

RISK-BASED CAPITAL STUDY ACT OF 2015

DECEMBER 12, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2769]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2769) to require the National Credit Union Administration to conduct a study of the appropriate capital requirements for credit unions, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 2769 requires the National Credit Union Administration (NCUA) to conduct a study of the appropriate capital requirements for Federal and State credit unions, as defined under section 101 of the Federal Credit Union Act (FCUA). Any credit union may voluntarily provide information for the study if requested by the NCUA, but may not be required to provide such information.

H.R. 2769 also requires the NCUA to issue a report to Congress containing all findings made in carrying out its study and any legislative recommendations to improve the capital system for credit unions. The report must be issued to Congress within 270 days of enactment. Until 120 days after it issues its report to Congress, the NCUA may not issue or implement any final risk-based capital rule or regulation.

BACKGROUND AND NEED FOR LEGISLATION

On January 23, 2014, the NCUA issued a proposed rule to amend its risk-based capital requirements for credit unions. Known as the “Risk-Based Net Worth Rule,” the proposal generated significant controversy and garnered over 2,000 comment letters, in-

cluding over 300 from members of Congress. In response, the NCUA withdrew its original proposal and issued a revised risk-based capital rule on January 15, 2015. Concerns were not ameliorated with the issuance of the 2015 revision, as shown by the 2,147 comment letters received by the NCUA after re-issuance. Yet, on October 15, 2015, the NCUA Board voted 2–1 to approve a final risk-based capital rule, which will take effect January 1, 2019.

Many are concerned the risk-based capital is unnecessary, because as former NCUA Chairman Matz noted in a December 2011 letter to the Governmental Accountability Office, “consumer credit unions performed very well during the worst financial crisis since the Great Depression and NCUA was highly successful overall in mitigating failures and losses for consumer credit unions.” While the NCUA has an important role in ensuring credit unions remain sound enough to withstand a range of economic conditions, there is an absence of adequate research, dialogue, and due diligence in its rulemaking efforts.

Additionally, there are concerns that the final rule exceeds NCUA’s statutory authority, as current law does not expressly permit the NCUA to establish a two-tiered risk-based capital system. As a result, several legal opinions were commissioned to determine whether the NCUA has legal authority to do so. Paul Hastings, LLP found that the Federal Credit Union Act is ambiguous and susceptible to differing interpretations, including that of the NCUA. Venable, LLP concluded that the Federal Credit Union Act (FCUA) does not permit NCUA to establish a higher risk based capital component for “well-capitalized” credit unions than what is required for “adequately capitalized” credit unions, and therefore the rule would violate the FCUA.

In addition, NCUA Board Member Mark McWatters, an attorney and former law professor, voted against the final risk-based capital rule, arguing that the Hastings legal opinion was not a strong enough basis which to justify the NCUA’s legal authority to implement a two-tier risk-based net worth system. In his October 15, 2015, dissent, Board Member McWatters stated:

Since I am of the view that the NCUA Board does not possess the legal authority under the FCUA to adopt a two-tier RBNW standard, and based upon other major concerns with the rule I have addressed in this statement, I will not support the RBNW regulations as currently drafted. Further, I would find it problematic to support a single-tier RBNW standard unless the rule permits the inclusion—or at least acknowledges a good faith undertaking to investigate the viability—of properly structured supplemental capital in the calculation of the RBNW ratio to the fullest extent permitted by applicable law.

In a letter of support for H.R. 2769 dated June 15, 2015, the National Association of Federal Credit Unions wrote:

This important legislation will require the National Credit Union Administration (NCUA) to take a more deliberate approach before it issues an unnecessary and costly Risk-Based Capital final rule. It should be noted that the legislation will not prevent NCUA from instituting new capital requirements, but will require NCUA to thoroughly examine the myriad of significant concerns raised by the credit union industry . . .

HEARINGS

The Committee held no hearings on H.R. 2769 in the 114th Congress. However, while the Committee did not hold a specific legislative hearing on this measure, it held a hearing entitled “National Credit Union Administration Operations and Budget” on July 23, 2015, at which matters relating to this measure were discussed.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 30, 2015, and considered the bill. An amendment offered by Mr. Heck was ruled by the Chair to be not germane. The Committee ordered H.R. 2769 to be reported favorably to the House without amendment by a recorded vote of 50 yeas to 9 nays (recorded vote no. FC–60), 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. A motion to table the appeal of the Chair’s ruling that Mr. Heck’s amendment was not germane was agreed to by a recorded vote of 28 yeas to 23 nays (recorded vote no. FC–58), a quorum being present. The second and final recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 50 yeas to 9 nays (Record vote no. FC–60), a quorum being present.

Record vote no. FC-58

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)				Mrs. Maloney (NY)		X	
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman		X	
Mr. Garrett	X			Mr. Meeks			
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa		X	
Mr. Pearce	X			Mr. Clay			
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick				Mr. David Scott (GA)		X	
Mr. Westmoreland				Mr. Al Green (TX)		X	
Mr. Luetkemeyer				Mr. Cleaver		X	
Mr. Huizenga (MI)	X			Ms. Moore		X	
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter		X	
Mr. Stivers	X			Mr. Himes		X	
Mr. Fincher	X			Mr. Carney		X	
Mr. Stutzman	X			Ms. Sewell (AL)		X	
Mr. Mulvaney				Mr. Foster			
Mr. Hultgren	X			Mr. Kildee		X	
Mr. Ross	X			Mr. Murphy (FL)		X	
Mr. Pittenger	X			Mr. Delaney		X	
Mrs. Wagner	X			Ms. Sinema		X	
Mr. Barr	X			Mrs. Beatty		X	
Mr. Rothfus	X			Mr. Heck (WA)		X	
Mr. Messer				Mr. Vargas		X	
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

Record vote no. FC-60

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)	X			Mrs. Maloney (NY)	X		
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks	X		
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa		X	
Mr. Pearce	X			Mr. Clay		X	
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland				Mr. Al Green (TX)		X	
Mr. Luetkemeyer	X			Mr. Cleaver	X		
Mr. Huizenga (MI)	X			Ms. Moore	X		
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter	X		
Mr. Stivers	X			Mr. Himes	X		
Mr. Fincher	X			Mr. Carney	X		
Mr. Stutzman	X			Ms. Sewell (AL)	X		
Mr. Mulvaney	X			Mr. Foster	X		
Mr. Hultgren	X			Mr. Kildee		X	
Mr. Ross	X			Mr. Murphy (FL)	X		
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty	X		
Mr. Rothfus	X			Mr. Heck (WA)	X		
Mr. Messer	X			Mr. Vargas	X		
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	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. 2769 will increase agency accountability by providing for review of the appropriate capital requirements for credit unions.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE 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, October 15, 2015.

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. 2769, the Risk-Based Capital Study Act of 2015.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 2769—Risk-Based Capital Study Act of 2015

H.R. 2769 would direct the National Credit Union Administration (NCUA) to conduct a study of the appropriate capital requirements for federal and state credit unions and to report its findings to the Congress within 270 days of the legislation's enactment. The

bill would delay the implementation of any proposed or final rule related to risk-based capital for credit unions until 120 days after the report has been issued. In January 2015, the NCUA issued a proposed risk-based capital rule. That proposed rule will take effect on January 1, 2019.

CBO estimates that enacting the legislation would affect direct spending; therefore, pay-as-you-go procedures apply. However we estimate that the net effects would be negligible because any increase in operating costs for NCUA to prepare the report required by the bill would be offset by additional fees collected from federal credit unions. CBO also expects that the report required by H.R. 2769 would not delay the implementation of the proposed rule on risk based capital or affect the financial risks facing federal credit unions, because the proposed rule will not take effect until 2019 under current law, after the report would be issued. Enacting the bill would not affect revenues.

Enacting the bill would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four 10-year periods beginning in 2026.

H.R. 2769 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Martin von Gnechten. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates reform Act.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 2769 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 2769 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 2769 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 2769 as the “Risk-Based Capital Study Act of 2015”.

Section 2. NCUA study

This section requires the NCUA to conduct a study that includes an analysis of the NCUA’s legal authority to prescribe separate risk-based capital thresholds to both “adequately capitalized” and “well capitalized” credit unions; a discussion of the differences between credit unions and other types of depository institutions and how they differ in their risk-weights for their capital requirements; a discussion of the rationale behind the risk-weights assigned in the NCUA’s proposed rule; an analysis of the impact the proposed rule would have on excess capital above the minimum level for a credit union to be “well-capitalized.” This section also allows for any credit union to voluntarily provide information requested by the NCUA. Lastly, this section prescribes the NCUA to issue a report to Congress regarding the findings of their study.

Section 3. Delay of rulemaking

This section prohibits the NCUA from issuing or implementing any final risk-based capital rule or regulation until 120 days after it issues its report to Congress.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 2769 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by Clause 3(e)(1)(B) of rule XIII of the House of Representatives.