

Union Calendar No. 450

115TH CONGRESS
2^D SESSION

H. R. 4061

[Report No. 115–592]

To amend the Financial Stability Act of 2010 to improve the transparency of the Financial Stability Oversight Council, to improve the SIFI designation process, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 12, 2017

Mr. ROSS (for himself, Mr. DELANEY, Mr. LUETKEMEYER, Ms. SINEMA, Mr. MCHENRY, Mr. MEEKS, Mr. HUIZENGA, Mr. DAVID SCOTT of Georgia, Mr. DUFFY, Mr. FOSTER, Mr. BARR, Mr. SHERMAN, Mrs. WAGNER, Mr. PERLMUTTER, Mr. ROYCE of California, Mr. HIMES, Mr. LUCAS, Mr. GOTTHEIMER, Mr. STIVERS, Mr. KIHUEN, Mr. PITTENGER, Mrs. BEATTY, Mr. MESSER, Ms. SEWELL of Alabama, Mr. TIPTON, Mr. KILMER, Mr. WILLIAMS, Mr. PETERS, Mr. POLIQUIN, Mr. KIND, Mrs. LOVE, Ms. DELBENE, Mr. HILL, Mr. CÁRDENAS, Mr. EMMER, Mr. QUIGLEY, Mr. MOONEY of West Virginia, Mr. COSTA, Mr. MACARTHUR, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. COSTELLO of Pennsylvania, Mr. THOMPSON of California, Mr. RENACCI, Miss RICE of New York, Mr. SCHWEIKERT, Mr. MOULTON, Mr. SESSIONS, Mr. NORCROSS, Mr. TIBERI, and Ms. KUSTER of New Hampshire) introduced the following bill; which was referred to the Committee on Financial Services

MARCH 9, 2018

Additional sponsors: Mr. AGUILAR, Mr. HULTGREN, Mr. CONNOLLY, Mr. HOLLINGSWORTH, Mr. BUDD, Mr. LOUDERMILK, Ms. BLUNT ROCHESTER, and Mr. GONZALEZ of Texas

MARCH 9, 2018

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend the Financial Stability Act of 2010 to improve the transparency of the Financial Stability Oversight Council, to improve the SIFI designation process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Stability
5 Oversight Council Improvement Act of 2017”.

6 **SEC. 2. SIFI DESIGNATION PROCESS.**

7 Section 113 of the Financial Stability Act of 2010
8 (12 U.S.C. 5323) is amended—

9 (1) in subsection (a)(2)—

10 (A) in subparagraph (J), by striking “and”
11 at the end;

12 (B) by redesignating subparagraph (K) as
13 subparagraph (L); and

14 (C) by inserting after subparagraph (J)
15 the following:

16 “(K) the appropriateness of the imposition
17 of prudential standards as opposed to other
18 forms of regulation to mitigate the identified
19 risks; and”;

20 (2) in subsection (b)(2)—

21 (A) in subparagraph (J), by striking “and”
22 at the end;

23 (B) by redesignating subparagraph (K) as
24 subparagraph (L);

1 (C) by inserting after subparagraph (J)
2 the following:

3 “(K) the appropriateness of the imposition
4 of prudential standards as opposed to other
5 forms of regulation to mitigate the identified
6 risks; and”;

7 (3) by amending subsection (d) to read as fol-
8 lows:

9 “(d) REEVALUATION AND RESCISSION.—

10 “(1) ANNUAL REEVALUATION.—Not less fre-
11 quently than annually, the Council shall reevaluate
12 each determination made under subsections (a) and
13 (b) with respect to a nonbank financial company su-
14 pervised by the Board of Governors and shall—

15 “(A) provide written notice to the nonbank
16 financial company being reevaluated and afford
17 such company an opportunity to submit written
18 materials, within such time as the Council de-
19 termines to be appropriate (but which shall be
20 not less than 30 days after the date of receipt
21 by the company of such notice), to contest the
22 determination, including materials concerning
23 whether, in the company’s view, material finan-
24 cial distress at the company, or the nature,
25 scope, size, scale, concentration, interconnected-

1 ness, or mix of the activities of the company
2 could pose a threat to the financial stability of
3 the United States;

4 “(B) provide an opportunity for the
5 nonbank financial company to meet with the
6 Council to present the information described in
7 subparagraph (A); and

8 “(C) if the Council does not rescind the de-
9 termination, provide notice to the nonbank fi-
10 nancial company, its primary financial regu-
11 latory agency and the primary financial regu-
12 latory agency of any of the company’s signifi-
13 cant subsidiaries of the reasons for the Coun-
14 cil’s decision, which notice shall address with
15 specificity how the Council assessed the mate-
16 rial factors presented by the company under
17 subparagraphs (A) and (B).

18 “(2) PERIODIC REEVALUATION.—

19 “(A) REVIEW.—Every 5 years after the
20 date of a final determination with respect to a
21 nonbank financial company under subsection
22 (a) or (b), as applicable, the nonbank financial
23 company may submit a written request to the
24 Council for a reevaluation of such determina-
25 tion. Upon receipt of such a request, the Coun-

1 cil shall conduct a reevaluation of such deter-
2 mination and hold a vote on whether to rescind
3 such determination.

4 “(B) PROCEDURES.—Upon receipt of a
5 written request under paragraph (A), the Coun-
6 cil shall fix a time (not earlier than 30 days
7 after the date of receipt of the request) and
8 place at which such company may appear, per-
9 sonally or through counsel, to—

10 “(i) submit written materials (which
11 may include a plan to modify the com-
12 pany’s business, structure, or operations,
13 which shall specify the length of the imple-
14 mentation period); and

15 “(ii) provide oral testimony and oral
16 argument before the members of the Coun-
17 cil.

18 “(C) TREATMENT OF PLAN.—If the com-
19 pany submits a plan in accordance with sub-
20 paragraph (B)(i), the Council shall consider
21 whether the plan, if implemented, would cause
22 the company to no longer meet the standards
23 for a final determination under subsection (a)
24 or (b), as applicable. The Council shall provide
25 the nonbank financial company an opportunity

1 to revise the plan after consultation with the
2 Council.

3 “(D) EXPLANATION FOR CERTAIN COMPA-
4 NIES.—With respect to a reevaluation under
5 this paragraph where the determination being
6 reevaluated was made before the date of enact-
7 ment of this paragraph, the nonbank financial
8 company may require the Council, as part of
9 such reevaluation, to explain with specificity the
10 basis for such determination.

11 “(3) RESCISSION OF DETERMINATION.—

12 “(A) IN GENERAL.—If the Council, by a
13 vote of not fewer than $\frac{2}{3}$ of the voting members
14 then serving, including an affirmative vote by
15 the Chairperson, determines under this sub-
16 section that a nonbank financial company no
17 longer meets the standards for a final deter-
18 mination under subsection (a) or (b), as appli-
19 cable, the Council shall rescind such determina-
20 tion.

21 “(B) APPROVAL OF COMPANY PLAN.—Ap-
22 proval by the Council of a plan submitted or re-
23 vised in accordance with paragraph (2) shall re-
24 quire a vote of not fewer than $\frac{2}{3}$ of the voting
25 members then serving, including an affirmative

1 vote by the Chairperson. If such plan is ap-
2 proved by the Council, the company shall imple-
3 ment the plan during the period identified in
4 the plan, except that the Council, in its sole dis-
5 cretion and upon request from the company,
6 may grant one or more extensions of the imple-
7 mentation period. After the end of the imple-
8 mentation period, including any extensions
9 granted by the Council, the Council shall pro-
10 ceed to a vote as described under subparagraph
11 (A).”;

12 (4) by amending subsection (e) to read as fol-
13 lows:

14 “(e) REQUIREMENTS FOR PROPOSED DETERMINA-
15 TION, NOTICE AND OPPORTUNITY FOR HEARING, AND
16 FINAL DETERMINATION.—

17 “(1) NOTICE OF IDENTIFICATION FOR INITIAL
18 EVALUATION AND OPPORTUNITY FOR VOLUNTARY
19 SUBMISSION.—Upon identifying a nonbank financial
20 company for comprehensive analysis of the potential
21 for the nonbank company to pose a threat to the fi-
22 nancial stability of the United States, the Council
23 shall provide the nonbank financial company with—

24 “(A) written notice that explains with
25 specificity the basis for so identifying the com-

1 pany, a copy of which shall be provided to the
2 company’s primary financial regulatory agency;

3 “(B) an opportunity to submit written ma-
4 terials for consideration by the Council as part
5 of the Council’s initial evaluation of the risk
6 profile and characteristics of the company;

7 “(C) an opportunity to meet with the
8 Council to discuss the Council’s analysis; and

9 “(D) a list of the public sources of infor-
10 mation being considered by the Council as part
11 of such analysis.

12 “(2) REQUIREMENTS BEFORE MAKING A PRO-
13 POSED DETERMINATION.—Before making a pro-
14 posed determination with respect to a nonbank fi-
15 nancial company under paragraph (3), the Council
16 shall—

17 “(A) by a vote of not fewer than $\frac{2}{3}$ of the
18 voting members then serving, including an af-
19 firmative vote by the Chairperson, approve a
20 resolution that identifies with specificity any
21 risks to the financial stability of the United
22 States the Council has identified relating to the
23 nonbank financial company;

24 “(B) with respect to nonbank financial
25 company with a primary financial regulatory

1 agency, provide a copy of the resolution de-
2 scribed under subparagraph (A) to the primary
3 financial regulatory agency and provide such
4 agency with at least 180 days from the receipt
5 of the resolution to—

6 “(i) consider the risks identified in the
7 resolution; and

8 “(ii) provide a written response to the
9 Council that includes its assessment of the
10 risks identified and the degree to which
11 they are or could be addressed by existing
12 regulation and, as appropriate, issue pro-
13 posed regulations or undertake other regu-
14 latory action to mitigate the identified
15 risks;

16 “(C) provide the nonbank financial com-
17 pany with written notice that the Council—

18 “(i) is considering whether to make a
19 proposed determination with respect to the
20 nonbank financial company under sub-
21 section (a) or (b), as applicable, which no-
22 tice explains with specificity the basis for
23 the Council’s consideration, including any
24 aspects of the company’s operations or ac-

1 activities that are a primary focus for the
2 Council; or

3 “(ii) has determined not to subject the
4 company to further review, which action
5 shall not preclude the Council from issuing
6 a notice to the company under subpara-
7 graph (1)(A) at a future time; and

8 “(D) in the case of a notice to the nonbank
9 financial company under subparagraph (C)(i),
10 provide the company with—

11 “(i) an opportunity to meet with the
12 Council to discuss the Council’s analysis;

13 “(ii) an opportunity to submit written
14 materials, within such time as the Council
15 deems appropriate (but not less than 30
16 days after the date of receipt by the com-
17 pany of the notice described under clause
18 (i)), to the Council to inform the Council’s
19 consideration of the nonbank financial
20 company for a proposed determination, in-
21 cluding materials concerning the com-
22 pany’s views as to whether it satisfies the
23 standard for determination set forth in
24 subsection (a) or (b), as applicable;

1 “(iii) an explanation of how any re-
2 quest by the Council for information from
3 the nonbank financial company relates to
4 potential risks to the financial stability of
5 the United States and the Council’s anal-
6 ysis of the company;

7 “(iv) written notice when the Council
8 deems its evidentiary record regarding
9 such nonbank financial company to be
10 complete; and

11 “(v) an opportunity to meet with the
12 members of the Council.

13 “(3) PROPOSED DETERMINATION.—

14 “(A) VOTING.—The Council may, by a
15 vote of not fewer than $\frac{2}{3}$ of the voting members
16 then serving, including an affirmative vote by
17 the Chairperson, propose to make a determina-
18 tion in accordance with the provisions of sub-
19 section (a) or (b), as applicable, with respect to
20 a nonbank financial company.

21 “(B) DEADLINE FOR MAKING A PROPOSED
22 DETERMINATION.—With respect to a nonbank
23 financial company provided with a written no-
24 tice under paragraph (2)(C)(i), if the Council
25 does not provide the company with the written

1 notice of a proposed determination described
2 under paragraph (4) within the 180-day period
3 following the date on which the Council notifies
4 the company under paragraph (2)(C) that the
5 evidentiary record is complete, the Council may
6 not make such a proposed determination with
7 respect to such company unless the Council re-
8 peats the procedures described under paragraph
9 (2).

10 “(C) REVIEW OF ACTIONS OF PRIMARY FI-
11 NANCIAL REGULATORY AGENCY.—With respect
12 to a nonbank financial company with a primary
13 financial regulatory agency, the Council may
14 not vote under subparagraph (A) to make a
15 proposed determination unless—

16 “(i) the Council first determines that
17 any proposed regulations or other regu-
18 latory actions taken by the primary finan-
19 cial regulatory agency after receipt of the
20 resolution described under paragraph
21 (2)(A) are insufficient to mitigate the risks
22 identified in the resolution;

23 “(ii) the primary financial regulatory
24 agency has notified the Council that the
25 agency has no proposed regulations or

1 other regulatory actions to mitigate the
2 risks identified in the resolution; or

3 “(iii) the period allowed by the Coun-
4 cil under paragraph (2)(B) has elapsed
5 and the primary financial regulatory agen-
6 cy has taken no action in response to the
7 resolution.

8 “(4) NOTICE OF PROPOSED DETERMINATION.—
9 The Council shall—

10 “(A) provide to a nonbank financial com-
11 pany written notice of a proposed determination
12 of the Council, including an explanation of the
13 basis of the proposed determination of the
14 Council, that a nonbank financial company shall
15 be supervised by the Board of Governors and
16 shall be subject to prudential standards in ac-
17 cordance with this title, an explanation of the
18 specific risks to the financial stability of the
19 United States presented by the nonbank finan-
20 cial company, and a detailed explanation of why
21 existing regulations or other regulatory action
22 by the company’s primary financial regulatory
23 agency, if any, is insufficient to mitigate such
24 risk; and

1 “(B) provide the primary financial regu-
2 latory agency of the nonbank financial company
3 a copy of the nonpublic written explanation of
4 the Council’s proposed determination.

5 “(5) HEARING.—

6 “(A) IN GENERAL.—Not later than 30
7 days after the date of receipt of any notice of
8 a proposed determination under paragraph (4),
9 the nonbank financial company may request, in
10 writing, an opportunity for a written or oral
11 hearing before the Council to contest the pro-
12 posed determination, including the opportunity
13 to present a plan to modify the company’s busi-
14 ness, structure, or operations in order to miti-
15 gate the risks identified in the notice, and
16 which plan shall also include any steps the com-
17 pany expects to take during the implementation
18 period to mitigate such risks.

19 “(B) GRANT OF HEARING.—Upon receipt
20 of a timely request, the Council shall fix a time
21 (not earlier than 30 days after the date of re-
22 ceipt of the request) and place at which such
23 company may appear, personally or through
24 counsel, to—

1 “(i) submit written materials (which
2 may include a plan to modify the com-
3 pany’s business, structure, or operations);
4 or

5 “(ii) provide oral testimony and oral
6 argument to the members of the Council.

7 “(6) COUNCIL CONSIDERATION OF COMPANY
8 PLAN.—

9 “(A) IN GENERAL.—If a nonbank financial
10 company submits a plan in accordance with
11 paragraph (5), the Council shall, prior to mak-
12 ing a final determination—

13 “(i) consider whether the plan, if im-
14 plemented, would mitigate the risks identi-
15 fied in the notice under paragraph (4); and

16 “(ii) provide the nonbank financial
17 company an opportunity to revise the plan
18 after consultation with the Council.

19 “(B) VOTING.—Approval by the Council of
20 a plan submitted under paragraph (5) or re-
21 vised under subparagraph (A)(ii) shall require a
22 vote of not fewer than $\frac{2}{3}$ of the voting members
23 then serving, including an affirmative vote by
24 the Chairperson.

1 “(C) IMPLEMENTATION OF APPROVED
2 PLAN.—With respect to a nonbank financial
3 company’s plan approved by the Council under
4 subparagraph (B), the company shall have one
5 year to implement the plan, except that the
6 Council, in its sole discretion and upon request
7 from the nonbank financial company, may
8 grant one or more extensions of the implemen-
9 tation period.

10 “(D) OVERSIGHT OF IMPLEMENTATION.—

11 “(i) PERIODIC REPORTS.—The Coun-
12 cil, acting through the Office of Financial
13 Research, may require the submission of
14 periodic reports from a nonbank financial
15 company for the purpose of evaluating the
16 company’s progress in implementing a plan
17 approved by the Council under subpara-
18 graph (B).

19 “(ii) INSPECTIONS.—The Council may
20 direct the primary financial regulatory
21 agency of a nonbank financial company or
22 its subsidiaries (or, if none, the Board of
23 Governors) to inspect the company or its
24 subsidiaries for the purpose of evaluating
25 the implementation of the company’s plan.

1 “(E) AUTHORITY TO RESCIND AP-
2 PROVAL.—

3 “(i) IN GENERAL.—During the imple-
4 mentation period described under subpara-
5 graph (C), including any extensions grant-
6 ed by the Council, the Council shall retain
7 the authority to rescind its approval of the
8 plan if the Council finds, by a vote of not
9 fewer than $\frac{2}{3}$ of the voting members then
10 serving, including an affirmative vote by
11 the Chairperson, that the company’s imple-
12 mentation of the plan is no longer suffi-
13 cient to mitigate or prevent the risks iden-
14 tified in the resolution described under
15 paragraph (2)(A).

16 “(ii) FINAL DETERMINATION VOTE.—
17 The Council may proceed to a vote on final
18 determination under subsection (a) or (b),
19 as applicable, not earlier than 10 days
20 after providing the nonbank financial com-
21 pany with written notice that the Council
22 has rescinded the approval of the com-
23 pany’s plan pursuant to clause (i).

24 “(F) ACTIONS AFTER IMPLEMENTATION.—

1 “(i) EVALUATION OF IMPLEMENTA-
2 TION.—After the end of the implementa-
3 tion period described under subparagraph
4 (C), including any extensions granted by
5 the Council, the Council shall consider
6 whether the plan, as implemented by the
7 nonbank financial company, adequately
8 mitigates or prevents the risks identified in
9 the resolution described under paragraph
10 (2)(A).

11 “(ii) VOTING.—If, after performing
12 an evaluation under clause (i), not fewer
13 than $\frac{2}{3}$ of the voting members of the
14 Council then serving, including an affirma-
15 tive vote by the Chairperson, determine
16 that the plan, as implemented, adequately
17 mitigates or prevents the identified risks,
18 the Council shall not make a final deter-
19 mination under subsection (a) or (b), as
20 applicable, with respect to the nonbank fi-
21 nancial company and shall notify the com-
22 pany of the Council’s decision to take no
23 further action.

24 “(7) FINAL COUNCIL DECISIONS.—

1 “(A) IN GENERAL.—Not later than 90
2 days after the date of a hearing under para-
3 graph (5), the Council shall notify the nonbank
4 financial company of—

5 “(i) a final determination under sub-
6 section (a) or (b), as applicable;

7 “(ii) the Council’s approval of a plan
8 submitted by the nonbank financial com-
9 pany under paragraph (5) or revised under
10 paragraph (6); or

11 “(iii) the Council’s decision to take no
12 further action with respect to the nonbank
13 financial company.

14 “(B) EXPLANATORY STATEMENT.—A final
15 determination of the Council, under subsection
16 (a) or (b), shall contain a statement of the basis
17 for the decision of the Council, including the
18 reasons why the Council rejected any plan by
19 the nonbank financial company submitted under
20 paragraph (5) or revised under paragraph (6).

21 “(C) NOTICE TO PRIMARY FINANCIAL REG-
22 ULATORY AGENCY.—In the case of a final de-
23 termination under subsection (a) or (b), the
24 Council shall provide the primary financial reg-
25 ulatory agency of the nonbank financial com-

1 pany a copy of the nonpublic written expla-
2 nation of the Council’s final determination.”;

3 (5) in subsection (g), strike “before the Council
4 makes any final determination” and insert “from
5 the outset of the Council’s consideration of the com-
6 pany, including before the Council makes any pro-
7 posed or final determination”; and

8 (6) by adding at the end the following:

9 “(j) PUBLIC DISCLOSURE REQUIREMENT.—The
10 Council shall—

11 “(1) in each case where a nonbank financial
12 company has been notified that it is subject to the
13 Council’s review and the company has publicly dis-
14 closed such fact, confirm that the nonbank financial
15 company is subject to the Council’s review, in re-
16 sponse to a request from a third party;

17 “(2) upon making a final determination, pub-
18 licly provide a written explanation of the basis for its
19 decision with sufficient detail to provide the public
20 with an understanding of the specific bases of the
21 Council’s determination, including any assumptions
22 related thereof, subject to the requirements of sec-
23 tion 112(d)(5);

24 “(3) include, in the annual report required by
25 section 112, the number of nonbank financial com-

1 panies from the previous year subject to preliminary
2 analysis, further review, and subject to a proposed
3 or final determination; and

4 “(4) within 90 days after the enactment of this
5 subsection, publish information regarding its meth-
6 odology for calculating any quantitative thresholds
7 or other metrics used to identify nonbank financial
8 companies for analysis by the Council.

9 “(k) PERIODIC ASSESSMENT OF THE IMPACT OF
10 DESIGNATIONS.—

11 “(1) ASSESSMENT.—Every five years after the
12 date of enactment of this section, the Council
13 shall—

14 “(A) conduct a study of the Council’s de-
15 terminations that nonbank financial companies
16 shall be supervised by the Board of Governors
17 and shall be subject to prudential standards;
18 and

19 “(B) comprehensively assess the impact of
20 such determinations on the companies for which
21 such determinations were made and the wider
22 economy, including whether such determina-
23 tions are having the intended result of improv-
24 ing the financial stability of the United States.

1 “(2) REPORT.—Not later than 90 days after
2 completing a study required under paragraph (1),
3 the Council shall issue a report to the Congress
4 that—

5 “(A) describes all findings and conclusions
6 made by the Council in carrying out such study;
7 and

8 “(B) identifies whether any of the Coun-
9 cil’s determinations should be rescinded or
10 whether related regulations or regulatory guid-
11 ance should be modified, streamlined, expanded,
12 or repealed.”.

13 **SEC. 3. RULE OF CONSTRUCTION.**

14 None of the amendments made by this Act may be
15 construed as limiting the Financial Stability Oversight
16 Council’s emergency powers under section 113(f) of the
17 Financial Stability Act of 2010 (12 U.S.C. 5323(f)).

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