H.R. 4296: To place requirements on operational risk capital requirements for banking organizations established by an appropriate Federal banking agency (Rep. Luetkemeyer, R-MO)

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FLOOR SCHEDULE:

Expected to be considered on February 27, 2018, under a closed rule.

The rule would consider as adopted an amendment that is meant to offset the cost of the bill.

TOPLINE SUMMARY:

H.R. 4296 would prohibit banking regulators from imposing operational risk capital requirements that are not based primarily on the banking organization's current activities and determined on a forward looking assessment of potential losses.

COST:

The Congressional Budget Office (CBO) estimates that "enacting H.R. 4296 would increase the deficit by $22 million over the 2018-2027 period. That figure includes an increase of $26 million in direct spending and an increase of $4 million in revenues."

The rule considers as adopted an amendment that would reduce the limitation on the Federal Reserve Surplus Fund by $31,428,572 (from $7.5 billion to $7,468,571,428). Any amounts of the Surplus Fund that exceed the limit are required to be transferred to the General Fund of the Treasury. This amendment is meant to offset the cost of the bill. However, some conservatives may be concerned that transfers from the Federal Reserve Surplus Fund can be considered a budget gimmick. According to the Committee for a Responsible Federal Budget, this type of transfer "results in one-time savings on paper but no actual change in the amount of revenue the Treasury would receive over the long term." Section 5111 of the FY 2018 Budget Resolution prohibits the use of the Federal Reserve Surplus Fund from being counted as an offset in the House of Representatives.

CONSERVATIVE CONCERNS:

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

H.R. 4296 would prohibit a Federal banking agency (such as the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, or the National Credit Union Administration) from establishing an operational risk capital requirement for banking organizations, unless the requirement:

1. "is based primarily on the risks posed by a banking organization's current activities and businesses;
2. "is appropriately sensitive to the risks posed by such current activities and businesses;
3. "is determined under a forward-looking assessment of potential losses that may arise out of a banking organization's current activities, businesses, and exposures, which is not solely based on a banking organization's historical losses; and
4. "permits adjustments based on qualifying operational risk mitigants."

According to the Committee Report, the bill "will ensure that banks have the proper incentives financial to mitigate operational risk, and if a bank exits one or more business lines, the regulatory response does not increase complexity and retain the backward-looking nature of current operational risk capital requirements."

Analysis of the bill from CBO states that: "CBO anticipates that the directives in H.R. 4296 would apply to around 10 bank holding companies and their insured depository subsidiaries that currently estimate capital requirements using what the FDIC refers to as advanced approaches… CBO estimates that in fiscal year 2017, the advanced-approaches formula was used to determine capital requirements for companies that accounted for about 20 percent of the assets held by bank holding companies subject to that standard and for about 5 percent of the assets held by IDIs [insured depository institutions]… CBO anticipates that changing to forward-looking models as required by H.R. 4296 probably would lower firm's estimates of their operating risks, thereby lowering the amount of capital they would be required to hold… CBO estimates that, relative to current practice, enacting the bill would reduce the total capital held by the all of the large bank holding companies by less than 2 percent and for the IDIs subject to the standard by less than 0.5 percent."

COMMITTEE ACTION:

H.R. 4296 was introduced on November 8, 2017, and referred to the House Financial Services Committee. The Committee marked up and reported the bill on November 15, 2017, by a 43 – 17 vote.

ADMINISTRATION POSITION:

No Statement of Administration Policy is available at this time.

CONSTITUTIONAL AUTHORITY:

"Congress has the power to enact this legislation pursuant to the following: The constitutional authority on which this bill rests is the explicit power of Congress to regulate commerce in and among the states, as enumerate in Article 1, Section 8, Clause 3, the Commerce Clause, of the United States Constitution."

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