

115TH CONGRESS
2D SESSION

H. R. 4061

IN THE SENATE OF THE UNITED STATES

APRIL 12, 2018

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

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

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

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. SIFI DESIGNATION PROCESS.**

5 Section 113 of the Financial Stability Act of 2010
6 (12 U.S.C. 5323) is amended—

7 (1) in subsection (a)(2)—

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

10 (B) by redesignating subparagraph (K) as
11 subparagraph (L); and

12 (C) by inserting after subparagraph (J)
13 the following:

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

18 (2) in subsection (b)(2)—

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

21 (B) by redesignating subparagraph (K) as
22 subparagraph (L);

23 (C) by inserting after subparagraph (J)
24 the following:

25 “(K) the appropriateness of the imposition
26 of prudential standards as opposed to other

1 forms of regulation to mitigate the identified
2 risks; and”; and

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

5 “(d) REEVALUATION AND RESCISSION.—

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

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

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

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

“(2) PERIODIC REEVALUATION.—

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

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

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

12 “(ii) provide oral testimony and oral
13 argument before the members of the Coun-
14 cil.

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

1 “(D) EXPLANATION FOR CERTAIN COMPANIES.—With respect to a reevaluation under
2 this paragraph where the determination being
3 reevaluated was made before the date of enactment of this paragraph, the nonbank financial
4 company may require the Council, as part of
5 such reevaluation, to explain with specificity the
6 basis for such determination.
7

8 “(3) RESCISSION OF DETERMINATION.—

9 “(A) IN GENERAL.—If the Council, by a
10 vote of not fewer than $\frac{2}{3}$ of the voting members
11 then serving, including an affirmative vote by
12 the Chairperson, determines under this subsection that a nonbank financial company no
13 longer meets the standards for a final determination under subsection (a) or (b), as applicable,
14 the Council shall rescind such determination.
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19 “(B) APPROVAL OF COMPANY PLAN.—Approval by the Council of a plan submitted or revised
20 in accordance with paragraph (2) shall require a vote of not fewer than $\frac{2}{3}$ of the voting
21 members then serving, including an affirmative
22 vote by the Chairperson. If such plan is approved by the Council, the company shall imple-

ment the plan during the period identified in the plan, except that the Council, in its sole discretion and upon request from the company, may grant one or more extensions of the implementation period. After the end of the implementation period, including any extensions granted by the Council, the Council shall proceed to a vote as described under subparagraph (A).”;

(4) by amending subsection (e) to read as follows:

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

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

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

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

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

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

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

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

22 “(B) with respect to nonbank financial
23 company with a primary financial regulatory
24 agency, provide a copy of the resolution de-
25 scribed under subparagraph (A) to the primary

1 financial regulatory agency and provide such
2 agency with at least 180 days from the receipt
3 of the resolution to—

4 “(i) consider the risks identified in the
5 resolution; and

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

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

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

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

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

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

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

23 “(iii) an explanation of how any re-
24 quest by the Council for information from
25 the nonbank financial company relates to

1 potential risks to the financial stability of
2 the United States and the Council's anal-
3 ysis of the company;

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

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

10 “(3) PROPOSED DETERMINATION.—

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

18 “(B) DEADLINE FOR MAKING A PROPOSED
19 DETERMINATION.—With respect to a nonbank
20 financial company provided with a written no-
21 tice under paragraph (2)(C)(i), if the Council
22 does not provide the company with the written
23 notice of a proposed determination described
24 under paragraph (4) within the 180-day period
25 following the date on which the Council notifies

1 the company under paragraph (2)(C) that the
2 evidentiary record is complete, the Council may
3 not make such a proposed determination with
4 respect to such company unless the Council re-
5 peats the procedures described under paragraph
6 (2).

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

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

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

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

6 “(4) NOTICE OF PROPOSED DETERMINATION.—

7 The Council shall—

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

23 “(B) provide the primary financial regu-
24 latory agency of the nonbank financial company

1 a copy of the nonpublic written explanation of
2 the Council’s proposed determination.

3 “(5) HEARING.—

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

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

23 “(i) submit written materials (which
24 may include a plan to modify the com-

1 pany’s business, structure, or operations);
 2 or

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

5 “(6) COUNCIL CONSIDERATION OF COMPANY
 6 PLAN.—

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

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

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

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

23 “(C) IMPLEMENTATION OF APPROVED
 24 PLAN.—With respect to a nonbank financial
 25 company’s plan approved by the Council under

1 subparagraph (B), the company shall have one
2 year to implement the plan, except that the
3 Council, in its sole discretion and upon request
4 from the nonbank financial company, may
5 grant one or more extensions of the implemen-
6 tation period.

7 “(D) OVERSIGHT OF IMPLEMENTATION.—

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

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

23 “(E) AUTHORITY TO RESCIND AP-
24 PROVAL.—

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

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

22 “(F) ACTIONS AFTER IMPLEMENTATION.—

23 “(i) EVALUATION OF IMPLEMENTA-
24 TION.—After the end of the implementa-
25 tion period described under subparagraph

1 (C), including any extensions granted by
2 the Council, the Council shall consider
3 whether the plan, as implemented by the
4 nonbank financial company, adequately
5 mitigates or prevents the risks identified in
6 the resolution described under paragraph
7 (2)(A).

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

21 “(7) FINAL COUNCIL DECISIONS.—

22 “(A) IN GENERAL.—Not later than 90
23 days after the date of a hearing under para-
24 graph (5), the Council shall notify the nonbank
25 financial company of—

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

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

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

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

17 “(C) NOTICE TO PRIMARY FINANCIAL REG-
18 ULATORY AGENCY.—In the case of a final de-
19 termination under subsection (a) or (b), the
20 Council shall provide the primary financial reg-
21 ulatory agency of the nonbank financial com-
22 pany a copy of the nonpublic written expla-
23 nation of the Council’s final determination.”;

24 (5) in subsection (g), strike “before the Council
25 makes any final determination” and insert “from

1 the outset of the Council’s consideration of the com-
2 pany, including before the Council makes any pro-
3 posed or final determination”; and

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

5 “(j) PUBLIC DISCLOSURE REQUIREMENT.—The
6 Council shall—

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

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

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

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

6 “(k) PERIODIC ASSESSMENT OF THE IMPACT OF
7 DESIGNATIONS.—

8 “(1) ASSESSMENT.—Every five years after the
9 date of enactment of this section, the Council
10 shall—

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

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

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

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

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

9 **SEC. 3. RULE OF CONSTRUCTION.**

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

14 **SEC. 4. REDUCTION OF SURPLUS FUNDS OF FEDERAL RE-**
15 **SERVE BANKS.**

16 (a) IN GENERAL.—Section 7(a)(3)(A) of the Federal
17 Reserve Act (12 U.S.C. 289(a)(3)(A)) is amended by
18 striking “\$7,500,000,000” and inserting
19 “\$7,451,428,571”.

1 (b) EFFECTIVE DATE.—Subsection (a) shall take ef-
2 fect on June 1, 2018.

Passed the House of Representatives April 11, 2018.

Attest:

KAREN L. HAAS,
Clerk.