

AMENDING THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT TO ADJUST THE DATE ON WHICH CONSOLIDATED ASSETS ARE DETERMINED FOR PURPOSES OF EXEMPTING CERTAIN INSTRUMENTS OF SMALLER INSTITUTIONS FROM CAPITAL DEDUCTIONS

JUNE 29, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 3128]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3128) to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to adjust the date on which consolidated assets are determined for purposes of exempting certain instruments of smaller institutions from capital deductions, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

The purpose of H.R. 3128 is to provide regulatory relief from the requirements of Section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (P.L. 111-203) to certain bank holding companies with less than \$15 billion in assets. H.R. 3128 amends the Dodd-Frank Act to permit bank holding companies to continue counting hybrid capital instruments issued before May 19, 2010, as Tier 1 capital so long as the company held less than \$15 billion in assets as of either December 31, 2009 or March 31, 2010.

BACKGROUND AND NEED FOR LEGISLATION

Section 171 of the Dodd-Frank Act prohibits bank holding companies from counting hybrid capital instruments, such as trust preferred securities, towards their Tier 1 capital requirements. The prohibition applies immediately to capital instruments issued on or after May 19, 2010. Instruments issued before then either will continue to be included in Tier 1 capital or may be phased out over

a three-year period, depending on the size of the bank holding company on December 31, 2009. Bank holding companies with less than \$15 billion in total assets as of December 31, 2009, may continue counting hybrid capital instruments issued before May 19, 2010, as Tier 1 capital. Bank holding companies with more than \$15 billion in total assets as of December 31, 2009, will be required to phase out Tier 1 hybrid capital over the three-year period from 2013 to 2016.

Because Section 171 of the Dodd-Frank Act may prove to be costly and onerous for institutions, H.R. 3128 was drafted to ensure that Section 171 does not inadvertently ensnare financial institutions that have traditionally held less than \$15 billion in total assets. H.R. 3128 amends Section 171 to provide a second date—March 31, 2010—from which bank holding companies may elect to have their consolidated assets determined for purposes of permitting them to continue counting hybrid capital instruments as Tier 1 capital.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a legislative hearing on May 18, 2012, entitled “The Impact of the Dodd-Frank Act: Understanding Heightened Regulatory Capital Requirements.” The following witnesses testified at the hearing:

- Mr. Daniel McCardell, Senior Vice President and Head of Regulatory Affairs, The Clearing House
- Mr. Richard Wald, Chief Regulatory Officer, Emigrant Bank

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 31, 2012, and ordered H.R. 3128 favorably reported to the House by a record vote of 35 yeas and 15 nays (Record vote no. FC-77).

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. A motion by Chairman Bachus to report the bill to the House with a favorable recommendation was agreed to by a record vote of 35 yeas and 15 nays (Record vote no. FC-77). The names of Members voting for and against follow:

Record vote no. FC-77

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|-------------------------------|-------|-------|---------|----------------------|-------|-------|---------|
| Mr. Bachus | X | ..... | ..... | Mr. Frank (MA) | X | ..... | ..... |
| Mr. Hensarling ..... | ..... | X | ..... | Ms. Waters | X | ..... | ..... |
| Mr. King (NY) | X | ..... | ..... | Mrs. Maloney | X | ..... | ..... |
| Mr. Royce ..... | ..... | X | ..... | Mr. Gutierrez | X | ..... | ..... |
| Mr. Lucas | X | ..... | ..... | Ms. Velázquez ..... | ..... | ..... | ..... |
| Mr. Paul | X | ..... | ..... | Mr. Watt | X | ..... | ..... |
| Mr. Manzullo | X | ..... | ..... | Mr. Ackerman | X | ..... | ..... |
| Mr. Jones ..... | ..... | X | ..... | Mr. Sherman ..... | ..... | X | ..... |
| Mrs. Biggert ..... | ..... | X | ..... | Mr. Meeks | X | ..... | ..... |
| Mr. Gary G. Miller (CA) ..... | ..... | X | ..... | Mr. Capuano | X | ..... | ..... |

Record vote no. FC-77—Continued

| Representative | Aye | Nay | Present | Representative | Aye | Nay | Present |
|-------------------------|-----|-----|---------|----------------------------|-----|-----|---------|
| Mrs. Capito | | X | ..... | Mr. Hinojosa ..... |  |  | ..... |
| Mr. Garrett | | X | ..... | Mr. Clay ..... |  |  | ..... |
| Mr. Neugebauer | | X | ..... | Mrs. McCarthy (NY) | X |  | ..... |
| Mr. McHenry | X |  | ..... | Mr. Baca | X |  | ..... |
| Mr. Campbell | | X | ..... | Mr. Lynch | | X | ..... |
| Mrs. Bachmann | X |  | ..... | Mr. Miller (NC) | X |  | ..... |
| Mr. McCotter | X |  | ..... | Mr. David Scott (GA) ..... |  |  | ..... |
| Mr. McCarthy (CA) ..... |  |  | ..... | Mr. Al Green (TX) | X |  | ..... |
| Mr. Pearce | | X | ..... | Mr. Cleaver ..... |  |  | ..... |
| Mr. Posey | | X | ..... | Ms. Moore | X |  | ..... |
| Mr. Fitzpatrick | | X | ..... | Mr. Ellison ..... |  |  | ..... |
| Mr. Westmoreland | X |  | ..... | Mr. Perlmutter | X |  | ..... |
| Mr. Luetkemeyer | X |  | ..... | Mr. Donnelly | X |  | ..... |
| Mr. Huizenga | X |  | ..... | Mr. Carson | X |  | ..... |
| Mr. Duffy ..... |  |  | ..... | Mr. Himes | X |  | ..... |
| Ms. Hayworth ..... |  |  | ..... | Mr. Peters | X |  | ..... |
| Mr. Renacci | X |  | ..... | Mr. Carney ..... |  |  | ..... |
| Mr. Hurt | X |  | ..... |  |  |  |  |
| Mr. Dold | X |  | ..... |  |  |  |  |
| Mr. Schweikert | X |  | ..... |  |  |  |  |
| Mr. Grimm ..... |  |  | ..... |  |  |  |  |
| Mr. Canseco | X |  | ..... |  |  |  |  |
| Mr. Stivers | X |  | ..... |  |  |  |  |
| Mr. Fincher | | X | ..... |  |  |  |  |

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in 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 establishes the following performance related goals and objectives for this legislation:

The objective of H.R. 3128 is to provide regulatory relief from the requirements of Section 171 of the Dodd-Frank Wall Act to certain bank holding companies with less than \$15 billion in assets. H.R. 3128 would permit bank holding companies to continue counting hybrid capital instruments issued before May 19, 2010, as Tier 1 capital so long as the company held less than \$15 billion in assets as of either December 31, 2009, or March 31, 2010.

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 ESTIMATE

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, June 19, 2012.

Hon. SPENCER BACHUS,
*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. 3128, a bill to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to adjust the date on which consolidated assets are determined for purposes of exempting certain instruments of smaller institutions from capital deductions.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 3128—A bill to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to adjust the date on which consolidated assets are determined for purposes of exempting certain instruments of smaller institutions from capital deductions

H.R. 3128 would allow a depository institution holding company to use one of two reporting dates to determine whether it must phase out the use of certain financial instruments as regulatory capital. CBO estimates that enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under current law, certain depository institution holding companies must phase out the use of previously issued, trust-preferred securities (preferred stock issued by a wholly owned trust subsidiary of a company; also known as TruPS) as tier 1 capital for regulatory purposes. Tier 1 capital is a measure used by regulators to gauge a bank's financial strength. Smaller institutions (defined as those with less than \$15 billion in total consolidated assets as of December 31, 2009) may continue to use TruPS issued before May 19, 2010, to meet capital requirements.

H.R. 3128 would expand the definition of a small institution, for purposes of this exemption, to include depository institution holding companies with total consolidated assets of less than \$15 billion as reported on either December 31, 2009, or March 30, 2010. CBO estimates that the expanded definition would allow TruPS issued by one institution to count as tier 1 capital that would not otherwise qualify under current law. As a result, that institution may reduce other types of tier 1 capital that would be more flexible if its capital position were to deteriorate; however, CBO does not expect any significant effect on either the institution's probability of failure or assistance provided by the federal government. As such,

CBO estimates no effect on the federal budget over the next 10 years.

H.R. 3128 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Daniel Hoople. The estimate was approved by Theresa Gullo, 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 the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 3128 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Date for determining consolidated assets

This section amends Section 171(b)(4)(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111–203) to permit bank holding companies to continue counting hybrid capital instruments issued before May 19, 2010, as Tier 1 capital so long as the company held less than \$15 billion in assets as of *either* December 31, 2009, or March 31, 2010.

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 (new matter is printed in italic 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. 171. LEVERAGE AND RISK-BASED CAPITAL REQUIREMENTS.

(a) * * *

(b) **MINIMUM CAPITAL REQUIREMENTS.—**

(1) * * *

* * * * *

(4) **EFFECTIVE DATES AND PHASE-IN PERIODS.—**

(A) * * *

* * * * *

(C) **DEBT OR EQUITY INSTRUMENTS OF SMALLER INSTITUTIONS.—**For debt or equity instruments issued before May 19, 2010, by depository institution holding companies with total consolidated assets of less than \$15,000,000,000 as of December 31, 2009, or *March 31, 2010*, and by organizations that were mutual holding companies on May 19, 2010, the capital deductions that would be required for other institutions under this section are not required as a result of this section.

* * * * *

a three-year period, depending on the size of the bank holding company on December 31, 2009. Bank holding companies with less than \$15 billion in total assets as of December 31, 2009, may continue counting hybrid capital instruments issued before May 19, 2010, as Tier 1 capital. Bank holding companies with more than \$15 billion in total assets as of December 31, 2009, will be required to phase out Tier 1 hybrid capital over the three-year period from 2013 to 2016.

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SEC. 171. LEVERAGE AND RISK-BASED CAPITAL REQUIREMENTS.

(a) * * *

(b) **MINIMUM CAPITAL REQUIREMENTS.—**

(1) * * *

* * * * *

(4) **EFFECTIVE DATES AND PHASE-IN PERIODS.—**

(A) * * *

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* * * * *