

113TH CONGRESS
2^D SESSION

H. R. 5180

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

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2014

Mr. ROSS (for himself, Mr. DELANEY, Mr. BACHUS, Mr. MURPHY of Florida, Ms. SINEMA, and Mr. LUETKEMEYER) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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

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 Stability
5 Oversight Council Improvement Act of 2014”.

1 **SEC. 2. TRANSPARENCY AND ACCOUNTABILITY.**

2 Section 111 of the Financial Stability Act of 2010
3 (12 U.S.C. 5321) is amended by adding at the end the
4 following:

5 “(k) APPLICATION OF THE ADMINISTRATIVE PROCE-
6 DURE ACT.—

7 “(1) IN GENERAL.—The Council shall be an
8 agency for purposes of subchapter II of chapter 5
9 and chapter 7 of title 5, United States Code (com-
10 monly referred to as the ‘Administrative Procedure
11 Act’).

12 “(2) NOTICE OF MEETINGS BY CHAIR-
13 PERSON.—The Chairperson shall be responsible for
14 the public announcements required under section
15 552b(e) of title 5, United States Code.

16 “(3) CLOSED MEETING VOTES.—A determina-
17 tion made by the Council under section 552b(e) of
18 title 5, United States Code, may only be made by a
19 majority vote of the voting members of the Council
20 then serving.

21 “(4) TREATMENT AS REGULATORS OF FINAN-
22 CIAL INSTITUTIONS.—The Council and the Office of
23 Financial Research shall each be an agency respon-
24 sible for the regulation or supervision of financial in-
25 stitutions for purposes of section 552(b)(8) of title
26 5, United States Code.

1 “(1) PUBLICATION OF REPORTS AND ANALYSES.—

2 “(1) IN GENERAL.—With respect to any final
3 report, study, or analysis prepared by the Council,
4 the Council shall promptly make available to the
5 public, after distribution for review or use—

6 “(A) any data, analysis, and reports—

7 “(i) produced by the Council; and

8 “(ii) produced by member agencies or
9 the Office of Financial Research to support
10 the work of the Council; and

11 “(B) with respect to any findings in such
12 report, study, or analysis, an explanation for
13 such findings and any data used to substantiate
14 such findings.

15 “(2) REDACTION OF EXEMPT INFORMATION.—

16 Paragraph (1) shall not apply to any information
17 that is exempt from disclosure under section 552(b)
18 of title 5, United States Code.

19 “(m) REVISIONS TO ANALYTIC FRAMEWORK FOR
20 DETERMINATIONS.—The Council shall make no revisions
21 to any final published analytic framework for determina-
22 tions under this section or adopt or apply any new similar
23 framework without providing prior public notice and an
24 opportunity for comment, consistent with section 553 of
25 title 5, United States Code.”.

1 **SEC. 3. SIFI DESIGNATION PROCESS.**

2 Section 113 of the Financial Stability Act of 2010
3 (12 U.S.C. 5323) is amended—

4 (1) in subsection (a)(2)—

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

7 (B) by redesignating subparagraph (K) as
8 subparagraph (L); and

9 (C) by inserting after subparagraph (J)
10 the following:

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

15 (2) in subsection (b)(2)—

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

18 (B) by redesignating subparagraph (K) as
19 subparagraph (L);

20 (C) by inserting after subparagraph (J)
21 the following:

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

26 (D) in subsection (d)—

1 (i) in paragraph (1), by striking
2 “and” at the end;

3 (ii) by redesignating paragraph (2) as
4 paragraph (3); and

5 (iii) by inserting after paragraph (1)
6 the following:

7 “(2) provide written notice to the nonbank fi-
8 nancial company being reevaluated and afford such
9 company an opportunity to submit written materials,
10 within such time as the Council determines to be ap-
11 propriate (but which shall be not less than 30 days
12 after the date of receipt by the company of such no-
13 tice), to contest the determination, including mate-
14 rials concerning whether, in the company’s view, ma-
15 terial financial distress at the company, or the na-
16 ture, scope, size, scale, concentration, interconnect-
17 edness, or mix of the activities of the company could
18 pose a threat to the financial stability of the United
19 States; and”;

20 (3) by amending subsection (e) to read as fol-
21 lows:

22 “(e) REQUIREMENTS PRIOR TO A FINAL DETER-
23 MINATION, NOTICE AND OPPORTUNITY FOR HEARING,
24 AND FINAL DETERMINATION.—

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

8 “(A) written notice that explains with
9 specificity the basis for so identifying the com-
10 pany; and

11 “(B) an opportunity to submit written ma-
12 terials for consideration by the Council as part
13 of the Council’s initial evaluation of the risk
14 profile and characteristics of the company.

15 “(2) REQUIREMENTS BEFORE MAKING A PRO-
16 POSED DETERMINATION.—Before making a pro-
17 posed determination with respect to a nonbank fi-
18 nancial company under paragraph (3), the Council
19 shall—

20 “(A) by a vote of not fewer than $\frac{2}{3}$ of the
21 voting members then serving, including an af-
22 firmative vote by the Chairperson, approve a
23 resolution that identifies with specificity any
24 risks to the financial stability of the United

1 States the Council has identified relating to the
2 nonbank financial company;

3 “(B) with respect to nonbank financial
4 company with a primary financial regulatory
5 agency, provide a copy of the resolution de-
6 scribed under subparagraph (A) to the primary
7 financial regulatory agency and provide such
8 agency with at least 180 days from the receipt
9 of the resolution to—

10 “(i) consider the risks identified in the
11 resolution; and

12 “(ii) issue proposed regulations or un-
13 dertake other regulatory action to mitigate
14 or prevent the identified risks; and

15 “(C) provide the nonbank financial com-
16 pany with—

17 “(i) written notice that the Council is
18 considering whether to make a proposed
19 determination with respect to the nonbank
20 financial company under subsection (a) or
21 (b), as applicable;

22 “(ii) an opportunity to submit written
23 materials, within such time as the Council
24 deems appropriate (but not less than 30
25 days after the date of receipt by the com-

1 pany of the notice described under clause
2 (i)), to the Council to inform the Council’s
3 consideration of the nonbank financial
4 company for a proposed determination, in-
5 cluding materials concerning the com-
6 pany’s views as to whether it satisfies the
7 standard for determination set forth in
8 subsection (a) or (b), as applicable; and

9 “(iii) written notice when the Council
10 deems its evidentiary record regarding
11 such nonbank financial company to be
12 complete.

13 “(3) PROPOSED DETERMINATION.—

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

21 “(B) DEADLINE FOR MAKING A PROPOSED
22 DETERMINATION.—With respect to a nonbank
23 financial company provided with a written no-
24 tice under paragraph (2)(C)(i), if the Council
25 does not provide the company with the written

1 notice of a proposed determination described
2 under paragraph (4) within the 180-day period
3 following the date on which the Council notifies
4 the company under paragraph (2)(C) that the
5 evidentiary record is complete, the Council may
6 not make such a proposed determination with
7 respect to such company unless the Council re-
8 peats the procedures described under paragraph
9 (2).

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

16 “(i) the Council determines that any
17 proposed regulations or other regulatory
18 actions taken by the primary financial reg-
19 ulatory agency after receipt of the resolu-
20 tion described under paragraph (2)(A) are
21 insufficient to mitigate or prevent the risks
22 identified in the resolution;

23 “(ii) the primary financial regulatory
24 agency has notified the Council that the
25 agency has no proposed regulations or

1 other regulatory actions to mitigate or pre-
2 vent the risks identified in the resolution;
3 or

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

9 “(4) NOTICE OF PROPOSED DETERMINATION.—

10 The Council shall provide to a nonbank financial
11 company written notice of a proposed determination
12 of the Council, including an explanation of the basis
13 of the proposed determination of the Council, that a
14 nonbank financial company shall be supervised by
15 the Board of Governors and shall be subject to pru-
16 dential standards in accordance with this title, an
17 explanation of the specific risks to the financial sta-
18 bility of the United States presented by the nonbank
19 financial company, and a detailed explanation of why
20 other regulatory action by the company’s primary fi-
21 nancial regulatory agency, if any, is insufficient to
22 mitigate or prevent such risk.

23 “(5) HEARING.—

24 “(A) IN GENERAL.—Not later than 30
25 days after the date of receipt of any notice of

1 a proposed determination under paragraph (4),
2 the nonbank financial company may request, in
3 writing, an opportunity for a written or oral
4 hearing before the Council to contest the pro-
5 posed determination, including the opportunity
6 to present a plan to modify the company’s busi-
7 ness, structure, or operations in order to miti-
8 gate the risks identified in the notice, and
9 which plan shall also include any steps the com-
10 pany expects to take during the implementation
11 period to mitigate such risks.

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

18 “(i) submit written materials (which
19 may include a plan to modify the com-
20 pany’s business, structure, or operations);
21 or

22 “(ii) provide oral testimony and oral
23 argument.

24 “(6) COUNCIL CONSIDERATION OF COMPANY
25 PLAN.—

1 “(A) IN GENERAL.—If a nonbank financial
2 company submits a plan in accordance with
3 paragraph (5), the Council shall, prior to mak-
4 ing a final determination—

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

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

11 “(B) VOTING.—Approval by the Council of
12 a plan submitted under paragraph (5) or re-
13 vised under subparagraph (A)(ii) shall require a
14 vote of not fewer than $\frac{2}{3}$ of the voting members
15 then serving, including an affirmative vote by
16 the Chairperson.

17 “(C) IMPLEMENTATION OF APPROVED
18 PLAN.—With respect to a nonbank financial
19 company’s plan approved by the Council under
20 subparagraph (B), the company shall have one
21 year to implement the plan, except that the
22 Council, in its sole discretion and upon request
23 from the nonbank financial company, may
24 grant one or more extensions of the implemen-
25 tation period.

1 “(D) OVERSIGHT OF IMPLEMENTATION.—

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

10 “(ii) INSPECTIONS.—The Council may
11 direct the primary financial regulatory
12 agency of a nonbank financial company
13 (or, if none, the Board of Governors) to in-
14 spect the company for the purpose of eval-
15 uating the company’s progress in imple-
16 menting the company’s plan.

17 “(E) AUTHORITY TO RESCIND AP-
18 PROVAL.—

19 “(i) IN GENERAL.—During the imple-
20 mentation period described under subpara-
21 graph (C), including any extensions grant-
22 ed by the Council, the Council shall retain
23 the authority to rescind its approval of the
24 plan if the Council finds, by a vote of not
25 fewer than $\frac{2}{3}$ of the voting members then

1 serving, including an affirmative vote by
2 the Chairperson, that the company’s imple-
3 mentation of the plan is no longer suffi-
4 cient to mitigate or prevent the risks iden-
5 tified in the resolution described under
6 paragraph (2)(A).

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

15 “(F) ACTIONS AFTER IMPLEMENTATION.—

16 “(i) EVALUATION OF IMPLEMENTA-
17 TION.—After the end of the implementa-
18 tion period described under subparagraph
19 (C), including any extensions granted by
20 the Council, the Council shall consider
21 whether the plan, as implemented by the
22 nonbank financial company, adequately
23 mitigates or prevents the risks identified in
24 the resolution described under paragraph
25 (2)(A).

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

14 “(7) FINAL COUNCIL DECISIONS.—

15 “(A) IN GENERAL.—Not later than 90
16 days after the date of a hearing under para-
17 graph (5), the Council shall notify the nonbank
18 financial company of—

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

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

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

4 “(B) EXPLANATORY STATEMENT.—A final
5 determination of the Council, under subsection
6 (a) or (b), shall contain a statement of the basis
7 for the decision of the Council, including the
8 reasons why the Council rejected any plan by
9 the nonbank financial company submitted under
10 paragraph (5) or revised under paragraph
11 (6).”; and
12 (4) by adding at the end the following:

13 “(j) PERIODIC REVIEW OF INDIVIDUAL DETERMINA-
14 TION.—

15 “(1) REVIEW.—Every 5 years after the date of
16 a final determination with respect to a nonbank fi-
17 nancial company under subsection (a) or (b), as ap-
18 plicable, the nonbank financial company may submit
19 a written request to the Council for a reevaluation
20 of such determination. Upon receipt of such a re-
21 quest, the Council shall conduct a reevaluation of
22 such determination and hold a vote on whether to
23 rescind such determination.

24 “(2) PROCEDURES.—

1 “(A) IN GENERAL.—Upon receipt of a
2 written request under paragraph (1), 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); or

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

15 “(B) TREATMENT OF PLAN.—If the com-
16 pany submits a plan in accordance with sub-
17 paragraph (A)(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.

25 “(3) RESCISSION OF DETERMINATION.—

1 “(A) IN GENERAL.—If the Council, by a
2 vote of not fewer than $\frac{2}{3}$ of the voting members
3 then serving, including an affirmative vote by
4 the Chairperson, determines under this sub-
5 section that a nonbank financial company no
6 longer meets the standards for a final deter-
7 mination under subsection (a) or (b), as appli-
8 cable, the Council shall rescind such determina-
9 tion.

10 “(B) APPROVAL OF COMPANY PLAN.—Ap-
11 proval by the Council of a plan submitted or re-
12 vised in accordance with paragraph (2) shall re-
13 quire a vote of not fewer than $\frac{2}{3}$ of the voting
14 members then serving, including an affirmative
15 vote by the Chairperson. If such plan is ap-
16 proved by the Council, the company shall imple-
17 ment the plan during the period identified in
18 the plan, except that the Council, in its sole dis-
19 cretion and upon request from the company,
20 may grant one or more extensions of the imple-
21 mentation period. After the end of the imple-
22 mentation period, including any extensions
23 granted by the Council, the Council shall pro-
24 ceed to a vote as described under subparagraph
25 (A).

1 “(k) PERIODIC ASSESSMENT OF THE IMPACT OF
2 DESIGNATIONS.—

3 “(1) ASSESSMENT.—Every five years after the
4 date of enactment of this section, the Council
5 shall—

6 “(A) conduct a study of the Council’s de-
7 terminations that nonbank financial companies
8 shall be supervised by the Board of Governors
9 and shall be subject to prudential standards;
10 and

11 “(B) comprehensively assess the impact of
12 such determinations on the companies for which
13 such determinations were made and the wider
14 economy, including whether such determina-
15 tions are having the intended result of improv-
16 ing the financial stability of the United States.

17 “(2) REPORT.—Not later than 90 days after
18 completing a study required under paragraph (1),
19 the Council shall issue a report to the Congress
20 that—

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

24 “(B) identifies whether any of the Coun-
25 cil’s determinations should be rescinded or

1 whether related regulations or regulatory guid-
2 ance should be modified, streamlined, expanded,
3 or repealed.”.

4 **SEC. 4. RULE OF CONSTRUCTION.**

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

○