

SMALL BANK HOLDING COMPANY RELIEF ACT OF 2018

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FEBRUARY 2, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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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. 4771]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4771) to raise the consolidated assets threshold under the small bank holding company policy statement, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Introduced by Representative Mia Love on January 11, 2018, H.R. 4771, the “Small Bank Holding Company Relief Act of 2018” requires the Board of Governors of the Federal Reserve System (Federal Reserve) within six months of the date of enactment, to revise its “Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors” (“Policy Statement”). The legislation requires the Federal Reserve to raise the consolidated asset threshold at which the Policy Statement applies from \$1 billion to \$3 billion.

BACKGROUND AND NEED FOR LEGISLATION

To ensure that bank holding companies (“BHCs”) are able to serve as a source of strength for their insured depository subsidiaries, the Board of Governors of the Federal Reserve System (Federal Reserve) subjects them to consolidated, risk-based and lever-

age capital adequacy guidelines. As part of these guidelines, the Federal Reserve generally discourages the use of debt by BHCs to finance the acquisition of banks or other companies; however, the Federal Reserve acknowledges that the transfer of ownership of small banks to small bank holding companies often requires the use of acquisition debt. Accordingly, in 1980, the Federal Reserve created an exemption for qualifying small bank holding companies (“SBHCs”) from the BHC capital guidelines—the Small Bank Holding Company Policy Statement (“Policy Statement”).<sup>1</sup>

The Policy Statement permits the formation and expansion of SBHCs with debt levels that are higher than what would be permitted for larger BHCs. The original Policy Statement issued in 1980 set the qualifying asset threshold at \$150 million. In 2006, the Federal Reserve increased this threshold to \$500 million. On April 9, 2015, the Federal Reserve issued a final rule to implement P.L. 113–250, which required the Federal Reserve Board to raise the Policy Statement threshold to \$1 billion.

In addition to mandatory consolidated assets of less than \$1 billion, a BHC that seeks to qualify as an SBHC must not:

- (1) Be engaged in significant nonbanking activities;
- (2) Conduct significant off-balance sheet activities (including securitization); or
- (3) Have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission.

The Federal Reserve may, in its discretion, exclude any BHC, regardless of asset size, from the Policy Statement if such action is warranted for supervisory purposes.

H.R. 4771 allows those BHCs that qualify as SBHCs under the Policy Statement to be exempt from the Federal Reserve’s risk-based capital and leverage rules. In addition, an SBHC may use debt to finance up to 75 percent of the purchase price of an acquisition, subject to ongoing requirements and restrictions. These restrictions include (1) not paying dividends if their debt-to-equity ratio exceeds 1:1; and (2) retiring all debt within 25 years and reducing debt to 30 percent or less of equity within 12 years of incurring the debt, to ensure that the higher leverage does not pose an undue burden on subsidiary depository institutions; (3) ensuring each depository institution subsidiary remain well-capitalized.

On average the United States loses more than one community financial institution every day because of the sheer weight, volume, cost, complexity and uncertainty of federal regulation. As they die, unfortunately, so do the home ownership dreams of millions of consumers and taxpayers who want and need the customized services community banks and credit unions provide as they seek financial independence. The U.S. financial regulatory system should promote economic growth that not only prevents financial crises but also minimizes regulations that increase costs without corresponding benefits.

H.R. 4771 is a targeted and focused bill that will make it easier for community banks to raise additional capital by issuing debt, providing sensible regulatory relief to small financial institutions while also preserving safety and soundness measures. H.R. 4771

<sup>1</sup> 12 C.F.R. part 225—appendix C.

makes it easier for community banks subject to the Policy Statement to form new holding companies, fund existing holding companies, and make acquisitions by issuing debt at the holding company level.

Small bank and thrift holding companies face unique challenges with regard to capital formation, which is a particular concern at a time when the federal financial regulators are demanding higher capital levels in response to the Basel III capital accords. The environment in which these financial institutions operate has become more difficult in the past few years, with massive increases in regulatory burdens and capital requirements on top of industry consolidation and impediments to asset growth. H.R. 4771 would ease some of this burden and simply make it easier for institutions subject to the Policy Statement to form new holding companies, fund existing holding companies and make acquisitions by issuing debt at the holding company level. These are all important tools to ensure that our smallest financial institutions continue to lend to their communities, hire new loan officers and staff, and survive in what remains a very difficult environment for community banks.

#### HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 4771 on April 26, 2017 and April 28, 2017.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on January 18, 2018, and ordered H.R. 4771 to be reported favorably to the House by a recorded vote of 41 yeas to 14 nays (Record vote no. FC-144), a quorum being present.

#### COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House with amendment. The motion was agreed to by a recorded vote of 41 yeas to 14 nays (Record vote no. FC-144), a quorum being present.

## Record vote no. FC-144

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Maxine Waters (CA) .....		X	
Mr. McHenry .....				Mrs. Carolyn B. Maloney (NY) .....		X	
Mr. King .....				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 .....			
Mr. Luetkemeyer .....	X			Mr. Lynch .....		X	
Mr. Huizenga .....	X			Mr. David Scott (GA) .....	X		
Mr. Duffy .....	X			Mr. Al Green (TX) .....		X	
Mr. Stivers .....				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. 4771 will promote the formation and expansion of small bank holding companies by raising the consolidated assets threshold under the Small Bank Holding Company Policy Statement from \$1 billion to \$3 billion.

## 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, January 31, 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. 4771, the Small Bank Holding Company Relief Act of 2018.

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. 4771—Small Bank Holding Company Relief Act of 2018*

H.R. 4771 would require the Federal Reserve to change its policy statement on the allowable level of debt at certain small bank holding companies. The current policy statement applies to bank holding companies with less than \$1 billion in total consolidated assets. Under the bill, it would apply to bank holding companies with less than \$3 billion in such assets.

Generally, banks with higher levels of debt have a higher probability of failing. The failure of such an institution is likely to increase direct spending by the Federal Deposit Insurance Corporation (FDIC). However, the Federal Reserve may choose not to apply the policy statement to any bank holding company, regardless of asset size, if it determines that such an action is necessary. CBO expects that the Federal Reserve would not allow bank holding companies to take on additional debt under this policy if that debt would jeopardize the solvency of the bank holding company and significantly increase the probability of failure. Further, because the Federal Reserve already supervises those companies, CBO expects that any changes to its administrative costs under the bill would be insignificant. Because increased administrative costs to the Federal Reserve would lower remittances to the Treasury, those costs are recorded in the budget as a decrease in revenues.

Because enacting H.R. 4771 could affect direct spending and revenues, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year.

CBO estimates that enacting H.R. 4771 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4771 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contacts for this estimate are Sarah Puro (for the FDIC) and Nathaniel Frenz (for the Federal Reserve). The estimate was 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 rulemakings: The Committee states that the bill requires no directed rulemakings.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

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

This section cites H.R. 4771 as the “Small Bank Holding Company Relief Act of 2018.”

##### *Section 2. Changes required to Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors*

This section requires the Federal Reserve Board, within six months of date of enactment, to revise the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors (12 C.F.R. part 225—appendix C) to raise the consolidated asset threshold under such policy statement from \$1,000,000,000 to \$3,000,000,000.

This section also includes conforming amendments clarifying the exemption granted under the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors from minimum leverage and risk-based capital requirements.

#### 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 italic, 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 italic, and existing law in which no change is proposed is shown in roman):

**DODD-FRANK WALL STREET REFORM AND CONSUMER  
PROTECTION ACT**

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**TITLE I—FINANCIAL STABILITY**

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

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

(a) **DEFINITIONS.**—For purposes of this section, the following definitions shall apply:

(1) **GENERALLY APPLICABLE LEVERAGE CAPITAL REQUIREMENTS.**—The term “generally applicable leverage capital requirements” means—

(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

(2) **GENERALLY APPLICABLE RISK-BASED CAPITAL REQUIREMENTS.**—The term “generally applicable risk-based capital requirements” means—

(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

(3) **DEFINITION OF DEPOSITORY INSTITUTION HOLDING COMPANY.**—The term “depository institution holding company” means a bank holding company or a savings and loan holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) that is organized in the United States, including any bank or savings and loan holding company that is owned or controlled by a foreign organization, but does not include the foreign organization.



(4) BUSINESS OF INSURANCE.—The term “business of insurance” has the same meaning as in section 1002(3).

(5) PERSON REGULATED BY A STATE INSURANCE REGULATOR.—The term “person regulated by a State insurance regulator” has the same meaning as in section 1002(22).

(6) REGULATED FOREIGN SUBSIDIARY AND REGULATED FOREIGN AFFILIATE.—The terms “regulated foreign subsidiary” and “regulated foreign affiliate” mean a person engaged in the business of insurance in a foreign country that is regulated by a foreign insurance regulatory authority that is a member of the International Association of Insurance Supervisors or other comparable foreign insurance regulatory authority as determined by the Board of Governors following consultation with the State insurance regulators, including the lead State insurance commissioner (or similar State official) of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, where the person, or its principal United States insurance affiliate, has its principal place of business or is domiciled, but only to the extent that—

(A) such person acts in its capacity as a regulated insurance entity; and

(B) the Board of Governors does not determine that the capital requirements in a specific foreign jurisdiction are inadequate.

(7) CAPACITY AS A REGULATED INSURANCE ENTITY.—The term “capacity as a regulated insurance entity”—

(A) includes any action or activity undertaken by a person regulated by a State insurance regulator or a regulated foreign subsidiary or regulated foreign affiliate of such person, as those actions relate to the provision of insurance, or other activities necessary to engage in the business of insurance; and

(B) does not include any action or activity, including any financial activity, that is not regulated by a State insurance regulator or a foreign agency or authority and subject to State insurance capital requirements or, in the case of a regulated foreign subsidiary or regulated foreign affiliate, capital requirements imposed by a foreign insurance regulatory authority.

(b) MINIMUM CAPITAL REQUIREMENTS.—

(1) MINIMUM LEVERAGE CAPITAL REQUIREMENTS.—The appropriate Federal banking agencies shall establish minimum leverage capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum leverage capital requirements established under this paragraph shall not be less than the generally applicable leverage capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable leverage capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.

(2) **MINIMUM RISK-BASED CAPITAL REQUIREMENTS.**—The appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum risk-based capital requirements established under this paragraph shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.

(3) **INVESTMENTS IN FINANCIAL SUBSIDIARIES.**—For purposes of this section, investments in financial subsidiaries that insured depository institutions are required to deduct from regulatory capital under section 5136A of the Revised Statutes of the United States or section 46(a)(2) of the Federal Deposit Insurance Act need not be deducted from regulatory capital by depository institution holding companies or nonbank financial companies supervised by the Board of Governors, unless such capital deduction is required by the Board of Governors or the primary financial regulatory agency in the case of nonbank financial companies supervised by the Board of Governors.

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

(A) **DEBT OR EQUITY INSTRUMENTS ON OR AFTER MAY 19, 2010.**—For debt or equity instruments issued on or after May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, this section shall be deemed to have become effective as of May 19, 2010.

(B) **DEBT OR EQUITY INSTRUMENTS ISSUED BEFORE MAY 19, 2010.**—For debt or equity instruments issued before May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, any regulatory capital deductions required under this section shall be phased in incrementally over a period of 3 years, with the phase-in period to begin on January 1, 2013, except as set forth in subparagraph (C).

(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.

(D) **DEPOSITORY INSTITUTION HOLDING COMPANIES NOT PREVIOUSLY SUPERVISED BY THE BOARD OF GOVERNORS.**—For any depository institution holding company that was not supervised by the Board of Governors as of May 19, 2010, the requirements of this section, except as set forth

in subparagraphs (A) and (B), shall be effective 5 years after the date of enactment of this Act

(E) CERTAIN BANK HOLDING COMPANY SUBSIDIARIES OF FOREIGN BANKING ORGANIZATIONS.—For bank holding company subsidiaries of foreign banking organizations that have relied on Supervision and Regulation Letter SR-01-1 issued by the Board of Governors (as in effect on May 19, 2010), the requirements of this section, except as set forth in subparagraph (A), shall be effective 5 years after the date of enactment of this Act.

(5) EXCEPTIONS.—This section shall not apply to—

(A) debt or equity instruments issued to the United States or any agency or instrumentality thereof pursuant to the Emergency Economic Stabilization Act of 2008, and prior to October 4, 2010;

(B) any Federal home loan bank; or

[(C) any bank holding company or savings and loan holding company having less than \$1,000,000,000 in total consolidated assets that complies with the requirements of the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors of the Board of Governors (12 CFR part 225 appendix C), as the requirements of such Policy Statement are amended pursuant to section 1 of an Act entitled “To enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, increase individual savings, and for other purposes”.]

*(C) any bank holding company or savings and loan holding company that is subject to the application of the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors of the Board of Governors (12 C.F.R. part 225—appendix C).*

(6) STUDY AND REPORT ON SMALL INSTITUTION ACCESS TO CAPITAL.—

(A) STUDY REQUIRED.—The Comptroller General of the United States, after consultation with the Federal banking agencies, shall conduct a study of access to capital by smaller insured depository institutions.

(B) SCOPE.—For purposes of this study required by subparagraph (A), the term “smaller insured depository institution” means an insured depository institution with total consolidated assets of \$5,000,000,000 or less.

(C) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report summarizing the results of the study conducted under subparagraph (A), together with any recommendations for legislative or regulatory action that would enhance the access to capital of smaller insured depository institutions, in a manner that is consistent with safe and sound banking operations.

(7) CAPITAL REQUIREMENTS TO ADDRESS ACTIVITIES THAT POSE RISKS TO THE FINANCIAL SYSTEM.—

(A) IN GENERAL.—Subject to the recommendations of the Council, in accordance with section 120, the Federal banking agencies shall develop capital requirements applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors that address the risks that the activities of such institutions pose, not only to the institution engaging in the activity, but to other public and private stakeholders in the event of adverse performance, disruption, or failure of the institution or the activity.

(B) CONTENT.—Such rules shall address, at a minimum, the risks arising from—

(i) significant volumes of activity in derivatives, securitized products purchased and sold, financial guarantees purchased and sold, securities borrowing and lending, and repurchase agreements and reverse repurchase agreements;

(ii) concentrations in assets for which the values presented in financial reports are based on models rather than historical cost or prices deriving from deep and liquid 2-way markets; and

(iii) concentrations in market share for any activity that would substantially disrupt financial markets if the institution is forced to unexpectedly cease the activity.

(c) CLARIFICATION.—

(1) IN GENERAL.—In establishing the minimum leverage capital requirements and minimum risk-based capital requirements on a consolidated basis for a depository institution holding company or a nonbank financial company supervised by the Board of Governors as required under paragraphs (1) and (2) of subsection (b), the appropriate Federal banking agencies shall not be required to include, for any purpose of this section (including in any determination of consolidation), a person regulated by a State insurance regulator or a regulated foreign subsidiary or a regulated foreign affiliate of such person engaged in the business of insurance, to the extent that such person acts in its capacity as a regulated insurance entity.

(2) RULE OF CONSTRUCTION ON BOARD'S AUTHORITY.—This subsection shall not be construed to prohibit, modify, limit, or otherwise supersede any other provision of Federal law that provides the Board of Governors authority to issue regulations and orders relating to capital requirements for depository institution holding companies or nonbank financial companies supervised by the Board of Governors.

(3) RULE OF CONSTRUCTION ON ACCOUNTING PRINCIPLES.—

(A) IN GENERAL.—A depository institution holding company or nonbank financial company supervised by the Board of Governors of the Federal Reserve that is also a person regulated by a State insurance regulator that is engaged in the business of insurance that files financial statements with a State insurance regulator or the National Association of Insurance Commissioners utilizing

only Statutory Accounting Principles in accordance with State law, shall not be required by the Board under the authority of this section or the authority of the Home Owners' Loan Act to prepare such financial statements in accordance with Generally Accepted Accounting Principles.

(B) PRESERVATION OF AUTHORITY.—Nothing in subparagraph (A) shall limit the authority of the Board under any other applicable provision of law to conduct any regulatory or supervisory activity of a depository institution holding company or non-bank financial company supervised by the Board of Governors, including the collection or reporting of any information on an entity or group-wide basis. Nothing in this paragraph shall excuse the Board from its obligations to comply with section 161(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5361(a)) and section 10(b)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2)), as appropriate.

\* \* \* \* \*

## MINORITY VIEWS

In 2014, Democrats worked with Republicans to reach a reasonable compromise to increase the threshold for the Federal Reserve’s Small Bank Holding Company Policy Statement (“Policy Statement”) for bank holding companies (“BHCs”) and savings and loan holding companies (“SLHCs”), from \$500 million to \$1 billion in total assets.<sup>1</sup> In general, the Federal Reserve limits the debt levels of BHCs and SLHCs to ensure that they are able to serve as a source of strength for their depository subsidiary. The Policy Statement allows certain small BHCs and SLHCs to hold more debt at the holding company level than would otherwise be permitted by capital requirements if the debt is used to finance up to 75% of an acquisition of another bank. The 2014 law included some conditions, such as excluding any BHC or SLHC with less than \$1 billion that was engaged in significant nonbanking activities, and it gave the Federal Reserve the ability to exclude any BHC or SLHC from the Policy Statement, regardless of size, “if exclusion is determined warranted for supervisory purposes.”

Despite this recent bipartisan effort to double the threshold level, Republicans are pushing further increases without knowing the effect of the last increase. In the last Congress, the House passed a bill that would increase the Policy Statement threshold to \$5 billion,<sup>2</sup> which faced a veto threat from the Obama Administration.<sup>3</sup> Last year, Republicans included a provision in H.R. 10, the Wrong Choice Act, to drastically raise the \$1 billion threshold to \$10 billion. Now that it is clear that these dangerous proposals will go nowhere, Republicans are attempting to advance H.R. 4771, the Small Bank Holding Company Relief Act, which would triple the threshold to \$3 billion.

H.R. 4771 would dramatically raise the Policy Statement threshold without giving policymakers sufficient time to evaluate the benefits and costs of the 2014 adjustment. One such potential downside could be the acceleration of industry consolidation through more mergers and acquisitions that leads to fewer, not more, community banks and encouraging BHCs and SLHCs to increase debt, which could pose safety and soundness risks.

It is worth noting even the Trump Administration’s Department of the Treasury only recommended an increase in the Policy Statement threshold of \$1 billion.

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<sup>1</sup> P.L. 113–250, H.R. 3329, 113th Congress, a bill to enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, increase individual savings, and for other purposes, available at: <https://www.congress.gov/bill/113th-congress/house-bill/3329>.

<sup>2</sup> H.R. 3791, 114th Congress, a bill to raise the consolidated assets threshold under the small bank holding company policy statement, and for other purposes, available at: <https://www.congress.gov/bill/114th-congress/house-bill/3791>.

<sup>3</sup> Statement of Administration Policy, April 12, 2016, available at: [https://obamawhitehouse.archives.gov/sites/default/files/omb/legislative/sap/114/saphr3791r\\_20160412.pdf](https://obamawhitehouse.archives.gov/sites/default/files/omb/legislative/sap/114/saphr3791r_20160412.pdf).

According to 2016 data from the Federal Reserve, there were 3,682 BHCs and 171 SLHCs with less than \$1 billion. So under the current \$1 billion threshold, the Policy Statement applies to about 87 percent of all BHCs and 72 percent of all SLHCs that collectively have nearly \$1 trillion in assets,<sup>4</sup> meaning a large majority of the industry can already benefit from the Policy Statement under the \$1 billion threshold, including all truly small community financial institutions.

Furthermore, the current \$1 billion threshold seems reasonable given that the Federal Deposit Insurance Corporation (FDIC) conducted an exhaustive study in 2012 defining a community bank, which included, among other factors, a dollar threshold of less than \$1 billion in assets.<sup>5</sup> This point was emphasized by Americans for Financial Reform in a letter to the Committee, as they wrote, “A \$3 billion limit is unjustified, as there is no evidence that community banks over \$1 billion in size are currently too small to survive. According to a recent FDIC report, ‘While economies of scale are important for community banks, historical trends in the size distribution of community banks that have survived over the last quarter century do not suggest that economies of scale require a community bank to grow or merge to asset sizes larger than \$1 billion’. . . . The Committee should reject HR 4771.”<sup>6</sup>

Tripling the Policy Statement threshold to \$3 billion at this time is wholly unfounded. There has not been sufficient time to see what effect previously doubling the Policy Statement threshold to \$1 billion just a few years ago really means for community banks and the communities they serve. Congress should examine the data and consider the benefits and costs before making further changes.

For these reasons, we oppose H.R. 4771.

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EMANUEL CLEAVER.  
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AL GREEN.  
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<sup>4</sup> See: <https://www.federalreserve.gov/publications/2016-ar-supervision-and-regulation.htm>.

<sup>5</sup> FDIC, “Community Banking Study,” (Dec. 2012), available at: <https://www.fdic.gov/regulations/resources/cbi/study.html>.

<sup>6</sup> Americans for Financial Reform, “Letter to Congress: AFR Opposes A Dozen Deregulatory Bills Under Consideration at a House Financial Services Committee Markup,” available at: <http://ourfinancialsecurity.org/2018/01/afr-opposes-dozen-deregulatory-bills-consideration-house-financial-services-committee-markup/>. For referenced FDIC report, see Stefan Jacewitz and Paul Kupiec, FDIC, “Community Bank Efficiency and Economies of Scale,” (Dec. 2012), available at: <https://www.fdic.gov/regulations/resources/report/cbi-eff.pdf>.