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IN FOCUS

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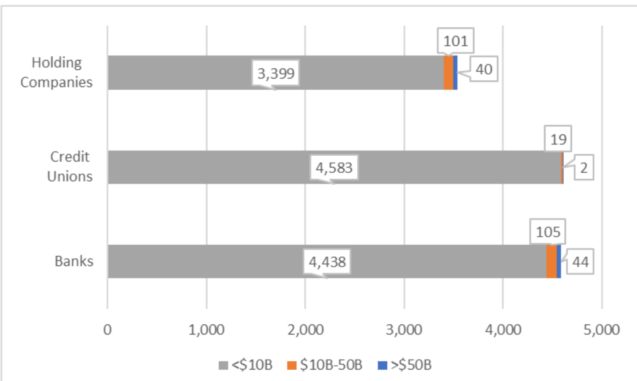
Bank Resilience and Regulatory Improvement Act (H.R. 8337)

On May 16, 2024, the House Financial Services Committee ordered an amendment in the nature of a substitute to H.R. 8337 to be reported. The bill would provide various forms of regulatory relief to banks, as discussed in this In Focus. In addition, the bill has two sections related to issues raised by the failure of three large banks in 2023.

Higher Regulatory Thresholds

Some bank regulations are "tailored," with small banks either exempted from regulations or allowed to comply with streamlined versions of regulations. Congress has debated what size is appropriate for certain regulations to apply to banks, with various thresholds currently used.

Figure 1. Depository Institutions by Asset Size, 2023



Source: CRS calculations based on data from Federal Reserve, Federal Deposit Insurance Corporation, and National Credit Union Administration.

Notes: *Banks* includes commercial banks and savings associations. *Holding companies* includes bank holding companies and thrift holding companies. Figure does not include foreign banking organizations.

Section 101 of H.R. 8337 would raise a number of these thresholds from $10 billion to $50 billion in assets. Banks with assets between $10 billion and $50 billion would now, provided they meet other qualifying criteria, be

- exempt from supervision for consumer compliance by the Consumer Financial Protection Bureau;
- exempt from the "Durbin Amendment," which caps debit card swipe fees;
- exempt from the "Volcker Rule," which prohibits banks from proprietary trading and sponsoring private funds;
- eligible for the "Portfolio Qualified Mortgage (QM)" compliance option;
- eligible for the Community Bank Leverage Ratio (CBLR), which allows banks to elect to be exempted from risk-weighted capital requirements.

Section 601 would raise the asset threshold from $3 billion to $10 billion for the Small Bank Holding Company Policy Statement (SBHCPS), which allows eligible bank holding companies below the threshold to take on more debt to complete mergers and exempts holding companies from Basel III requirements. The current thresholds for the Volcker Rule, Portfolio QM, CBLR, and SBHCPS were set by P.L. 115-174 in 2018.

Figure 1 shows how many institutions are below the $10 billion in assets threshold and how many fall between $10 billion and $50 billion. (Whether a bank, holding company, or credit union would be exempted depends on the provision and whether the institution meets other qualifying criteria.) For more information, see CRS Report R46779, *Over the Line: Asset Thresholds in Bank Regulation*.

Mergers

The bank merger process has been criticized by some as too lax and by others as too slow and vulnerable to interference. Because the merger application process is iterative, it can be lengthy, particularly for large institutions. Depending on the legal structure of the merger, current law sets deadlines on how long the regulators may take to make a decision on a merger application, and the regulators have internal guidelines on how long the approval process should take.

Section 201 would replace existing statutory deadlines with new ones. It would require the relevant bank regulators to notify a merger applicant within 30 days of any information needed to complete an application and then notify the applicant within 30 days of any deficiencies in the application. It would require the regulators to grant or deny an application within 90 days (with the potential to extend the deadline by 30 days) regardless of whether the initial application was complete. If the regulators have not made a determination within that time period, the application would be deemed granted. For more information, see CRS In Focus IF11956, *Bank Mergers and Acquisitions*.

Stress Tests

Large bank holding companies are subject to *stress tests*—simulations to see if they would still be adequately capitalized in severely adverse economic environments. Capital requirements for each large bank are based in part on the outcome of the stress test run by the Federal Reserve (Fed) via the stress capital buffer. In 2019, the Fed issued a final rule that increased transparency surrounding the stress tests by disclosing more information on the Fed's models. In 2023, two banking trade groups filed a petition requesting that the Fed engage in notice and comment rulemaking to "codify by rule, any and all models, formulas, or other decisional methodologies that the Board uses to calculate the 'stress capital buffer requirement.'" The groups argue that doing so would "remedy the serious existing legal defects" and provide external perspectives that would improve the stress tests. In 2019, the Fed rejected a similar proposal on the grounds that it "could … (allow) firms to make (business) modifications … that would change their … stress test results without materially changing their risk profile."

Section 301 would require the Fed to issue a rule to "establish any models, assumptions, formulas, or other decisional methodologies that are used to determine … the stress capital buffer." Section 302 would require the Fed to establish its stress test scenarios annually through rulemakings, which would add administrative cost.

Section 302 would prohibit the Fed from imposing a climate stress test on any nonbank that has been designated a systemically important financial institution (SIFI). Section 303 would require a triennial report by the Government Accountability Office on the effectiveness of nonbank SIFI stress tests. To date, the Fed has never conducted a nonbank SIFI stress test, and there are currently no nonbank SIFIs. For more information, see CRS Report R47876, *Enhanced Prudential Regulation of Large Banks*.

Supervisory Appeals

Insured depository institutions (IDIs, including banks and credit unions) are subject to examinations for safety and soundness on a regular schedule. Supervisory decisions rendered by the depository agencies are not subject to external appeal and are made in a confidential process without much independent oversight or recourse for the IDI. Section 309(a) of P.L. 103-325 required the IDI regulators to establish an appellate process to review supervisory determinations. Banks are expected to make a "good-faith effort … to resolve [a dispute with a supervisory finding] with the on-site examiner and Regional Office." However, they can also appeal material supervisory determinations through the respective agencies' appellate processes. Confidentiality in supervisory findings is crucial to ensuring that those findings do not cause a bank run. IDIs must address matters requiring attention (MRAs) raised by supervisors, and poor ratings can result in restrictions on their activities. (The failure of Silicon Valley Bank exposed the fact that MRAs are not always addressed promptly.)

Section 401 would require, among other things, relevant regulators to submit justifications to the IDI (upon request) for all "material supervisory determinations" and to conduct exit interviews with senior management and the board about the examination. It would further require agencies to provide justifications for their regulatory authorities upon request and to publish summary reports of the determinations (while redacting sensitive information).

Section 402 would establish an Office of Supervisory Appeals at each of the depository regulators, the head of which would appoint as many "appeals officials" as needed to "fully staff the [appeals] panel" from a broad range of professional backgrounds specified in the bill. (This differs from the current approach, where the review committee is comprised of agency officials.) The funding source for these offices is not specified, so they would be funded by the respective agencies' independent budgets.

The bill would allow an IDI to file an appeal against supervisory findings and require the regulators to respond to the appeal in an expedited manner. The regulators have three choices: grant the appeal, refer the appeal to the aforementioned panel, or deny the appeal. If the appeal is denied, the institution can appeal that decision, and it is sent to a panel anyway. The panel can recommend that the supervisory determination be continued, terminated, or modified, or it can send it back to the examiners to allow them to consider additional information. The agency head must then ratify or deny the panel's decision, and the institution can petition the U.S. Court of Appeals to review the agency head's decision. (It is possible that the public record of an IDI filing a case with the U.S. Court of Appeals could signal to the market that such an institution has received an unfavorable supervisory rating, putting it at greater risk of a bank run.) For more information, see CRS Report R46648, *Bank Supervision by Federal Regulators: Overview and Policy Issues*.

Material Loss Review

Following a bank failure, the inspector general of the failed bank's primary regulator must conduct a "material loss review" (MLR) for each such failure, and a version of the MLR omitting confidential information must be publicly released under current law. The report must review the bank's supervision to explain why the problems caused a material loss to the Federal Deposit Insurance Corporation (FDIC) and make recommendations to avoid future losses.

Section 403 of the bill would broaden the scope of the MLR to include an evaluation of whether the FDIC's resolution could have avoided a material loss. When three large banks failed in 2023, critics complained about how the FDIC selected winning bids to assume the failed banks' assets and deposits. The FDIC released a summary of the bids it received to purchase the failing banks, although it is difficult to determine from that summary what the FDIC's losses would have been under each bid. For more information, see CRS In Focus IF12454, *Bank Failures and Congressional Oversight*.

Discount Window

The Fed acts as a lender of last resort to banks by making short-term loans through its discount window. Depositor runs on three large banks that failed in 2023 raised questions about the effectiveness of the discount window. Section 501 would require the Fed to conduct a review of the effectiveness of the discount window, develop a remediation plan of any deficiencies identified in the review, and issue a report to Congress. For more information, see CRS In Focus IF12655, *Federal Reserve's Discount Window: Policy Issues*.

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