

114TH CONGRESS
1ST SESSION

H. R. 4248

To amend the Financial Stability Act to revise the reevaluation procedures with respect to determinations by the Financial Stability Oversight Council that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 2015

Mr. WESTMORELAND (for himself and Mr. DAVID SCOTT of Georgia) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Financial Stability Act to revise the reevaluation procedures with respect to determinations by the Financial Stability Oversight Council that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards.

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 “FSOC Designation Re-
5 view Act”.

1 **SEC. 2. REEVALUATION AND REAFFIRMATION.**

2 Section 113(d) of the Financial Stability Act of 2010
3 (12 U.S.C. 5323(d)) is amended to read as follows:

4 “(d) REEVALUATION AND REAFFIRMATION.—

5 “(1) IN GENERAL.—The Council shall reeval-
6 ate each determination made under subsections (a)
7 and (b) with respect to a nonbank financial company
8 supervised by the Board of Governors on—

9 “(A) an annual basis; and

10 “(B) upon the request of such company
11 based upon the company’s representation that
12 there has been a material change in the com-
13 pany’s operations or activities or a material
14 change in regulatory or market conditions.

15 “(2) REEVALUATION.—As part of the reevalua-
16 tion required by paragraph (1), the Council shall—

17 “(A) provide the nonbank financial com-
18 pany with a confidential written analysis of the
19 specific elements of the company’s exposures or
20 activities that would be relevant to the Council’s
21 reevaluation of the determination for such com-
22 pany;

23 “(B) provide the nonbank financial com-
24 pany with an opportunity to submit written ma-
25 terials to the Council regarding the reevalua-
26 tion, including, as the company’s option, a plan

1 to obtain rescission of the determination or
2 other materials relevant to the assessment de-
3 scribed under paragraph (3)(A);

4 “(C) if the nonbank financial company
5 submits a plan under subparagraph (B), con-
6 sider whether the plan, if implemented, would
7 result in the nonbank financial company no
8 longer meeting the criteria for a final deter-
9 mination under subsection (a) or (b);

10 “(D) make a preliminary written decision
11 regarding rescinding such determination;

12 “(E) if the preliminary decision is not to
13 rescind the determination, provide the nonbank
14 financial company with—

15 “(i) a copy of the preliminary deci-
16 sion, which shall include a confidential
17 written analysis explaining with specificity
18 whether and to what extent any plan sub-
19 mitted by the company under subpara-
20 graph (B) addresses the potential threat
21 posed by the nonbank financial company to
22 the financial stability of the United States;

23 “(ii) an opportunity to meet with rep-
24 resentatives of the Council to discuss the

1 preliminary decision and analysis provided
2 under clause (i); and

3 “(iii) an opportunity to revise and re-
4 submit such plan or any other written ma-
5 terials, after discussions with representa-
6 tives of the Council; and

7 “(F) upon the request of the nonbank fi-
8 nancial company, grant such company an oral
9 hearing before the Council.

10 “(3) VULNERABILITY TO FINANCIAL DIS-
11 TRESS.—

12 “(A) IN GENERAL.—The written analysis
13 required under paragraph (2)(A) shall include
14 an assessment describing with particularity the
15 vulnerability of the nonbank financial company
16 to financial distress, including consideration of
17 the company’s leverage, liquidity risk and matu-
18 rity mismatch, and existing regulatory scrutiny
19 of the company.

20 “(B) EFFECTIVE OF FAILURE TO INCLUDE
21 ASSESSMENT.—If the Council provides a writ-
22 ten analysis under paragraph (2)(A) that does
23 not contain the assessment required under sub-
24 paragraph (A), any determination made under

subsection (a) or (b) with respect to such company shall be rescinded immediately.

“(C) DEFINITIONS.—For purposes of this paragraph the terms ‘vulnerability to financial distress’, ‘leverage’, ‘liquidity risk and maturity mismatch’, and ‘existing regulatory scrutiny of the nonbank financial company’ shall have the same meaning as those terms are given, respectively, under appendix A to part 1310 of title 12, Code of Federal Regulations.

“(4) REAFFIRMATION.—

“(A) IN GENERAL.—Following a reevaluation under paragraph (1), the Council shall vote whether to reaffirm the determination that the nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, pursuant to subsection (a) or (b), as applicable.

“(B) VOTE REQUIREMENT.—Any reaffirmation under subparagraph (A) shall require a vote of no fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, finding that the company still meets the standards for designation under subsection (a) or (b), as applicable. Any such find-

1 ing shall include a detailed explanation of the
2 basis for the Council’s determination, including
3 a confidential written analysis explaining with
4 specificity whether and to what extent any plan
5 submitted by the nonbank financial company
6 pursuant to paragraph (2)(B) addresses the po-
7 tential threat posed by the company to the fi-
8 nancial stability of the United States.

9 “(C) EFFECT OF FAILURE TO REAF-
10 FIRM.—If the Council votes under subpara-
11 graph (A) with respect to a nonbank financial
12 company and does not reaffirm the designation,
13 the determination made with respect to such
14 company shall be rescinded immediately.

15 “(5) VIEWS OF PRIMARY FINANCIAL REGU-
16 LATORY AGENCY.—In conducting a reevaluation
17 under paragraph (1), the Council shall consult with
18 the primary financial regulatory agency for the
19 nonbank financial company, if any, and the primary
20 financial regulatory agencies of the company’s prin-
21 cipal subsidiaries, if any, and the views of such
22 agencies shall be given special consideration.”.

1 **SEC. 3. JUDICIAL REVIEW.**

2 Section 113(h) of the Financial Stability Act of 2010
3 (12 U.S.C. 5323(h)) is amended by striking “subsection
4 (d)(2)” and inserting “subsection (d)(4)”.

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