (FDIC) would incur additional costs to resolve failed financial institutions. For this estimate, CBO assumes that the bill will be enacted near the end of 2018.

CBO's estimate for H.R. 4293 is based on the analysis underlying its projections for banking programs in its June 2017 baseline. Those projections incorporate the small probability of a financial crisis in each year during the projection period and the more likely scenario of an average number of bank and credit union failures in any given year. As a result, the estimated cost represents a weighted probability of different outcomes for future failures of financial institutions. Some of those outcomes have a very low probability of occurring but if they do, the costs to the Deposit Insurance Fund (DIF) or the Orderly Liquidation Fund (OLF) are very large. Costs incurred by the DIF are recovered over time by assessments on insured depository institutions. Fees paid to recover costs incurred by the OLF are classified in the budget as revenues. Both of those funds are administered by the FDIC.

The estimated costs result from provisions that would prohibit the Federal Reserve from using its qualitative assessments of the ability of large banking intuitions to withstand financial stress as a basis for objecting to a financial institution's plan to draw down capital. According to the major private credit-rating agencies and other financial analysts, the Federal Reserve's quantitative and qualitative stress tests have improved the financial strength and resiliency of large banking institutions.[1] Companies typically resolve shortcomings identified by the tests by strengthening internal controls and reducing the portion of equity used for dividends and stock repurchases, which increases the capital held by the company.

Since 2013, only a few financial institutions have been cited for qualitative shortcomings, and most of those cases were resolved quickly. The actions required by the Federal Reserve were relatively minor, in part because those institutions were still recovering from the financial crisis.[2] Based on those actions of the Federal Reserve, CBO estimates that implementing H.R. 4293 would reduce the average amount of capital held by all large, systemically important banking institutions by less than 1 percent.

Changes in the amount of capital that a financial institution holds may affect both that institution's likelihood of failure and the costs incurred by the OLF or DIF to resolve failed assets. Most of the costs from enacting the legislation would primarily be incurred by the OLF. CBO estimates that implementing the bill would increase the deficit by $14 million, or by roughly 0.02 percent of that baseline's projection of the FDIC's programs over the next decade. That total consists of an increase in direct spending of $16 million and an increase of revenues of $2 million. CBO expects that most of the costs over the 2018–2027 period under the bill would be offset after 2027 by an increase in fees paid to the FDIC by financial institutions.

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. 4293, THE STRESS TEST IMPROVEMENT ACT OF 2017, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON NOVEMBER 15, 2017

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018–2022	2018–2027
	NET INCREASE IN THE DEFICIT											
Statutory Pay-As-You-Go Impact	0	1	1	2	2	2	2	2	1	1	6	14
Memorandum:												
Changes in Outlays	0	1	1	2	2	2	2	2	2	2	6	16
Changes in Revenues	0	0	0	0	0	0	0	0	1	1	0	2

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 $2.5 billion in any of the four consecutive 10-year periods beginning in 2028.

[1] See Office of Financial Research, *Capital Buffers and the Future of Bank Stress Test*, Brief 7–20 (February 2017), www.financialresearch.gov/briefs; Government Accountability Office, *Federal Reserve: Additional Actions Could Help Ensure the Achievement of Stress Test Goals*, GAO–17–49 (November 2016), www.gao.gov/products/GAO-17-48; and Moody's Investors Service, "Fed Stress Testing Has Strengthened Banks' Capital and Risk Management (June 21, 2016), http://tinyurl.com/yd7uhz7r.

[2] Daniel K. Tarullo, Governor, Federal Reserve, "Next Steps in the Evolution of Stress Testing" (speech at the Yale University School of Management Leaders Forum, New Haven, Conn., September 26, 2016), https://go.usa.gov/xnJZc.

Mandates: H.R. 4293 contains no intergovernmental or private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Sarah Puro and Kathleen Gramp (for the FDIC) and Nathaniel Frentz (for the Federal Reserve); Mandates: Rachel Austin.

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

Federal Mandates Statement

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

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 the section 102(b)(3) of the Congressional Accountability Act.

Earmark Identification

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

Duplication of Federal Programs

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

Disclosure of Directed Rulemaking

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rule makings: The Committee states that the bill requires two directed rule makings.

The rulemaking directs the Federal Reserve Board (Federal Reserve) to provide for at least 3 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline, adverse, and severely adverse, and methodologies, including models used to estimate losses on certain assets, and the Board of Governors shall not carry out any such evaluation until 60 days after such regulations are issued; and provide copies of such regulations to the Comptroller General of the United States and the Panel of Economic Advisors of the Congressional Budget Office before publishing such regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 4293 as the "Stress Test Improvement Act of 2017."

Section 2. CCAR and DFAST reforms

This section amends 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act to require the Federal Reserve Board's (Federal Reserve) Comprehensive Capitol Analysis and Review (CCAR) be conducted once each year, rather than semiannually. This section also reduces the number of supervisory scenarios from three to two by striking the adverse scenario, and prohibits the Federal Reserve's objection to a bank holding company's capital plan based solely on qualitative deficiencies.

Section 3. Rule of construction

This section clarifies that the amendments made by this Act may not be construed to prohibit an appropriate Federal banking agency from ensuring the safety and soundness of an entity regulated by such an appropriate Federal banking agency, and ensuring compliance with applicable laws, regulations, and supervisory policies.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

* * * * * * *

TITLE I—FINANCIAL STABILITY

* * * * * * *

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

* * * * * * *

SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies with total consolidated assets equal to or greater than $50,000,000,000 that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) TAILORED APPLICATION.—

(A) IN GENERAL.—In prescribing more stringent prudential standards under this section, the Board of Governors may, on its own or pursuant to a recommendation by the Council in accordance with section 115, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

(B) ADJUSTMENT OF THRESHOLD FOR APPLICATION OF CERTAIN STANDARDS.—The Board of Governors may, pursuant to a recommendation by the Council in accordance with section 115, establish an asset threshold above $50,000,000,000 for the application of any standard established under subsections (c) through (g).

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements and leverage limits, unless the Board of Governors, in consultation with the Council, determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company (such as investment company activities or assets under management) or structure, in which case, the Board of Governors shall apply other standards that result in similarly stringent risk controls;

(ii) liquidity requirements;

(iii) overall risk management requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may establish additional prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures;

(iii) short-term debt limits; and

(iv) such other prudential standards as the Board or Governors, on its own or pursuant to a recommendation made by the Council in accordance with section 115, determines are appropriate.

(2) STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards set forth in paragraph (1) to any foreign nonbank financial company supervised by the Board of Governors or foreign-based bank holding company, the Board of Governors shall—

(A) give due regard to the principle of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other risk-related factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection;

(C) take into account any recommendations of the Council under section 115; and

(D) adapt the required standards as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(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.

(5) REPORT.—The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—Subsequent to submission by the Council of a report to Congress under section 115(c), the Board of Governors may issue regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In issuing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 115(c);

(B) an appropriate transition period for implementation of contingent capital under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, which shall include—

(A) information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company;

(B) full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company;

(C) identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and

(D) any other information that the Board of Governors and the Corporation jointly require by rule or order.

(2) CREDIT EXPOSURE REPORT.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) REVIEW.—The Board of Governors and the Corporation shall review the information provided in accordance with this subsection by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—

(A) the Board of Governors and the Corporation shall notify the company of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a timeframe determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors and the Corporation, in consultation with the Council, may jointly direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, United States Code, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(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, 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.

(7) NO PRIVATE RIGHT OF ACTION.—No private right of action may be based on any resolution plan submitted in accordance with this subsection.

(8) RULES.—Not later than 18 months after the date of enactment of this Act, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

(e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) CREDIT EXPOSURE.—For purposes of paragraph (2), “credit exposure” to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company, and all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(C) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(D) all purchases of or investment in securities issued by the company;

(E) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(F) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) ATTRIBUTION RULE.—For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) EXEMPTIONS.—This subsection shall not apply to any Federal home loan bank. The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term "credit exposure" for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—

(A) IN GENERAL.—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) EXTENSION AUTHORIZED.—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) ENHANCED PUBLIC DISCLOSURES.—The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) SHORT-TERM DEBT LIMITS.—

(1) IN GENERAL.—In order to mitigate the risks that an over-accumulation of short-term debt could pose to financial companies and to the stability of the United States financial system, the Board of Governors may, by regulation, prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any bank holding company described in subsection (a) and any nonbank financial company supervised by the Board of Governors.

(2) BASIS OF LIMIT.—Any limit prescribed under paragraph (1) shall be based on the short-term debt of the company de-

scribed in paragraph (1) as a percentage of capital stock and surplus of the company or on such other measure as the Board of Governors considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term "short-term debt" means such liabilities with short-dated maturity that the Board of Governors identifies, by regulation, except that such term does not include insured deposits.

(4) RULEMAKING AUTHORITY.—In addition to prescribing regulations under paragraphs (1) and (3), the Board of Governors may prescribe such regulations, including definitions consistent with this subsection, and issue such orders, as may be necessary to carry out this subsection.

(5) AUTHORITY TO ISSUE EXEMPTIONS AND ADJUSTMENTS.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board of Governors may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a company described in paragraph (1) that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(h) RISK COMMITTEE.—

(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(e)(3) with respect to such nonbank financial company supervised by the Board of Governors.

(2) CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(i) STRESS TESTS.—

(1) BY THE BOARD OF GOVERNORS.—

(A) ANNUAL TESTS REQUIRED.—The Board of Governors, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, shall conduct annual analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) TEST PARAMETERS AND CONSEQUENCES.—The Board of Governors—

(i) shall provide for at least ⟦3 different⟧ *2 different* sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline⟦, adverse,⟧ and severely adverse;

(ii) may require the tests described in subparagraph (A) at bank holding companies and nonbank financial companies, in addition to those for which annual tests are required under subparagraph (A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in subparagraph (A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; and

(v) shall publish a summary of the results of the tests required under subparagraph (A) or clause (ii) of this subparagraph.

(C) CCAR REQUIREMENTS.—

(i) LIMITATION ON QUALITATIVE CAPITAL PLANNING OBJECTIONS.—In carrying out CCAR, the Board of Governors may not object to a company's capital plan on the basis of qualitative deficiencies in the company's capital planning process.

(ii) CCAR DEFINED.—For purposes of this subparagraph and subparagraph (E), the term "CCAR" means the Comprehensive Capital Analysis and Review established by the Board of Governors.

(2) BY THE COMPANY.—

(A) REQUIREMENT.—A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct ⟦semiannual⟧ *annual* stress tests. All other financial companies that have total consolidated assets of more than $10,000,000,000 and are regulated by a primary Federal financial regulatory agency shall conduct annual stress tests. The tests required under this subparagraph shall be conducted in accordance with the regulations prescribed under subparagraph (C).

(B) REPORT.—A company required to conduct stress tests under subparagraph (A) shall submit a report to the Board of Governors and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require.

(C) REGULATIONS.—Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, shall issue consistent and comparable regulations to implement this paragraph that shall—

(i) define the term "stress test" for purposes of this paragraph;

(ii) establish methodologies for the conduct of stress tests required by this paragraph that shall provide for at least ⟦3 different sets of conditions, including baseline, adverse,⟧ *2 different sets of conditions, including baseline* and severely adverse;

(iii) establish the form and content of the report required by subparagraph (B); and

(iv) require companies subject to this paragraph to publish a summary of the results of the required stress tests.

(j) LEVERAGE LIMITATION.—

(1) REQUIREMENT.—The Board of Governors shall require a bank holding company with total consolidated assets equal to or greater than $50,000,000,000 or a nonbank financial company supervised by the Board of Governors to maintain a debt to equity ratio of no more than 15 to 1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States. Nothing in this paragraph shall apply to a Federal home loan bank.

(2) CONSIDERATIONS.—In making a determination under this subsection, the Council shall consider the factors described in subsections (a) and (b) of section 113 and any other risk-related factors that the Council deems appropriate.

(3) REGULATIONS.—The Board of Governors shall promulgate regulations to establish procedures and timelines for complying with the requirements of this subsection.

(k) INCLUSION OF OFF-BALANCE-SHEET ACTIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

(1) IN GENERAL.—In the case of any bank holding company described in subsection (a) or nonbank financial company supervised by the Board of Governors, the computation of capital for purposes of meeting capital requirements shall take into account any off-balance-sheet activities of the company.

(2) EXEMPTIONS.—If the Board of Governors determines that an exemption from the requirement under paragraph (1) is appropriate, the Board of Governors may exempt a company, or any transaction or transactions engaged in by such company, from the requirements of paragraph (1).

(3) OFF-BALANCE-SHEET ACTIVITIES DEFINED.—For purposes of this subsection, the term "off-balance-sheet activities" means an existing liability of a company that is not currently a balance sheet liability, but may become one upon the happening of some future event, including the following transactions, to the extent that they may create a liability:

(A) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(B) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(C) Risk participations in bankers' acceptances.

(D) Sale and repurchase agreements.

(E) Asset sales with recourse against the seller.

(F) Interest rate swaps.

(G) Credit swaps.

(H) Commodities contracts.

(I) Forward contracts.

(J) Securities contracts.

(K) Such other activities or transactions as the Board of Governors may, by rule, define.

* * * * * * *

MINORITY VIEWS

One of the most important policy developments following the largest financial crisis since the Great Depression was the enactment of stress testing for our nation's largest banks. H.R. 4293 would make several harmful changes to the current bank stress test regime, specifically the stress tests required by the Dodd-Frank Wall Street Reform and Consumer Protection Act as well as the Comprehensive Capital Analysis and Review (CCAR) program administered by the Board of Governors of the Federal Reserve System.

While it is appropriate for Congress to examine the effectiveness of enhanced prudential standards, and how they are applied and tailored to our largest banks, H.R. 4293 would make a series of one-sided changes that weaken oversight of Wall Street banks.

Although the bill was modestly narrowed during the Committee's markup, H.R. 4293 still makes it harder for regulators to object to a deficient capital plan submitted by a megabank, and reduces the frequency of company-run stress tests required for the nation's largest bank holding companies.

U.S. banks added more than $700 billion in capital to absorb potential losses since the financial crisis of 2007–2009. Even though banks are well capitalized today, we should not let complacency allow us to overlook how unexpected risks can quickly materialize and tank our economy. We should also not forget the lessons of the financial crisis and how costly and painful that was for our constituents and the country.

Furthermore, we would highlight testimony the Committee received warning about the dangers of rushing to rollback stress testing requirements. Former Assistant Secretary of the Treasury, Michael Barr, testified that, "stress testing is a central and innovative risk management tool used since the financial crisis by both regulators and practitioners. Unlike fixed capital ratios, of either the risk-based or leverage ratio type, stress testing seeks to understand how macro shocks would deplete capital. It would be a serious mistake to . . . hamstring stress testing by the Fed."

Mr. Barr's fears were also echoed by Ms. Emily Liner, Senior Policy Advisor at Third Way. She testified that, "eventually, there will be another economic downturn, and we need to be certain that our largest financial institutions can weather the storm so that we can return to growth, we can return to strong markets, and we can prevent massive investor losses far more quickly. If we had had stress tests before the financial crisis, we could have been prepared to take action before the chain reaction of bank failures unfolded."

For these reasons, we oppose H.R. 4293.

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