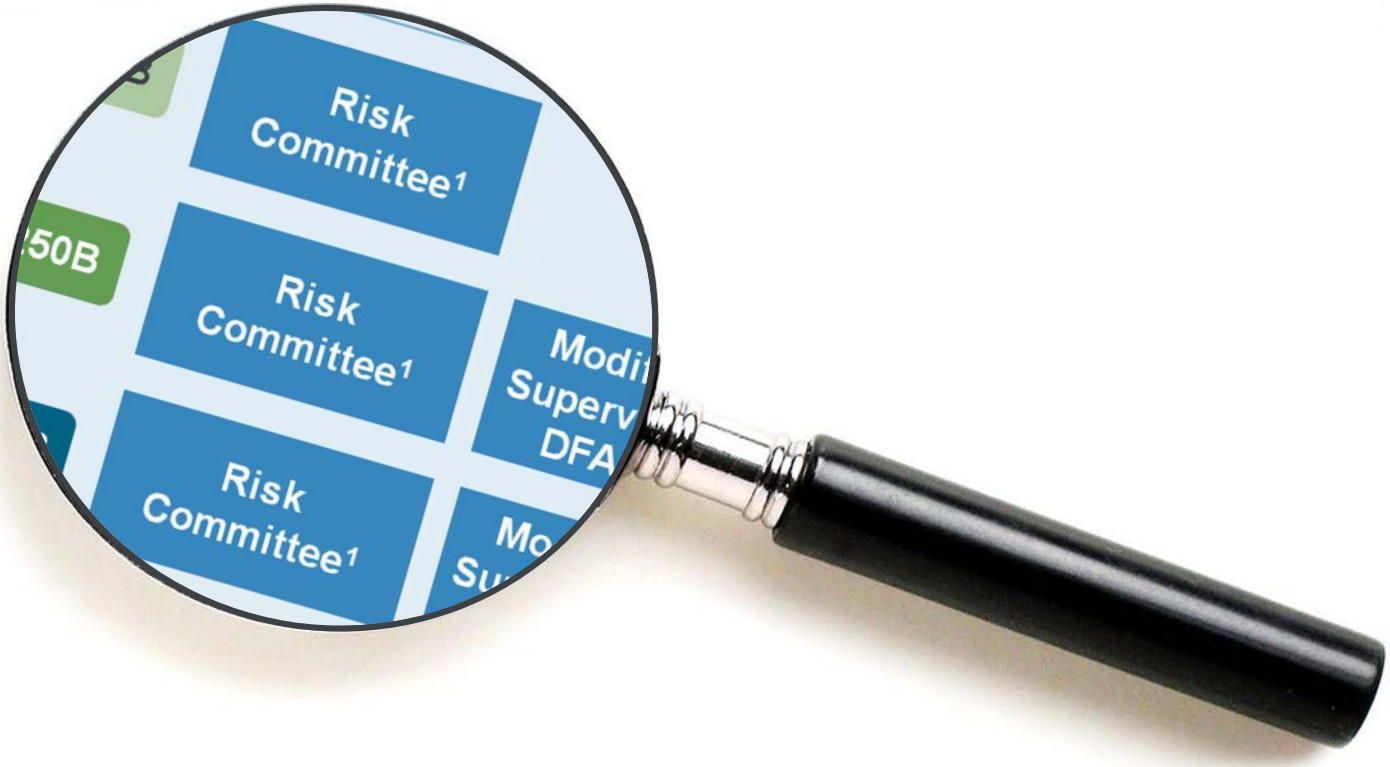
Bipartisan Banking Act Will Rebalance the Financial Regulatory Landscape

August 9, 2018



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Update for July 6 Agency Statements

- The U.S. banking agencies have released **statements explaining how they will enforce their existing rules** in the interim until the agencies formally amend their regulations to implement the Bipartisan Banking Act's changes.
  - On July 6, 2018 the Federal Reserve, OCC and FDIC released a joint statement with respect to the existing rules jointly administered by these agencies.
  - The Federal Reserve released its own supplemental statement with respect to the rules it administers – notably the **EPS requirements** for which the Act raised the applicable asset thresholds, in its signature provision.

- In general, the agencies' statements either:
  - **implement exemptions provided in the Act** – e.g., exempting BHCs < $100B from resolution planning requirements; or
  - note that the agencies will **align their rules** to the provisions of the Act at a **later date**.

- In addition, we have updated this memorandum with:

  new green callout boxes that note where the agencies have announced interim interpretations that **go beyond** the Act's requirements – *see pp. 13, 15–16, 27, 30–31.*

Current State of Financial Regulatory Asset Thresholds

	< $10B	≥ $10B, < $50B	≥ $50B, < $100B	≥ $100B, < $250B	≥ $250B	G-SIBs
Recovery Plans						✓
TLAC Requirement						✓
G-SIB Surcharge						✓
Enhanced Supplementary Leverage Ratio						✓
Supplementary Leverage Ratio					✓	✓
AOCI Included in Basel 3 capital					✓	✓
Full Liquidity Coverage Ratio					✓	✓
Advanced Approach Risk Weighted Assets					✓	✓
Single-Counterparty Credit Limits (SCCL)*					✓	✓
Section 165(d) Resolution Plans				✓**	✓	✓
Company-Run DFAST				✓**	✓	✓
Supervisory DFAST				✓	✓	✓
CCAR				✓	✓	✓
Modified Liquidity Coverage Ratio				✓	✓	✓
FDIC IDI Plans			✓	✓	✓	✓
Early Remediation Tools			✓	✓	✓	✓
Risk Management Committee *(for publicly traded BHCs)*			✓	✓	✓	✓
Durbin Amendment (Interchange Fee Restrictions)		✓	✓	✓	✓	✓
Subject to Regulation by CFPB	**Certain Products**	✓	✓	✓	✓	✓
Volcker Rule	**Eligible for Exemption**	✓	✓	✓	✓	✓
Prompt Corrective Action Tools	✓	✓	✓	✓	✓	✓

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* As finalized, the SCCL rule does not apply to **U.S. BHCs ≥ $100B, < $250B**, although the preamble noted that the Federal Reserve could choose to apply the rule to some or all of these firms at a later date.

** The Federal Reserve may choose to exempt some or all **U.S. BHCs ≥ $100B, < $250B**.

I. Introduction

Color Coding in this Memorandum

- This visual memorandum describes the **key changes** the Act makes to the regulation of banking organizations. Because the Act's provisions apply differently to institutions of different sizes, this memorandum uses the following **color coding** scheme to reference institutions by total consolidated assets:

< $10B | **≥ $10B, < $50B** | **≥ $50B, < $100B** | **≥ $100B, < $250B** | **≥ $250B** | **G-SIBs**

Overview of the Bipartisan Banking Act

- The Bipartisan Banking Act is the first major piece of legislation to **rebalance the financial regulatory landscape** since the Dodd-Frank Act in 2010.
- The Act's central change for bank holding companies (**BHCs**) is to **raise the asset thresholds at which certain enhanced prudential standards (EPS) apply**. The following chart summarizes how these and other changes apply to BHCs:

	< $10B	≥ $10B, < $50B	≥ $50B, < $100B	≥ $100B, < $250B	≥ $250B	G-SIBs
General EPS – including contingent capital, resolution plans, credit exposure reports, single-counterparty credit limits, enhanced public disclosures and short-term debt limits – *pp. 10–16*	N/A	N/A	Exempt	Exempt under Statute, Fed May Apply by Rule / Order	Still Applies	Still Applies
DFAST supervisory stress testing – *pp. 25–26*	N/A	N/A	Exempt	Still Applies but Modified	Still Applies but Modified	Still Applies but Modified
DFAST company-run stress testing – *p. 27*	N/A	Exempt	Exempt	Exempt under Statute, Fed May Apply by Rule / Order	Still Applies but Modified	Still Applies but Modified
Risk committee requirement – *p. 13*	Fed May Apply by Rule*	Still Applies under Rule, Fed May Eliminate*	Still Applies	Still Applies	Still Applies	Still Applies
SLR relief – *pp. 28–29*	N/A	N/A	N/A	N/A	Custody Banks Eligible	Custody Banks Eligible
Community Bank Leverage Ratio / Off Ramp – *pp. 16–17*	Eligible	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible
Volcker Rule Exemption – *p. 18*	Eligible	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible
Increased eligibility threshold for (1) Federal Reserve Small Holding Company Policy, (2) extended examination cycles, (3) reduced reporting requirements – *p. 23*	May Be Eligible	Ineligible	Ineligible	Ineligible	Ineligible	Ineligible

* The Bipartisan Banking Act allows but does not require the Federal Reserve to impose the risk committee requirement on publicly traded BHCs < $50B. Therefore, the pre-existing regulatory requirement for publicly traded BHCs ≥ $10B, < $50B remains effective but could be eliminated by the Federal Reserve.

Overview of the Bipartisan Banking Act

- The Bipartisan Banking Act has three main goals for banking organizations:

Raising the Asset-Size Threshold for EPS

The Bipartisan Banking Act raises the statutory threshold for EPS applicable to BHCs from $50B to $250B in total consolidated assets, allowing the Federal Reserve discretion to apply any of these standards to a BHC ≥ $100B in total consolidated assets.

See section II

Community Bank Relief

The Bipartisan Banking Act provides welcome relief to certain community banks across a wide range of regulatory requirements – e.g., capital and leverage ratios, the Volcker Rule and examination cycles.

See section III

Changes to the Capital and Liquidity Rules

The Bipartisan Banking Act changes certain capital and liquidity rules, some of which are available only to certain banking organizations – e.g., the supplementary leverage ratio for custody banks – while others are available for all banking organizations – e.g., the treatment of certain municipal securities under the liquidity coverage ratio.

See section IV

- The Act also:
  - Provides additional regulatory relief that is available regardless of an entity's size or activities – *see section V*;
  - Requires three **studies and reports** to be created and submitted to various regulators – *see section VI*; and
  - Provides additional consumer protections, including for veterans, home owners and student loan borrowers, and changes to securities laws and regulations designed to encourage capital formation.

Scope and Terminology

- Many provisions of the Bipartisan Banking Act apply only to specific types of entities – e.g., BHCs, insured depository institutions (**IDIs**) or other financial companies.
- **Scope.** The Bipartisan Banking Act changes the asset thresholds at which EPS apply for BHCs but does not change which EPS apply to nonbank financial companies that are supervised by the Federal Reserve (**SIFIs**). Accordingly, this visual memorandum **does not address** how EPS apply to SIFIs.
- **Terminology.** In this visual memorandum, we use the following terminology to refer to certain entities made by the Bipartisan Banking Act:
  - **Regulated financial organizations** – a BHC, savings and loan holding company (**SLHC**) or other financial company that is regulated by a U.S. banking agency, the SEC, the CFTC or the FHFA; and
  - **Banking organization** – an entity that is regulated by a U.S. banking agency, such as a BHC, SLHC or IDI.

II. Raising the Asset Thresholds for Enhanced Prudential Standards

Asset Thresholds for EPS

- The Dodd-Frank Act required the Federal Reserve to establish EPS**,** such as resolution planning, stress testing and single-counterparty credit limits (**SCCL**), for any BHC ≥ $50B .
- The Bipartisan Banking Act **raises this statutory threshold** to apply only to a BHC ≥ $250B (**except for** supervisory stress testing and risk committee requirements) while providing the Federal Reserve authority to **raise** or **lower** this threshold in certain circumstances:

- **G-SIBs.** The Act treats any G-SIB as if it were a BHC ≥ $250B .
- **Impact on CCAR?** Because the Federal Reserve's comprehensive capital analysis and review (**CCAR**) capital planning rules are not EPS, the raised threshold technically does not apply. It is difficult to imagine, however, the Federal Reserve taking a different approach in terms of making corresponding changes to its capital planning requirements.
- **No Impact on FDIC IDI Plans.** The Act affects neither the applicability nor the substance of the FDIC's IDI plan rule.

Raised Threshold

The Federal Reserve may establish asset thresholds **above $250B**, with discretion to differentiate among firms, for EPS relating to contingent capital, resolution plans, credit exposure reports, concentration limits, enhanced public disclosures and short-term debt limits.

Lower Threshold

The Federal Reserve may apply any of the EPS to any BHC ≥ $100B, < $250B provided that the Federal Reserve has determined that applying the standards is appropriate to address financial stability risks or safety and soundness concerns and has taken into consideration the firm's capital structure, riskiness, complexity and other factors.

Asset Thresholds for EPS

Under Current Law

< $10B	Risk Committee[1,2]						
≥ $10B, < $50B	Risk Committee[1]	Company-Run DFAST					
≥ $50B	Risk Committee[1]	Company-Run DFAST	Supervisory DFAST	Resolution Planning	SCCL	Short-Term Debt Limits	Contingent Capital

Under the Bipartisan Banking Act

< $10B, ≥ $10B, < $50B	Risk Committee[1,2]						
≥ $50B, < $100B	Risk Committee[1]						
≥ $100B, < $250B	Risk Committee[1]	Modified Supervisory DFAST	Modified Company-Run DFAST[2]	Resolution Planning[2]	SCCL[2]	Short-Term Debt Limits[2]	Contingent Capital[2]
≥ $250B, G-SIB	Risk Committee[1]	Modified Supervisory DFAST	Modified Company-Run DFAST	Resolution Planning	SCCL	Short-Term Debt Limits	Contingent Capital

1. Only applicable by statute to publicly traded BHCs
2. Only applicable if designated or required by the Federal Reserve

Asset Thresholds for EPS

- While the Bipartisan Banking Act raises the general asset threshold for most EPS to apply to any BHC ≥ $250B, the following EPS are still applicable to **BHCs < $250B**:

Risk Committee Requirement. Before the Act, any publicly traded BHC ≥ $10B was required to establish an independent risk committee of its board of directors. Under the Bipartisan Banking Act:

- BHC ≥ $50B: the Federal Reserve is **required** to impose this risk committee requirement; and
- BHC < $50B: the Federal Reserve **has the authority** to impose this risk committee requirement.

- The Federal Reserve already had the authority, but was not required, to impose the risk committee requirement on publicly traded BHCs < $10B, but it **had chosen not to do so**.

- In its statement on the Act, the Federal Reserve announced that it would not expect any publicly traded BHC ≥ $10B, < $50B to comply with the risk committee requirement in the interim before the Federal Reserve can formally amend its rules

Supervisory Stress Testing. As described on page 26, the Bipartisan Banking Act imposes **periodic supervisory stress testing** requirements on any BHC ≥ $100B, < $250B.

Timeline of the EPS Threshold Change

BHC < $100B : **immediately exempt** from EPS requirements

(except the **risk committee** requirement, which applies to any publicly traded BHC ≥ $50B)

BHC ≥ $100B, < $250B : **become exempt** from the EPS requirements

(except **supervisory stress testing**)

Date of Enactment

Date of Enactment + 18 Months

At any time, the Federal Reserve **may exempt** by order any BHC ≥ $100B, < $250B from any of the EPS requirements

(except **supervisory stress testing**)

At any time, the Federal Reserve may by rule or order **subject** any BHC ≥ $100B, < $250B to any of the EPS requirements

Impact on FBOs

- Just as the Dodd-Frank Act itself, previous versions of the Bipartisan Banking Act were silent as to **which measure of asset size** would be used for determining whether a foreign banking organization (**FBO**) was subject to EPS under the Act's revised asset threshold framework.
  - Would the asset threshold be evaluated based on an FBO's global assets, combined U.S. assets, or another measure?
- As enacted, the Act clarifies that the changed EPS thresholds **do not**:
  - Affect the application of the Federal Reserve's EPS regulations to an FBO **≥ $100B in global total consolidated assets**; or
  - Limit the authority of the Federal Reserve to **implement EPS** with respect to, **require the establishment of an IHC** under or **tailor** the regulation of an FBO **≥ $100B in global total consolidated assets**.

- EPS regulations established by the Federal Reserve before the Bipartisan Banking Act reflect a **tiered approach**, with different EPS requirements applicable to FBOs depending on their **global total consolidated assets**, **combined U.S. assets** and/or **U.S. non-branch assets**.
- We see no reason to expect that the Federal Reserve will deviate from this tiered approach when implementing the Bipartisan Banking Act, with or without the clarification provided in the Act regarding FBOs ≥ $100B in global total consolidated assets.
- The box on the following page summarizes **the Federal Reserve's current approach** to EPS thresholds with respect to FBOs.

Impact on FBOs

- The following chart summarizes the Federal Reserve's **current approach** to implementing the Bipartisan Banking Act with respect to **FBOs** based on their **global total consolidated assets**:

	FBO ≥ $10B, < $50B globally	**FBO ≥ $50B, < $100B globally**	**FBO ≥ $100B globally**
Risk committee requirement	**Exempt**	Still Applies	Still Applies
DFAST company-run stress testing	**Exempt**	**Exempt**	Still Applies
Resolution planning	N/A	**Exempt**	Still Applies
Debt-to-equity limits	N/A	**Exempt**	Still Applies
Home country / Basel III risk-based and leverage capital, liquidity risk management and capital and liquidity stress testing requirements, as applicable	N/A	**Exempt**	Still Applies
U.S. IHC requirements	N/A	**Exempt***	Still Applies
TLAC requirements	N/A	N/A	Still Applies

* Currently, no FBOs ≥ $50B, < $100B globally have U.S. IHCs.

III. Community Bank Relief

Introduction

- The Bipartisan Banking Act also provides a series of targeted relief to **community banks** – generally for banking organizations < $10B , although some of this relief is only available to smaller banks.
- This relief includes:
  - A new **community bank leverage ratio** – see pages 19–20;
  - Exempting community banks from the **Volcker Rule** – see page 21;
  - Certain changes to the **EPS thresholds** that affect community banks – see page 21;
  - A new option for certain **federal savings associations** to exercise the same powers and have the same duties as national banks – see page 22;
  - Additional relief applicable to smaller community banks – see page 23.

Community Bank Leverage Ratio / Off Ramp

- The Bipartisan Banking Act directs the U.S. banking agencies to establish via rulemaking a **community bank leverage ratio**, which operates as an **off ramp in** which a banking organization that chooses to meet the leverage ratio would be deemed to have met its otherwise applicable capital requirements and standards, including:
  - applicable leverage ratios;
  - risk-based capital ratios;
  - well-capitalized minimums for prompt corrective action; and
  - any other applicable capital or leverage requirements.

Eligible Banking Organizations. An IDI or its holding company is eligible to opt into the community bank leverage ratio if it:

- has < $10B ; and
- meets any **risk profile requirements** established by the U.S. banking agencies, which must consider factors including:
  - off-balance sheet exposures;
  - trading assets and liabilities; and
  - total notional derivatives exposures.

Community Bank Leverage Ratio / Off Ramp

Mechanics of the Community Bank Leverage Ratio.

$$8\% \leq \text{Community Bank Leverage Ratio} \leq 10\%$$

$$\text{Community Bank Leverage Ratio} = \frac{\text{Tangible Equity Capital}}{\text{Average Total Consolidated Assets}}$$

The Act requires the U.S. banking agencies to establish:

- a community bank leverage ratio **between 8% and 10%** for qualifying community banks; and
- procedures for the treatment of a qualifying community bank that **falls below** the applicable community bank leverage ratio **after previously having exceeded** the ratio.

The U.S. banking agencies also must:

- **consult with the relevant state banking supervisors** in implementing the community bank leverage ratio; and
- **notify the relevant state banking supervisor** of any qualifying community bank that **falls out of compliance** with the community bank leverage ratio.

The components of the community bank leverage ratio are the banking organization's:

- **tangible equity capital** (not defined in the Bipartisan Banking Act) and
- **average total consolidated assets**,

each as reported on the banking organization's applicable regulatory filing with the appropriate U.S. banking agency.

Volcker and EPS Exemptions

The Volcker Rule. The Bipartisan Banking Act exempts from the Volcker Rule any IDI and any affiliate of an IDI that meets (and is not controlled by a company that does not *itself* meet) the following requirements:

- $\leq$ $10B ; and
- **Total trading assets and trading liabilities** of 5% or less of total assets.

EPS Threshold. In raising the EPS thresholds from those established under the Dodd-Frank Act (as discussed on pages 10–16), the Act provides the following relief for any BHC $\geq$ $10B, < $50B :

- **immediately** from the **company-run stress testing requirements**; and
- if publicly traded, no longer statutorily required to have a **risk committee** – although the Federal Reserve could choose to maintain this requirement under its regulations.

Federal Savings Association Election

- The Bipartisan Banking Act allows a federal savings association ≤ $20B **as of December 31, 2017** to elect to exercise the same **rights** and be subject to the same duties as a **national bank** that has its main office in the same location as the savings association's home office.

Exceptions. A federal savings association that makes this election will still be treated as a federal savings association for the following purposes:

- Governance – including boards of directors and distribution of dividends;
- Consolidation, merger, dissolution, conversion, conservatorship and receivership; and
- Any other purpose determined by OCC rule.

- Among other things, this election allows a federal savings association to **opt out** of:
  - The **qualified thrift lender (QTL) test**, which requires these organizations to maintain a high percentage of loans relating to residential real estate; and
  - The current low **limits on commercial and consumer lending**.
- **Impact on SLHCs?** The Act is silent about whether an SLHC is subject to the same rights and limitations as a BHC – e.g., permissible activities restrictions.

Additional Relief for Smaller Community Banks

Small Holding Company Policy Statement. Certain BHCs and SLHCs **< $3B in total assets** (up from the current $1B threshold) are eligible for relief under the Federal Reserve's **Small Bank Holding Company and Savings and Loan Holding Company Policy Statement**.

To be eligible for this treatment, a BHC or SLHC must:

- Not be engaged in **significant non-banking activities**;
- Not conduct **significant off-balance sheet activities** – including securitization and asset management or administration; and
- Not have a **material amount of SEC-registered debt or equity securities** – other than trust preferred securities.

- BHCs and SLHCs subject to this policy are **exempt from the U.S. Basel III** capital requirements.
- The Federal Reserve also allows the acquisition of a holding company to be financed by a **greater proportion of debt** than the agency otherwise typically permits.

Extended Examination Cycle. The total consolidated asset threshold under which eligible well capitalized and well managed insured depository institutions may qualify for an 18-month examination cycle is raised to **$3B** from $1B.

Short Form Call Reports. The U.S. banking agencies are required to reduce the reporting requirements for the first and third quarter call reports of certain IDIs **< $5B** in total consolidated assets.

IV. Changes to Stress Testing, Capital and Liquidity Rules

Overview of Changes to Dodd-Frank Act Stress Testing

- The Bipartisan Banking Act makes the following changes to the Dodd-Frank Act stress testing (**DFAST**) framework:

	≥ $10B, < $50B	≥ $50B, < $100B	≥ $100B, < $250B	≥ $250B	G-SIBs
Company-run stress testing	**Was Annual, Now Exempt**	**Was Semi-Annual, Now Exempt**	**Was Semi-Annual, Now Exempt under Statute (*But Fed May Apply by Rule / Order*)**	**Still Semi-Annual but Modified**	**Still Semi-Annual but Modified**
Supervisory stress testing	N/A	**Was Annual, Now Exempt**	**Was Annual, Now Periodic Supervisory Stress Test Required**	**Still Annual but Modified**	**Still Annual but Modified**
Decreased number of stress test **economic scenarios**	N/A (*exempt*)	N/A (*exempt*)	**Eligible**	**Eligible**	**Eligible**

Changes to DFAST

- As summarized on the chart in the previous slide, the Bipartisan Banking Act makes the following changes to the **DFAST** requirements:

Supervisory Stress Tests: Threshold and Frequency

- G-SIB / BHC ≥ $250B : still subject to **annual** supervisory stress tests.
- BHC ≥ $100B, < $250B : subject to **periodic**, rather than annual, supervisory stress tests.
  - The Federal Reserve **may designate** a BHC in this asset range to be subject to the **annual** supervisory stress test requirements applicable to G-SIBs and larger BHCs.
- BHC ≥ $50B, < $100B : **exempt** from supervisory stress tests.

Changes to DFAST

Company-Run Stress Tests: Threshold and Frequency

- G-SIB / regulated financial organization ≥ $250B : subject to **periodic**, as opposed to annual or semi-annual, company-run stress tests.
- BHC ≥ $100B, < $250B : the Federal Reserve **may designate** to be subject to company-run stress tests.
- Regulated financial organization other than a BHC ≥ $100B, < $250B / Regulated financial organization ≥ $50B, < $100B / Regulated financial organization ≥ $10B, < $50B : **exempt** from company-run stress tests.

Company-Run & Supervisory Stress Tests: Number of Stress Test Economic Scenarios

The Act also reduces the required number of economic scenarios from three to two, eliminating the middle-of-the-road adverse scenario and leaving the **baseline** and **severely adverse** scenarios.

Impact on CCAR: In its statement on the Bipartisan Banking Act, the Federal Reserve confirmed that it will not subject any BHC ≥ $50B, < $100B to CCAR in the interim until the agency can finalize rules implementing the Act's requirements.

Changes to SLR for Custody Banks

- The Dodd-Frank Act and U.S. Basel III capital rules established a supplementary leverage ratio (**SLR**), which applies to advanced approaches banking organizations – i.e., ≥ $250B in total consolidated assets or ≥ $10B in on balance sheet foreign exposures – and an enhanced SLR (**eSLR**) applicable to U.S. G-SIBs and their IDI subsidiaries.

- The Bipartisan Banking Act directs the U.S. banking agencies to issue a rulemaking **excluding certain central bank reserves** from the measure of total leverage exposure (the SLR denominator) for custody banks:

$$\text{SLR (\%)} = \frac{\text{Tier 1 Capital}}{\text{Total Leverage Exposure}}$$

← *custody bank exclusion of certain central bank reserves*

Changes to SLR for Custody Banks

$$\text{SLR (\%)} = \frac{\text{Tier 1 Capital}}{\text{Total Leverage Exposure}}$$

← *custody bank exclusion of certain central bank reserves*

- **Scope of Deduction**. Central bank reserves of a custody bank are excluded **only to the extent of the value of client deposits** at the custody bank that are linked to fiduciary, custody or safekeeping accounts.

  - Custody banks, among other things, facilitate the settlement of their clients securities transactions with respect to securities held under custody. In order to finance the settlement of these transactions, custody bank clients deposit funds at their custody bank.
  - The exclusion of central bank reserves from a custody bank's SLR denominator is **limited** to the value of client deposits such as these.

- **Definition of Custody Bank?** The Act defines a custody bank as a "depository institution holding company predominantly engaged in custody, safekeeping and asset servicing activities," together with its IDI subsidiaries. The U.S. banking agencies have discretion to interpret this standard in any implementing regulation.

Treatment of Municipal Securities under the LCR

- The Act also requires the U.S. banking agencies to treat certain **municipal securities** as Level 2B high quality liquid assets (**HQLAs**) for purposes of the Basel III liquidity coverage ratio (**LCR**), provided that the securities are:
  - **Liquid and readily marketable** – as defined under the LCR rule; and
  - **Investment grade** – as defined in the OCC's investment securities rule.

Scope of Municipal Securities. The Act requires the U.S. banking agencies to define a **municipal obligation** as an "obligation of a State or any political subdivision thereof, or any agency or instrumentality of a State or any political subdivision thereof." This change permits **revenue bonds** to be recognized as Level 2B HQLAs for the first time.

- A revenue bond is a type of municipal bond, distinct from general obligation bonds, that is supported by (and is generally used to finance) **a specific public works project**, such as a toll bridge, school system project or public infrastructure facility.
- Unlike a general obligation bond, a revenue bond is backed by the revenues of a particular project and not by the full faith and credit of the issuing municipality.

Treatment of Level 2B HQLAs. As Level 2B HQLAs and public sector entity securities under the LCR, these eligible municipal securities are still subject to:

- a **50% haircut** on their fair value;
- an overall **cap on Level 2B HQLAs** of 15% of total HQLAs; and
- an overall **cap on public entity securities** recognizable as HQLAs as 5% of total HQLAs.

The U.S. banking agencies' joint statement on the Bipartisan Banking Act provides that, until the agencies take further action, banking organizations **may treat as HQLA** the municipal securities **it believes** meet the criteria for inclusion under the Act.

Treatment of HVCRE Exposures

- The U.S. Basel III capital rules define a category of high volatility commercial real estate (**HVCRE**) exposures that are subject to a heightened, **150% risk weight** for purposes of calculating a banking organization's standardized approach RWAs.
- The Bipartisan Banking Act defines a new category of **HVCRE ADC loans** and amends the Federal Deposit Insurance Act to prevent the U.S. banking agencies from applying heightened risk weights to an HVCRE exposure unless the exposure **also** falls within the definition of an HVCRE ADC loan.
  - This **effectively creates a specific statutory capital regulation** and requires the U.S. banking agencies to align their rules with the new HVCRE ADC loan definition.

- **Earlier Capital Simplification Proposal?** This provision of the Bipartisan Banking Act effectively prevents the U.S. banking agencies from amending the capital treatment of commercial real estate exposures for non-advanced approaches banking organizations – which they proposed to do in September 2017, as we discussed in a FinReg blog post here.
- **Supervisory Authority**. The Act also clarifies that the U.S. banking agencies retain their authority to scrutinize all commercial real estate lending in exercising their supervisory functions.

- The U.S. banking agencies' joint statement on the Act provides that banking organizations **may**, until the agencies take further action, either:
  - risk-weight at 150% **only those exposures it believes** meet the statutory definition of an HVCRE ADC Loan; or
  - continue to risk-weight HVCRE exposures at 150% to the extent they meet the **current regulatory definition**.

Treatment of HVCRE Exposures

- The following table summarizes the definition of an HVCRE exposure under prior U.S. Basel III capital rules, the definition of an HVCRE ADC loan under the Bipartisan Banking Act and our initial analysis as to the significant differences between the two definitions:

Prior Capital Rules – Defining HVCRE Exposure	Bipartisan Banking Act – Defining HVCRE ADC Loan	Analysis of Difference
Scope of Definition		
HVCRE exposure includes a credit facility that finances or has financed the acquisition, development, or construction (ADC) of real property, subject to the exemptions noted below and the provision regarding the conversion to permanent financing.	HVCRE ADC loan includes a credit facility that: ▪ Is secured by land or improved real property; ▪ Primarily finances, has financed, or refinances the ADC of real property; ▪ Has the purpose of financing the acquisition, development or improvement of real property into income-producing (i.e., commercial) real property; and ▪ Is dependent on future income from or proceeds from the sale of (or the refinancing of) such real property for repayment. The scope of an HVCRE ADC loan is subject to the exemptions noted below and the provision regarding the reclassification as a non-HVCRE ADC loan.	▪ The Bipartisan Banking Act's more granular definition may have the effect of narrowing the scope of credit facilities subject to the heightened, 150% risk weight, as all elements of the definition must be satisfied.

Treatment of HVCRE Exposures

Prior Capital Rules – Defining HVCRE Exposure	Bipartisan Banking Act – Defining HVCRE ADC Loan	Analysis of Difference
Exemptions		
No comparable provision.	**Grandfathering**. Any loan made prior to January 1, 2015.	▪ January 1, 2015 was the first effective date for non-advanced approaches banking organizations to calculate risk-weighted assets using the standardized approach under the U.S. Basel III capital rules. This exemption applies to any outstanding credit facility that was made prior to the effective date of the current HVCRE exposure definition.
No comparable provision.	**Cash Flow-Generating Property**. Any credit facility, secured by a mortgage on existing income-producing real property: ▪ That finances the acquisition or refinance of or improvements to that property; ▪ If the cash flow being generated by the real property is sufficient to support the debt service and expenses of the real property, in accordance with the institution's applicable loan underwriting criteria for permanent financings.	▪ This new exemption both sensibly covers ADC projects for which the banking organization is not taking on any more risk than a typical secured loan and aligns with the existing exemption for a credit facility that has converted to permanent financing, as discussed below.
Residential Projects. Any credit facility that finances one- to four-family residential property.	**Residential Projects**. Any credit facility that finances the ADC of one- to four-family residential property.	▪ No change.

Treatment of HVCRE Exposures

Prior Capital Rules – Defining HVCRE Exposure	Bipartisan Banking Act – Defining HVCRE ADC Loan	Analysis of Difference
Exemptions *(continued)*		
Community Development. Any credit facility that finances real property that: ▪ Would qualify as an investment in community development, under the provision of law that authorizes state member banks to make certain public welfare and community development investments, or as a qualified investment, under the rules implementing the Community Reinvestment Act; and ▪ Is not an ADC loan to certain small businesses or farms.	**Community Development**. Any credit facility that finances the ADC of real property that would qualify as an investment in community development.	▪ Although the Act's definition of an "investment in community development" is less specific than that contained in the current U.S. Basel III capital rules, this change is likely immaterial, as the U.S. banking agencies have the authority to interpret the broader statutory exemption in any implementing rule.
Agricultural. Any credit facility that finances the purchase or development of agricultural land, which includes all land known to be used or usable for agricultural purposes (such as crop and livestock production), provided that: ▪ The valuation of the agricultural land is based on its value for agricultural purposes; and ▪ The valuation does not take into consideration any potential use of the land for nonagricultural commercial development or residential development	**Agricultural**. Any credit facility that finances the ADC of agricultural land.	▪ As with the community development exemption, the HVCRE ADC loan definition removes the specific requirements for the agricultural land exemption. It remains to be seen, however, how the U.S. banking agencies will interpret this broader statutory definition in any implementing rule.

Treatment of HVCRE Exposures

Prior Capital Rules – Defining HVCRE Exposure	Bipartisan Banking Act – Defining HVCRE ADC Loan	Analysis of Difference
Exemptions *(continued)*		
Qualifying Commercial Projects. Any credit facility that finances commercial real estate projects in which:	**Qualifying Commercial Projects**. Any credit facility that finances commercial real property projects in which:	▪ The Bipartisan Banking Act version of this exemption allows the promoter or sponsor of a qualifying project to extract internally generated capital from the project prior to the project's reclassification as a non-HVCRE ADC loan. ▪ In a potentially significant modification, the Act version apparently allows the promoter or sponsor to count the value of contributed real property or improvements at the time of the contribution (i.e., inclusive of any change in value since acquisition) towards the 15% contribution threshold, whereas under the prior rules and the U.S. banking agencies' FAQs regarding these rules (see this FDIC FAQ, Federal Reserve SR Letter 15-06 and this OCC FAQ) contributed real property counted towards the 15% threshold only to the extent it was purchased with cash. Under these FAQs, real estate subject to a mortgage did not qualify as value contributed to a project.
▪ The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the relevant U.S. banking agency;	▪ The loan-to-value ratio is less than or equal to the applicable maximum supervisory loan-to-value ratio as determined by the relevant U.S. banking agency;	
▪ The borrower has contributed capital to the project in the form of cash or unencumbered readily marketable assets (or has paid development expenses out-of-pocket) of at least 15 percent of the real estate's appraised "as completed" value;	▪ The borrower has contributed capital of at least 15 percent of the real property's appraised "as completed" value to the project in the form of: ▪ Cash; ▪ Unencumbered readily marketable assets; ▪ Paid development expenses out-of-pocket; or ▪ Contributed real property or improvements;	
▪ The borrower contributed the minimum amount of capital before the banking organization advances funds under the credit facility; and	▪ The borrower contributed the minimum amount of capital before the banking organization advances funds (other than the advance of a nominal sum made in order to secure the depository institution's lien against the real property) under the credit facility; and	
▪ The contributed capital and any capital internally generated by the project is contractually required to remain in the project until the credit facility is converted to permanent financing, as described below.	▪ The contributed capital is contractually required to remain in the project until the credit facility has been reclassified as a non-HVCRE ADC loan, as described below. The value of any real property contributed by a borrower must be the appraised value of the property as determined under standards prescribed pursuant to FIRREA.	

Treatment of HVCRE Exposures

Prior Capital Rules – Defining HVCRE Exposure	Bipartisan Banking Act – Defining HVCRE ADC Loan	Analysis of Difference
Conversion to Permanent Financing		
A credit facility ceases to be an HVCRE exposure if it is converted to permanent financing. Permanent financing may be provided by the banking organization that provided the ADC facility as long as the permanent financing is subject to the Board-regulated institution's underwriting criteria for long-term mortgage loans.	A banking organization may reclassify a credit facility as a non-HVCRE ADC loan – at which point it no longer may be subject to heightened risk-based capital requirements – upon: ▪ The substantial completion of the development or construction of the underlying property; and ▪ Cash flow being generated by the property is sufficient to support the debt service and expenses of the property, in accordance with the banking organization's applicable loan underwriting criteria for permanent financings.	▪ The non-HVCRE ADC loan definition provides more guidance as to when an ADC loan transitions to permanent financing, but it does not seem to meaningfully change the existing rules.

V. Additional Relief Regardless of Size and Activities

Brokered Deposits

- An IDI may accept **brokered deposits** – i.e., deposits obtained directly or indirectly by or through a deposit broker – only if it is either (1) well-capitalized or (2) adequately capitalized and receives a waiver from the FDIC.
- The Bipartisan Banking Act exempts certain **reciprocal deposits** from the definition of brokered deposits, up to the **lesser** of:
  - $5 billion; or
  - an amount equal to 20% of the total liabilities of the IDI.

A **reciprocal deposit** is a deposit that the IDI:

- receives through a **deposit placement network**
- with the **same maturity** (if any) and in the **same amount as deposits placed by the IDI** at other network members.

Eligibility. An IDI is eligible to accept reciprocal deposits if:

- it received a **composite condition of outstanding or good** in its last examination and is **well-capitalized**;
- where the IDI is **not** in an outstanding or good condition or not well-capitalized, the amount of reciprocal deposits held by it are **less than or equal to** the average of the total amount of reciprocal deposits it held on the last day of each of the four calendar quarters **preceding the rating or capital downgrade**; or
- it receives a waiver from the FDIC.

Volcker Rule Name Sharing & Online Accounts

- The Bipartisan Banking Act also provides the following relief:

Volcker Rule Name Sharing. The Bipartisan Banking Act revises the Volcker Rule covered fund name-sharing restriction, allowing a covered fund to share the same name, or a variation of the same name, as a banking entity that is an investment adviser to the fund, if:

- the investment adviser **is not and does not share the same name as**:
  - an **IDI**;
  - a company that **controls** an IDI; or
  - a **foreign company treated as a BHC** under the International Banking Act; and
- the fund's name **does not contain the word "bank."**

Online Accounts. The Bipartisan Banking Act also preempts state law regarding use of certain photo IDs uploaded online for establishing a customer's identity when opening a new account or obtaining a new product or service from an IDI, an insured credit union or an affiliate of either.

Capital Markets Reforms

- The Bipartisan Banking Act makes the following capital markets reforms:

National Securities Exchange Parity.

- The Act amends Section 18 of the Securities Act of 1933 to apply **the exemption from state regulation** of securities offerings to securities listed or authorized for listing on a **national securities exchange**.
- Before the Bipartisan Banking Act, national securities exchanges were required to evidence that their listing standards were substantially similar to those of the NYSE, NYSE American or Nasdaq in order for those securities to be exempt from such state regulations.
- This amendment facilitates the creation of **innovative listing standards** on new national securities exchanges and **new tiers** on existing national securities exchanges.

Parity for Closed-End Companies Regarding Offering and Proxy Rules. The Act makes available to listed (or hybrid) closed-end funds the streamlined securities offering rules currently in place for operating companies under the SEC's Securities Offering Reform rules, such as the shelf registration and WKSI rules.

VI. Studies and Reports

Studies and Reports

- The Bipartisan Banking Act also requires certain studies and reports, including:

Algorithmic Trading. The Act requires the SEC to submit to the Senate Banking Committee and House Financial Services Committee a report on the risks and benefits of algorithmic trading in U.S. capital markets, including:

- An assessments of the effect of algorithmic trading on liquidity;
- An assessments of the benefits and risks of algorithmic trading;
- An analysis of whether algorithmic trading activities and entities are subject to appropriate supervision and regulation; and
- A recommendation of whether any regulations should change and whether the SEC needs additional legal authorities or resources to effect these changes.

Cyber Threats. The Act requires the Secretary of the Treasury to submit to the Senate Banking Committee and House Financial Services Committee a report on the risks of cyber threats to U.S. financial institutions and capital markets, including:

- An assessments of material risks of cyber threats;
- The impact and potential effects of material cyber attacks;
- An analysis of how the U.S. banking agencies and SEC are addressing these material risks; and
- A recommendation of whether any of these agencies needs additional legal authorities or resources to adequately assess and address these risks.

Consumer Reporting Agencies (CRAs). The Act requires the Comptroller General to submit to the Senate Banking Committee and House Financial Services Committee a comprehensive report that includes:

- A review of the current legal and regulatory structure for CRAs;
- A review of the process by which consumers can appeal and expunge errors on their consumer reports
- A review of the causes of consumer reporting errors;
- A review of the responsibility of data furnishers to insure accurate information is reported;
- A review of data security related to CRAs;
- A review of who has access to and may use, and has control or ownership over data; and
- Recommendations to Congress on how to improve the consumer reporting system.

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Appendix A: Changes to Dodd-Frank Section 165

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Appendix A: Changes to Section 165 of the Dodd-Frank Act and Related Provisions[1] under the Bipartisan Banking Act

Senate Bill – Section 401(b)

RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to limit—

(1) the authority of the Board of Governors of the Federal Reserve System, in prescribing prudential standards under section 165 of the Financial Stability Act of 2010 (12 U.S.C. 5365) or any other law, to tailor or differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate; or

(2) the supervisory, regulatory, or enforcement authority of an appropriate Federal banking agency to further the safe and sound operation of an institution under the supervision of the appropriate Federal banking agency.

(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~~250,000,000,000 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).

Senate Bill – Section 401(f)

GLOBAL SYSTEMICALLY IMPORTANT BANK HOLDING COMPANIES.—Any bank holding company, regardless of asset size, that has been identified as a global systemically important BHC under section 217.402 of title 12, Code of Federal Regulations, shall be considered a bank holding company with total consolidated assets equal to or greater than $250,000,000,000 with respect to the application of standards or requirements under—

(1) this section;

(2) sections 116(a), 121(a), 155(d), 163(b), 164, and 165 of the Financial Stability Act of 2010 (12 U.S.C. 5326(a), 5331(a), 5345(d), 5363(b), 5364, 5365); and (3) paragraph (2)(A) of the second subsection (s) (relating to assessments) of section 11 of the Federal Reserve Act (12 U.S.C. 248(s)(2)).

[1] In addition to direct amendments to section 165 of the Dodd-Frank Act, the Act also includes several closely related provisions that affect the application of section 165 but that are not incorporated into section 165. For convenience, we have presented these related provisions in this appendix, which appear in blue boxes.

(2) Tailored application.—

(A) In general.—In prescribing more stringent prudential standards under this section, the Board of Governors ~~may~~shall, 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~~the applicable threshold for the application of any standard established under subsections (c) through (g).

Senate Bill – Section 401(d)

EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date that is 18 months after the date of enactment of this Act.

(2) EXCEPTION.—Notwithstanding paragraph (1), the amendments made by this section shall take effect on the date of enactment of this Act with respect to any bank holding company with total consolidated assets of less than $100,000,000,000.

(3) ADDITIONAL AUTHORITY.—Before the effective date described in paragraph (1), the Board of Governors of the Federal Reserve System may by order exempt any bank holding company with total consolidated assets of less than $250,000,000,000 from any prudential standard under section 165 of the Financial Stability Act of 2010 (12 U.S.C. 5365).

(C) Risks to Financial Stability and Safety and Soundness.—The Board of Governors may by order or rule promulgated pursuant to section 553 of title 5, United States Code, apply any prudential standard established under this section to any bank holding company or bank holding companies with total consolidated assets equal to or greater than $100,000,000,000 to which the prudential standard does not otherwise apply provided that the Board of Governors—

(i) determines that application of the prudential standards is appropriate—

(I) to prevent or mitigate risks to the financial stability of the United States, as described in paragraph (1); or

(II) to promote the safety and soundness of the bank holding company or bank holding companies; and

(ii) takes into consideration the bank holding company's or bank holding companies' capital structure, riskiness, complexity, financial activities (including financial activities of subsidiaries), size, and any other risk-r elated factors that the Board of Governors deems appropriate.

Senate Bill – Section 401(g)

CLARIFICATION FOR FOREIGN BANKS.—Nothing in this section shall be construed to—

(1) affect the legal effect of the final rule of the Board of Governors of the Federal Reserve System entitled "Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations" (79 Fed. Reg. 17240 (March 27, 2014)) as applied to foreign banking organizations with total consolidated assets equal to or greater than $100,000,000,000; or

(2) limit the authority of the Board of Governors of the Federal Reserve System to require the establishment of an intermediate holding company under, implement enhanced prudential standards with respect to, or tailor the regulation of a foreign banking organization with total consolidated assets equal to or greater than $100,000,000,000.

(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, including credit exposure reports;

(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~~may 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 described 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~~50,000,000,000 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~~50,000,000,000 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~~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.

Senate Bill – Section 401(e)

SUPERVISORY STRESS TEST.—Beginning on the effective date described in subsection (d)(1), the Board of Governors of the Federal Reserve System shall, on a periodic basis, conduct supervisory stress tests of bank holding companies with total consolidated assets equal to or greater than $100,000,000,000 and total consolidated assets of less than $250,000,000,000 to evaluate whether such bank holding companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(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~~periodic stress tests. All other financial companies that have total consolidated assets of more than $~~10,000,000,000~~250,000,000,000 and are regulated by a primary Federal financial regulatory agency shall conduct ~~annual~~periodic 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~~2 different sets of conditions, including baseline~~, adverse,~~ 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~~250,000,000,000 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.