

111TH CONGRESS
1ST SESSION

S. 2756

To establish the Financial Services Systemic Risk Oversight Council, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 2009

Mr. WARNER introduced the following bill; which was read twice and referred
to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish the Financial Services Systemic Risk Oversight
Council, 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 Services Sys-
5 temic Risk Oversight Council Act of 2009”.

6 **SEC. 2. FINANCIAL SERVICES SYSTEMIC RISK OVERSIGHT**
7 **COUNCIL ESTABLISHED.**

8 (a) ESTABLISHMENT.—There is established the Fi-
9 nancial Services Systemic Risk Oversight Council, which

1 shall be an independent establishment, as defined in sec-
 2 tion 104 of title 5, United States Code.

3 (b) APPOINTMENT.—

4 (1) IN GENERAL.—The Chairman of the Coun-
 5 cil shall be appointed by the President, by and with
 6 the advice and consent of the Senate, for a term of
 7 6 years.

8 (2) PROHIBITION.—The Chairman may not
 9 hold any other office for which appointment by the
 10 President and confirmation by the Senate are re-
 11 quired, during service as the Chairman.

12 (3) PROHIBITION ON POLITICAL CAM-
 13 PAIGNING.—The Chairman may not participate in
 14 Federal election campaign activities.

15 (c) MEMBERS.—

16 (1) IN GENERAL.—The members of the Council
 17 shall be—

18 (A) the Chairman;

19 (B) the Secretary of the Treasury;

20 (C) the Chairman of the Board of Gov-
 21 ernors of the Federal Reserve System;

22 (D) the Comptroller of the Currency, or
 23 any successor thereto;

24 (E) the Director of the Office of Thrift Su-
 25 pervision, or any successor thereto;

1 (F) 1 individual, designated by the Presi-
 2 dent, having expertise and experience in the
 3 protection of consumers of financial products,
 4 subject to paragraph (2)(B);

5 (G) the Chairman of the Securities and
 6 Exchange Commission;

7 (H) the Chairman of the Commodity Fu-
 8 tures Trading Commission;

9 (I) the Chairman of the Federal Deposit
 10 Insurance Corporation; and

11 (J) 1 individual designated by the Presi-
 12 dent.

13 (2) TERMS OF DESIGNATED MEMBERS.—

14 (A) LENGTH OF TERMS.—Each member
 15 designated by the President under subpara-
 16 graph (F) or (J) of paragraph (1) shall serve
 17 for a term of 6 years, except that—

18 (i) the first individual designated
 19 under paragraph (1)(F) shall serve for a
 20 term of 5 years; and

21 (ii) the first individual designated
 22 under paragraph (1)(J) shall serve for a
 23 term of 3 years.

24 (B) SUCCESSIVE TERMS.—No member des-
 25 ignated under subparagraph (A), (F), or (J) of

1 paragraph (1) may serve for more than 2 con-
2 secutive terms.

3 (C) REMOVAL.—No member designated
4 under subparagraph (F) or (J) of paragraph
5 (1) may be removed, except for cause.

6 (3) SUCCESSION.—If Congress establishes an
7 agency in the executive branch that acts as a con-
8 sumer financial protection agency—

9 (A) the director of such office shall be a
10 member of the Council;

11 (B) the individual designated by the Presi-
12 dent under paragraph (1)(F) shall not be a
13 member of the Council; and

14 (C) the limitations under paragraph (2)
15 shall not apply to the director of such office.

16 (d) TECHNICAL AND PROFESSIONAL ADVISORY COM-
17 MITTEES.—

18 (1) IN GENERAL.—The Council may establish
19 an advisory, technical, or professional committees to
20 assist the Council in carrying out the duties of the
21 Council under this Act.

22 (2) MEMBERS.—A committee established under
23 paragraph (1) may include a member of the Council.

24 (e) MEETINGS.—The Council shall meet—

25 (1) not less frequently than once each quarter;

1 (2) at such time as the Chairman determines is
2 necessary; and

3 (3) upon the request of any member of the
4 Council.

5 (f) AGENDA.—The Chairman shall prepare an agen-
6 da for each meeting that shall include any item requested
7 by a member of the Council.

8 **SEC. 3. DUTIES OF THE COUNCIL AND THE CHAIRMAN.**

9 (a) DUTIES OF THE COUNCIL.—The Council shall—
10 (1) be the systemic risk regulator for the finan-
11 cial system of the United States;

12 (2) advise the President on issues relating to
13 systemic risk mitigation;

14 (3) monitor the financial markets and financial
15 companies to identify and address potential systemic
16 risk;

17 (4) evaluate the ability of the financial markets
18 to function appropriately throughout the failure of
19 United States financial companies and foreign finan-
20 cial companies in a way that minimizes systemic
21 risk;

22 (5) ensure that each financial institution is ade-
23 quately supervised and regulated for systemic risk
24 purposes;

1 (6) establish criteria specifying the need for the
2 assignment of a primary prudential regulator to a fi-
3 nancial institution which may pose a systemic risk
4 which are not already subject to Federal prudential
5 regulation; and

6 (7) promote the integrity, efficiency, orderli-
7 ness, and stability of the financial markets, by—

8 (A) making recommendations to the Fed-
9 eral financial regulators for the mitigation of
10 systemic risk; and

11 (B) establishing minimum, mandatory pru-
12 dential standards for the mitigation of systemic
13 risk.

14 (b) DUTIES OF THE CHAIRMAN.—The Chairman
15 shall—

16 (1) coordinate areas of overlapping or joint ju-
17 risdiction among the Federal financial regulators, by
18 identifying regulations of the Federal financial regu-
19 lators that should be amended—

20 (A) to ensure that financial markets and
21 financial companies are—

22 (i) sufficiently regulated by the Fed-
23 eral financial regulators to mitigate sys-
24 temic risk; and

1 (ii) subject to consistent regulations in
2 the case of overlapping jurisdiction;

3 (B) to ensure that comparable financial
4 products, activities, and institutions receive
5 comparable regulation and supervision; and

6 (C) to improve the exchange of information
7 by the Federal financial regulators;

8 (2) review the rules, regulations, and regulatory
9 actions of each Federal financial regulator, as such
10 rules, regulations, and actions relate to the mitiga-
11 tion of systemic risk, and provide comments to each
12 Federal financial regulator relating to such review;

13 (3) identify any deficiencies in the authority of
14 a Federal financial regulator that would prevent the
15 Federal financial regulator from issuing regulations
16 to mitigate systemic risk;

17 (4) recommend to the Council any revision to
18 the rules or regulations of a Federal financial regu-
19 lator necessary to monitor or prevent systemic risk;

20 (5) ensure that the Council—

21 (A) collects and analyzes sufficiently com-
22 prehensive data relating to financial companies
23 and financial markets, wherever possible from
24 existing governmental agencies and sources, to
25 identify systemic risks; and

1 (B) shares such information with the mem-
 2 bers of the Council;

3 (6) propose minimum prudential standards and
 4 risk management standards for consideration by the
 5 Council; and

6 (7) provide testimony before Congress that re-
 7 flects his or her own views of systemic risk and its
 8 mitigation through financial regulation and market
 9 structures.

10 **SEC. 4. PRUDENTIAL REGULATION OF NONBANK FINAN-**
 11 **CIAL COMPANIES.**

12 (a) ASSIGNMENT OF A PRIMARY PRUDENTIAL REGU-
 13 LATOR FOR FINANCIAL COMPANIES.—

14 (1) DESIGNATION.—

15 (A) IN GENERAL.—Upon a majority vote
 16 of the members of the Council, the Council
 17 may, by rule or order, assign a primary pruden-
 18 tial regulator to any United States financial
 19 company or foreign financial company for which
 20 the Council determines a primary prudential
 21 regulator is necessary to mitigate systemic risk
 22 related to the financial company.

23 (B) CRITERIA FOR ASSIGNMENT OF A PRI-
 24 MARY PRUDENTIAL REGULATOR.—

1 (i) IN GENERAL.—In making an as-
2 signment under subparagraph (A), the
3 Council shall consider—

4 (I) the amount and nature of the
5 financial assets of the United States
6 financial company or the foreign fi-
7 nancial company;

8 (II) the amount and type of the
9 liabilities of the United States finan-
10 cial company or the foreign financial
11 company, including the degree of reli-
12 ance by the United States financial
13 company or the foreign financial com-
14 pany on short-term funding;

15 (III) the extent of the activities
16 and risk of the United States financial
17 company or the foreign financial com-
18 pany that are held off-balance sheet;

19 (IV) the extent of the trans-
20 actions and relationships of the
21 United States financial company or
22 the foreign financial company with
23 other major financial companies;

1 (V) the importance of the United
2 States financial company or the for-
3 eign financial company as—

4 (aa) a source of credit for
5 households, businesses, and State
6 and local governments; and

7 (bb) a source of liquidity for
8 the financial system;

9 (VI) any recommendation of a
10 member of the Council relating to the
11 United States financial company or
12 the foreign financial company; and

13 (VII) any other factor that the
14 Council determines is appropriate.

15 (ii) SPECIFIC CRITERIA FOR FOREIGN
16 FINANCIAL COMPANIES.—In making an as-
17 signment under subparagraph (A) with re-
18 spect to a foreign financial company, the
19 Council shall consider—

20 (I) only the assets, liabilities, and
21 activities of the foreign financial com-
22 pany that are held or conducted in the
23 United States; and

1 (II) the principles of national
2 treatment and equality of competitive
3 opportunity.

4 (C) PROHIBITION RELATING TO FOREIGN
5 FINANCIAL COMPANIES.—The Council may not
6 assign a primary prudential regulator for a for-
7 eign financial company if the foreign financial
8 company does not have substantial assets , li-
9 abilities, counterparty relationships or oper-
10 ations in the United States.

11 (2) EVALUATION AND RECISSION OF ASSIGN-
12 MENT.—

13 (A) EVALUATION.—Not less frequently
14 than annually, the Council shall evaluate each
15 assignment made under paragraph (1).

16 (B) TERMINATION.—Subject to paragraph
17 (3), if the Council determines that a United
18 States financial company or a foreign financial
19 company no longer meets the criteria for as-
20 signment under paragraph (1), the Council
21 shall, by order, terminate the assignment under
22 paragraph (1).

23 (3) NOTICE AND HEARING.—

24 (A) NOTICE.—The Council shall provide to
25 a United States financial company or a foreign

1 financial company notice of any assignment
2 that the Council proposes to make under para-
3 graph (1) or (2)(B) in relation to the United
4 States financial company or foreign financial
5 company.

6 (B) REQUEST FOR HEARING.—Not later
7 than 30 days after the date of receipt of the no-
8 tice under subparagraph (A), a United States
9 financial company or foreign financial company
10 may make a written request for a written or
11 oral hearing by the Council to contest the pro-
12 posed assignment under paragraph (1) or
13 (2)(B).

14 (C) TIME AND PLACE OF HEARING.—Upon
15 receipt of a timely request under subparagraph
16 (B), the Council shall fix a date that is not
17 more than 30 days after receipt of the request
18 and place at which a United States financial
19 company or foreign financial company may, in
20 person or through counsel—

21 (i) submit written materials in rela-
22 tion to the proposed assignment under
23 paragraph (1) or (2)(B); or

24 (ii) at the discretion of the Council,
25 submit oral testimony and oral argument

1 in relation to the proposed assignment
2 under paragraph (1) or (2)(B).

3 (D) NOTICE OF DETERMINATION.—

4 (i) HEARING.—Not later than 60 days
5 after the date of a hearing under subpara-
6 graph (C), and upon a majority vote of the
7 members of the Council, the Council shall
8 transmit to the United States financial
9 company or foreign financial company—

10 (I) notice of the determination of
11 the Council; and

12 (II) a statement of the basis for
13 the determination of the Council.

14 (ii) NO HEARING.—If a United States
15 financial company or a foreign financial
16 company does not make a timely request
17 under clause (ii), the Council shall notify
18 the United States financial company or the
19 foreign financial company, in writing, of
20 any assignment under paragraph (1) or
21 (2)(B), not later than 40 days after the
22 date of receipt of the notice under sub-
23 paragraph (A).

24 (E) EMERGENCY WAIVER OR MODIFICA-
25 TION.—

1 (i) IN GENERAL.—The Council may
2 waive or modify the requirements of this
3 paragraph with respect to a United States
4 financial company or a foreign financial
5 company if the Council determines, by an
6 affirmative vote of not fewer than 5 mem-
7 bers (or, if there are fewer than 5 mem-
8 bers then serving, by a unanimous vote of
9 all members then serving) that such waiver
10 or modification is necessary or appropriate
11 to prevent or mitigate threats posed by the
12 United States financial company or foreign
13 financial company to the financial stability
14 of the United States.

15 (ii) NOTICE.—The Council shall pro-
16 vide notice to a United States financial
17 company or a foreign financial company of
18 a waiver or modification under clause (i)
19 as soon as is practicable, and in no case
20 later than 24 hours after the waiver or
21 modification is made.

22 (iii) REQUEST FOR HEARING.—Not
23 later than 10 days after the date of receipt
24 of notice under clause (ii), the United
25 States financial company or the foreign fi-

1 nancial company may make a written re-
2 quest for a written or oral hearing by the
3 Council to contest the waiver or modifica-
4 tion.

5 (iv) TIME AND PLACE OF HEARING.—

6 Upon receipt of a timely request under
7 clause (iii), the Council shall fix a date
8 that is not more than 30 days after the
9 date of receipt of the request and place at
10 which a United States financial company
11 or foreign financial company may, in per-
12 son or through counsel—

13 (I) submit written materials in
14 relation to the waiver or modification
15 under clause (i); or

16 (II) at the discretion of the
17 Council, submit oral testimony and
18 oral argument in relation to the waiv-
19 er or modification under clause (i).

20 (v) NOTICE OF DETERMINATION.—

21 Not later than 30 days after a hearing
22 under clause (iv), and upon a majority vote
23 of the members of the Council, the Council
24 shall transmit to a United States financial
25 company or a foreign financial company—

1 (I) notice of the determination of
2 the Council in relation to the waiver
3 or modification; and

4 (II) a statement of the basis for
5 the determination of the Council.

6 (4) CONSULTATION REQUIRED.—If a United
7 States financial company or a foreign financial com-
8 pany has 1 or more subsidiaries subject to regula-
9 tion by a Federal financial regulator, the Council
10 shall consult with the Federal financial regulator be-
11 fore making any assignment under paragraph (1) in
12 relation to the United States financial company or
13 foreign financial company.

14 (b) REGISTRATION OF FINANCIAL COMPANIES AS-
15 SIGNED A PRIMARY PRUDENTIAL REGULATOR.—

16 (1) REGISTRATION REQUIRED.—Not later than
17 180 days after the date an assignment is made
18 under subsection (a)(1), a United States financial
19 company or a foreign financial company that has
20 been assigned a primary prudential regulator under
21 subsection (a)(1) shall register with the Council,
22 using such forms and providing such information as
23 the Council may deem necessary or appropriate to
24 carry out this Act.

1 (2) REGULATIONS.—The Council, in consulta-
 2 tion with the appropriate Federal financial regu-
 3 lators, shall issue regulations to carry out this sub-
 4 section.

5 (c) PRIMARY PRUDENTIAL REGULATOR.—Each pri-
 6 mary prudential regulator shall act as the primary pruden-
 7 tial regulator of the entire financial company, and each
 8 affiliate thereof.

9 (d) RESOLUTION PLANS FOR CERTAIN FINANCIAL
 10 COMPANIES.—

11 (1) RESOLUTION PLAN REQUIRED.—The Fed-
 12 eral Deposit Insurance Corporation, in consultation
 13 with or at the direction of the Council (upon a ma-
 14 jority vote of the members of the Council) shall re-
 15 quire, by rule, a United States any financial com-
 16 pany or foreign financial company that may pose a
 17 systemic risk to develop a plan for rapid and orderly
 18 resolution that—

19 (A) is designed to mitigate systemic risk;
 20 and

21 (B) does not contemplate and is not de-
 22 pendent upon the use of any extraordinary sys-
 23 temic resolution process that requires the ap-
 24 proval of the President.

25 (2) REVISION OF PLANS.—

1 (A) REVISION OF PLANS.—The Federal
 2 Deposit Insurance Corporation may require a
 3 financial company to revise a plan developed
 4 under paragraph (1).

5 (B) PLAN NOT ESTABLISHED.—

6 (i) IN GENERAL.—If a plan cannot be
 7 established under this paragraph, the Fed-
 8 eral Deposit Insurance Corporation may
 9 request any Federal financial regulator
 10 with jurisdiction over the financial com-
 11 pany to take such steps as are necessary
 12 for an acceptable plan to be approved.

13 (ii) DISAGREEMENT BETWEEN FED-
 14 ERAL DEPOSIT INSURANCE CORPORATION
 15 AND FEDERAL FINANCIAL REGULATOR.—If
 16 a Federal financial regulator fails to take
 17 the steps requested by the Federal Deposit
 18 Insurance Corporation under clause (i)—

19 (I) the Federal Deposit Insur-
 20 ance Corporation may submit a plan
 21 for the financial company to the
 22 Council; and

23 (II) the Council may, upon a ma-
 24 jority vote of the members of the

1 Council, require the financial company
2 to adopt—

3 (aa) the plan described in
4 subclause (I); or

5 (bb) any other plan selected
6 by the Council.

7 (3) REGULATIONS.—The Federal Deposit In-
8 surance Corporation shall issue such regulations as
9 are necessary to carry out this subsection.

10 **SEC. 5. BACKUP REGULATORY AUTHORITY OF THE COUN-**
11 **CIL.**

12 (a) PURPOSES.—The purposes of this section are to
13 ensure that—

14 (1) all regulations of the Federal financial regu-
15 lators that relate to matters over which the Federal
16 financial regulators have overlapping or joint juris-
17 diction are consistent;

18 (2) comparable financial products, activities,
19 and companies receive comparable regulation and
20 supervision; and

21 (3) regulations issued by the Federal financial
22 regulators are sufficient to prevent and mitigate sys-
23 temic risk.

24 (b) COORDINATION OF EXISTING REGULATIONS OF
25 FEDERAL FINANCIAL REGULATORS.—

1 (1) JOINT RULEMAKING.—The Chairman may
 2 request that a Federal financial regulator participate
 3 in a joint rulemaking with another Federal financial
 4 regulator to improve coordination among Federal fi-
 5 nancial regulators.

6 (2) COORDINATION BY COUNCIL.—If a Federal
 7 financial regulator fails to participate in a joint rule-
 8 making under subparagraph (B), upon a majority
 9 vote of the members of the Council, the Council may
 10 issue regulations for the purpose of improving co-
 11 ordination among Federal financial regulators.

12 (c) MINIMUM PRUDENTIAL STANDARDS AND RISK
 13 MANAGEMENT STANDARDS.—

14 (1) ESTABLISHMENT OF STANDARDS.—In order
 15 to mitigate risks to the United States financial sys-
 16 tem and to address systemic risk, upon a majority
 17 vote of the members of the Council, the Council
 18 shall—

19 (A) establish minimum prudential stand-
 20 ards for United States financial companies and
 21 foreign financial companies, including—

- 22 (i) capital requirements;
- 23 (ii) leverage limits;
- 24 (iii) liquidity requirements;
- 25 (iv) underwriting standards;

- 1 (v) counterparty risk limits;
- 2 (vi) restrictions on activities;
- 3 (vii) margin requirements;
- 4 (viii) compensation standards; and
- 5 (ix) any other requirements, stand-
- 6 ards, or limits it deems necessary to miti-
- 7 gate systemic risk; and

8 (B) prescribe minimum risk management
9 standards for United States financial companies
10 and foreign financial companies to address
11 issues, including—

12 (i) the risk management policies and
13 procedures of United States financial com-
14 panies or foreign financial companies;

15 (ii) the ability of United States finan-
16 cial companies or foreign financial compa-
17 nies to complete timely clearing and settle-
18 ment of financial transactions; and

19 (iii) any other issue that the Council
20 determines that it is necessary to address
21 in order to—

22 (I) promote robust risk manage-
23 ment by United States financial com-
24 panies or foreign financial companies;

- 1 (II) promote safety and sound-
 2 ness of United States financial compa-
 3 nies or foreign financial companies;
 4 (III) reduce systemic risk; and
 5 (IV) support the stability of the
 6 United States financial system.

7 (2) RULE OF CONSTRUCTION RELATING TO
 8 CONFLICTING STANDARDS.—A standard established
 9 by the Council under this subsection shall be con-
 10 strued as a minimum standard that may be exceeded
 11 by a standard established by the primary prudential
 12 regulator of a United States financial company, a
 13 foreign financial company, or financial market util-
 14 ity.

15 (d) INSUFFICIENT REGULATIONS OR FAILURE TO
 16 ACT.—The Chairman may issue findings relating to any
 17 regulation of a Federal financial regulator that the Chair-
 18 man determines is not—

19 (1) sufficient to prevent or mitigate the effects
 20 of systemic risk; or

21 (2) consistent with regulations issued by the
 22 Council.

23 (e) CONFLICT BETWEEN REGULATIONS OF THE
 24 COUNCIL AND REGULATIONS OF A FEDERAL FINANCIAL
 25 REGULATOR.—If the Council determines that the provi-

1 sions of a regulation of the Council and a regulation of
 2 a Federal financial regulator are inconsistent, the provi-
 3 sions of the regulation of the Council shall apply.

4 **SEC. 6. ENFORCEMENT OF REGULATIONS AND ORDERS OF**
 5 **COUNCIL.**

6 (a) ENFORCEMENT BY APPROPRIATE FEDERAL FI-
 7 NANCIAL AGENCIES.—Subject to subsection (b), the ap-
 8 propriate Federal financial regulator shall enforce the reg-
 9 ulations and orders of the Council.

10 (b) BACKUP AUTHORITY.—

11 (1) IN GENERAL.—If the Council determines
 12 that it is necessary to prevent or mitigate systemic
 13 risk, the Council may enforce the regulations and or-
 14 ders of the Council with respect to—

15 (A) a United States financial company;

16 (B) a foreign financial company operating
 17 in the United States; or

18 (C) a financial market utility.

19 (2) MANNER OF ENFORCEMENT.—In carrying
 20 out this subsection, the Council shall have the pow-
 21 ers and duties of the appropriate Federal banking
 22 agencies under section 8 of the Federal Deposit In-
 23 surance Act (12 U.S.C. 1818), as if—

24 (A) the United States financial company,
 25 foreign financial company, or financial market

1 utility were an insured depository institution, as
 2 defined in section 3 of the Federal Deposit In-
 3 surance Act (12 U.S.C. 1813); and

4 (B) the Council were the appropriate Fed-
 5 eral banking agency, as defined in section 3 of
 6 the Federal Deposit Insurance Act (12 U.S.C.
 7 1813).

8 (3) REGULATIONS.—The Council shall, by regu-
 9 lation, establish the conditions under which the
 10 Council will exercise enforcement authority under
 11 this subsection.

12 **SEC. 7. RESOLUTION OF FINANCIAL COMPANIES PRE-**
 13 **SENTING SYSTEMIC RISK.**

14 (a) RECEIVERSHIP.—

15 (1) IN GENERAL.—The Council may rec-
 16 ommend to the President that systemic resolution
 17 procedures be used to effect the orderly failure of a
 18 financial company, if a majority of the members of
 19 the Council finds that—

20 (A) a United States financial company or
 21 Foreign financial company operating in the
 22 United States is in default or in danger of de-
 23 fault; and

24 (B) the financial company could pose a
 25 systemic risk to the United States.

1 (2) DEFAULT OR DANGER OF DEFAULT.—For
2 purposes of this paragraph, a United States finan-
3 cial company or foreign financial company is in de-
4 fault or in danger of default if—

5 (A) an action under the provisions of title
6 11, United States Code, has been, or is reason-
7 ably likely to be commenced with respect to the
8 financial company;

9 (B) the financial company is critically
10 undercapitalized, as such term is defined by the
11 appropriate regulator;

12 (C) the financial company has incurred, or
13 is likely to incur, unavoidable losses that will
14 deplete all or substantially all of the capital of
15 the financial company;

16 (D) the assets of the financial company
17 are, or are likely to be, less than the obligations
18 of the financial company to creditors and oth-
19 ers; or

20 (E) the financial company is, or is likely to
21 be, unable to pay the obligations of the finan-
22 cial company (other than any obligation that is
23 the subject of a bona fide dispute) in the nor-
24 mal course of business.

1 (3) SYSTEMIC RISK.—In determining whether a
 2 financial company poses a systemic risk for purposes
 3 of this subsection, the Council shall take into ac-
 4 count—

5 (A) the amount and nature of the financial
 6 assets of the financial company;

7 (B) the amount and type of the liabilities
 8 of the financial company, including the degree
 9 of reliance by the financial company on short-
 10 term funding;

11 (C) the extent of the off-balance sheet ex-
 12 posures of the financial company;

13 (D) the extent of the transactions and re-
 14 lationships of the financial company with other
 15 major financial companies;

16 (E) the importance of the financial com-
 17 pany as a source of—

18 (i) credit for individuals, businesses,
 19 and State and local governments; and

20 (ii) liquidity for the financial system;

21 and

22 (F) any other factor that the Council de-
 23 termines is appropriate.

24 (b) REPORT TO CONGRESS AND THE PRESIDENT.—

25 Upon making any recommendation to the President that

1 systemic resolution procedures be used to effect the or-
 2 derly failure of a financial company, the Council shall
 3 make a report to the President and to Congress explain-
 4 ing—

5 (1) how and why financial regulation failed to
 6 mitigate the systemic risk posed by the institution
 7 prior to its failure;

8 (2) why non-systemic resolution procedures
 9 were unsuitable for the financial company subject to
 10 the recommendation; and

11 (3) what steps are necessary to prevent a recur-
 12 rence of the systemic risk posed by the failing insti-
 13 tution from other sources.

14 **SEC. 8. COLLECTION OF DATA AND INFORMATION BY**
 15 **COUNCIL.**

16 (a) COLLECTION OF DATA BY COUNCIL.—

17 (1) DUTY TO COLLECT DATA.—The Council
 18 shall collect and analyze sufficiently comprehensive
 19 data regarding the financial sector in order to un-
 20 derstand and mitigate systemic risks.

21 (2) POWER TO COLLECT DATA.—The Council
 22 may collect data from any United States financial
 23 company or foreign financial company, whether or
 24 not the financial company is regulated by a member
 25 of the Council, to carry out this section.

1 (3) BURDEN MINIMIZATION.—The Council shall
2 make every effort to utilize data already collected by
3 other Federal agencies and departments.

4 (b) SUBMISSION OF DATA AND INFORMATION RE-
5 QUIRED.—The Federal financial regulators shall, upon re-
6 quest, submit to the Chairman any data or information
7 that the Chairman determines is necessary to carry out
8 this Act.

9 (c) DIRECTION TO OBTAIN DATA OR INFORMA-
10 TION.—

11 (1) IN GENERAL.—The Chairman may, if the
12 Chairman determines that such action is necessary
13 to carry out this Act, direct a Federal financial reg-
14 ulator, consistent with the authorities of such regu-
15 lator, to require the production of any data or infor-
16 mation from any entity regarding any activity that
17 is financial in nature, as determined by the Chair-
18 man.

19 (2) COORDINATION BY COUNCIL.—Before di-
20 recting a Federal financial regulator to require the
21 production of data or information under paragraph
22 (1) from an entity regulated a member of the Coun-
23 cil, the Chairman shall coordinate with members of
24 the Council to prevent duplicative requests for data
25 and information.

1 (d) SUBMISSIONS BY FEDERAL FINANCIAL REGU-
 2 LATORS.—Any Federal financial regulator in possession of
 3 data or information relevant to preventing systemic risk
 4 shall provide such data or information to the Chairman
 5 in a timely manner.

6 (e) REQUESTS TO INSURERS FOR DATA AND INFOR-
 7 MATION.—The Chairman may request data and informa-
 8 tion from an insurer regulated by a State or the affiliate
 9 of such insurer relating to any product or activity of the
 10 insurer or affiliate that the Chairman determines is finan-
 11 cial in nature.

12 (f) DATA AND INFORMATION SHARING.—The Chair-
 13 man, in consultation with the members of the Council—

14 (1) shall—

15 (A) establish procedures to share data and
 16 information collected by the Council under this
 17 section with the members of the Council;

18 (B) develop an electronic process for shar-
 19 ing all information collected by the Council with
 20 the Chairman of the Board of Governors of the
 21 Federal Reserve System on a real-time basis;
 22 and

23 (C) issue any regulations necessary to
 24 carry out this subsection; and

1 (2) may designate the format in which re-
 2 requested data and information must be submitted to
 3 the Council, including any electronic, digital, or
 4 other format that facilitates the use of such data by
 5 the Council in its analysis.

6 (g) APPLICABLE PRIVILEGES NOT WAIVED.—A Fed-
 7 eral financial regulator, State financial regulator, United
 8 States financial company, foreign financial company oper-
 9 ating in the United States, financial market utility, or
 10 other person shall not be deemed to have waived any privi-
 11 lege otherwise applicable to any data or information by
 12 transferring the data or information to, or permitting that
 13 data or information to be used by—

14 (1) the Council;

15 (2) any Federal financial regulator or State fi-
 16 nancial regulator, in any capacity; or

17 (3) any other agency of the Federal Govern-
 18 ment (as defined in section 6 of title 18, United
 19 States Code).

20 (h) DISCLOSURE EXEMPTION.—Any information ob-
 21 tained by the Council under this section shall be exempt
 22 from the disclosure requirements under section 552 of title
 23 5, United States Code.

24 (i) CONSULTATION WITH FOREIGN GOVERN-
 25 MENTS.—Under the supervision of the President, and in

1 a manner consistent with section 207 of the Foreign Serv-
 2 ice Act of 1980 (22 U.S.C. 3927), the Chairman, in con-
 3 sultation with the Council, shall regularly consult with the
 4 financial regulatory entities and other appropriate organi-
 5 zations of foreign governments or international organiza-
 6 tions on matters relating to systemic risk to the inter-
 7 national financial system.

8 (j) SUBPOENAS.—

9 (1) AUTHORITY.—The Chairman may, for the
 10 purpose of carrying out this section, require by sub-
 11 poena, access to the documents of—

12 (A) any United States financial company
 13 or foreign financial company; and

14 (B) any Federal financial regulator.

15 (2) ISSUANCE AND ENFORCEMENT OF SUB-
 16 POENAS.—

17 (A) ISSUANCE.—Subpoenas issued under
 18 this section shall—

19 (i) bear the signature of the Chair-
 20 man; and

21 (ii) be served by any person or class
 22 of persons designated by the Chairman for
 23 that purpose.

24 (B) ENFORCEMENT.—In the case of contu-
 25 macy or failure to obey a subpoena issued

1 under this section, the United States district
2 court for the District of Columbia may issue an
3 order requiring compliance. Any failure to obey
4 the order of the court may be punished by the
5 court as a contempt that court.

6 **SEC. 9. REPORTS OF FEDERAL FINANCIAL REGULATORS.**

7 (a) **REPORT REQUIRED.**—Each Federal financial
8 regulator shall submit to the Council and to the Com-
9 mittee on Banking, Housing, and Urban Affairs of the
10 Senate and the Committee on Financial Services of the
11 House of Representatives an annual report that con-
12 tains—

13 (1) an explanation of how the regulations, ex-
14 aminations, and enforcement actions of the Federal
15 financial regulator prevent, reduce, and mitigate the
16 effects of systemic risk;

17 (2) an explanation of specific actions taken by
18 the Federal financial regulator during the preceding
19 fiscal year in response to any systemic risk under
20 the jurisdiction of the Federal financial regulator;

21 (3) information relating to emerging sources of
22 systemic risk—

23 (A) within the jurisdiction of the Federal
24 financial regulator; and

1 (B) outside the jurisdiction of the Federal
2 financial regulator; and

3 (4) recommendations, if any, for legislative or
4 regulatory action which could prevent, reduce, or
5 mitigate emerging systemic risk.

6 (b) TIMING OF REPORT.—Each Federal financial
7 regulator shall submit the report required under sub-
8 section (a)—

9 (1) at a time that is prior to the first appear-
10 ance required under section 10(a) of each calendar
11 year; and

12 (2) determined by the Chairman, in consulta-
13 tion with the members of the Council.

14 **SEC. 10. APPEARANCE AT HEARINGS AND REPORT BY**
15 **COUNCIL.**

16 (a) APPEARANCES BEFORE CONGRESS.—

17 (1) IN GENERAL.—The Chairman of the Coun-
18 cil shall appear before Congress at semi-annual
19 hearings regarding—

20 (A) the efforts, activities, objectives and
21 plans of the Council with respect to—

22 (i) the conduct of financial regulation;

23 (ii) the prevention of systemic risk;

24 and

1 (iii) the mitigation of harm from sys-
 2 temic risk;

3 (B) the development of financial markets;
 4 and

5 (C) the prospects for the future of finan-
 6 cial regulation of systemic risk.

7 (2) TIMING OF APPEARANCES; COMMITTEES.—

8 The Chairman of the Council shall appear—

9 (A) before the Committee on Banking,
 10 Housing, and Urban Affairs of the Senate—

11 (i) in July of each odd-numbered cal-
 12 endar year;

13 (ii) in February of each even-num-
 14 bered calendar year; and

15 (iii) upon request, after any appear-
 16 ance required under subparagraph (B);
 17 and

18 (B) before the Committee on Financial
 19 Services of the House of Representatives—

20 (i) in February of each odd-numbered
 21 calendar year;

22 (ii) in July of each even-numbered
 23 calendar year; and

24 (iii) upon request, after any appear-
 25 ance required under subparagraph (A).

(b) REPORT.—At each appearance required under subsection (a), the Council shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a written report that contains a description of—

(1) the conduct of financial regulation systemic risk prevention and mitigation, including actions taken by Federal financial regulators and the Council;

(2) developments in the financial markets; and

(3) prospects for the future, taking into account past and prospective developments—

(A) relating to the Federal financial regulators, as such developments are described in the reports of the Federal financial regulators under section 7; and

(B) outside the United States.

SEC. 11. CIVIL PENALTIES.

(a) IN GENERAL.—Any person who violates this Act or fails to comply with a rule, regulation, or order of the Council issued under this Act shall be subject to a civil penalty in an amount established by the Council and published under subsection (b). Each such violation or failure shall constitute a separate civil offense.

1 (b) PUBLICATION.—The Council shall annually pre-
2 scribe and publish in the Federal Register a schedule of
3 the maximum authorized civil penalty for any violation of
4 this Act or any regulatory action of the Council under this
5 Act.

6 **SEC. 12. FUNDING OF THE COUNCIL.**

7 (a) IN GENERAL.—

8 (1) DETERMINATION BY CHAIRMAN.—For each
9 fiscal year, the Chairman shall determine the
10 amount necessary for the Council to carry out its
11 duties under this Act.

12 (2) FUNDING.—The Board of Governors of the
13 Federal Reserve System shall transfer to the Council
14 an amount equal to the amount described in para-
15 graph (1).

16 (b) REGULATIONS.—The Chairman may issue such
17 regulations as are necessary to carry out this section.

18 (c) ANNUAL REPORTS ON COUNCIL OPERATIONS.—

19 (1) IN GENERAL.—The Council shall annually
20 submit a full report of its operations, activities,
21 budget, receipts, and expenditures for the preceding
22 12-month period.

23 (2) MANNER OF SUBMISSION.—Such report
24 shall be submitted to the President of the Senate
25 and the Speaker of the House of Representatives

1 (who shall cause the same to be printed for the in-
 2 formation of Congress) and the President as soon as
 3 practicable after the first day of January each year.

4 (d) QUARTERLY REPORTS TO THE SECRETARY OF
 5 THE TREASURY.—

6 (1) FINANCIAL OPERATING PLANS AND FORE-
 7 CASTS.—Before the beginning of each fiscal quarter,
 8 the Council shall provide to the Secretary of the
 9 Treasury a copy of the financial operating plans and
 10 forecasts of the Council.

11 (2) RULE OF CONSTRUCTION.—The require-
 12 ment to provide plans, forecasts, and reports to the
 13 Secretary of the Treasury under this subsection may
 14 not be construed as implying any obligation on the
 15 part of the Council to obtain the consent or approval
 16 of such Secretary with respect to such plans, fore-
 17 casts, and reports.

18 (e) AUDIT.—

19 (1) AUDIT REQUIRED.—The Comptroller Gen-
 20 eral shall audit annually the operations and financial
 21 transactions of the Council in accordance with gen-
 22 erally accepted government auditing standards.

23 (2) ACCESS TO BOOKS AND RECORDS.—All
 24 books, records, accounts, reports, files, and property
 25 belonging to or used by the Council, or by an inde-

1 pendent certified public accountant retained to audit
2 the Council's financial statements, shall be made
3 available to the Comptroller General.

4 (3) REPORT.—A report of each audit conducted
5 under paragraph (1) shall be made by the Comp-
6 troller General to the Congress not later than six
7 and one-half months following the close of the last
8 year covered by such audit. The report to the Con-
9 gress shall set forth the scope of the audit and shall
10 include a statement of expenses and information as
11 may be deemed necessary to inform Congress of the
12 operations and condition of the Council, together
13 with such recommendations with respect thereto as
14 the Comptroller General may deem advisable. The
15 report shall also show specifically any program, ex-
16 penditure, or other financial transaction or under-
17 taking observed in the course of the audit, which, in
18 the opinion of the Comptroller General, has been
19 carried on or made without authority of law. A copy
20 of each report shall be furnished to the President, to
21 the Secretary of the Treasury, and to the Council at
22 the time submitted to the Congress.

23 (4) EMPLOYMENT AUTHORITY.—For the pur-
24 pose of conducting such audit the Comptroller Gen-
25 eral is authorized in his discretion to employ by con-

1 tract, without regard to section 3709 of the Revised
2 Statutes, professional services of firms and organiza-
3 tions of certified public accountants, with the con-
4 currence of the Council, for temporary periods or for
5 special purposes. The Council shall reimburse the
6 Government Accountability Office for the cost of any
7 such audit as billed therefor by the Comptroller Gen-
8 eral, and the Government Accountability Office shall
9 deposit the sums so reimbursed into the Treasury as
10 miscellaneous receipts.

11 **SEC. 13. TRANSITIONAL ASSISTANCE FROM FEDERAL**
12 **AGENCIES.**

13 (a) MEMBERS OF THE COUNCIL.—On the request of
14 the Chairman and until such time as the Council has suffi-
15 cient staff, a member of the Council shall provide to the
16 permanent staff of the Council and any advisory, tech-
17 nical, or professional committee established by the Council
18 such technical assistance, professional support, or other
19 services as are necessary for the Council to carry out this
20 Act.

21 (b) OTHER DEPARTMENTS AND AGENCIES.—Upon
22 the request of the Council, a Federal department or agen-
23 cy may provide to the Council, and any advisory, technical,
24 or professional committee established by the Council, such
25 services, funds, facilities, staff, and other support services

1 as the Federal department or agency may determine advis-
2 able.

3 **SEC. 14. PERSONNEL MATTERS.**

4 (a) COUNCIL STAFF.—

5 (1) IN GENERAL.—The Chairman may appoint
6 and terminate such personnel as may be necessary
7 to enable to the Council to perform its duties. The
8 Chairman may establish positions in the excepted
9 service for employees of the Council.

10 (2) COMPENSATION.—The Chairman may fix
11 the compensation of Council personnel without re-
12 gard to the provisions of chapter 51 and subchapter
13 III of chapter 53 of title 5, United States Code, re-
14 lating to classification of positions and General
15 Schedule pay rates, except that the rate of pay for
16 such personnel may not exceed the rate payable for
17 level V of the Executive Schedule under section 5316
18 of such title.

19 (3) OTHER PERSONNEL AUTHORITIES.—The
20 Chairman may exercise any personnel authority of
21 any of the Federal financial regulators for the pur-
22 poses of recruiting, hiring, or retention of Council
23 personnel.

24 (b) DETAIL OF GOVERNMENT EMPLOYEES.—Any
25 Federal Government employee may be detailed to the

1 Council without reimbursement, and such detail shall be
2 without interruption or loss of civil service status or privi-
3 lege.

4 (c) PROCUREMENT OF TEMPORARY AND INTERMIT-
5 TENT SERVICES.—The Chairman may procure temporary
6 and intermittent services under section 3109(b) of title 5,
7 United States Code, at rates for individuals that do not
8 exceed the daily equivalent of the annual rate of basic pay
9 prescribed for level V of the Executive Schedule under sec-
10 tion 5316 of such title.

11 **SEC. 15. APPLICABILITY OF FEDERAL ADVISORY COM-**
12 **MITTEE ACT.**

13 The Federal Advisory Committee Act (5 U.S.C. App.
14 1 et seq.) shall not apply to the Council, or to any advi-
15 sory, technical, or professional committee established by
16 the Council.

17 **SEC. 16. JUDICIAL REVIEW.**

18 Nothing in this Act affects any otherwise available
19 judicial review of agency action or creates any right or
20 benefit, substantive or procedural, enforceable at law or
21 equity by a party against the United States, its agencies
22 or instrumentalities, its officers or employees, or any other
23 person.

1 **SEC. 17. CONFLICTING PROVISIONS TERMINATED.**

2 Executive Order Number 12631, issued by the Presi-
3 dent on March 18, 1988, may not be enforced on or after
4 the date of enactment of this Act.

5 **SEC. 18. EXECUTIVE SCHEDULE MATTERS.**

6 Section 5312 of title 5, United States Code, is
7 amended by adding at the end the following new item:

8 “Chairman of the Financial Services Systemic Risk
9 Oversight Council.”.

10 **SEC. 19. RULE OF CONSTRUCTION.**

11 Nothing in this Act may be construed to interfere
12 with the authority of—

13 (1) the Board of Governors of the Federal Re-
14 serve System, with respect to monetary policy;

15 (2) the Securities Exchange Commission to set
16 or enforce standards for accounting or auditing
17 practices or auditor independence; or

18 (3) any Federal financial regulator to establish
19 and enforce consumer and investor protection regu-
20 lations.

21 **SEC. 20. TECHNICAL AND CONFORMING AMENDMENTS.**

22 (a) INDEPENDENCE IN CONGRESSIONAL TESTIMONY
23 AND RECOMMENDATIONS.—Section 111 of Public Law
24 No. 93–495 (12 U.S.C. 250) is amended by inserting “the
25 Financial Services Systemic Risk Oversight Council,”
26 after “the Federal Housing Finance Agency,”.

1 (b) PAPERWORK REDUCTION.—Section 3502(5) of
 2 title 44, United States Code, is amended by inserting “the
 3 Financial Services Systemic Risk Oversight Council,”
 4 after “the Securities and Exchange Commission,”.

5 **SEC. 21. DEFINITIONS.**

6 In this Act—

7 (1) the term “appropriate Federal financial reg-
 8 ulator” means—

9 (A) the Office of the Comptroller of the
 10 Currency, in the case of a national bank, or a
 11 Federal branch or agency of a foreign bank;

12 (B) the Board of Governors of the Federal
 13 Reserve System, in the case of—

14 (i) a State member bank, as defined
 15 in section 3 of the Federal Deposit Insur-
 16 ance Act (12 U.S.C. 1813);

17 (ii) a branch or agency of a foreign
 18 bank (other than a Federal branch, Fed-
 19 eral agency, or insured State branch of a
 20 foreign bank);

21 (iii) a commercial lending company
 22 owned or controlled by a foreign bank;

23 (iv) an organization operating under
 24 section 25 or 25A of the Federal Reserve
 25 Act (12 U.S.C. 601 et seq.);

1 (v) a bank holding company, as de-
 2 fined in section 2 of the Bank Holding
 3 Company Act of 1956 (12 U.S.C. 1841);

4 (vi) an investment bank holding com-
 5 pany, as defined in section 17(i)(5) of the
 6 Securities Exchange Act of 1934 (15
 7 U.S.C. 78q(i)(5)); or

8 (vii) a United States financial com-
 9 pany, a foreign financial company oper-
 10 ating in the United States, or a financial
 11 market utility over which no other Federal
 12 or State regulatory agency has enforce-
 13 ment authority;

14 (C) the Federal Deposit Insurance Cor-
 15 poration, in the case of—

16 (i) a national nonmember bank or a
 17 State nonmember bank, as those terms are
 18 defined in section 3 of the Federal Deposit
 19 Insurance Act (12 U.S.C. 1813), the de-
 20 posits of which are insured by the Federal
 21 Deposit Insurance Corporation; or

22 (ii) an insured State branch of a for-
 23 eign bank;

24 (D) the Director of the Office of Thrift
 25 Supervision, in the case of—

1 (i) a savings association, as defined in
2 section 3 of the Federal Deposit Insurance
3 Act (12 U.S.C. 1813), the deposits of
4 which are insured by the Federal Deposit
5 Insurance Corporation; or

6 (ii) a savings and loan holding com-
7 pany, as defined in section 3 of the Fed-
8 eral Deposit Insurance Act (12 U.S.C.
9 1813);

10 (E) the National Credit Union Administra-
11 tion Board, in the case of any insured credit
12 union, as defined in section 101 of the Federal
13 Credit Union Act (12 U.S.C. 1752);

14 (F) the Securities and Exchange Commis-
15 sion, in the case of—

16 (i) a United States financial company
17 or foreign financial company operating in
18 the United States that is subject to regula-
19 tion by the Commission; or

20 (ii) a financial market utility that is
21 subject to regulation by the Commission
22 and is not subject to regulation by any
23 other Federal financial regulator; and

24 (G) the Commodity Futures Trading Com-
25 mission, in the case of—

1 (i) a United States financial company
2 or foreign financial company operating in
3 the United States that is subject to regula-
4 tion by the Commission; or

5 (ii) a financial market utility that is
6 subject to regulation by the Commission
7 and is not subject to regulation by any
8 other Federal financial regulator;

9 (2) the term “Chairman” means the Chairman
10 of the Financial Services Systemic Risk Oversight
11 Council appointed under section 4;

12 (3) the term “Council” means the Financial
13 Services Systemic Risk Oversight Council established
14 under section 3;

15 (4) the terms “depository institution” and “in-
16 sured depository institution” have the same mean-
17 ings as in section 3 of the Federal Deposit Insur-
18 ance Act (12 U.S.C. 1813);

19 (5) the term “Federal financial regulator”
20 means—

21 (A) the Comptroller of the Currency;

22 (B) the Board of Governors of the Federal
23 Reserve System;

24 (C) the Federal Deposit Insurance Cor-
25 poration;

1 (D) the National Credit Union Administra-
2 tion;

3 (E) the Securities and Exchange Commis-
4 sion;

5 (F) the Public Company Accounting Over-
6 sight Board;

7 (G) the Federal Housing Finance Agency;

8 (H) the Federal Trade Commission;

9 (I) the Farm Credit Administration;

10 (J) the Commodity Futures Trading Com-
11 mission;

12 (K) the Department of Housing and
13 Urban Development, in carrying out the duties
14 of the Secretary of Housing and Urban Devel-
15 opment under the Real Estate Settlement Pro-
16 cedures Act of 1974 (12 U.S.C. 2601 et seq.);

17 (L) the Federal Housing Administration;
18 and

19 (M) the Department of Veterans Affairs,
20 in the case of a guarantee by the Secretary of
21 Veterans Affairs of an extension of credit, in-
22 cluding a mortgage loan and a small business
23 loan;

24 (6) the term “activity that is financial in na-
25 ture” means an activity—

1 (A) described in section 4(k)(4) of the
2 Bank Holding Company Act of 1956 (12
3 U.S.C. 1843(k)(4)); or

4 (B) that the Board of Governors of the
5 Federal Reserve System has determined is fi-
6 nancial in nature under section 4(k) of the
7 Bank Holding Company Act of 1956;

8 (7) the term “foreign financial company”
9 means a bank holding company, as those terms are
10 defined in section 2 of the Bank Holding Company
11 Act of 1954 (12 U.S.C. 1841), and any affiliate
12 thereof, or any other person that—

13 (A) is incorporated or organized in a coun-
14 try other than the United States; and

15 (B) is, directly or indirectly (including
16 through a branch operating in the United
17 States), engaged in any activity that is financial
18 in nature in the United States;

19 (8) the term “financial market utility” means a
20 corporation, company, association, firm, partnership,
21 society, joint stock company, or other legal entity
22 (other than a natural person) that manages or oper-
23 ates a multilateral system for the purpose of trans-
24 ferring, clearing, or settling payments, securities, or
25 other financial transactions—

1 (A) among United States financial compa-
2 nies or foreign financial companies in the
3 United States; or

4 (B) between a United States financial com-
5 pany, or foreign financial company in the
6 United States, and the corporation, company,
7 association, firm, partnership, society, joint
8 stock company, or other legal entity;

9 (9) the term “financial transaction” includes a
10 fund transfer, a securities contract, a contract for
11 sale of a commodity for future delivery, a forward
12 contract, a repurchase agreement, a swap agree-
13 ment, a foreign exchange contract, a financial de-
14 rivatives contract, and any similar transaction that
15 the Council determines, by rule or order, to be a fi-
16 nancial transaction for purposes of this Act;

17 (10) the term “payment, clearing, or settlement
18 activity” means an activity carried out by a United
19 States financial company or a foreign financial com-
20 pany operating in the United States to facilitate the
21 completion of a financial transaction, including—

22 (A) the calculation and communication of
23 unsettled obligations between counterparties;

24 (B) the netting of transactions;

1 (C) the provision and maintenance of
2 trade, contract, or instrument information;

3 (D) the management of risks and activities
4 associated with continuing obligations;

5 (E) the transmittal and storage of pay-
6 ment instructions;

7 (F) the movement of funds;

8 (G) the final settlement of obligations; and

9 (H) other similar functions, as determined
10 by the Council;

11 (11) the term “primary prudential regulator”
12 means a Federal financial regulator designated by
13 the Council as the primary prudential regulator of a
14 financial company;

15 (12) the term “State” means any State, terri-
16 tory, or possession of the United States, the District
17 of Columbia, Commonwealth of Puerto Rico, Com-
18 monwealth of Northern Mariana Islands, Guam,
19 American Samoa, or the United States Virgin Is-
20 lands;

21 (13) the term “systemic risk” means the risk
22 that the disruption or failure of a United States fi-
23 nancial company, a foreign financial company oper-
24 ating in the United States, or a financial market
25 utility could have a serious adverse effect on the eco-

1 nomic conditions in or financial stability of the
2 United States; and

3 (14) the term “United States financial com-
4 pany” means a bank holding company, as that term
5 is defined in section 2 of the Bank Holding Com-
6 pany Act of 1954 (12 U.S.C. 1841), or any affiliate
7 thereof, or any other person that is—

8 (A) incorporated or organized under the
9 laws of the United States or any State; and

10 (B) in whole or in part engaged, directly or
11 indirectly, in activities that are financial in na-
12 ture.

○