Union Calendar No. 450

115TH CONGRESS 2D 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. Meeeks, 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. Tibéri, 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.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. SIFI DESIGNATION PROCESS.

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

(1) in subsection (a)(2)—

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

(B) by redesignating subparagraph (K) as

subparagraph (L); and

(C) by inserting after subparagraph (J)

the following:

“(K) the appropriateness of the imposition

of prudential standards as opposed to other

forms of regulation to mitigate the identified

risks; and”;

(2) in subsection (b)(2)—

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

(B) by redesignating subparagraph (K) as

subparagraph (L);
(C) by inserting after subparagraph (J) the following:

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

(3) by amending subsection (d) to read as follows:

“(d) REEVALUATION AND RESCISSION.—

“(1) ANNUAL REEVALUATION.—Not less frequently than annually, the Council shall reevaluate each determination made under subsections (a) and (b) with respect to a nonbank financial company supervised by the Board of Governors and shall—

“(A) provide written notice to the nonbank financial company being reevaluated and afford such company an opportunity to submit written materials, within such time as the Council determines to be appropriate (but which shall be not less than 30 days after the date of receipt by the company of such notice), to contest the determination, including materials concerning whether, in the company’s view, material financial distress at the company, or the nature, scope, size, scale, concentration, interconnected-
ness, or mix of the activities of the company could pose a threat to the financial stability of the United States;

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

“(C) if the Council does not rescind the determination, provide notice to the nonbank financial company, its primary financial regulatory agency and the primary financial regulatory agency of any of the company’s significant subsidiaries of the reasons for the Council’s decision, which notice shall address with specificity how the Council assessed the material factors presented by the company under subparagraphs (A) and (B).

“(2) Periodic Reevaluation.—

“(A) Review.—Every 5 years after the date of a final determination with respect to a nonbank financial company under subsection (a) or (b), as applicable, the nonbank financial company may submit a written request to the Council for a reevaluation of such determination. Upon receipt of such a request, the Coun-
cil shall conduct a reevaluation of such determination and hold a vote on whether to rescind such determination.

“(B) PROCEDURES.—Upon receipt of a written request under paragraph (A), the Council shall fix a time (not earlier than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to—

“(i) submit written materials (which may include a plan to modify the company’s business, structure, or operations, which shall specify the length of the implementation period); and

“(ii) provide oral testimony and oral argument before the members of the Council.

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

“(D) EXPLANATION FOR CERTAIN COMPANIES.—With respect to a reevaluation under this paragraph where the determination being reevaluated was made before the date of enactment of this paragraph, the nonbank financial company may require the Council, as part of such reevaluation, to explain with specificity the basis for such determination.

“(3) RECISSION OF DETERMINATION.—

“(A) IN GENERAL.—If the Council, by a vote of not fewer than 2/3 of the voting members then serving, including an affirmative vote by the Chairperson, determines under this subsection that a nonbank financial company no longer meets the standards for a final determination under subsection (a) or (b), as applicable, the Council shall rescind such determination.

“(B) APPROVAL OF COMPANY PLAN.—Approval by the Council of a plan submitted or revised in accordance with paragraph (2) shall require a vote of not fewer than 2/3 of the voting members then serving, including an affirmative
vote by the Chairperson. If such plan is ap-
proved by the Council, the company shall imple-
ment the plan during the period identified in
the plan, except that the Council, in its sole dis-
cretion and upon request from the company,
may grant one or more extensions of the imple-
mentation period. After the end of the imple-
mentation period, including any extensions
granted by the Council, the Council shall pro-
ceed to a vote as described under subparagraph
(A).”;

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

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

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

“(A) written notice that explains with
specificity the basis for so identifying the com-
pany, a copy of which shall be provided to the
compny’s primary financial regulatory agency;

"
*(B) an opportunity to submit written ma-
terials for consideration by the Council as part
of the Council’s initial evaluation of the risk
profile and characteristics of the company;
"
*(C) an opportunity to meet with the
Council to discuss the Council’s analysis; and

"
*(D) a list of the public sources of infor-
mation being considered by the Council as part
of such analysis.
"
*(2) REQUIREMENTS BEFORE MAKING A PRO-
POSED DETERMINATION.—Before making a pro-
posed determination with respect to a nonbank fi-
nancial company under paragraph (3), the Council
shall—

"
*(A) by a vote of not fewer than 2/3 of the
voting members then serving, including an af-
firmative vote by the Chairperson, approve a
resolution that identifies with specificity any
risks to the financial stability of the United
States the Council has identified relating to the
nonbank financial company;
"
*(B) with respect to nonbank financial
company with a primary financial regulatory
agency, provide a copy of the resolution de-
scribed under subparagraph (A) to the primary
financial regulatory agency and provide such
agency with at least 180 days from the receipt
of the resolution to—

"(i) consider the risks identified in the
resolution; and

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

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

"(i) is considering whether to make a
proposed determination with respect to the
nonbank financial company under sub-
section (a) or (b), as applicable, which no-
tice explains with specificity the basis for
the Council’s consideration, including any
aspects of the company’s operations or ac-
tivities that are a primary focus for the
Council; or

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

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

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

“(ii) an opportunity to submit written
materials, within such time as the Council
deems appropriate (but not less than 30
days after the date of receipt by the com-
pany of the notice described under clause
(i)), to the Council to inform the Council’s
consideration of the nonbank financial
compny for a proposed determination, in-
cluding materials concerning the com-
pany’s views as to whether it satisfies the
standard for determination set forth in
subsection (a) or (b), as applicable;
“(iii) an explanation of how any request by the Council for information from the nonbank financial company relates to potential risks to the financial stability of the United States and the Council’s analysis of the company;

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

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

“(3) PROPOSED DETERMINATION.—

“(A) VOTING.—The Council may, by a vote of not fewer than 2/3 of the voting members then serving, including an affirmative vote by the Chairperson, propose to make a determination in accordance with the provisions of subsection (a) or (b), as applicable, with respect to a nonbank financial company.

“(B) DEADLINE FOR MAKING A PROPOSED DETERMINATION.—With respect to a nonbank financial company provided with a written notice under paragraph (2)(C)(i), if the Council does not provide the company with the written
notice of a proposed determination described under paragraph (4) within the 180-day period following the date on which the Council notifies the company under paragraph (2)(C) that the evidentiary record is complete, the Council may not make such a proposed determination with respect to such company unless the Council repeats the procedures described under paragraph (2).

“(C) Review of actions of primary financial regulatory agency.—With respect to a nonbank financial company with a primary financial regulatory agency, the Council may not vote under subparagraph (A) to make a proposed determination unless—

“(i) the Council first determines that any proposed regulations or other regulatory actions taken by the primary financial regulatory agency after receipt of the resolution described under paragraph (2)(A) are insufficient to mitigate the risks identified in the resolution;

“(ii) the primary financial regulatory agency has notified the Council that the agency has no proposed regulations or
other regulatory actions to mitigate the risks identified in the resolution; or

“(iii) the period allowed by the Council under paragraph (2)(B) has elapsed and the primary financial regulatory agency has taken no action in response to the resolution.

“(4) NOTICE OF PROPOSED DETERMINATION.—

The Council shall—

“(A) provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title, an explanation of the specific risks to the financial stability of the United States presented by the nonbank financial company, and a detailed explanation of why existing regulations or other regulatory action by the company’s primary financial regulatory agency, if any, is insufficient to mitigate such risk; and
“(B) provide the primary financial regulatory agency of the nonbank financial company a copy of the nonpublic written explanation of the Council’s proposed determination.

“(5) HEARING.—

“(A) IN GENERAL.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (4), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination, including the opportunity to present a plan to modify the company’s business, structure, or operations in order to mitigate the risks identified in the notice, and which plan shall also include any steps the company expects to take during the implementation period to mitigate such risks.

“(B) GRANT OF HEARING.—Upon receipt of a timely request, the Council shall fix a time (not earlier than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to—
“(i) submit written materials (which may include a plan to modify the company’s business, structure, or operations); or

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

“(6) Council consideration of company plan.—

“(A) In general.—If a nonbank financial company submits a plan in accordance with paragraph (5), the Council shall, prior to making a final determination—

“(i) consider whether the plan, if implemented, would mitigate the risks identified in the notice under paragraph (4); and

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

“(B) Voting.—Approval by the Council of a plan submitted under paragraph (5) or revised under subparagraph (A)(ii) shall require a vote of not fewer than 2⁄3 of the voting members then serving, including an affirmative vote by the Chairperson.
“(C) IMPLEMENTATION OF APPROVED PLAN.—With respect to a nonbank financial company’s plan approved by the Council under subparagraph (B), the company shall have one year to implement the plan, except that the Council, in its sole discretion and upon request from the nonbank financial company, may grant one or more extensions of the implementation period.

“(D) OVERSIGHT OF IMPLEMENTATION.—

“(i) PERIODIC REPORTS.—The Council, acting through the Office of Financial Research, may require the submission of periodic reports from a nonbank financial company for the purpose of evaluating the company’s progress in implementing a plan approved by the Council under subparagraph (B).

“(ii) INSPECTIONS.—The Council may direct the primary financial regulatory agency of a nonbank financial company or its subsidiaries (or, if none, the Board of Governors) to inspect the company or its subsidiaries for the purpose of evaluating the implementation of the company’s plan.
“(E) Authority to rescind approval.—

“(i) In general.—During the implementation period described under subparagraph (C), including any extensions granted by the Council, the Council shall retain the authority to rescind its approval of the plan if the Council finds, by a vote of not fewer than 2/3 of the voting members then serving, including an affirmative vote by the Chairperson, that the company’s implementation of the plan is no longer sufficient to mitigate or prevent the risks identified in the resolution described under paragraph (2)(A).

“(ii) Final determination vote.—The Council may proceed to a vote on final determination under subsection (a) or (b), as applicable, not earlier than 10 days after providing the nonbank financial company with written notice that the Council has rescinded the approval of the company’s plan pursuant to clause (i).

“(F) Actions after implementation.—
“(i) Evaluation of Implementation.—After the end of the implementation period described under subparagraph (C), including any extensions granted by the Council, the Council shall consider whether the plan, as implemented by the nonbank financial company, adequately mitigates or prevents the risks identified in the resolution described under paragraph (2)(A).

“(ii) Voting.—If, after performing an evaluation under clause (i), not fewer than 2/3 of the voting members of the Council then serving, including an affirmative vote by the Chairperson, determine that the plan, as implemented, adequately mitigates or prevents the identified risks, the Council shall not make a final determination under subsection (a) or (b), as applicable, with respect to the nonbank financial company and shall notify the company of the Council’s decision to take no further action.

“(7) Final Council Decisions.—
“(A) IN GENERAL.—Not later than 90 days after the date of a hearing under paragraph (5), the Council shall notify the nonbank financial company of—

“(i) a final determination under subsection (a) or (b), as applicable;

“(ii) the Council’s approval of a plan submitted by the nonbank financial company under paragraph (5) or revised under paragraph (6); or

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

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

“(C) NOTICE TO PRIMARY FINANCIAL REGULATORY AGENCY.—In the case of a final determination under subsection (a) or (b), the Council shall provide the primary financial regulatory agency of the nonbank financial com-
pany a copy of the nonpublic written explanation of the Council’s final determination.”;

(5) in subsection (g), strike “before the Council makes any final determination” and insert “from the outset of the Council’s consideration of the company, including before the Council makes any proposed or final determination”; and

(6) by adding at the end the following:

“(j) Public Disclosure Requirement.—The Council shall—

“(1) in each case where a nonbank financial company has been notified that it is subject to the Council’s review and the company has publicly disclosed such fact, confirm that the nonbank financial company is subject to the Council’s review, in response to a request from a third party;

“(2) upon making a final determination, publicly provide a written explanation of the basis for its decision with sufficient detail to provide the public with an understanding of the specific bases of the Council’s determination, including any assumptions related thereof, subject to the requirements of section 112(d)(5);

“(3) include, in the annual report required by section 112, the number of nonbank financial com-
panies from the previous year subject to preliminary analysis, further review, and subject to a proposed or final determination; and

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

“(k) Periodic Assessment of the Impact of Designations.—

“(1) Assessment.—Every five years after the date of enactment of this section, the Council shall—

“(A) conduct a study of the Council’s determinations that nonbank financial companies shall be supervised by the Board of Governors and shall be subject to prudential standards; and

“(B) comprehensively assess the impact of such determinations on the companies for which such determinations were made and the wider economy, including whether such determinations are having the intended result of improving the financial stability of the United States.
“(2) REPORT.—Not later than 90 days after completing a study required under paragraph (1), the Council shall issue a report to the Congress that—

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

“(B) identifies whether any of the Council’s determinations should be rescinded or whether related regulations or regulatory guidance should be modified, streamlined, expanded, or repealed.”.

SEC. 3. RULE OF CONSTRUCTION.

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

MARCH 9, 2018

COMMITTED TO THE COMMITTEE OF THE WHOLE HOUSE ON THE STATE OF THE UNION AND ORDERED TO BE PRINTED

REPORT NO. 115-592

H. R. 4061

Union Calendar No. 460