To address equity capital requirements for financial institutions, bank holding companies, subsidiaries, and affiliates, and for other purposes.

**IN THE SENATE OF THE UNITED STATES**

Mr. BROWN (for himself and Mr. VITTER) introduced the following bill; which was read twice and referred to the Committee on ________________

**A BILL**

To address equity capital requirements for financial institutions, bank holding companies, subsidiaries, and affiliates, and for other purposes.

1  Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2  **SECTION 1. SHORT TITLE.**

3  This Act may be cited as the “Terminating Bailouts for Taxpayer Fairness Act of 2013” or the “TBTF Act”.

4  **SEC. 2. DEFINITIONS.**

5  (a) **IN GENERAL.**—As used in this Act—

6  (1) the terms “affiliate”, “appropriate Federal banking agency”, “Federal banking agency”, “foreign bank”, and “insured depository institution”
have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(2) the terms "bank holding company" and "subsidiary" have the same meanings as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841);

(3) the term "Board" means the Board of Governors of the Federal Reserve System;

(4) the term "Corporation" means the Federal Deposit Insurance Corporation;

(5) the term "financial institution" means an insured depository institution, bank holding company, a savings and loan holding company, and a foreign bank subject to the Bank Holding Company Act of 1956;

(6) the term "nonbank financial company" has the same meaning as in the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5311); and

(7) the term "savings and loan holding company" has the same meaning as in section 10 of the Home Owners' Loan Act (10 U.S.C. 1467a), except that such term does not include any savings and loan holding company described in section
SEC. 3. EQUITY CAPITAL REQUIREMENTS.

(a) Equity Capital Requirements for Bank Holding Companies, Subsidiaries, and Affiliates.—

(1) Equity capital requirements.—

(A) In general.—Not later than 1 year after the date of enactment of this Act, the appropriate Federal banking agency, in consultation with the other Federal banking agencies, shall, by rule, establish capital requirements for the ratio of equity capital to total consolidated assets for all financial institutions.

(B) Limitations.—

(i) In general.—In no case may the requirements issued under this subsection require any financial institution with more than $50,000,000,000 in total consolidated assets to have a ratio of less than 8 percent of equity capital to total consolidated assets.

(ii) Comparability.—The equity capital requirement issued under this subsection for any financial institution with
$50,000,000,000 or less in total consolidated assets shall be comparable to the requirements established by the appropriate Federal banking agencies under the prompt corrective actions regulations implementing section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) and under the capital adequacy regulations implementing section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844), that were in effect as of May 1, 2013.

(2) CAPITAL SURCHARGE FOR THE LARGEST FINANCIAL INSTITUTIONS.—

(A) STUDY REQUIRED.—

(i) IN GENERAL.—The Corporation shall study historical equity capital ratios chosen by large depository institutions before the advent of the Federal Reserve System, Federal deposit insurance, and the Federal income tax encouraged depositories to favor more highly leveraged deposit and debt funding.

(ii) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Corporation shall issue a
report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives regarding the study conducted under clause (i).

(iii) Incorporation of Findings.—

The Corporation, in consultation with the other Federal banking agencies, shall structure the capital surcharge for financial institutions with at least $500,000,000,000 in total consolidated assets, such that the surcharge fully accounts for and offsets any distortion of capital levels by the Government policies described in clause (i).

(B) Rules.—Not later than 1 year after the date of completion of the study required by subparagraph (A), the appropriate Federal banking agency, in consultation with the other Federal banking agencies, shall, by rule, establish equity capital surcharges for each financial institution having at least $500,000,000,000 in total consolidated assets.

(C) Increases Authorized.—Capital requirements established under this paragraph
may increase continuously as a percentage of total consolidated assets as the total consolidated assets of a financial institution increase.

(D) Required Amount.—The surcharge imposed under the rules issued under this paragraph shall require any financial institution having at least $500,000,000,000 in total consolidated assets to have a ratio of not less than 15 percent of equity capital to total consolidated assets.

(E) Anti-Evasion.—

(i) In General.—Any attempt by a financial institution to structure any activity, transaction, or affiliation for the purpose or effect of evading or attempting to evade the asset threshold that gives rise to the surcharge provided in subparagraph (A) shall be considered a violation of the Federal Deposit Insurance Act, section 24 of the Revised Statutes of the United States, and the Bank Holding Company Act of 1956, as applicable to such financial institution.

(ii) Restricting Activities.—Notwithstanding any other provision of law, if
the Board, the Corporation, or the Comptroller of the Currency has reasonable cause to believe that a financial institution or any affiliate thereof has engaged in an activity, transaction, or affiliation in a manner that functions as an evasion of the asset threshold that gives rise to the surcharge provided in subparagraph (A) or otherwise violates such provision, the appropriate Federal banking agency shall order, after due notice and opportunity for hearing, the financial institution to restrict, restructure, or divest the offending activities, transactions, or investments.

(3) Effective date.—The equity capital and surcharge rules issued under paragraphs (1) and (2) shall apply with respect to each financial institution not later than 5 years after the date on which final rules are published in the Federal Register with respect to that financial institution.

(4) Well-capitalized status.—

(A) Compliance with other provisions.—Any financial institution that meets the equity capital requirements established under paragraph (1) or surcharge requirements
established under paragraph (2) shall be considered well capitalized for purposes of—

(i) section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o); and

(ii) the early remediation requirements established pursuant to section 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5366).

(B) AGENCY ACTIONS.—Consistent with this section, the appropriate Federal banking agency, in consultation with the other Federal banking agencies, shall, by regulation, establish the appropriate capital categories for financial institutions under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o) and early remediation requirements established pursuant to section 166 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5366).

(5) ENHANCED PRUDENTIAL STANDARDS.—The equity capital and surcharge rules issued under paragraphs (1) and (2) shall be considered sufficient to satisfy the risk-based capital requirements and leverage limits for purposes of section 165 of the

(b) **Equity Capital Requirements for Affiliates and Subsidiaries of Bank Holding Companies.**—

(1) **In general.**—Not later than 1 year after the date of enactment of this Act, notwithstanding any other provision of law applicable to insured depository institutions, the Board (subject to section 5(e)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)(3)) and section 10(g) of the Home Owners’ Loan Act (12 U.S.C. 1467a(g))), the Corporation, and the Comptroller of the Currency shall each promulgate regulations to establish capital requirements for each affiliate and subsidiary of a financial institution that are no less stringent than the equity capital requirements established under subsection (a)(1) or surcharge requirements established under subsection (a)(2).

(2) **Limitation.**—Paragraph (1) and the regulations issued under paragraph (1) do not apply in the case of any financial institution with less than $50,000,000,000 in total consolidated assets.

(3) **Amendment to Bank Holding Company Act of 1956.**—Section 5(e)(5)(B) of the Bank Hold-
ing Company Act of 1956 (12 U.S.C. 1844(e)(5)(B)) is amended—

(A) by striking clauses (i) and (v);

(B) in clause (iv), by striking ‘‘; or’’ and inserting a period;

(C) in clause (iii), by inserting ‘‘or’’ after the semicolon; and

(D) by redesignating clauses (ii) through (iv) as clauses (i) through (iii), respectively.

(4) Amendment to the Home Owner’s Loan Act.—The Home Owner’s Loan Act (15 U.S.C. 1461 et seq.) is amended—

(A) in section 2 (12 U.S.C. 1462) by adding at the end the following:

‘‘(12) Functionally regulated affiliate.—The term ‘functionally regulated affiliate’ means, with respect to a savings association, any affiliate of such savings association that is a company described in section 5(c)(5)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(e)(5)(B)).’’;

and

(B) in section 10(g) (12 U.S.C. 1467a(g)) by adding at the end the following:

‘‘(6) Capital for functionally regulated subsidiaries and functionally regulated aff-
Notwithstanding section 3(b)(1) of the Terminating Bailouts for Taxpayer Fairness Act of 2013, the Board may not, by regulation, guideline, order, or otherwise, prescribe or impose any capital or capital adequacy rules, guidelines, standards, or requirements on any functionally regulated subsidiary of a savings and loan holding company or functionally regulated affiliate of a savings association that—

"(A) is not a depository institution; and

"(B) is —

"(i) in compliance with the applicable capital requirements of its Federal regulatory authority (including the Securities Exchange Commission) or State insurance authority;

"(ii) properly registered as an investment adviser under the Investment Advisers Act of 1940, or with any State; or

"(iii) licensed as an insurance agent with the appropriate State insurance authority.”.

(e) Specific Elements of Capital Requirements.—For purposes of calculating—
(1) equity capital requirements under this section, equity capital shall consist of tangible common equity (defined as common stockholders’ equity less goodwill), deferred tax assets, accumulated other comprehensive income, treasury stock, and intangible assets plus retained earnings; and

(2) total consolidated assets under this section, derivative exposures shall include—

   (A) the fair value of the derivative exposures without recognizing the benefits of any netting arrangement, unless—

   (i) the netting arrangement is documented under a formal master netting agreement or other formal arrangement with a derivatives clearing organization; and

   (ii) the financial institution, as a matter of ongoing business practice, exchanges collateral on a daily basis for the fulfillment of variation margin requirements on a net basis, and fulfills all contractual payment requirements, including payments for contract termination, on a net basis, with such net exchange of collateral and payments encompassing all derivative expo-
sures covered by the formal arrangement; and

(B) off-balance sheet assets—

(i) defined as any assets in which the financial institution has guaranteed performance by another party or provided a liquidity backstop should another party be unable to perform under the contractual obligation; and

(ii) excluding commitments to lend, whereby certain provisions and or covenants exist that limit the risk to the bank holding company with respect to future draws of liquidity.

(d) Risk-Based Capital Requirements Permitted.—

(1) Rule of construction.—Except as provided in paragraph (2), nothing in this section shall be interpreted to prevent any appropriate Federal banking agency from establishing supplemental risk-based capital requirements for any financial institution with more than $20,000,000,000 in total consolidated assets, or any affiliate or subsidiary of such institutions for the purpose of measuring the
relative risk of certain assets and preventing investment in excessive amounts of riskier assets.

(2) LIMITATION.—

(A) JOINT DETERMINATION.—An appropriate Federal banking agency may not implement risk-based capital requirements with respect to a financial institution with more than $20,000,000,000, unless all appropriate Federal banking agencies agree that bank supervision is insufficient to prevent the excessive concentration of riskier assets.

(B) REPORT TO CONGRESS.—Before proposing risk based capital rules described in this subsection, the appropriate Federal banking agencies shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives detailing the deficiency in supervisory tools in preventing investment in excessive amounts of riskier assets and how risk based capital will be used. The appropriate Federal banking agencies may establish supplemental risk-based capital requirements that do not replace the equity capital requirements required by this Act not
earlier than 90 days after the date of submission of the report under this subparagraph.

(e) **Treatment of Basel III International Accord.**—The Board, the Corporation, and the Comptroller of the Currency shall be prohibited from any further implementation of any rules of the Federal banking agencies regarding “Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems”.

**SEC. 4. Prohibition on Subsidy Transfers.**

Section 23A of the Federal Reserve Act (12 U.S.C. 371c) is amended—

(1) in subsection (a), by adding at the end the following:

“(5) **Prohibition on transactions by insured depository institutions with affiliates or subsidiaries.**—

“(A) **Affiliate transactions prohibited.**—Except as provided in subparagraph (B), only an insured depository institution that is a member bank or an affiliate or subsidiary of a member bank may engage in a covered transaction with another affiliate or subsidiary that is not an insured depository institution.

“(B) **Exceptions.**—Notwithstanding subparagraph (A), an insured depository institution
that is not a member bank or an affiliate or subsidiary of a member bank may—

“(i) engage in lawful dividend payments to its holding company; or

“(ii) make sales of property or securities to, or accept infusions of capital or other distributions from, its parent holding company, consistent with section 38A of the Federal Deposit Insurance Act (12 U.S.C. 1831p).”; and

(2) in subsection (b)—

(A) by redesignating paragraphs (8) through (11) as paragraphs (9) through (12), respectively; and

(B) by inserting after paragraph (7) the following:

“(8) the term ‘member bank’ means a member bank having less than $50,000,000,000 of total consolidated assets;”.

SEC. 5. LIMITATION ON THE FEDERAL SAFETY NET.

(a) Prohibition Against Government Assistance to Non-Banks.—Except in connection with the resolution of any insured depository institution or financial company for which the Corporation has been appointed as receiver, no affiliate or subsidiary of a financial institu-
tion, or affiliate of an insured depository institution or nonbank financial institution may receive any assistance through—

(1) asset purchases made by the United States Government, loans from the United States Government, investments in debt or equity made by the United State Government, or capital injections from the United States Government;

(2) the Exchange Stabilization Fund, as established under section 2 of the Gold Reserve Act of 1934;

(3) the Deposit Insurance Fund established under section 11(a)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(4));

(4) the Board, pursuant to its authority under section 10B, 13, or 13A of the Federal Reserve Act (12 U.S.C. 347b, 342, and 343); or

(5) the Board, pursuant to its authority under the third paragraph of section 13 of the Federal Reserve Act (12 U.S.C. 343).

(b) Exclusion for Monetary Policy.—Subsection (a) shall not apply to transactions or operations implementing monetary policy matters under the direction of the Federal Open Market Committee or the Board of Governors of the Federal Reserve System.
(e) LENDING TO SYSTEMATICALLY IMPORTANT FINANCIAL MARKET UTILITIES.—Section 806 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 6455) is amended—

(1) by striking subsections (a) through (c); and

(2) redesignating subsections (d) and (e) as subsections (a) and (b), respectively.

(d) TERMINATION OF SYSTEMIC RISK EXEMPTION.—

Section 13(e)(4)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)) is amended—

(1) by striking subparagraph (G); and

(2) by redesignating subparagraph (H) as subparagraph (G).

SEC. 6. RELIEF FOR COMMUNITY BANKS AND SMALL SAVINGS ASSOCIATIONS.

(a) RURAL DEFINITION.—For purposes of the rules of the Bureau of Consumer Financial Protection (in this section referred to as the “Bureau”) regarding qualified mortgages for purposes of section 129C(c)(2) of the Truth in Lending Act, the definition of the term “rural” means any area other than—

(1) a city or town that has a population of greater than 50,000 inhabitants; and

(2) any urbanized area contiguous and adjacent to a city or town described in paragraph (1).

(1) in section 12(g) (15 U.S.C. 78l(g))—

(A) in paragraph (1)(B), by inserting after “is a bank” the following: “, a savings and loan holding company (as defined in section 10 of the Home Owners’ Loan Act),”; and

(B) in paragraph (4), by inserting after “case of a bank” the following: “, a savings and loan holding company (as defined in section 10 of the Home Owners’ Loan Act),”; and

(2) in section 15(d), by striking “case of bank” and inserting the following: “case of a bank, a savings and loan holding company (as defined in section 10 of the Home Owners’ Loan Act),”.

(c) Federal Reserve Board.—The policy statement of the Board in the Small Bank Holding Company Statement found at Part 225 of the appendix to title 12, Code of Federal Regulations (or any successor thereto), shall apply to financial institutions that are otherwise subject to that policy statement with consolidated assets of more than $5,000,000,000.

(d) Mutual Holding Company Dividend Waivers.—Notwithstanding the rule of the Board regarding
Mutual Holding Company Dividend Waivers in section 239.63 of title 12, Code of Federal Regulations (or any successor thereto), grandfathered mutual holding companies and all other mutual holding companies shall be permitted to waive the receipt of dividends declared on the common stock of their bank or mid-size holding companies.

(c) Examination Ombudsman.—

(1) In general.—The Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3301 et seq.) is amended by adding at the end the following:

"Sec. 1012. Office of Examination Ombudsman."

"(a) Establishment.—There is established in the Council an Office of Examination Ombudsman.

"(b) Head of Office.—There is established the position of the Ombudsman, who shall serve as the head of the Office of Examination Ombudsman, and who shall be hired separately by the Council and shall be independent from any member agency of the Council.

"(c) Staffing.—The Ombudsman is authorized to hire staff to support the activities of the Office of Examination Ombudsman.

"(d) Duties.—The Ombudsman shall—"
“(1) receive and, at the Ombudsman’s discretion, investigate complaints from financial institutions, their representatives, or another entity acting on behalf of such institutions, concerning examinations, examination practices, or examination reports;

“(2) hold meetings, at least once every 3 months and in locations designed to encourage participation from all sections of the United States, with financial institutions, their representatives, or another entity acting on behalf of such institutions, to discuss examination procedures, examination practices, or examination policies;

“(3) review examination procedures of the Federal financial institutions regulatory agencies to ensure that the written examination policies of those agencies are being followed in practice and adhere to the standards for consistency established by the Council;

“(4) conduct a continuing and regular program of examination quality assurance for all examination types conducted by the Federal financial institutions regulatory agencies;

“(5) process any supervisory appeal initiated under section 1015 or section 309(e) of the Riegle
Community Development and Regulatory Improvement Act of 1994; and

“(6) report annually to the Committee on Financial Services of the House of Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Council, on the reviews carried out pursuant to paragraphs (3) and (4), including compliance with the requirements set forth in section 1012 regarding timeliness of examination reports, and the Council’s recommendations for improvements in examination procedures, practices, and policies.

“(e) CONFIDENTIALITY.—The Ombudsman shall keep confidential all meetings, discussions, and information provided by financial institutions.”.

(2) DEFINITION.—Section 1003 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3302) is amended—

(A) in paragraph (2), by striking “and” at the end;

(B) in paragraph (3), by adding “and” at the end; and

(C) by adding at the end the following:

“(4) the term ‘Ombudsman’ means the Ombudsman established under section 1012.”.
(f) Exception to Annual Written Privacy Notice Requirement Under the Gramm-Leach-Bliley Act.—Section 503 of the Gramm-Leach-Bliley Act (15 U.S.C. 6803) is amended by adding at the end the following:

“(f) Exception to Annual Written Notice Requirement.—

“(1) In general.—A financial institution described in paragraph (2) shall not be required to provide an annual written disclosure under this section, until such time as the financial institution fails to comply with subparagraph (A), (B), or (C) of paragraph (1).

“(2) Covered institutions.—Paragraph (1) applies with respect to a financial institution that—

“(A) provides nonpublic personal information in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b);

“(B) has not changed its policies and practices with respect to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section; and
“(C) otherwise provides customers access
to such most recent disclosure in electronic or
other form permitted by regulations prescribed
under section 504.”.

(g) **Exemption From Small Business Data Collection.**—Section 704B(h)(1) of the Equal Credit Opportunity Act (15 U.S.C. 1691e–2(h)(1)) is amended by inserting “with more than $10,000,000,000 in total consolidated assets” after “entity”.

(h) **Dodd-Frank.**—Section 171(b)(5)(C) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5371(b)(5)(C)) is amended by inserting before the period at the end “or savings and loan holding company with less than $500,000,000 in total consolidated assets”.