

FINANCIAL INSTITUTION LIVING WILL IMPROVEMENT
ACT OF 2017

DECEMBER 14, 2017.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 4292]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4292) to reform the living will process under the Dodd-Frank Wall Street Reform and Consumer Protection Act, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Financial Institution Living Will Improvement Act of 2017”.

SEC. 2. LIVING WILL REFORMS.

(a) **IN GENERAL.**—Section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(d)) is amended—

(1) in paragraph (1), by striking “periodically” and inserting “every 2 years”; and

(2) in paragraph (3)—

(A) by striking “The Board” and inserting the following:

“(A) **IN GENERAL.**—The Board”;

(B) by striking “shall review” and inserting the following: “shall—
“(i) review”;

(C) by striking the period and inserting “; and”; and

(D) by adding at the end the following:

“(ii) not later than the end of the 6-month period beginning on the date the company submits the resolution plan, provide feedback to the company on such plan.

“(B) **DISCLOSURE OF ASSESSMENT FRAMEWORK.**—The Board of Governors and the Corporation shall publicly disclose the assessment framework that is used to review information under this paragraph.”.

(b) **TREATMENT OF OTHER RESOLUTION PLAN REQUIREMENTS.**—

(1) IN GENERAL.—With respect to an appropriate Federal banking agency that requires a banking organization to submit to the agency a resolution plan not described under section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act—

(A) the respective agency shall ensure that the review of such resolution plan is consistent with the requirements contained in the amendments made by this Act;

(B) the agency may not require the submission of such a resolution plan more often than every 2 years; and

(C) paragraphs (6) and (7) of such section 165(d) shall apply to such a resolution plan.

(2) DEFINITIONS.—For purposes of this subsection:

(A) APPROPRIATE FEDERAL BANKING AGENCY.—The term “appropriate Federal banking agency”—

(i) has the meaning given such term under section 3 of the Federal Deposit Insurance Act; and

(ii) means the National Credit Union Administration, in the case of an insured credit union.

(B) BANKING ORGANIZATION.—The term “banking organization” means—

(i) an insured depository institution;

(ii) an insured credit union;

(iii) a depository institution holding company;

(iv) a company that is treated as a bank holding company for purposes of section 8 of the International Banking Act; and

(v) a U.S. intermediate holding company established by a foreign banking organization pursuant to section 252.153 of title 12, Code of Federal Regulations.

(C) INSURED CREDIT UNION.—The term “insured credit union” has the meaning given that term under section 101 of the Federal Credit Union Act.

(D) OTHER BANKING TERMS.—The terms “depository institution holding company” and “insured depository institution” have the meaning given those terms, respectively, under section 3 of the Federal Deposit Insurance Act.

(c) RULE OF CONSTRUCTION.—Nothing in this Act, or any amendment made by this Act, shall be construed as limiting the authority of an appropriate Federal banking agency (as defined under subsection (b)(2)) to obtain information from an institution in connection with such agency’s authority to examine or require reports from the institution.

PURPOSE AND SUMMARY

Introduced by Representative Lee Zeldin on November 7, 2017, H.R. 4292, the “Financial Institution Living Will Improvement Act of 2017” amends Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) to reform the “living will” process and require bank holding companies to submit to the Board of Governors of the Federal Reserve System (Federal Reserve) and the Federal Deposit Insurance Corporation (FDIC) resolution plans every two years.

This bill also requires the Federal Reserve and FDIC to provide feedback to a bank holding company regarding a submitted resolution plan within six months after its submission. This bill also requires the Federal Reserve and FDIC to publicly disclose the assessment framework used to review the adequacy of resolution plans.

BACKGROUND AND NEED FOR LEGISLATION

Section 165 of the Dodd-Frank Act requires bank holding companies with total consolidated assets of \$50 billion or more (also known as systemically-important financial institutions (SIFIs), and nonbank financial companies designated by the Financial Stability Oversight Council (FSOC) for supervision to annually submit de-

tailed plans to the Federal Reserve and the Federal Deposit Insurance Company (FDIC) that describes the company’s strategy for rapid and orderly resolution under the Bankruptcy Code in the event of its material financial distress or failure. If the Federal Reserve and FDIC jointly conclude that a SIFI has failed to produce a “credible” plan for its orderly resolution, they can take a series of punitive measures, including the imposition of “more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof.”¹ Failure to remedy the deficiencies identified by the prudential regulators can ultimately result in the Federal Reserve and FDIC ordering the firm “to divest certain assets or operations.”²

In an April 2016 report, entitled “Regulators Have Refined Their Review Processes but Could Improve Transparency and Timeliness,” the Government Accountability Office (GAO) examined the process used by regulators under Section 165 of the Dodd-Frank Act to review SIFI resolution plans.³ The GAO concluded that while the reviewing regulators have sought to reduce the burden of the resolution plan requirements, there were still weaknesses to be addressed.⁴ Specifically, the GAO determined that the Federal Reserve and FDIC should increase transparency by disclosing their assessment frameworks and criteria, noting that:

. . . a better understanding of the regulators’ assessment frameworks could give the larger companies a more complete understanding of the key factors that can lead to plan deficiencies. Likewise, disclosure of the regulators’ criteria could help motivate smaller companies to reduce their systemic risk and understand how they might qualify to file reduced plans.

In addition to assessment transparency, the GAO also found a need to increase timeliness of guidance and feedback. The GAO concluded that:

FDIC and the Federal Reserve have taken about 9 months on average to review resolution plans and jointly provide companies with guidance or feedback. Because the resolution plan rule requires companies to file plans annually, some companies may not have sufficient time to fully incorporate such guidance or feedback into their subsequent plans and obtain their board of directors’ approval of the plans by the submission deadline.

As such, the GAO recommended that regulators should: publicly disclose information about their respective frameworks for assessing and recommending to their boards whether a plan is not credible or would not facilitate an orderly resolution under the Code; publicly disclose aspects of their criteria used to decide which companies are allowed to file a reduced plan; and revise the resolution plan rule’s annual filing requirement to provide sufficient time not

¹Dodd-Frank Act § 165(d)(5)(A).

²Dodd-Frank Act § 165(d)(5)(B).

³See “RESOLUTION PLANS: Regulators Have Refined Their Review Processes but Could Improve Transparency and Timeliness”, GAO-16-341: Published: Apr 12, 2016. Publicly Released: Apr 12, 2016. available at <https://www.gao.gov/products/GAO-16-341>.

⁴GAO, GAO-16-341, Resolution Plans: Regulators Have Refined Their Review Processes But Could Improve Transparency And Timeliness (April 12, 2016), available at: <http://www.gao.gov/products/GAO-16-341>.

only for the regulators to complete their plan reviews and provide feedback but also for companies to address and incorporate regulators' feedback in subsequent plan filings.

The Federal Reserve and FDIC have also recognized the need to reform the living wills framework. During a June 22, 2017 hearing before the Committee on Banking, Housing and Urban Affairs of the U.S. Senate, both FDIC Chairman Martin Gruenberg and Federal Reserve Chair Nominee, and current-Governor Jay Powell mutually testified that both regulators:

. . . believe it is worthwhile to consider extending the cycle for living will submissions from annual to once every two years, and focusing every other of these filings on key topics of interest and material changes from the prior full plan submission. In addition, there may be opportunities to greatly reduce the submission requirements for a large number of firms due to their relatively small, simple, and domestically focused activities

With Chairman Gruenberg adding that, “[s]uch an approach could limit full plan filing requirements to firms that are large, complex, or have a systemically critical operation.”

In June 2017, the Treasury Department issued the first in a series of reports to the President in response to Executive Order 13772 on Core Principles for Regulating the United States Financial System. The report, entitled, “A Financial System That Creates Economic Opportunities: Banks and Credit Unions,” focused on regulatory relief recommendations for those institutions. With regard to living wills guidance, the Treasury Report recommended that institutions be provided a two year submission cycle, and that the Federal Reserve complete reviews and provide feedback of living wills proposals within six months of submission.

As implemented by federal regulators, the living will process has devolved into an opaque and hugely expensive exercise in command-and-control Washington, top-down regulation. H.R. 4292, as amended, is a measured and appropriate response to fix many of the challenges that financial institutions experience in their efforts to comply with the living will statutory regulatory mandates.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 4292 on April 26, 2017 and April 28, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 14, 2017, and November 15, 2017, and ordered H.R. 4292 to be reported favorably to the House as amended by a recorded vote of 60 yeas to 0 nays (recorded vote no. FC-106), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment offered by Ms. Waters by 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. The sole recorded

vote was on a motion by Chairman Hensarling to report the bill favorably to the House with amendment. The motion was agreed to by a recorded vote of 60 yeas to 0 nays (Record vote no. FC-106), a quorum being present.

Record vote no. FC-106

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY) ..	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch	X		
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison	X		
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of 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 states that H.R. 4292 will reform the living wills submission process to make it more transparent, responsive, and efficient for submitting bank holding companies.

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.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

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, December 8, 2017.

Hon. JEB HENSARLING,
*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. 4292, the Financial Institution Living Will Improvement Act of 2017.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 4292—Financial Institution Living Will Improvement Act of 2017

H.R. 4292 would codify current regulatory practices by requiring certain financial institutions to submit resolution plans (known as living wills) to the Federal Deposit Insurance Corporation (FDIC) and the Federal Reserve once every two years. The bill also would require the FDIC and the Federal Reserve to provide additional

feedback to those financial institutions about their living wills and to publicly disclose their assessment framework.

H.R. 4292 would impose a small administrative cost on both agencies. Such costs to the FDIC are recorded in the budget as an increase in direct spending; costs incurred by the Federal Reserve are treated as reductions in remittances to the Treasury. Such reductions are recorded in the budget as reductions in revenues.

Because enacting H.R. 4292 would affect direct spending and revenues, pay-as-you-go procedures apply. However, using information from those agencies, CBO estimates that the net budgetary effects would be insignificant for each year.

CBO estimates that enacting H.R. 4292 would not significantly increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4292 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contacts for this estimate are Sarah Puro (for the FDIC) and Nathaniel Frentz (for the Federal Reserve). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

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

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

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public

Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 4292 as the “Financial Institution Living Will Improvement Act of 2017”.

Section 2. Living will reforms

This section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act to require bank holding companies submit to the Federal Reserve Board (Federal Reserve) and the Federal Deposit Insurance Corporation (FDIC) resolution plans every two years. This section also requires the Federal Reserve and FDIC to provide feedback within six months of the submission of a resolution plan by a company. This section also requires the Federal Reserve and FDIC to publicly disclose the assessment framework used to review the adequacy of resolution plans.

This section also requires an appropriate Federal banking agency follow the above cited requirements for any resolution plan not described under section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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

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

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

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TITLE I—FINANCIAL STABILITY

* * * * *

Subtitle C—Additional Board of Governors Authority for Certain Nonbank Financial Companies and Bank Holding Companies

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SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLD- ING COMPANIES.

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies with total consolidated assets equal to or greater than \$50,000,000,000 that—

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) TAILORED APPLICATION.—

(A) IN GENERAL.—In prescribing more stringent prudential standards under this section, the Board of Governors may, on its own or pursuant to a recommendation by the Council in accordance with section 115, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

(B) ADJUSTMENT OF THRESHOLD FOR APPLICATION OF CERTAIN STANDARDS.—The Board of Governors may, pursuant to a recommendation by the Council in accordance with section 115, establish an asset threshold above \$50,000,000,000 for the application of any standard established under subsections (c) through (g).

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements and leverage limits, unless the Board of Governors, in consultation with the Council, determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company (such as investment company activities or assets under management) or structure, in which case, the Board of Governors shall apply other standards that result in similarly stringent risk controls;

- (ii) liquidity requirements;
- (iii) overall risk management requirements;
- (iv) resolution plan and credit exposure report requirements; and
- (v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may establish additional prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

- (i) a contingent capital requirement;
- (ii) enhanced public disclosures;
- (iii) short-term debt limits; and
- (iv) such other prudential standards as the Board or Governors, on its own or pursuant to a recommendation made by the Council in accordance with section 115, determines are appropriate.

(2) STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards set forth in paragraph (1) to any foreign nonbank financial company supervised by the Board of Governors or foreign-based bank holding company, the Board of Governors shall—

- (A) give due regard to the principle of national treatment and equality of competitive opportunity; and
- (B) take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

- (i) the factors described in subsections (a) and (b) of section 113;
- (ii) whether the company owns an insured depository institution;
- (iii) nonfinancial activities and affiliations of the company; and
- (iv) any other risk-related factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the

prudential standards established under paragraph (1) of this subsection;

(C) take into account any recommendations of the Council under section 115; and

(D) adapt the required standards as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(4) CONSULTATION.—Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

(5) REPORT.—The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—Subsequent to submission by the Council of a report to Congress under section 115(c), the Board of Governors may issue regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In issuing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 115(c);

(B) an appropriate transition period for implementation of contingent capital under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report **[periodically]** *every 2 years* to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, which shall include—

- (A) information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company;
- (B) full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company;
- (C) identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and
- (D) any other information that the Board of Governors and the Corporation jointly require by rule or order.
- (2) CREDIT EXPOSURE REPORT.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—
- (A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and
- (B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.
- (3) REVIEW.—**[The Board]**
- (A) *IN GENERAL.*—*The Board of Governors and the Corporation [shall review] shall—*
- (i) *review the information provided in accordance with this subsection by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a)[.]; and*
- (ii) *not later than the end of the 6-month period beginning on the date the company submits the resolution plan, provide feedback to the company on such plan.*
- (B) *DISCLOSURE OF ASSESSMENT FRAMEWORK.*—*The Board of Governors and the Corporation shall publicly disclose the assessment framework that is used to review information under this paragraph.*
- (4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—
- (A) the Board of Governors and the Corporation shall notify the company of the deficiencies in the resolution plan; and
- (B) the company shall resubmit the resolution plan within a timeframe determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors and the Corporation, in consultation with the Council, may jointly direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, United States Code, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) NO LIMITING EFFECT.—A resolution plan submitted in accordance with this subsection shall not be binding on a bankruptcy court, a receiver appointed under title II, or any other authority that is authorized or required to resolve the nonbank financial company supervised by the Board, any bank holding company, or any subsidiary or affiliate of the foregoing.

(7) NO PRIVATE RIGHT OF ACTION.—No private right of action may be based on any resolution plan submitted in accordance with this subsection.

(8) RULES.—Not later than 18 months after the date of enactment of this Act, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

(e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and sur-

plus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) CREDIT EXPOSURE.—For purposes of paragraph (2), “credit exposure” to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company, and all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(C) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(D) all purchases of or investment in securities issued by the company;

(E) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(F) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) CONTRIBUTION RULE.—For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) EXEMPTIONS.—This subsection shall not apply to any Federal home loan bank. The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term “credit exposure” for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—

(A) IN GENERAL.—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) EXTENSION AUTHORIZED.—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) ENHANCED PUBLIC DISCLOSURES.—The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors

and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) SHORT-TERM DEBT LIMITS.—

(1) IN GENERAL.—In order to mitigate the risks that an over-accumulation of short-term debt could pose to financial companies and to the stability of the United States financial system, the Board of Governors may, by regulation, prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any bank holding company described in subsection (a) and any nonbank financial company supervised by the Board of Governors.

(2) BASIS OF LIMIT.—Any limit prescribed under paragraph (1) shall be based on the short-term debt of the company described in paragraph (1) as a percentage of capital stock and surplus of the company or on such other measure as the Board of Governors considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term “short-term debt” means such liabilities with short-dated maturity that the Board of Governors identifies, by regulation, except that such term does not include insured deposits.

(4) RULEMAKING AUTHORITY.—In addition to prescribing regulations under paragraphs (1) and (3), the Board of Governors may prescribe such regulations, including definitions consistent with this subsection, and issue such orders, as may be necessary to carry out this subsection.

(5) AUTHORITY TO ISSUE EXEMPTIONS AND ADJUSTMENTS.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board of Governors may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a company described in paragraph (1) that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(h) RISK COMMITTEE.—

(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(e)(3) with respect to such nonbank financial company supervised by the Board of Governors.

(2) CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than \$10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than \$10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or ap-

propriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(i) STRESS TESTS.—

(1) BY THE BOARD OF GOVERNORS.—

(A) ANNUAL TESTS REQUIRED.—The Board of Governors, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, shall conduct annual analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) TEST PARAMETERS AND CONSEQUENCES.—The Board of Governors—

(i) shall provide for at least 3 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline, adverse, and severely adverse;

(ii) may require the tests described in subparagraph (A) at bank holding companies and nonbank financial companies, in addition to those for which annual tests are required under subparagraph (A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in subparagraph (A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; and

(v) shall publish a summary of the results of the tests required under subparagraph (A) or clause (ii) of this subparagraph.

(2) BY THE COMPANY.—

(A) REQUIREMENT.—A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct semiannual stress tests. All other financial companies that have total consolidated assets of more than \$10,000,000,000 and are regulated by a primary Federal financial regulatory agency shall conduct annual stress tests. The tests required under this subparagraph shall be conducted in accordance with the regulations prescribed under subparagraph (C).

(B) REPORT.—A company required to conduct stress tests under subparagraph (A) shall submit a report to the Board of Governors and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require.

(C) REGULATIONS.—Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, shall issue consistent and comparable regulations to implement this paragraph that shall—

(i) define the term “stress test” for purposes of this paragraph;

(ii) establish methodologies for the conduct of stress tests required by this paragraph that shall provide for at least 3 different sets of conditions, including baseline, adverse, and severely adverse;

(iii) establish the form and content of the report required by subparagraph (B); and

(iv) require companies subject to this paragraph to publish a summary of the results of the required stress tests.

(j) LEVERAGE LIMITATION.—

(1) REQUIREMENT.—The Board of Governors shall require a bank holding company with total consolidated assets equal to or greater than \$50,000,000,000 or a nonbank financial company supervised by the Board of Governors to maintain a debt to equity ratio of no more than 15 to 1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States. Nothing in this paragraph shall apply to a Federal home loan bank.

(2) CONSIDERATIONS.—In making a determination under this subsection, the Council shall consider the factors described in subsections (a) and (b) of section 113 and any other risk-related factors that the Council deems appropriate.

(3) REGULATIONS.—The Board of Governors shall promulgate regulations to establish procedures and timelines for complying with the requirements of this subsection.

(k) INCLUSION OF OFF-BALANCE-SHEET ACTIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

(1) IN GENERAL.—In the case of any bank holding company described in subsection (a) or nonbank financial company supervised by the Board of Governors, the computation of capital

for purposes of meeting capital requirements shall take into account any off-balance-sheet activities of the company.

(2) EXEMPTIONS.—If the Board of Governors determines that an exemption from the requirement under paragraph (1) is appropriate, the Board of Governors may exempt a company, or any transaction or transactions engaged in by such company, from the requirements of paragraph (1).

(3) OFF-BALANCE-SHEET ACTIVITIES DEFINED.—For purposes of this subsection, the term “off-balance-sheet activities” means an existing liability of a company that is not currently a balance sheet liability, but may become one upon the happening of some future event, including the following transactions, to the extent that they may create a liability:

(A) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(B) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(C) Risk participations in bankers’ acceptances.

(D) Sale and repurchase agreements.

(E) Asset sales with recourse against the seller.

(F) Interest rate swaps.

(G) Credit swaps.

(H) Commodities contracts.

(I) Forward contracts.

(J) Securities contracts.

(K) Such other activities or transactions as the Board of Governors may, by rule, define.

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