

112TH CONGRESS
2^D SESSION

H. R. 3336

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2012

Received; read twice and referred to the Committee on Agriculture, Nutrition,
and Forestry

AN ACT

To ensure the exclusion of small lenders from certain
regulations of the Dodd-Frank Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Credit
3 Availability Act”.

4 **SEC. 2. CLARIFICATION OF SWAP DEALER DEFINITION.**

5 Section 1a(49) of the Commodity Exchange Act (7
6 U.S.C. 1a(49)) is amended by striking all that follows sub-
7 paragraph (A)(iv) through subparagraph (C) and insert-
8 ing the following:

9 “provided however, in no event shall an insured
10 depository institution, an institution chartered
11 and operating under the Farm Credit Act of
12 1971, or a United States uninsured branch or
13 agency of a foreign bank that has a prudential
14 regulator be considered to be a swap dealer to
15 the extent that it enters into a swap—

16 “(I) with a customer that is seeking
17 to manage risk in connection with an ex-
18 tension of credit by the institution to, on
19 behalf of, or for the benefit of, the cus-
20 tomer; or

21 “(II) to offset the risks arising from
22 a swap that meets the requirement of sub-
23 clause (I).

24 “(B) INCLUSION.—A person may be des-
25 ignated as a swap dealer for a single type or
26 single class or category of swap or activities and

1 considered not to be a swap dealer for other
2 types, classes, or categories of swaps or activi-
3 ties.

4 “(C) EXCEPTIONS.—

5 “(i) The term ‘swap dealer’ does not
6 include a person that enters into swaps for
7 such person’s own account, either individ-
8 ually or in a fiduciary capacity, but not as
9 part of regular business activities as de-
10 scribed in subparagraph (A).

11 “(ii) In determining whether a person
12 is a ‘swap dealer’ within the meaning of
13 subparagraph (A), the following shall not
14 be considered as part of the determination:

15 “(I) any swap entered into for a
16 person’s own account for the purpose
17 of hedging or mitigating commercial
18 risk; and

19 “(II) any swap entered into for a
20 person’s own account for the purpose
21 of meeting State or local govern-
22 mental regulatory compliance pur-
23 poses.

24 “(iii) In determining whether a person
25 is a ‘swap dealer’ within the meaning of

1 subparagraph (A)(iii), any swap which in-
2 volves a capacity contract, a renewable en-
3 ergy credit, an emissions allowance, or an
4 emissions offset shall not be considered as
5 part of that determination, if—

6 “(I) the contract, credit, allow-
7 ance, or offset is utilized to meet obli-
8 gations under State or local law or
9 regulation for that person; and

10 “(II) the swap is entered into for
11 that person’s own account.”.

12 **SEC. 3. EXCLUSIONS FROM FINANCIAL ENTITY DEFINITION.**

13 Section 2(h)(7)(C)(ii) of the Commodity Exchange
14 Act (7 U.S.C. 2(h)(7)(C)(ii)) is amended to read as fol-
15 lows:

16 “(ii) EXCLUSION.—Such definition
17 shall not include an entity that is a small
18 bank, savings association, farm credit sys-
19 tem institution, non-profit cooperative
20 lender controlled by electric cooperatives,
21 or credit union if the aggregate
22 uncollateralized outward exposure plus ag-
23 gregate potential outward exposure of the
24 entity with respect to its swaps does not
25 exceed \$1,000,000,000.”.

1 **SEC. 4. CLARIFICATION OF THE EXEMPTIONS FOR CAPTIVE**
2 **FINANCE COMPANIES FROM THE DEFINITION**
3 **OF MAJOR SWAP PARTICIPANT AND FROM**
4 **THE SWAP CLEARING REQUIREMENT.**

5 (a) EXCLUSION FROM DEFINITION OF MAJOR SWAP
6 PARTICIPANT.—Section 1a(33)(D) of the Commodity Ex-
7 change Act (7 U.S.C. 1a(33)(D)) is amended to read as
8 follows:

9 “(D) EXCLUSION OF CERTAIN CAPTIVE FI-
10 NANCE ENTITIES.—

11 “(i) IN GENERAL.—The definition
12 under this paragraph shall not include an
13 entity whose primary business is providing
14 financing that facilitates the sale or lease
15 of products by or on behalf of the parent
16 company or another subsidiary of the par-
17 ent company, and uses derivatives only for
18 the purpose of hedging underlying com-
19 mercial risks in a consolidated financing
20 and leasing portfolio, at least 90 percent of
21 which, as of the end of its preceding fiscal
22 year, is qualifying financing (including
23 loans, notes, installment sales contracts,
24 receivables, and operating and financing
25 leases).

1 “(ii) DEFINITIONS.—In this subpara-
2 graph:

3 “(I) QUALIFYING FINANCING.—
4 The term ‘qualifying financing’
5 means—

6 “(aa) any financing or lease
7 of, or that includes, a product; or

8 “(bb) any financing to or for
9 the benefit of an affiliate of the
10 entity, a distribution entity, or
11 any customer or affiliate of a dis-
12 tribution entity,

13 except that the term does not include
14 any financing that does not facilitate
15 the sale of a product manufactured by
16 the entity or its affiliates, as deter-
17 mined by the Commission.

18 “(II) PRODUCT.—The term
19 ‘product’ means—

20 “(aa) any good that is man-
21 ufactured or sold by an affiliate
22 of the entity; and

23 “(bb) any service that is
24 provided by an affiliate of the en-
25 tity.

1 “(III) DISTRIBUTION ENTITY.—

2 The term ‘distribution entity’ means a
3 person whose primary business is the
4 sale, lease or servicing of a product
5 that is manufactured by the entity or
6 its affiliates.

7 “(IV) AFFILIATE.—The term ‘af-
8 filiate’ means, with respect to an enti-
9 ty—

10 “(aa) a person that reports
11 information or prepares financial
12 statements on a consolidated
13 basis with the entity, or for
14 which a parent company reports
15 information or prepares financial
16 statements on a consolidated
17 basis for the person and the enti-
18 ty; or

19 “(bb) a person of which the
20 entity or the parent of the entity
21 holds 50 percent or more of the
22 equity interests.

23 “(V) PERSON.—The term ‘per-
24 son’ means an individual, partnership,
25 corporation (including a business

1 trust), limited liability company, joint
2 stock company, trust, unincorporated
3 association, joint venture or other en-
4 tity, or a government or any political
5 subdivision or agency thereof.”.

6 (b) EXCLUSION FROM SWAP CLEARING REQUIRE-
7 MENT.—Section 2(h)(7)(C)(iii) of such Act (42 U.S.C.
8 2(h)(7)(C)(iii)) is amended to read as follows:

9 “(iii) EXCLUSION OF CERTAIN CAP-
10 TIVE FINANCE ENTITIES.—Such term shall
11 not include an entity excluded from the
12 definition of major swap participant by
13 reason of section 1a(33)(D).”.

14 **SEC. 5. EFFECTIVE DATE.**

15 The amendments made by this Act shall take effect
16 as if they had been included in subtitle A of title VII of
17 the Dodd-Frank Wall Street Reform and Consumer Pro-
18 tection Act.

19 **SEC. 6. IMPLEMENTATION.**

20 The amendments made by this Act to the Commodity
21 Exchange Act shall be implemented—

22 (1) without regard to—

23 (A) chapter 35 of title 44, United States
24 Code; and

1 (B) the notice and comment provisions of
2 section 553 of title 5, United States Code;

3 (2) through the promulgation of an interim
4 final rule, pursuant to which public comment will be
5 sought before a final rule is issued, and

6 (3) such that paragraph (1) shall apply solely
7 to changes to rules and regulations, or proposed
8 rules and regulations, that are limited to and di-
9 rectly a consequence of such amendments.

Passed the House of Representatives April 25, 2012.

Attest:

KAREN L. HAAS,

Clerk.