

PROMOTING NEW AND DIVERSE DEPOSITORY  
 INSTITUTIONS ACT

JANUARY 20, 2022.—Committed to the Committee of the Whole House on the State  
 of the Union and ordered to be printed

Ms. WATERS, from the Committee on Financial Services,  
 submitted the following

R E P O R T

[To accompany H.R. 4590]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4590) to require the Federal banking regulators to jointly conduct a study and develop a strategic plan to address challenges faced by proposed depository institutions seeking de novo depository institution charters; and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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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 “Promoting New and Diverse Depository Institutions Act”.

**SEC. 2. STUDY AND STRATEGIC PLAN.**

(a) **IN GENERAL.**—The Federal banking regulators shall jointly—

(1) conduct a study about the challenges faced by proposed depository institutions, including proposed minority depository institutions, seeking *de novo* depository institution charters; and

(2) submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate and publish publically, not later than 18 months after the date of the enactment of this section—

(A) an analysis based on the study conducted pursuant to paragraph (1);

(B) any findings from the study conducted pursuant to paragraph (1); and

(C) any legislative recommendations that the Federal banking regulators developed based on the study conducted pursuant to paragraph (1).

(b) **STRATEGIC PLAN.**—

(1) **IN GENERAL.**—Not later than 18 months after the date of the enactment of this section, the Federal banking regulators shall jointly submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate and publish publically a strategic plan based on the study conducted pursuant to subsection (a) and designed to help proposed depository institutions (including proposed minority depository institutions) successfully apply for *de novo* depository institution charters in a manner that promotes increased availability of banking and financial services, safety and soundness, consumer protection, community reinvestment, financial stability, and a level playing field.

(2) **CONTENTS OF STRATEGIC PLAN.**—The strategic plan described in paragraph (1) shall—

(A) promote the chartering of *de novo* depository institutions, including—

(i) proposed minority depository institutions; and

(ii) proposed depository institutions that could be certified as community development financial institutions; and

(B) describe actions the Federal banking regulators may take that would increase the number of depository institutions located in geographic areas where consumers lack access to a branch of a depository institution.

(c) **PUBLIC INVOLVEMENT.**—When conducting the study and developing the strategic plan required by this Act, the Federal banking regulators shall invite comments and other feedback from the public to inform the study and strategic plan.

(d) **DEFINITIONS.**—In this Act:

(1) **DEPOSITORY INSTITUTION.**—The term “depository institution” has the meaning given in section 3 of the Federal Deposit Insurance Act, and includes a “Federal credit union” and a “State credit union” as such terms are defined, respectively, under section 101 of the Federal Credit Union Act.

(2) **COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.**—The term “community development financial institution” has the meaning given in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994.

(3) **FEDERAL BANKING REGULATORS.**—The term “Federal banking regulators” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Director of the Bureau of Consumer Financial Protection.

(4) **MINORITY DEPOSITORY INSTITUTION.**—The term “minority depository institution” has the meaning given in section 308(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

**PURPOSE AND SUMMARY**

On July 21, 2021, Representative Auchincloss introduced H.R. 4590, the Promoting New and Diverse Depository Institutions Act, which would require Federal banking regulators to conduct an 18-month study examining challenges prospective *de novo* depository institutions face. (A *de novo* depository institution is a newly chartered depository institution.) The bill would also require Federal banking regulators to develop a strategic plan based on the study to promote the creation of newly chartered depository institutions,

especially minority depository institutions (MDIs) and community development financial institutions (CDFIs), in a manner that promotes increased access to financial services, including in banking deserts, as well as safety and soundness, consumer protection, and community reinvestment.

#### BACKGROUND AND NEED FOR LEGISLATION

Since the 1980s, the banking industry has steadily consolidated.<sup>1</sup> In 1985, there were more than 18,000 banks; today, there are fewer than 4,500.<sup>2</sup> There has been similar consolidation of credit unions: in 1985, there were more than 15,000 credit unions; today, there are a little more than 5,000 credit unions.<sup>3</sup> Moreover, despite a mandate that banking regulators work to preserve the number of MDIs and encourage the creation of new MDIs pursuant to Section 308 of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), there has been a one-third decline in the number of MDIs since the 2008 financial crisis, with a more steep 52 percent decline in the number of Black-owned banks.<sup>4</sup>

While the industry consolidation has occurred over the past few decades, the formation of *de novo* depository institutions has slowed in recent years. Between 2009 and 2019, 64 new banks were chartered, compared to 1,837 new banks that were chartered between 1998 and 2008. There have been a range of reasons given for this development. For example, while some have suggested these developments are driven by regulatory factors, Federal Reserve research suggests there may be a stronger correlation between the number of new banks formed in recent years and the interest rate environment and other non-regulatory factors.<sup>5</sup> Even at times when more *de novo* banks are being chartered, research has shown that new banks are financially fragile, in some cases failing at more than twice the rate established banks fail.<sup>6</sup>

While Federal banking regulators have advanced their own initiatives in recent years to support MDIs and CDFIs as well as the formation of *de novo* depository institutions,<sup>7</sup> regulators have not conducted a joint study or detailed a strategic plan on steps that could be taken to encourage the formation of new depository institutions, including MDIs and CDFI depository institutions. H.R. 4590 would require them to do so. This effort to encourage the formation of *de novo* depository institutions, especially MDIs and CDFIs, complements recently enacted legislation to shore up and

<sup>1</sup> See *Testimony* of Sarah Edelman, Center for American Progress, before the House Subcommittee on Financial Institutions and Consumer Credit hearing entitled, *Ending the De Novo Drought: Examining the Application Process for De Novo Financial Institutions* (Mar. 21, 2017).

<sup>2</sup> FDIC, *BankFind Suite: Find Annual Historical Bank Data* (accessed July 22, 2021), and FDIC, *Quarterly Banking Profile* (Third Quarter 2021).

<sup>3</sup> NCUA, *1985 Annual Report* (April 1986), and NCUA, *Quarterly Data Summary Reports* (Third Quarter 2021).

<sup>4</sup> Specifically, in 2008, there were 215 MDI banks, including 42 Black-owned banks, and today, there are 142 MDI banks, including only 20 Black-owned banks. See FDIC, *Minority Depository Institutions Program—Historical Data Year-by-Year 2001–2020* (accessed July 22, 2021). As of 2013, there were 805 MDI credit unions compared to 527 MDI credit unions today. See NCUA, *Minority Depository Institution Preservation* (accessed July 22, 2021).

<sup>5</sup> Robert M. Adams and Jacob P. Gramlich, Federal Reserve Board, *Where Are All the New Banks? The Role of Regulatory Burden in New Charter Creation*, (Dec. 16, 2014).

<sup>6</sup> See Yan Lee and Chiwon Yom, FDIC, *The Entry, Performance, and Risk Profile of De Novo Banks*, (Apr. 7, 2016).

<sup>7</sup> See, e.g., FDIC, *FDIC Rescinds De Novo Time Period Extension; Releases Supplemental Guidance on Business Planning* (Apr. 6, 2016); FDIC, *Investing in the Future of Mission-Driven Banks—A Guide to Facilitating New Partnerships*; OCC, *OCC Marks the First Anniversary of Project Reach* (Jul. 15, 2021).

strengthen existing MDIs and CDFIs, specifically through \$12 billion in capital investment and grant programs to support MDIs as well as CDFIs enacted into law in December 2020.<sup>8</sup> In 2021, the Department of Treasury and the CDFI Fund announced the deployment of nearly \$10 billion of these funds to support these diverse and mission-driven community financial institutions.

Research and testimony received by the House Financial Services Committee has shown that MDIs and CDFIs are far more likely to serve underbanked communities of color and LMI communities than large banks and non-minority community banks.<sup>9</sup> For example, MDIs are far more likely to be located in LMI communities with high representation of minorities, and loan data confirms that MDIs lend to minorities at dramatically higher rates. Indeed, per the FDIC, the median share of estimated service area population living in LMI census tracts is 69% for African American MDIs, 45% for Asian American MDIs, and 30% for Hispanic American MDIs, compared to 26% for non-MDI noncommunity banks, and 21% for non-MDI metro-area nonfarm community banks.<sup>10</sup> Mortgage and small business lending disparities are similar across banks types.<sup>11</sup> Furthermore, through May 2021, CDFIs provided 1.3 million Paycheck Protection Program (PPP) loans to small business totaling over \$30 billion in support.<sup>12</sup> The average PPP loan size CDFIs provided was \$21,653 compared to a program-wide average of \$41,560, and nearly 40% of CDFI loans reached business in LMI communities, compared to 28% for the overall program. Given this track record, supporting existing MDIs and CDFIs and encouraging the creation of *de novo* MDIs and CDFIs, as provided by H.R. 4590, is critical to help ensure underserved communities have access to affordable banking products and services, as well as emergency support from the government through programs like PPP.

H.R. 4590 is supported by the following organizations: American Bankers Association, California & Nevada Credit Union Leagues, Community Development Bankers Association, Credit Union National Association, Inclusiv, Independent Community Bankers Association, National Association of Federally-Insured Credit Unions, National Bankers Association, and National Community Reinvestment Coalition.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section establishes the short title of the bill as “Promoting New and Diverse Depository Institutions Act.”

##### *Section 2. Study and strategic plan*

This section requires the Federal Deposit Insurance Corporation (FDIC), Board of Governors of the Federal Reserve System (Fed),

<sup>8</sup>House Financial Services Committee, *One pager on the provisions providing Emergency Support for CDFIs and MDIs in the December COVID-19 stimulus package* (Dec. 2020).

<sup>9</sup>House Financial Services Committee hearing, *Promoting Inclusive Lending During the Pandemic: Community Development Financial Institutions and Minority Depository Institutions* (Jun. 3, 2021).

<sup>10</sup>FDIC, *2019 Minority Depository Institutions: Structure, Performance, and Social Impact* (2019).

<sup>11</sup>*Id.*

<sup>12</sup>Small Business Administration, *PPP data* (accessed Jan. 12, 2022). See also *Testimony of John Holdsworth IV, Executive Vice President, National Cooperative Bank and President, CDFI Coalition before the Senate Committee on Banking, Housing, and Urban Affairs* (Jan. 5, 2021).

Office of Comptroller of the Currency (OCC), National Credit Union Administration (NCUA), and Consumer Financial Protection Bureau (CFPB) to conduct an 18-month study examining the challenges faced by proposed *de novo* depository institutions, including *de novo* MDIs. The regulators must report to Congress and publish their analysis, findings, and legislative recommendations. It also requires those banking regulators to produce a strategic plan based on the study to encourage the formation of *de novo* depository institutions, including *de novo* MDIs and CDFIs, in a manner that promotes the availability of banking and financial services (especially in banking deserts), safety and soundness, consumer protection, community reinvestment, financial stability, and a level playing field. This section further requires the regulators to invite public feedback to inform the study and strategic plan.

#### HEARINGS

For the purposes of section 3(c)(6) of House rule XIII, the Committee on Financial Services' on May 19, 2021 held a hearing to consider H.R. 4590 entitled "Oversight of Prudential Regulators: Ensuring the Safety, Soundness, Diversity, and Accountability of Depository Institutions."

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 29, 2021, and ordered H.R. 4590 to be reported favorably to the House with an amendment in the nature of a substitute by a voice vote.

#### COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that no roll call votes occurred during consideration of H.R. 4590.

#### STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

#### STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 4590 are to examine the challenges prospective *de novo* depository institutions face and promote the creation of newly chartered depository institutions, especially MDIs and CDFIs, in order to increase access to financial services as well as safety and soundness, consumer protection, and community reinvestment.

#### NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congres-*

sional Budget Act of 1974, the Committee has received the following estimate for H.R. 4590 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 29, 2021.*

Hon. MAXINE WATERS,  
*Chairwoman, Committee on Financial Services,  
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4590, the Promoting New and Diverse Depository Institutions Act.

if you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

PHILLIP L. SWAGEL,  
*Director.*

Enclosure.

<b>H.R. 1277, Improving Corporate Governance Through Diversity Act of 2021</b>			
<b>As ordered reported by the House Committee on Financial Services on April 21, 2021</b>			
By Fiscal Year, Millions of Dollars	2021	2021-2026	2021-2031
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
* = between zero and \$500,000.			

H.R. 4590 would direct the Federal Deposit Insurance Corporate (FDIC), the National Credit Union Administration (NCUA), the Comptroller of the Currency (OCC), the Consumer Financial Protection Bureau (CFPB), and the Federal Reserve to study the challenges faced by new depository institutions seeking a charter. Those banking regulators also would be required to jointly issue a strategic plan to increase the number of entities applying for new depository institution charters.

The operating costs for the CFPB, FDIC, NCUA, and OCC are classified in the federal budget as direct spending. Using information from some of those agencies, CBO estimates that each agency would require about two employees to complete the bill's requirements over a two-year period, increasing gross direct spending by \$4 million over the 2022–2031 period. However, the NCUA and the OCC collect fees from financial institutions to offset their operating costs; those fees are treated as reductions in direct spending. Thus,

on net, CBO estimates that enacting the bill would increase direct spending by \$2 million over the same period.

Costs incurred by the Federal Reserve reduce remittances to the Treasury, which are recorded in the budget as revenues. CBO estimates that enacting H.R. 4590 would decrease revenues by \$1 million over the 2022–2031 period.

If the OCC and NCUA increased annual fee collections to offset the costs associated with implementing the bill, H.R. 4590 would increase the cost of an existing private-sector mandate on entities required to pay those fees. CBO estimates that the incremental cost of the mandate would be small and would fall below the thresholds established in the Unfunded Mandates Reform Act (UMRA) for private-sector mandates (\$170 million in 2021, adjusted annually for inflation).

H.R. 4590 contains no intergovernmental mandates as defined in UMRA.

The CBO staff contacts for this estimate are Stephen Rabent (for federal costs), Nathaniel Frentz (for revenues), and Fiona Forrester (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

#### COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 4590. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*.

#### UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104–4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 4590, as amended prepared by the Director of the Congressional Budget Office.

#### ADVISORY COMMITTEE

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

#### APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104–1, H.R. 4590, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

#### EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4590 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 4590 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.

