

CONGRESSIONAL ACCOUNTABILITY FOR EMERGENCY
LENDING PROGRAMS ACT OF 2017

NOVEMBER 6, 2018.—Ordered to be printed

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. 4302]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4302) to amend the Federal Reserve Act to create congressional accountability for emergency lending programs, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

On November 8, 2017, Representative Scott Tipton introduced H.R. 4302 the “Congressional Accountability for Emergency Lending Programs Act of 2017”, which requires Congress to ratify Federal Reserve loans issued under Section 13(3) of the Federal Reserve Act while allowing any such loan to remain outstanding for up to 60 days without ratification, makes supervisory information more readily available to emergency lending decisions, and establishes a more prudent minimum interest rate for emergency loans.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 4302 clearly defines responsibilities of the Board of Governors of the Federal Reserve System (Federal Reserve) and the United States Congress to both preserve the Federal Reserve’s capacity to extend emergency credit in a timely manner and hold Congress accountable for the fiscal consequences.

The Federal Reserve enjoys political independence to conduct monetary policy. It does so, however, with accountability to Congress to comply with its dual legislative mandate of price stability and full employment.

Accountability for fiscal policy, on the other hand, lies immediately with Congress. And while the Federal Reserve can effectively serve as our government's fiscal agent, it must absolutely avoid the expansion of its mandate to include a principal-role in credit policies. Nevertheless, Americans have repeatedly watched their monetary authority stretch its mandate to the breaking point, with the unfortunate result of increased financial fragility and decreased economic opportunity.

Doing better requires a brighter line between accountability for monetary and credit policies. Announcing the bipartisan legislation with former U.S. Senator David Vitter of Louisiana, Senator Elizabeth Warren (D-MA) highlighted the consequences of our continued failure to do so:¹

If big financial institutions know they can get cheap cash from the Fed in a crisis, they have less incentive to manage their risks carefully—which further increases the chance of another financial crisis.

Sounding a similar alarm while questioning the Honorable Alice Rivlin during a full-Committee hearing, Representative Brad Sherman (D-CA) emphasized that:²

I hope we look at Section 13(3), which remains the most dangerous economic provision in our statute books. It allows unlimited lending by the Fed, trillions of dollars at times. And we at least ought to make sure that those loans are default-risk-free, or as close to that as they can achieve.

Unfortunately, the “danger” that Congressman Sherman highlights will metastasize again if there is no accountability for credit policies. Following the introduction of the “Warren-Vitter” legislation, Dennis Kelleher, President and CEO of Better Markets, thus warned that:³

While the much smaller \$700 billion TARP program received widespread scrutiny, the Fed's trillions in bailouts did not. In fact, the public and even its elected officials in Congress were mostly kept in the dark about these bailouts. That was wrong. The Dodd-Frank Wall Street Reform and Consumer Protection Act made some modest changes to limit the Fed's ability to bailout Wall Street in the future, but more needs to be done if taxpayers are to be protected, bailouts are to be limited, too big to fail is to be ended and market discipline is to apply to Wall Street like the rest of America's banks and businesses.

¹ Senator Elizabeth Warren, “Warren, Vitter Introduced Bailout Prevention Act,” May 13, 2015. Press release available at https://www.warren.senate.gov/?p=press_release&id=818.

² Full-Committee hearing entitled “Rethinking the Federal Reserve's Many Mandates on its 100-Year Anniversary,” December 12, 2013, available at <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=363599>.

³ Dennis Kelleher, “Better Markets Statement on the Introduction of the Bailout Prevention Act,” May 13, 2015. Accessed at <https://bettermarkets.com/newsroom/better-markets-statement-introduction-bailout-prevention-act>.

Observations like these led Columbia University’s Charles Calomiris and Stanford University’s Stephen Haber to ask a simple question: “why do citizens tolerate this?”⁴ The Congressional Accountability for Emergency Lending Act answers that questions and would allow the Federal Reserve to serve as an agent for the government’s credit policies, but only with the resolution of a Congress that is *accountable to voters*.

H.R. 4302 adopts the “Warren-Vitter” framework of Congressional authorization for emergency banking credit, which MIT Professor, Simon Johnson characterized:⁵

This bill proposes a major improvement to the emergency powers of the Federal Reserve System. The ability of the Fed to react to systemic danger remains strong. But in this proposal, under certain circumstances, the Fed would need not to just explain its actions but also seek congressional approval. It makes sense to fast track the approval process—so the Fed will get a fair hearing and Members of Congress must vote on whether to support what the Fed has done. We retain sufficient flexibility and fire-fighting capacity for the Fed, along with significantly more democratic accountability. This is the best way to safeguard our financial system while also ensuring that the Fed retains its political legitimacy.

By insulating monetary policy from the political pressures of credit policy, the Congressional Accountability for Emergency Lending Act can improve both monetary policy and credit policy, and do so in a manner that Americans for Financial Reform⁶ characterized as aligning “not only with the intent of the Dodd-Frank Act, but with traditional principles of central bank lending that go back centuries.”⁷

HEARINGS

The Committee on Financial Services Subcommittee on Monetary Policy and Trade held a hearing examining matters relating to H.R. 4302 on November 7, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 14, 2017, and ordered H.R. 4302 to be reported favorably to the House without amendment by a recorded vote of 34 yeas to 25 nays (Record vote no. FC–100), a quorum being present.

⁴ Charles W. Calomiris and Stephen H. Haber, *Fragile by Design*, Princeton University Press, 2014, p. 10.

⁵ Senator Elizabeth Warren, “Warren, Vitter Introduced Bailout Prevention Act,” May 13, 2015. Press release available at https://www.warren.senate.gov/?p=press_release&id=818.

⁶ “About AFR: Americans for Financial Reform is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, we are working to lay the foundation for a strong, stable, and ethical financial system—one that serves the economy and the nation as a whole. AFR has been called “the leading voice for Wall Street accountability” in Washington (by Zach Carter of the Huffington Post).” (Source: <http://ourfinancialsecurity.org/about/>).

⁷ Quoted from Senator Elizabeth Warren, “Warren, Vitter Introduced Bailout Prevention Act,” May 13, 2015. Press release available at https://www.warren.senate.gov/?p=press_release&id=818.

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 without amendment. The motion was agreed to by a recorded vote of 34 yeas to 25 nays (Record vote no. FC-100), a quorum being present.

Record vote no. FC-100

| 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 | X | | | 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 | | X | |
| Mr. Luetkemeyer | X | | | Mr. Lynch | | X | |
| Mr. Huizenga | X | | | Mr. David Scott (GA) | | X | |
| Mr. Duffy | X | | | Mr. Al Green (TX) | | X | |
| Mr. Stivers | X | | | 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 | X | | | 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. 4302 will provide for a more accountable emergency lending facility by providing for the Congressional approval of Federal Reserve loans issued under Section 13(3) of the Federal Reserve Act, making supervisory information more readily available to lending decisions, and establishing a more prudent minimum interest rate.

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, September 18, 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. 4302, the Congressional Accountability for Emergency Lending Programs Act of 2017.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 4302—Congressional Accountability for Emergency Lending Programs Act of 2017

H.R. 4302 would amend the Federal Reserve's authority under section 13(3) of the Federal Reserve Act to create and use certain lending facilities.

Under current law, the Federal Reserve has broad discretion to make loans to banks and nonbanks under unusual and exigent circumstances. Such lending requires the approval of the Secretary of the Treasury and at least five members of the Board of Governors of the Federal Reserve, must have broad-based participant eligibility, and cannot be made to insolvent firms.

In 2008, the Federal Reserve exercised its section 13(3) authority to create new lending facilities to provide liquidity in the context of the financial crisis. That lending resulted in interest earnings for the Federal Reserve that increased its remittances to the Treasury, which are recorded in the budget as revenues.

H.R. 4302 would make a number of changes to the Federal Reserve's Section 13(3) lending authority:

- Limit eligibility to firms predominantly engaged in financial activities,
- Require that emergency lending be used only for circumstances that pose a threat to the financial stability of the United States,
- Require approval of the Secretary of the Treasury and two-thirds of the members of the Federal Open Market Committee for emergency lending,
- Prohibit the Federal Reserve from accepting equity capital as collateral for emergency lending and require the Federal Reserve to issue a rule with standards for collateral taken against emergency lending,
- Add, as a condition of emergency lending, that all federal banking regulators with jurisdiction over a borrower to certify that the borrower is not insolvent,
- Require a joint resolution of Congress approving an emergency facility or else it is terminated within 30 days of receiving a report notifying Congress of recent lending activity, and provide for a fast-track procedure for such a joint resolution, and,
- Require that a minimum interest rate be charged on emergency lending.

Because enacting H.R. 4302 could affect revenues, pay-as-you-go procedures apply. However, CBO has no basis for estimating the magnitude or direction of the effects on revenues. Based on its own analysis of historical lending and information provided by the Federal Reserve, CBO estimates that the amount of any emergency lending that would occur in the future would likely be reduced by the bill, in part from the new restrictions on eligible firms but primarily from the new required minimum interest rate. That lower amount of lending, at a higher interest rate, could either increase or decrease the Federal Reserve's earnings and thereby its remittances. Any such effects would be significantly discounted given the low probability of any emergency lending occurring over the next 10 years.

To the extent that such lending has effects on the broader economy, a reduction in the amount or types of lending could have budgetary effects that are much larger than any effect on Federal Reserve remittances.

CBO has no basis for estimating whether enacting H.R. 4302 would significantly increase net direct spending or on-budget defi-

cits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 4302 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Nathaniel Frentz. The estimate was reviewed by John McClelland, Assistant Director, Tax Analysis Division.

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).

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 4302 as the Congressional Accountability for Emergency Lending Act of 2017.

Section 2. Congressional accountability for emergency lending programs

This Section provides for the Congressional approval of Federal Reserve loans issued under Section 13(3) of the Federal Reserve Act, makes supervisory information more readily available to lending decisions, and establishes a more prudent minimum interest rate.

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):

FEDERAL RESERVE ACT

* * * * *

POWERS OF FEDERAL RESERVE BANKS.

SEC. 13. Any Federal reserve bank may receive from any of its member banks or other depository institutions, and from the United States, deposits of current funds in lawful money, national-bank notes, Federal reserve notes, or checks, and drafts, payable upon presentation or other items, and also, for collection, maturing notes and bills; or, solely for purposes of exchange or of collection, may receive from other Federal reserve banks deposits of current funds in lawful money, national-bank notes, or checks upon other Federal reserve banks, and checks and drafts, payable upon presentation within its district or other items, and maturing notes and bills payable within its district; or, solely for the purposes of exchange or of collection, may receive from any nonmember bank or trust company or other depository institution deposits of current funds in lawful money, national-bank notes, Federal reserve notes, checks and drafts payable upon presentation or other items, or maturing notes and bills: *Provided*, Such nonmember bank or trust company or other depository institution maintains with the Federal reserve bank of its district a balance in such amount as the Board determines taking into account items in transit, services provided by the Federal Reserve bank, and other factors as the Board may deem appropriate: *Provided further*, That nothing in this or any other section of this Act shall be construed as prohibiting a member or nonmember bank or other depository institution from making reasonable charges, to be determined and regulated by the Board of Governors of the Federal Reserve System, but in no case

to exceed 10 cents per \$100 or fraction thereof, based on the total of checks and drafts presented at any one time, for collection or payment of checks and drafts and remission therefor by exchange or otherwise; but no such charges shall be made against the Federal reserve banks.

Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice and protest by such bank as to its own indorsement exclusively, any Federal reserve bank may discount notes, drafts, and bills of exchange arising out of actual commercial transactions; that is, notes, drafts, and bills of exchange issued or drawn for agricultural, industrial, or commercial purposes, or the proceeds of which have been used, or are to be used, for such purposes, the Board of Governors of the Federal Reserve System to have the right to determine or define the character of the paper thus eligible for discount, within the meaning of this Act. Nothing in this Act contained shall be construed to prohibit such notes, drafts, and bills of exchange, secured by staple agricultural products, or other goods, wares, or merchandise from being eligible for such discount, and the notes, drafts, and bills of exchange of factors issued as such making advances exclusively to producers of staple agricultural products in their raw state shall be eligible for such discount; but such definition shall not include notes, drafts, or bills covering merely investments or issued or drawn for the purpose of carrying or trading in stocks, bonds, or other investment securities, except bonds and notes of the Government of the United States. Notes, drafts, and bills admitted to discount under the terms of this paragraph must have a maturity at the time of discount of not more than 90 days, exclusive of grace.

(3)(A) In unusual and exigent circumstances *that pose a threat to the financial stability of the United States*, the Board of Governors of the Federal Reserve System, by [the affirmative vote of not less than five members] *the prior approval of the Secretary of the Treasury and not less than 2/3 of the members of the Federal Open Market Committee*, may authorize any Federal reserve bank, during such periods as the said board may determine, at rates established in accordance with the provisions of section 14, subdivision (d), of this Act, to discount for any *financial institution* participant in any program or facility with broad-based eligibility, notes, drafts, and bills of exchange when such notes, drafts, and bills of exchange are indorsed or otherwise secured to the satisfaction of the Federal Reserve bank: *Provided*, That before discounting any such note, draft, or bill of exchange, the Federal reserve bank shall obtain evidence that such *financial institution* participant in any program or facility with broad-based eligibility is unable to secure adequate credit accommodations from other banking institutions. All such discounts for any *financial institution* participant in any program or facility with broad-based eligibility shall be subject to such limitations, restrictions, and regulations as the Board of Governors of the Federal Reserve System may prescribe.

(B)(i) As soon as is practicable after the date of enactment of this subparagraph, the Board shall establish, by regulation, in consultation with the Secretary of the Treasury, the policies and procedures governing emergency lending under this paragraph. Such policies and procedures shall be designed to ensure that any emergency lending program or facility is for the

purpose of providing liquidity to the financial system, and not to aid a failing financial company, and that the security for emergency loans is sufficient to protect taxpayers from losses and that any such program is terminated in a timely and orderly fashion. The policies and procedures established by the Board shall require that a Federal reserve bank assign, consistent with sound risk management practices and to ensure protection for the taxpayer, a lendable value to all collateral for a loan executed by a Federal reserve bank under this paragraph in determining whether the loan is secured satisfactorily for purposes of this paragraph. *Federal reserve banks may not accept equity securities issued by the recipient of any loan or other financial assistance under this paragraph as collateral. Not later than 6 months after the date of the enactment of this sentence, the Board shall, by rule, establish—*

(I) a method for determining the sufficiency of the collateral required under this paragraph;

(II) acceptable classes of collateral;

(III) the amount of any discount on the value of the collateral that the Federal reserve banks will apply for purposes of calculating the sufficiency of collateral under this paragraph; and

(IV) a method for obtaining independent appraisals of the value of collateral the Federal reserve banks receive.

(ii) The Board shall establish procedures to prohibit borrowing from programs and facilities by borrowers that are insolvent. *A borrower shall not be eligible to borrow from any emergency lending program or facility unless the Board and all Federal banking regulators with jurisdiction over the borrower certify that, at the time the borrower initially borrows under the program or facility, the borrower is not insolvent.* **【Such procedures may include a certification from the chief executive officer (or other authorized officer) of the borrower, at the time the borrower initially borrows under the program or facility (with a duty by the borrower to update the certification if the information in the certification materially changes), that the borrower is not insolvent.】** A borrower shall be considered insolvent for purposes of this subparagraph, if the borrower is in bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding.

(iii) A program or facility that is structured to remove assets from the balance sheet of a single and specific company, or that is established for the purpose of assisting a single and specific company avoid bankruptcy, resolution under title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or any other Federal or State insolvency proceeding, shall not be considered a program or facility with broad-based eligibility.

【(iv) The Board may not establish any program or facility under this paragraph without the prior approval of the Secretary of the Treasury.】

(C) The Board shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives—

(i) not later than 7 days after the Board authorizes any loan or other financial assistance under this paragraph, a report that includes—

(I) the justification for the exercise of authority to provide such assistance;

(II) the identity of the recipients of such assistance;

(III) the date and amount of the assistance, and form in which the assistance was provided; and

(IV) the material terms of the assistance, including—

(aa) duration;

(bb) collateral pledged and the value thereof;

(cc) all interest, fees, and other revenue or items of value to be received in exchange for the assistance;

(dd) any requirements imposed on the recipient with respect to employee compensation, distribution of dividends, or any other corporate decision in exchange for the assistance; and

(ee) the expected costs to the taxpayers of such assistance; and

(ii) once every 30 days, with respect to any outstanding loan or other financial assistance under this paragraph, written updates on—

(I) the value of collateral;

(II) the amount of interest, fees, and other revenue or items of value received in exchange for the assistance; and

(III) the expected or final cost to the taxpayers of such assistance.

(D) The information required to be submitted to Congress under subparagraph (C) related to—

(i) the identity of the *financial institution* participants in an emergency lending program or facility commenced under this paragraph;

(ii) the amounts borrowed by each *financial institution* participant in any such program or facility;

(iii) identifying details concerning the assets or collateral held by, under, or in connection with such a program or facility,

shall be kept confidential, upon the written request of the Chairman of the Board, in which case such information shall be made available only to the Chairpersons or Ranking Members of the Committees described in subparagraph (C).

(E) If an entity to which a Federal reserve bank has provided a loan under this paragraph becomes a covered financial company, as defined in section 201 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, at any time while such loan is outstanding, and the Federal reserve bank incurs a realized net loss on the loan, then the Federal reserve bank shall have a claim equal to the amount of the net realized loss

against the covered entity, with the same priority as an obligation to the Secretary of the Treasury under section 210(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(G) JOINT RESOLUTION OF APPROVAL.—

(i) IN GENERAL.—A program or facility created under subparagraph (A) shall terminate on the date that is 30 calendar days after the date on which Congress receives a report described in subparagraph (C) unless there is enacted into law a joint resolution approving the program or facility not later than 30 calendar days after the date on which the report is received. Any loan offered through the program or facility that is outstanding as of the date on which the program or facility is terminated shall be repaid in full not later than 30 calendar days after the date on which the program or facility is terminated.

(ii) CONTENTS OF JOINT RESOLUTION.—For the purpose of this subparagraph, the term “joint resolution” means only a joint resolution—

(I) that is introduced not later than 3 calendar days after the date on which the report described in subparagraph (C) is received by Congress;

(II) that does not have a preamble;

(III) the title of which is as follows: “Joint resolution relating to the approval of a program or facility created by the Board of Governors of the Federal Reserve System”; and

(IV) the matter after the resolving clause of which is as follows: “That Congress approves the program or facility created by the Board of Governors of the Federal Reserve System on _____.” (The blank space being appropriately filled in).

(iii) FAST TRACK CONSIDERATION IN HOUSE OF REPRESENTATIVES.—

(I) RECONVENING.—Upon receipt of a report under subparagraph (C), the Speaker, if the House would otherwise be adjourned, shall notify the Members of the House that, pursuant to this subparagraph, the House shall convene not later than the second calendar day after receipt of such report.

(II) REPORTING AND DISCHARGE.—Any committee of the House of Representatives to which a joint resolution is referred shall report it to the House not later than 5 calendar days after the date of receipt of the report described in subparagraph (C). If a committee fails to report the joint resolution within that period, the committee shall be discharged from further consideration of the joint resolution and the joint resolution shall be referred to the appropriate calendar.

(III) PROCEEDING TO CONSIDERATION.—After each committee authorized to consider a joint resolution reports it to the House or has been discharged from its consideration, it shall be in order, not later than the sixth day after Congress receives the report described in subparagraph (C), to move to proceed to consider the

joint resolution in the House. All points of order against the motion are waived. Such a motion shall not be in order after the House has disposed of a motion to proceed on the joint resolution. The previous question shall be considered as ordered on the motion to its adoption without intervening motion. The motion shall not be debatable. A motion to reconsider the vote by which the motion is disposed of shall not be in order.

(IV) CONSIDERATION.—The joint resolution shall be considered as read. All points of order against the joint resolution and against its consideration are waived. The previous question shall be considered as ordered on the joint resolution to its passage without intervening motion except 2 hours of debate equally divided and controlled by the proponent and an opponent. A motion to reconsider the vote on passage of the joint resolution shall not be in order.

(iv) FAST TRACK CONSIDERATION IN SENATE.—

(I) RECONVENING.—Upon receipt of a report under subparagraph (C), if the Senate has adjourned or recessed for more than 2 days, the majority leader of the Senate, after consultation with the minority leader of the Senate, shall notify the Members of the Senate that, pursuant to this subparagraph, the Senate shall convene not later than the second calendar day after receipt of such report.

(II) PLACEMENT ON CALENDAR.—Upon introduction in the Senate, the joint resolution shall be placed immediately on the calendar.

(III) FLOOR CONSIDERATION.—

(aa) IN GENERAL.—Notwithstanding Rule XXII of the Standing Rules of the Senate, it is in order at any time during the period beginning on the fourth day after the date on which Congress receives a report described in subparagraph (C) and ending on the sixth day after the date on which Congress receives the report (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion to proceed is not debatable. The motion is not subject to a motion to postpone. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the joint resolution shall remain the unfinished business until disposed of.

(bb) DEBATE.—Debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority leaders or their

designees. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(cc) *VOTE ON PASSAGE.*—The vote on passage shall occur immediately following the conclusion of the debate on a joint resolution, and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate.

(dd) *RULINGS OF THE CHAIR ON PROCEDURE.*—Appeals from the decisions of the Chair relating to the application of the rules of the Senate, as the case may be, to the procedure relating to a joint resolution shall be decided without debate.

(v) *COORDINATION WITH ACTION BY OTHER HOUSE.*—

(I) *IN GENERAL.*—If, before the passage by one House of a joint resolution of that House, that House receives from the other House a joint resolution, then the following procedures shall apply:

(aa) The joint resolution of the other House shall not be referred to a committee.

(bb) With respect to a joint resolution of the House receiving the resolution—

(AA) the procedure in that House shall be the same as if no joint resolution had been received from the other House, but

(BB) the vote on passage shall be on the joint resolution of the other House.

(II) *TREATMENT OF JOINT RESOLUTION OF OTHER HOUSE.*—If one House fails to introduce or consider a joint resolution under this section, the joint resolution of the other House shall be entitled to expedited floor procedures under this section.

(III) *CONSIDERATION AFTER PASSAGE.*—If, following passage of the joint resolution in the Senate, the Senate then receives the companion measure from the House of Representatives, the companion measure shall not be debatable.

(IV) *VETOES.*—If the President vetoes the joint resolution, the period beginning on the date the President vetoes the joint resolution and ending on the date the Congress receives the veto message with respect to the joint resolution shall be disregarded in computing the 30-calendar day period described in clause (i) and debate on a veto message in the Senate under this section shall be 1 hour equally divided between the majority and minority leaders or their designees.

(V) *RULES OF HOUSE OF REPRESENTATIVES AND SENATE.*—This subparagraph is enacted by Congress—

(aa) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that

House in the case of a joint resolution, and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(bb) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(H) PENALTY RATE.—

(i) IN GENERAL.—Not later than 6 months after the date of enactment of this subparagraph, the Board shall, with respect to a recipient of any loan or other financial assistance under this paragraph, establish by rule a minimum interest rate on the principal amount of any loan or other financial assistance.

(ii) MINIMUM INTEREST RATE DEFINED.—In this subparagraph, the term “minimum interest rate” shall mean the sum of—

(I) the average of the secondary discount rate of all Federal reserve banks over the most recent 90-day period; and

(II) the average of the difference between a distressed corporate bond yield index (as defined by rule of the Board) and a bond yield index of debt issued by the United States (as defined by rule of the Board) over the most recent 90-day period.

(I) FINANCIAL INSTITUTION PARTICIPANT DEFINED.—*For purposes of this paragraph, the term “financial institution participant”—*

(i) means a company that is predominantly engaged in financial activities (as defined in section 102(a) of the Financial Stability Act of 2010 (12 U.S.C. 5311(a))); and

(ii) does not include an agency described in subparagraph (W) of section 5312(a)(2) of title 31, United States Code, or an entity controlled or sponsored by such an agency.

Upon the indorsement of any of its member banks, which shall be deemed a waiver of demand, notice, and protest by such bank as to its own indorsement exclusively, and subject to regulations and limitations to be prescribed by the Board of Governors of the Federal Reserve System, any Federal reserve bank may discount or purchase bills of exchange payable at sight or on demand which grow out of the domestic shipment or the exportation of nonperishable, readily marketable agricultural and other staples and are secured by bills of lading or other shipping documents conveying or securing title to such staples: *Provided*, That all such bills of exchange shall be forwarded promptly for collection, and demand for payment shall be made with reasonable promptness after the arrival of such staples at their destination: *Provided further*, That no such bill shall in any event be held by or for the account of a Federal reserve bank for a period in excess of ninety days. In discounting such bills Federal reserve banks may compute the interest to be deducted on the basis of the estimated life of each bill and adjust the discount after payment of such bills to conform to the actual life thereof.

The aggregate of notes, drafts, and bills upon which any person, copartnership, association, or corporation is liable as maker, acceptor, indorser, drawer, or guarantor, rediscounted for any member bank, shall at no time exceed the amount for which such person, copartnership, association, or corporation may lawfully become liable to a national banking association under the terms of section 5200 of the Revised Statutes, as amended: *Provided, however,* That nothing in this paragraph shall be construed to change the character or class of paper now eligible for rediscount by Federal reserve banks.

Any Federal reserve bank may discount acceptances of the kinds hereinafter described, which have a maturity at the time of discount of not more than 90 days' sight, exclusive of days of grace, and which are indorsed by at least one member bank: *Provided,* That such acceptances if drawn for an agricultural purpose and secured at the time of acceptance by warehouse receipts or other such documents conveying or securing title covering readily marketable staples may be discounted with a maturity at the time of discount of not more than six months' sight exclusive of days of grace.

(7)(A) Any member bank and any Federal or State branch or agency of a foreign bank subject to reserve requirements under section 7 of the International Banking Act of 1978 (hereinafter in this paragraph referred to as "institutions"), may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace—

- (i) which grow out of transactions involving the importation or exportation of goods;
- (ii) which grow out of transactions involving the domestic shipment of goods; or
- (iii) which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples.

(B) Except as provided in subparagraph (C), no institution shall accept such bills, or be obligated for a participation share in such bills, in an amount equal at any time in the aggregate to more than 150 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

(C) The Board, under such conditions as it may prescribe, may authorize, by regulation or order, any institution to accept such bills, or be obligated for a participation share in such bills, in an amount not exceeding at any time in the aggregate 200 per centum of its paid up and unimpaired capital stock and surplus or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H).

(D) Notwithstanding subparagraphs (B) and (C), with respect to any institution, the aggregate acceptances, including obligations for a participation share in such acceptances, growing out of domestic transactions shall not exceed 50 per centum of the aggregate of all acceptances, including obligations for a participation share in such acceptances, authorized for such institution under this paragraph.

(E) No institution shall accept bills, or be obligated for a participation share in such bills, whether in a foreign or domestic trans-

action, for any one person, partnership, corporation, association or other entity in an amount equal at any time in the aggregate to more than 10 per centum of its paid up and unimpaired capital stock and surplus, or, in the case of a United States branch or agency of a foreign bank, its dollar equivalent as determined by the Board under subparagraph (H), unless the institution is secured either by attached documents or by some other actual security growing out of the same transaction as the acceptance.

(F) With respect to an institution which issues an acceptance, the limitations contained in this paragraph shall not apply to that portion of an acceptance which is issued by such institution and which is covered by a participation agreement sold to another institution.

(G) In order to carry out the purposes of this paragraph, the Board may define any of the terms used in this paragraph, and, with respect to institutions which do not have capital or capital stock, the Board shall define an equivalent measure to which the limitations contained in this paragraph shall apply.

(H) Any limitation or restriction in this paragraph based on paid-up and unimpaired capital stock and surplus of an institution shall be deemed to refer, with respect to a United States branch or agency of a foreign bank, to the dollar equivalent of the paid-up capital stock and surplus of the foreign bank, as determined by the Board, and if the foreign bank has more than one United States branch or agency, the business transacted by all such branches and agencies shall be aggregated in determining compliance with the limitation or restriction.

Any Federal reserve bank may make advances for periods not exceeding fifteen days to its member banks on their promissory notes secured by the deposit or pledge of bonds, notes, certificates of indebtedness or Treasury bills of the United States, or by the deposit or pledge of debentures or other such obligations of Federal intermediate credit banks which are eligible for purchase by Federal reserve banks under section 13 (a) of this Act, or by the deposit or pledge of bonds issued under the provisions of subsection (c) of section 4 of the Home Owners' Loan Act of 1933, as amended; and any Federal reserve bank may make advances for periods not exceeding ninety days to its member banks on their promissory notes secured by such notes, drafts, bills of exchange, or bankers' acceptances as are eligible for rediscount or for purchase by Federal reserve banks under the provisions of this Act, or secured by such obligations as are eligible for purchase under section 14(b) of this Act. All such advances shall be made at rates to be established by such Federal reserve banks, such rates to be subject to the review and determination of the Board of Governors of the Federal Reserve System. If any member bank to which any such advance has been made shall, during the life or continuance of such advance, and despite an official warning of the reserve bank of the district or of the Board of Governors of the Federal Reserve System to the contrary, increase its outstanding loans secured by collateral in the form of stocks, bonds, debentures, or other such obligations, or loans made to members of any organized stock exchange, investment house, or dealer in securities, upon any obligation, note, or bill, secured or unsecured, for the purpose of purchasing and/or carrying stocks, bonds, or other investment securities (except obligations of the United States) such advance shall be deemed immediately due and

payable, and such member bank shall be ineligible as a borrower at the reserve bank of the district under the provisions of this paragraph for such period as the Board of Governors of the Federal Reserve System shall determine: *Provided*, That no temporary carrying or clearance loans made solely for the purpose of facilitating the purchase or delivery of securities offered for public subscription shall be included in the loans referred to in this paragraph.

The discount and rediscount and the purchase and sale by any Federal reserve bank of any bills receivable and of domestic and foreign bills of exchange, and of acceptances authorized by this Act, shall be subject to such restrictions, limitations, and regulations as may be imposed by the Board of Governors of the Federal Reserve System. (Omitted from U.S. Code)

That in addition to the powers not vested by law in national banking associations organized under the laws of the United States any such association located and doing business in any place the population of which does not exceed five thousand inhabitants, as shown by the last preceding decennial census, may, under such rules and regulations as may be prescribed by the Comptroller of the Currency, act as the agent for any fire, life, or other insurance company authorized by the authorities of the State in which said bank is located to do business in said State, by soliciting and selling insurance and collecting premiums on policies issued by such company; and may receive for services so rendered such fees or commissions as may be agreed upon between the said association and the insurance company for which it may act as agent: *Provided, however*, That no such bank shall in any case assume or guarantee the payment of any premium on insurance policies issued through its agency by its principal: *And provided further*, That the bank shall not guarantee the truth of any statement made by an assured in filing his application for insurance.

Any member bank may accept drafts or bills of exchange drawn upon it having not more than three months' sight to run, exclusive of days of grace, drawn under regulations to be prescribed by the Board of Governors of the Federal Reserve System by banks or bankers in foreign countries or dependencies or insular possessions of the United States for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries, dependencies, or insular possessions. Such drafts or bills may be acquired by Federal reserve banks in such amounts and subject to such regulations, restrictions, and limitations as may be prescribed by the Board of Governors of the Federal Reserve System: *Provided, however*, That no member bank shall accept such drafts or bills of exchange referred to this paragraph for any one bank to an amount exceeding in the aggregate ten per centum of the paid-up and unimpaired capital and surplus of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or by some other adequate security: *Provided further*, That no member bank shall accept such drafts or bills in an amount exceeding at any time the aggregate of one-half of its paid-up and unimpaired capital and surplus. (Omitted from U.S. Code)

Subject to such limitations, restrictions and regulations as the Board of Governors of the Federal Reserve System may prescribe, any Federal reserve bank may make advances to any individual,

partnership or corporation on the promissory notes of such individual, partnership or corporation secured by direct obligations of the United States or by any obligation which is a direct obligation of, or fully guaranteed as to principal and interest by, any agency of the United States. Such advances shall be made for periods not exceeding 90 days and shall bear interest at rates fixed from time to time by the Federal reserve bank, subject to the review and determination of the Board of Governors of the Federal Reserve System.

Subject to such restrictions, limitations, and regulations as may be imposed by the Board of Governors of the Federal Reserve System, each Federal Reserve bank may receive deposits from, discount paper endorsed by, and make advances to any branch or agency of a foreign bank in the same manner and to the same extent that it may exercise such powers with respect to a member bank if such branch or agency is maintaining reserves with such Reserve bank pursuant to section 7 of the International Banking Act of 1978. In exercising any such powers with respect to any such branch or agency, each Federal Reserve bank shall give due regard to account balances being maintained by such branch or agency with such Reserve bank and the proportion of the assets of such branch or agency being held as reserves under section 7 of the International Banking Act of 1978. For the purposes of this paragraph, the terms "branch," "agency," and "foreign bank" shall have the same meanings assigned to them in section 1 of the International Banking Act of 1978.

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MINORITY VIEWS

Democrats share the view that the Federal Reserve cannot have free rein in exercising its emergency lending powers, and agree that any provision of credit must be broad-based, cannot be made to an insolvent entity or used for the purpose of preventing an institution or group of institutions from entering bankruptcy or otherwise failing, must entail a penalty rate, and must enclose a high degree of public transparency. These restrictions are critical to preventing moral hazard—the risk that institutions will take excessive risks with an expectation that the Federal Reserve will come to the rescue.

Democrats’ support for these reasonable constraints is precisely why we support the reforms included in the Dodd-Frank Wall Street Reform and Consumer Protection Act, as well as the additional restrictions included in the Federal Reserve’s final implementing regulation, which ended the ability for the Federal Reserve to save individual firms like AIG and Bear Stearns, as it did in response to the 2008 financial crisis.

To prevent a situation where any firm would be rescued, Democrats passed the Dodd-Frank Act to establish a mechanism to provide for the orderly resolution of failing firms, strengthen the resiliency of the financial sector, and enhance the supervision and regulation of systemic risks. We believe that as long as these reforms are not undercut either by Congressional deregulation or by the Trump Administration, they will reduce the likelihood that the Federal Reserve’s emergency lending powers will ever be used.

However, reducing the likelihood that emergency lending will be needed and placing reasonable constraints on the terms and conditions under which the authority can be used, do not eliminate the need for emergency lending powers altogether. Indeed, Democrats view the Federal Reserve’s lender-of-last resort function as a core function of our central bank, and an authority that is critical to the Federal Reserve’s ability to promote the stability of our financial system.

H.R. 4302 goes too far in curtailing the Federal Reserve’s ability to exercise its emergency lending powers, which would likely render this critical role unworkable and ineffectual in a time of crisis—precisely the time when it is needed most.

In particular, we are concerned that requiring Congress to approve all credit facilities established within 30 days would effectively make Congress the lender of last resort and put it in a position of making highly-technical judgments that the Federal Reserve, as our central bank, was established to do and is far better equipped to make. According to a statement by Better Markets, this requirement “in the context of a fast-moving, catastrophic financial crisis in the future where information will be incomplete, ambiguous and continually changing, will almost certainly result in

political paralysis and cripple the Fed's ability to respond to emergencies."

Furthermore, the provisions in the bill that require emergency credit facilities to be approved by a super-majority of the Federal Open Market Committee and all relevant Federal banking regulators would erect further barriers to a program's timely deployment.

The penalty rate called for in the bill is convoluted and may be too opaque and punitive to make the Fed's emergency lending effective. Currently, the Federal Reserve's final emergency lending rule outlines a number of factors that the Board will now take into account when setting a penalty rate, and the adequacy of these factors should be carefully considered prior to enacting a less coherent penalty formula. For example, these factors include the condition of the affected markets and the financial system generally, the historical rate of interest for loans of comparable terms and maturity during normal times, the purpose of the program or facility, the risk of repayment, the collateral supporting the credit and the duration, terms and amount of credit. At a legislative hearing held by the Subcommittee on Monetary Policy and Trade to examine this proposal, Dr. Jared Bernstein testified that, "the prescribed formula could return an overly punitive rate that would potentially undermine the Fed's lender of last resort function."

For these reasons we oppose the bill.

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