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REPORT
110–917

EXPEDITED FUNDS AVAILABILITY DOLLAR LIMITS ADJUSTMENT ACT OF 2008

DECEMBER 9, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 6871]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 6871) to amend the Expedited Funds Availability Act to provide a 1-time adjustment in certain dollar amounts to account for inflation over the 21 years since the enactment of such Act, to provide for future adjustments of such amounts on a regular basis, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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79–006

PURPOSE AND SUMMARY

H.R. 6871, the "Expedited Funds Availability Dollar Limits Adjustment Act of 2008," directs the Federal Reserve to issue regulations within a year to make an one-time adjustment to certain statutory dollar amount limits under the Expedited Funds Availability Act and to index these amounts at least every five years based on a cost-of-living adjustment.

BACKGROUND AND NEED FOR LEGISLATION

The Expedited Funds Availability Act (EFAA), enacted in 1987, establishes the maximum time periods that banks can hold funds deposited into transaction accounts before those funds must be made available for withdrawal. These time periods are set based upon the nature of the deposit and whether the deposited checks are drawn on banks in the same region (local checks) or in other regions (non-local checks). The Federal Reserve implements the EFAA under Regulation CC.

Section 603 of the EFAA requires that banks give next-day availability for up to the first $100 deposited on any one business day by a check or checks that are otherwise not eligible for next-day availability. Section 603 of the EFAA also allows a bank to extend by one business day the time that funds deposited by local checks, non-local checks, or other checks deposited by a non-proprietary ATM are available for withdrawal by cash or other means. A bank that uses this extension must make $400 of those funds available for cash withdrawal (or the maximum amount allowable in the case of a withdrawal from an ATM but no more than $400) by no later than 5 p.m. of the business day on which the funds are available based upon the maximum hold periods.

Since the EFAA was enacted in the 1980s, inflation has reduced substantially the real value of the cash-withdrawal limits of $100 and $400 included under the statute. For this reason, the Federal Reserve noted in the Report to the Congress on the Check Clearing for the 21st Century Act of 2003 that was released in April 2007 that "[i]ncreasing these limits may materially benefit consumers, particularly those with lower incomes who maintain low account balances and need quicker availability for deposited checks." (Report, page 28).

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a hearing entitled, "Implementation of the Check Clearing for the 21st Century Act," on Wednesday, April 20, 2005, (109th Congress), to review the implementation of the Act and its impact on consumers, including the appropriateness of the time periods and amounts limits under the EFAA in light of the changes allowed under the Act. The following witnesses testified at the hearing:

- Ms. Louise L. Roseman, Director, Division of Reserve Bank Operations and Payment Systems, The Federal Reserve Board of the United States
- Ms. Elizabeth A. Duke, Chairman, American Bankers Association

• Mr. Mark E. Budnitz, Professor, Georgia State University College of Law
• Mr. David Hayes, Chairman, Independent Community Bankers of America
• Mr. Elliott C. McEntee, President and CEO, NACHA—The Electronic Payments Association

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 16, 2008, and ordered H.R. 6871, Expedited Funds Availability Dollar Limits Adjustment Act of 2008, reported to the House by a voice vote.

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. No record votes were taken with in conjunction with the consideration of this legislation. A motion by Mr. Frank to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

No amendments were offered during consideration of the bill.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in 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 establishes the following performance related goals and objectives for this legislation:

H.R. 6871 directs the Federal Reserve to issue regulations within a year to make an one-time adjustment to certain statutory dollar amount limits under the Expedited Funds Availability Act and to index these amounts at least every five years based on a cost-of-living adjustment.

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.

COMMITTEE COST ESTIMATE

The Committee adopts as its own 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 ESTIMATE

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 26, 2008.

Hon. BARNEY FRANK,
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. 6871, the Expedited Funds Availability Dollar Limits Adjustment Act.

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

Sincerely,

ROBERT A. SUNSHINE
(For Peter R. Orszag, Director).

Enclosure.

H.R. 6871—Expedited Funds Availability Dollar Limits Adjustment Act

The Expedited Funds Availability Act (Title VI of Public Law 100–86) was enacted in 1987 and standardized the schedule under which funds deposited into transaction accounts of depository institutions become available for withdrawal. It requires all banks to make the first $100 deposited by check available for cash withdrawal on the next business day, and an additional $400 a day later if the depository institution is located locally (or four days later if not located locally). H.R. 6871 would increase those figures from $100 to $175 and from $400 to $700, respectively. Additionally, H.R. 6871 would require that adjustments for inflation be made to those figures at least every five years.

Based on information from the Board of Governors of the Federal Reserve, CBO estimates that the bill would have no effect on the federal budget. Any budgetary effects on the Federal Reserve would be recorded as changes in revenues, but CBO estimates that the Federal Reserve would incur no significant additional costs to issue regulations required by the bill. CBO estimates that the bill would have no effect on federal spending.

By increasing the amount of funds from certain deposits that must be made available for withdrawal within standard time periods, H.R. 6871 would impose a private-sector mandate, as defined in the Unfunded Mandates Reform Act (UMRA), on depository institutions. To comply with the mandate, banks and credit unions would need to adjust their electronic systems to allow account holders access to the additional funds, and many institutions could have to convert some of their interest-bearing holdings to have more cash available at any given time. According to industry sources the cost per institution would not be significant. However, because of the large number of depository institutions that would have to comply with the mandates (more than 16,000), CBO esti-

mates that the aggregate cost of the mandate would probably exceed the annual threshold established in UMRA for private-sector mandates ($136 million in 2008, adjusted annually for inflation) in at least one of the first five years the mandate is in effect.

H.R. 6871 contains no intergovernmental mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Grant Driessen. This estimate was approved by G. Thomas Woodward, Assistant Director for Tax Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

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 section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 6871 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Establishes as a short title the "Expedited Funds Availability Dollar Limits Adjustment Act of 2008."

Section 2. 1-time adjustment of dollar amounts

Under the Expedited Funds Availability Act (EFAA), the first $100 of a check deposited into a transaction account at a depository institution must be made available for use at the opening of business on the business day after a deposit is made. The bill would raise the $100 amount to $175. Under the EFAA, a depository institution that opts to delay the availability of deposited funds by one business day for cash withdrawals must exempt $400 from the

amount that can be held and make the $400 available by 5 p.m. on the business day specified under the availability schedules under Regulation CC. The bill would increase this amount to $700. The bill directs the Federal Reserve to issue regulations to implement this Section within one year of the date of the enactment of the bill.

Section 3. Subsequent indexation of dollar amounts

The bill directs the Federal Reserve to index for inflation the dollar amounts referenced in Section 2 of the bill, at least every five years. The cost-of-living adjustment is based on the published annual value of the Consumer Price Index for all-urban consumers published by the Secretary of Labor.

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, existing law in which no change is proposed is shown in roman):

EXPEDITED FUNDS AVAILABILITY ACT

TITLE VI—EXPEDITED FUNDS AVAILABILITY

* * * * * * *

SEC. 603. EXPEDITED FUNDS AVAILABILITY SCHEDULES.

(a) NEXT BUSINESS DAY AVAILABILITY FOR CERTAIN DEPOSITS.—

(1) * * *

(2) GOVERNMENT CHECKS; CERTAIN OTHER CHECKS.—Funds deposited in an account at a depository institution by check shall be available for withdrawal not later than the business day after the business day on which such funds are deposited in the case of—

(A) * * *

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(D) the first **[**$100**]** *$175* deposited by check or checks on any one business day;

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(b) PERMANENT SCHEDULE.—

(1) * * *

* * * * * * *

(3) TIME PERIOD ADJUSTMENTS FOR CASH WITHDRAWAL OF CERTAIN CHECKS.—

(A) * * *

(B) 5 P.M. CASH AVAILABILITY.—Not more than **[**$400**]** *$700* (or the maximum amount allowable in the case of a withdrawal from an automated teller machine but not more than **[**$400**]** *$700*) of funds deposited by one or more checks to which this paragraph applies shall be available for cash withdrawal not later than 5 o'clock post meridian

of the business day on which such funds are available under paragraph (1) or (2). If funds deposited by checks described in both paragraph (1) and paragraph (2) become available for cash withdrawal under this paragraph on the same business day, the limitation contained in this subparagraph shall apply to the aggregate amount of such funds.

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SEC. 607. MISCELLANEOUS PROVISIONS.

(a) * * *

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(f) ADJUSTMENT FOR INFLATION.—

(1) IN GENERAL.—Before the end of the 6-year period beginning on the date of the enactment of the Expedited Funds Availability Dollar Limits Adjustment Act of 2008 and at least every 5 years after the expiration of such period, each dollar amount contained in sections 603(a)(2)(D) and 603(b)(3)(B) shall be increased by an amount determined by the Board to be equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment for such period.

(2) COST OF LIVING ADJUSTMENT.—For purposes of paragraph (1), the cost-of-living adjustment for any period is the percentage (if any) by which—

(A) the published annual value of the Consumer Price Index for the calendar year preceding the date of the determination by the Board under paragraph (1), exceeds

(B) the published annual value of the Consumer Price Index for the calendar year 2008.

(3) CONSUMER PRICE INDEX DEFINED.—For purposes of paragraph (2), the term "Consumer Price Index" means the Consumer Price Index for all-urban consumers published by the Secretary of Labor.

(4) ROUNDING.—If any increase determined under paragraph (1) is not a multiple of $25, such increase shall be rounded to the nearest multiple of $25.

(5) PUBLICATION.—The Board shall publish the adjusted amount for each dollar amount determined under paragraph (1) in the Federal Register promptly upon making such determination.

(6) EFFECTIVE DATE.—The adjusted amounts shall take effect at the end of the 120-day period beginning on the date by which a determination is required under paragraph (1).

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