

## Senate Passes the Bipartisan Banking Bill

By Luigi L. De Ghenghi, Gabriel D. Rosenberg, Margaret E. Tahyar & Andrew Rohrkemper on March 15, 2018

POSTED IN [BANK CAPITAL](#), [BANK REGULATION](#), [DODD-FRANK](#), [FDIC](#), [FINANCIAL CHOICE ACT](#), [LEGISLATION](#), [OCC](#), [REGIONAL BANKS](#), [STRESS TESTING](#), [U.S. BASEL III](#), [U.S. CONGRESS](#)

The Senate has passed the Bipartisan Banking Bill, which would raise the generally applicable statutory threshold for most enhanced prudential standards (**EPS**) from \$50 billion to \$250 billion in total consolidated assets and would provide other targeted relief to regional and community banks. It would also make a narrow change to the calculation of the Supplementary Leverage Ratio for certain custody banks.

As passed by the Senate, the Bipartisan Banking Bill includes some changes from earlier versions discussed in our previous posts [here](#), [here](#) and [here](#). The most material changes affecting the regulation of banking organizations are, in our view:

- A clarification regarding how the bill's revised EPS threshold would apply to foreign banking organizations (**FBOs**), described below; and
- A statutory override of the U.S. banking agencies' Basel III capital rules for higher-risk commercial real estate exposures, which we cover in a separate post [here](#).

We will publish a visual memorandum soon that will go into more detail on these and other elements of the bill.

### Next Steps for the Bill

The Bipartisan Banking Bill will move on to the House, where Rep. Jeb Hensarling (R-TX) and other representatives have said they plan to propose a series of amendments. These amendments may include elements from Rep. Hensarling's CHOICE Act, versions of which we have discussed in memos [here](#) and [here](#). According to [Politico](#), Rep. Hensarling has said, "my job is

to represent the House, and we've got a lot of good bills that we want to talk to the Senate about. . . . I'm surprised that anybody thought we'd merely rubber-stamp their product."

If the House passes a version of the Bipartisan Banking Bill that differs from the Senate version, these differences would have to be reconciled in conference and sent back to both chambers, where the revised version would again face a potential filibuster in the Senate. Whether any revised version of the bill would maintain its strong bipartisan support – essential to surviving a filibuster – is unclear.

## **Clarification of EPS Threshold for FBOs**

Previous versions of the bill were silent as to how the raised EPS threshold would apply to FBOs. The current EPS regulations contained in the Federal Reserve's Regulation YY reflect a tiered approach, with different requirements applicable to FBOs depending on an FBO's global total consolidated assets, combined U.S. assets and U.S. non-branch assets. It was unclear under earlier drafts of the bill which asset measure would be used for determining whether an FBO was subject to EPS under the bill's revised asset threshold framework – e.g., would the asset threshold be evaluated based on an FBO's global assets or combined U.S. assets?

As passed by the Senate, the Bipartisan Banking Bill clarifies that nothing in the relevant provision would:

- Affect the application of the Federal Reserve's EPS regulations to an FBO with \$100 billion or more in global total consolidated assets; or
- Limit the authority of the Federal Reserve to implement EPS with respect to, require the establishment of an IHC under or tailor the regulation of an FBO with \$100 billion or more in global total consolidated assets.

This clarification would preserve the Federal Reserve's authority to impose EPS on an FBO with at least \$100 billion in global assets while permitting the Federal Reserve to tailor the application of EPS to FBOs based on other measures, such as combined U.S. assets, as is the case under existing EPS regulations.

We note that the provision of the Dodd-Frank Act that originally required the Federal Reserve to establish EPS, like previous versions of the Senate bill, did not distinguish between an FBO's global assets and measures of its U.S. assets. Yet

the Federal Reserve found that it had the authority under the Dodd-Frank Act to tailor EPS thresholds for FBOs based on measures of U.S. activity not mentioned in the statute, in part because the Dodd-Frank Act required the Federal Reserve to take into account, among other factors, the principle of national treatment and equality of competitive opportunity. In light of this pattern of past regulatory decisions, we see no reason to expect that the Federal Reserve would deviate from this approach if it were to implement the Bipartisan Banking Bill, with or without the latest clarification.

Although the Bipartisan Banking Bill would raise the asset threshold for most EPS requirements to \$250 billion, it would establish lower thresholds for some requirements – including the requirement that a banking organization establish a risk committee of its board of directors. Under the bill's revised thresholds, this requirement would apply to any publicly traded banking organization with at least \$50 billion in total consolidated assets. It is unclear what impact the \$100 billion global total consolidated asset threshold in the clarifying provision for FBOs would have on the risk committee requirement as applied to FBOs with at least \$50 billion but less than \$100 billion in global assets.

*Law Clerk Greg Swanson contributed to this post.*