

FINANCIAL STABILITY OVERSIGHT COUNCIL
IMPROVEMENT ACT OF 2015

DECEMBER 12, 2016.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1550]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1550) 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, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 1550 amends the Financial Stability Act of 2010 to require the Financial Stability Oversight Council (FSOC), when determining whether to subject a nonbank financial company to supervision by the Board of Governors of the Federal Reserve System, to consider the appropriateness of imposing such standards as opposed to other forms of regulation to mitigate identified risks to U.S. financial stability. The bill also provides for annual and periodic reevaluation of FSOC determinations, enhanced procedures for making additional determinations, and periodic FSOC assessments of the impact of its designations.

BACKGROUND AND NEED FOR LEGISLATION

Section 113 of the Dodd-Frank Act authorizes the FSOC to determine that the material financial distress of a nonbank financial company could pose a threat to the financial stability of the United States. Once the FSOC makes a determination regarding a nonbank financial company, the nonbank financial company becomes subject to heightened prudential supervision and regulation by the Fed. The FSOC is required to consider a number of factors when making its determination. H.R. 1550 would add an additional factor that the FSOC would be required to consider before designating a nonbank financial company as systemically important. Specifically, the FSOC would be required to consider the “appropriateness of the imposition of prudential standards as opposed to other forms of regulation to mitigate the identified risks.”

Section 113(e) requires the FSOC to provide a nonbank financial company written notice of a proposed designation determination, including an explanation of the basis of the proposed determination. The nonbank financial company is entitled to a hearing and can submit written materials contesting a proposed determination. H.R. 1550 would require the FSOC, upon identifying a nonbank financial company as a potential threat to the financial stability of the United States, to provide the nonbank financial company with a written notice that explains with specificity the basis for identifying the company and would require a copy of the notice to be provided to the company’s primary financial regulatory agency.

Upon receiving a notice of potential designation, a company would be provided an opportunity to submit written materials for consideration by the FSOC and meet with the FSOC to discuss the FSOC’s analysis. The FSOC would be required to give the nonbank financial company a list of the public sources of information being considered by the FSOC. The FSOC would then be permitted to approve a resolution that identifies with specificity any risks to the financial stability of the United States that the FSOC has identified relating to the nonbank financial company by a vote of at least 2/3rds of the voting members of the FSOC (including the affirmative vote of the Treasury Secretary). The nonbank financial company’s primary financial regulatory agency would have 180 days to consider the risks identified in the resolution and provide a written response to the FSOC that includes its assessment of the risks identified and the degree to which they are or could be addressed by existing regulation and, as appropriate, issue proposed regulations or undertake other regulatory action to mitigate the identified risks. In addition, the nonbank financial company would be (i) permitted to meet with the FSOC to discuss the FSOC’s analysis, (ii) permitted to submit written materials to the FSOC, (iii) entitled to receive an explanation from the FSOC of how any request by the FSOC for information from the nonbank financial company relates to the potential systemic risks posed by the company; and (iv) entitled to receive written notice when the FSOC deems its evidentiary record to be complete.

After following the above process, the FSOC could, by a vote of at least 2/3rds of the voting members of the FSOC (including the affirmative vote of the Treasury Secretary) make a proposed designation of a company. Prior to making a proposed designation, the

FSOC would be required to determine that any proposed regulations or other regulatory actions taken by the primary financial regulatory agency are insufficient to mitigate the risks identified in the resolution. If the FSOC makes a proposed designation, it would be required to provide an explanation of the specific risks to the financial stability of the United States presented by the nonbank financial company and a detailed explanation of why existing regulations are insufficient. Following a proposed designation, the nonbank financial company would be permitted to request a hearing before the FSOC to contest its decision and present a remediation plan to modify the company's business, structure, or operations. If the FSOC approves the remediation plan, then the FSOC would monitor implementation of the plan. If the FSOC rejects the remediation plan, then the FSOC could vote to make a final designation.

Section 113(d) currently requires the FSOC annually to reevaluate each determination and rescind any determination if at least 2/3rds of the voting members of the FSOC (including the affirmative vote of the Treasury Secretary) determine that the material financial distress of the nonbank financial company could not pose a threat to the financial stability of the United States. H.R. 1550 would amend this provision and require the FSOC, in connection with its annual review, to allow each designated company (i) an opportunity to submit written materials to contest the determination, (ii) provide each designated company an opportunity to meet with the FSOC, and (iii) provide the designated company and its primary financial regulatory agency with the reasons for the FSOC's decision to maintain a designation. In addition, the FSOC would be required at least every five years to conduct a reevaluation of a determination and hold a vote on whether to rescind a determination. In connection with this five-year review, the company would be permitted to submit a remediation plan that would explain how the company could modify its business, structure, or operations. The FSOC would be required to consider whether the plan, if implemented, would cause the company to no longer pose a threat to the financial stability of the United States.

H.R. 1550 would also require the FSOC to disclose in its annual report the number of nonbank financial companies from the previous year that were subject to preliminary analysis, further review, and a proposed or final determination. The FSOC would be required to publish information regarding its methodology for calculating any quantitative thresholds or other metrics used to identify nonbank financial companies for analysis by the FSOC. In addition, the FSOC would be required every five years to conduct a study of the FSOC's determinations and comprehensively assess the impact of such determinations, including whether such determinations are having the intended result of improving the financial stability of the United States.

In a letter of support for H.R. 1550 dated November 2, 2015, the Financial Services Roundtable wrote:

[H.R. 1550] would bring greater transparency to the Financial Services Oversight Council (FSOC). The goal of FSOC is to identify and mitigate systemic risk. Asset managers are different than banks, however. The standards for assessing their risk exposures should be measured by risk-

related activities and not simply the amount of assets under management. H.R. 1550 will improve accountability and transparency by requiring FSOC to identify the reasons it believes a nonbank entity should be declared a Systemically Important Financial Institution (SIFI), and allow the entity the opportunity to “de-risk” before being designated. Importantly, the bill will also allow the nonbanks’ primary regulator to first address any identified risks. This common-sense approach has strong bipartisan support.

HEARINGS

The Committee on Financial Services’ Subcommittee on Financial Institutions held a hearing examining matters relating to H.R. 1550 on July 8, 2015.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 3, 2015 and November 4, 2015, and ordered H.R. 1550 to be reported favorably to the House without amendment by a recorded vote of 44 yeas to 12 nays (recorded vote no. FC-66), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 44 yeas to 12 nays (Record vote no. FC-66), a quorum being present.

Record vote no. FC-66

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Waters (CA)		X	
Mr. King (NY)				Mrs. Maloney (NY)		X	
Mr. Royce	X			Ms. Velázquez		X	
Mr. Lucas	X			Mr. Sherman	X		
Mr. Garrett	X			Mr. Meeks			
Mr. Neugebauer	X			Mr. Capuano		X	
Mr. McHenry	X			Mr. Hinojosa		X	
Mr. Pearce	X			Mr. Clay		X	
Mr. Posey	X			Mr. Lynch		X	
Mr. Fitzpatrick	X			Mr. David Scott (GA)	X		
Mr. Westmoreland	X			Mr. Al Green (TX)		X	
Mr. Luetkemeyer	X			Mr. Cleaver		X	
Mr. Huizenga (MI)	X			Ms. Moore		X	
Mr. Duffy	X			Mr. Ellison		X	
Mr. Hurt (VA)	X			Mr. Perlmutter	X		
Mr. Stivers				Mr. Himes	X		
Mr. Fincher	X			Mr. Carney	X		
Mr. Stutzman	X			Ms. Sewell (AL)	X		
Mr. Mulvaney	X			Mr. Foster	X		
Mr. Hultgren	X			Mr. Kildee		X	
Mr. Ross	X			Mr. Murphy (FL)			
Mr. Pittenger	X			Mr. Delaney	X		
Mrs. Wagner	X			Ms. Sinema	X		
Mr. Barr	X			Mrs. Beatty	X		
Mr. Rothfus	X			Mr. Heck (WA)	X		
Mr. Messer	X			Mr. Vargas	X		
Mr. Schweikert	X						
Mr. Guinta	X						
Mr. Tipton	X						
Mr. Williams	X						
Mr. Poliquin	X						
Mrs. Love	X						
Mr. Hill	X						
Mr. Emmer	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. will promote accountability in the designation of systemically important nonbank financial institutions for Federal Reserve supervision and regulation by, among other things, reforming the process leading to designation and requiring review of whether such designations remain appropriate and are having their intended effect of reducing risks to the U.S. financial system.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 15, 2016.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1550, the Financial Stability Oversight Council Improvement Act of 2015.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 1550—Financial Stability Oversight Council Improvement Act of 2015

Summary: H.R. 1550 would require the Financial Stability Oversight Council (FSOC) to change the procedures by which it designates certain companies as systemically important financial institutions (SIFIs). Those procedural changes would apply only to SIFIs that are not banking institutions and would affect the regulatory activities of other federal financial regulators including the Board of Governors of the Federal Reserve.

Based on information from FSOC and other federal financial regulators, CBO estimates that enacting the legislation would increase net direct spending by \$73 million and increase revenues by \$22 million over the next 10 years, leading to a net increase in the deficit of \$51 million over the 2017–2026 period. Some of that cost would be recovered from financial institutions in the years after 2026. Pay-as-you-go procedures apply because enacting the legislation would affect direct spending and revenues.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

H.R. 1550 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

CBO expects that the federal financial regulators would increase fees and other assessments to offset the costs of implementing the bill. Doing so would increase the cost of an existing private-sector mandate on entities required to pay those assessments. Based on information from the federal financial regulators, CBO estimates that the aggregate increase in fees and assessments would fall well below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 1550 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—											2017– 2021	2017– 2026	
	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026				
NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES														
Administrative Costs to Financial Regulators to Review and Designate Financial Institutions ^a	2	3	2	2	2	2	2	2	2	2	2	11	21	
Additional Costs to resolve Non-Bank Financial Institutions ^b	0	0	1	3	5	5	4	4	4	4	4	9	30	
Total Increase in the Deficit	2	3	3	5	7	7	6	6	6	6	6	20	51	
Memorandum: Components of the Net Increase in the Deficit														
INCREASES IN DIRECT SPENDING														
Total Changes in Direct Spending:														
Estimated Budget Authority	2	4	5	7	9	10	9	9	9	10	10	26	73	
Estimated Outlays	2	4	5	7	9	10	9	9	9	10	10	26	73	
INCREASES IN REVENUES														
Total Changes in Revenues	0	1	2	2	2	3	3	3	3	4	4	6	22	

Source: Congressional Budget Office.

Notes: Amounts may not sum to totals because of rounding; FDIC = Federal Deposit Insurance Corporation.

^aAdministrative costs to financial regulators include costs incurred by the Federal Deposit Insurance Corporation, the Financial Stability Oversight Council, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Reserve System. Costs to the Federal Reserve System reduce remittances to the Treasury (which are recorded in the budget as revenues). Administrative costs to the financial regulators are typically offset, over time, by assessments levied on financial industries.

^bAdditional costs to resolve financial institutions under H.R. 1550 would be eventually offset, by increased assessments on federally insured depository institutions. Some of those increases would occur after 2026.

Basis of estimate: The budgetary effects of the legislation would stem from increased administrative costs to the federal financial regulators and costs to resolve certain financial institutions. CBO estimates that provisions in the bill that would change the standards and procedures for designating systemically important financial institutions would slightly increase the probability of losses to the Federal Deposit Insurance Corporation (FDIC) from resolving possible future defaults by certain nonbank financial institutions. The FDIC can eventually recover its costs for resolving those defaults from assessments on the financial industry; however, CBO estimates that such recoveries would occur over many years, resulting in a small additional net increase in deficits over the 2017–2026 period.

For this estimate, CBO assumes that the bill will be enacted near the end of 2016 and that spending will follow historical patterns.

Administrative costs to financial regulators to review and designate financial institutions

Enacting H.R. 1550 would change the procedures and timeline FSOC uses to designate nonbank financial institutions (such as insurance companies) as SIFIs. Provisions in the bill would increase the workload of FSOC and other financial regulators that are charged with designating such firms as SIFIs. Based on information from FSOC, CBO estimates that FSOC and the federal financial regulators would need to hire an additional 20 to 30 people (with average salaries of around \$200,000) to comply with the requirements of the bill. About half of those staff would be required to assist with implementing new requirements associated with conducting annual reviews of nonbank financial firms and about half would be required to assist with reviewing and identifying firms that may be designated in the future. As a result, CBO estimates that enacting the administrative provisions of H.R. 1550, assuming a partial recovery of administrative costs from private entities (some of which are recorded as revenues in the budget), would increase budget deficits by \$21 million over the 2017–2026 period.

Additional costs to the FDIC to resolve non-bank financial institutions

Under current law, non-bank firms that are designated as SIFIs are subject to enhanced prudential regulation by the Board of Governors of the Federal Reserve. Those regulations are designed to be similar to those imposed on banks, which typically require SIFIs to undergo special stress tests, develop resolution plans, and maintain certain levels of liquidity and loss absorbing capacity. Based on information from national credit rating agencies and from academic, industry, and regulatory experts, CBO concludes that the added capital and transparency that results from those enhanced prudential regulations improve the safety and soundness of the affected

firms.¹ On balance, CBO estimates that such regulation lowers the FDIC's cost of resolving insolvent firms through the Orderly Liquidation Fund by 2 percent to 3 percent, primarily because those measures should result in shareholders and other creditors absorbing a larger share of any losses in the event of insolvency.

CBO expects that the revised standards and procedures in H.R. 1550 could delay when some nonbank firms are designated as SIFIs and may reduce the number of firms so designated. Under current law, CBO estimates that enhanced prudential regulation of nonbank SIFIs will reduce the net losses incurred by the FDIC by about \$150 million over the next 10 years. Based on recent trends in the designation process, CBO estimates that the amount of nonbank assets subject to enhanced regulation would be about 20 percent smaller over the next ten years under this bill, resulting in additional net costs totaling \$30 million over the 2017–2026 period. Most of those losses would be offset after 2026 by income to the FDIC from fees paid by insured depository institutions and large financial firms.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1550, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON NOVEMBER 5, 2015

	By fiscal year, in millions of dollars—														2016– 2021	2016– 2026
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026					
	NET INCREASE IN THE DEFICIT															
Statutory Pay-As-You-Go Impact	0	2	3	3	5	7	7	6	6	6	6	6	20	51		
Memorandum:																
Changes in Outlays	0	2	4	5	7	9	10	9	9	9	10	10	26	73		
Changes in Revenues	0	0	1	2	2	2	3	3	3	3	4	4	6	22		

Increase in long-term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

Estimated impact on state, local, and tribal governments: H.R. 1550 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: CBO expects that the federal financial regulators would increase fees and assessments to offset the costs of implementing the additional regulatory activities required by the bill. Doing so would increase the cost of an existing mandate on private entities required to pay those assessments. Based on information from the agencies, CBO estimates that incremental cost of the mandate would amount to about \$37 million over the 2017–2026 period and, in aggregate, would fall well below the annual threshold established in UMRA for private-sector mandates (\$154 million in 2016, adjusted annually for inflation).

¹ See, for example, Standard and Poors, “Dodd-Frank Five Years Later: The Good, the Questionable, and the Unintended,” July 1, 2015.

Previous estimates: On July 29, 2015, CBO transmitted a cost estimate for S. 1484, the Financial Regulatory Improvement Act of 2015, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on June 2, 2015. Title II of that bill includes provisions that would modify the processing for designating nonbank SIFIs. The specific requirements in H.R. 1550 differ from those in S. 1484, but CBO estimates that the net budgetary effect of the provisions in the two bills would be similar.

Estimate prepared by: Federal Costs: Sarah Puro and Kathleen Gramp; Revenues: Nathaniel Frenztz; Impact on State, Local, and Tribal Governments: J'nell Blanco Suchy; Impact on the Private Sector: Logan Smith.

Estimate approved by: Theresa Gullo, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1550 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 1550 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 1550 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 1550 as the “Financial Stability Oversight Council Improvement Act of 2015”.

Section 2. SIFI designation process

Amends section 113 of the Financial Stability Act of 2010 to require the FSOC to examine the impact on the U.S. financial system of imposing heightened prudential standards by the Federal Reserve in lieu of other regulation.

In addition, this section directs the FSOC to reevaluate, both annually and periodically, final determinations of systemic risk regarding a nonbank financial company under supervision by the Federal Reserve. Where a reevaluation determines that a nonbank financial company no longer poses a threat to the financial stability of the United States, affirmed by a vote of 2/3rds of the FSOC voting membership, this bill directs FSOC to rescind the determination.

Further, this section prescribes procedural requirements for proposed FSOC determinations and final decision-making, including: written notification, opportunity to submit written materials to FSOC as part of the initial evaluation, opportunity to meet with the FSOC to discuss the analysis, and disclosure of the public sources of information considered by the FSOC as part of its analysis.

Finally, this section directs the FSOC every five years to study: (1) the impact of its determinations to subject nonbank financial companies to supervision by the Federal Reserve and prudential standards, and (2) whether such determinations have the intended result of improving domestic financial stability.

Section 3. Rule of construction

This section stipulates that this bill does not limit the powers of the FSOC to implement their emergency powers under section 113(f) of the Financial Stability Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

SECTION 113 OF THE FINANCIAL STABILITY ACT OF 2010**SEC. 113. AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES.**

(a) U.S. NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be su-

pervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the U.S. nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the U.S. nonbank financial company, could pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Council shall consider—

(A) the extent of the leverage of the company;

(B) the extent and nature of the off-balance-sheet exposures of the company;

(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(E) the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;

(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) the degree to which the company is already regulated by 1 or more primary financial regulatory agencies;

(I) the amount and nature of the financial assets of the company;

(J) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding; ~~and~~

~~(K) the appropriateness of the imposition of prudential standards as opposed to other forms of regulation to mitigate the identified risks; and~~

~~[(K)] (L) any other risk-related factors that the Council deems appropriate.~~

(b) FOREIGN NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—

(1) DETERMINATION.—The Council, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, may determine that a foreign nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this title, if the Council determines that material financial distress at the foreign nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the foreign nonbank financial company, could pose a threat to the financial stability of the United States.

(2) CONSIDERATIONS.—In making a determination under paragraph (1), the Council shall consider—

- (A) the extent of the leverage of the company;
- (B) the extent and nature of the United States related off-balance-sheet exposures of the company;
- (C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;
- (D) the importance of the company as a source of credit for United States households, businesses, and State and local governments and as a source of liquidity for the United States financial system;
- (E) the importance of the company as a source of credit for low-income, minority, or underserved communities in the United States, and the impact that the failure of such company would have on the availability of credit in such communities;
- (F) the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse;
- (G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;
- (H) the extent to which the company is subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority;
- (I) the amount and nature of the United States financial assets of the company;
- (J) the amount and nature of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding; **[and]**
- (K) *the appropriateness of the imposition of prudential standards as opposed to other forms of regulation to mitigate the identified risks; and*
- [(K)] (L)** any other risk-related factors that the Council deems appropriate.

(c) ANTIEVASION.—

(1) DETERMINATIONS.—In order to avoid evasion of this title, the Council, on its own initiative or at the request of the Board of Governors, may determine, on a nondelegable basis and by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, that—

- (A) material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would pose a threat to the financial stability of the United States, based on consideration of the factors in subsection (a)(2) or (b)(2), as applicable;
- (B) the company is organized or operates in such a manner as to evade the application of this title; and
- (C) such financial activities of the company shall be supervised by the Board of Governors and subject to pruden-

tial standards in accordance with this title, consistent with paragraph (3).

(2) REPORT.—Upon making a determination under paragraph (1), the Council shall submit a report to the appropriate committees of Congress detailing the reasons for making such determination.

(3) CONSOLIDATED SUPERVISION OF ONLY FINANCIAL ACTIVITIES; ESTABLISHMENT OF AN INTERMEDIATE HOLDING COMPANY.—

(A) ESTABLISHMENT OF AN INTERMEDIATE HOLDING COMPANY.—Upon a determination under paragraph (1), the company that is the subject of the determination may establish an intermediate holding company in which the financial activities of such company and its subsidiaries shall be conducted (other than the activities described in section 167(b)(2)) in compliance with any regulations or guidance provided by the Board of Governors. Such intermediate holding company shall be subject to the supervision of the Board of Governors and to prudential standards under this title as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

(B) ACTION OF THE BOARD OF GOVERNORS.—To facilitate the supervision of the financial activities subject to the determination in paragraph (1), the Board of Governors may require a company to establish an intermediate holding company, as provided for in section 167, which would be subject to the supervision of the Board of Governors and to prudential standards under this title, as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

(4) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION; JUDICIAL REVIEW.—Subsections (d) through (h) shall apply to determinations made by the Council pursuant to paragraph (1) in the same manner as such subsections apply to nonbank financial companies.

(5) COVERED FINANCIAL ACTIVITIES.—For purposes of this subsection, the term “financial activities”—

(A) means activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956);

(B) includes the ownership or control of one or more insured depository institutions; and

(C) does not include internal financial activities conducted for the company or any affiliate thereof, including internal treasury, investment, and employee benefit functions.

(6) ONLY FINANCIAL ACTIVITIES SUBJECT TO PRUDENTIAL SUPERVISION.—Nonfinancial activities of the company shall not be subject to supervision by the Board of Governors and prudential standards of the Board. For purposes of this Act, the financial activities that are the subject of the determination in paragraph (1) shall be subject to the same requirements as a nonbank financial company supervised by the Board of Governors. Nothing in this paragraph shall prohibit or limit the

authority of the Board of Governors to apply prudential standards under this title to the financial activities that are subject to the determination in paragraph (1).

[(d) REEVALUATION AND RESCISSION.—The Council shall—

[(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to such nonbank financial company supervised by the Board of Governors; and

[(2) rescind any such determination, if the Council, by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

[(e) NOTICE AND OPPORTUNITY FOR HEARING AND FINAL DETERMINATION.—

[(1) IN GENERAL.—The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title.

[(2) HEARING.—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

[(3) FINAL DETERMINATION.—Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

[(4) NO HEARING REQUESTED.—If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).]

(d) REEVALUATION AND RESCISSION.—

(1) ANNUAL REEVALUATION.—*Not less frequently than annually, the Council shall reevaluate each determination made under subsections (a) and (b) with respect to a nonbank financial company supervised by the Board of Governors and shall—*

(A) provide written notice to the nonbank financial company being reevaluated and afford such company an opportunity to submit written materials, within such time as the Council determines to be appropriate (but which shall be not less than 30 days after the date of receipt by the company of such notice), to contest the determination, including materials concerning whether, in the company's view, mate-

rial financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company could pose a threat to the financial stability of 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.

(B) PROCEDURES.—Upon receipt of a written request under paragraph (A), the Council shall fix a time (not earlier than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to—

(i) submit written materials (which may include a plan to modify the company's business, structure, or operations, which shall specify the length of the implementation period); and

(ii) provide oral testimony and oral argument before the members of the Council.

(C) TREATMENT OF PLAN.—If the company submits a plan in accordance with subparagraph (B)(i), the Council shall consider whether the plan, if implemented, would cause the company to no longer meet the standards for a final determination under subsection (a) or (b), as applicable. The Council shall provide the nonbank financial company an opportunity to revise the plan after consultation with the Council.

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

(3) RESCISSION OF DETERMINATION.—

(A) IN GENERAL.—If the Council, by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, determines under this subsection that a nonbank financial company no longer meets the standards for a final determination under sub-

section (a) or (b), as applicable, the Council shall rescind such determination.

(B) *APPROVAL OF COMPANY PLAN.*—Approval by the Council of a plan submitted or revised in accordance with paragraph (2) shall require a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson. If such plan is approved by the Council, the company shall implement 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).

(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;

(B) an opportunity to submit written materials for consideration by the Council as part of the Council's initial evaluation of the risk profile and characteristics of the company;

(C) an opportunity to meet with the Council to discuss the Council's analysis; and

(D) a list of the public sources of information being considered by the Council as part of such analysis.

(2) *REQUIREMENTS BEFORE MAKING A PROPOSED DETERMINATION.*—Before making a proposed determination with respect to a nonbank financial company under paragraph (3), the Council shall—

(A) by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, approve a resolution that identifies with specificity any risks to the financial stability of the United States the Council has identified relating to the nonbank financial company;

(B) with respect to nonbank financial company with a primary financial regulatory agency, provide a copy of the resolution described under subparagraph (A) to the primary financial regulatory agency and provide such agency with at least 180 days from the receipt of the resolution to—

- (i) consider the risks identified in the resolution; and
- (ii) provide a written response to the Council that includes its assessment of the risks identified and the degree to which they are or could be addressed by existing regulation and, as appropriate, issue proposed reg-

ulations or undertake other regulatory action to mitigate the identified risks;

(C) provide the nonbank financial company with written notice that the Council—

(i) is considering whether to make a proposed determination with respect to the nonbank financial company under subsection (a) or (b), as applicable, which notice explains with specificity the basis for the Council's consideration, including any aspects of the company's operations or activities that are a primary focus for the Council; or

(ii) has determined not to subject the company to further review, which action shall not preclude the Council from issuing a notice to the company under subparagraph (1)(A) at a future time; and

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

(i) an opportunity to meet with the Council to discuss the Council's analysis;

(ii) an opportunity to submit written materials, within such time as the Council deems appropriate (but not less than 30 days after the date of receipt by the company of the notice described under clause (i)), to the Council to inform the Council's consideration of the nonbank financial company for a proposed determination, including materials concerning the company's views as to whether it satisfies the standard for determination set forth in subsection (a) or (b), as applicable;

(iii) an explanation of how any request by the Council for information from the nonbank financial company relates to potential risks to the financial stability of the United States and the Council's analysis of the company;

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

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

(3) PROPOSED DETERMINATION.—

(A) VOTING.—The Council may, by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, propose to make a determination in accordance with the provisions of subsection (a) or (b), as applicable, with respect to a nonbank financial company.

(B) DEADLINE FOR MAKING A PROPOSED DETERMINATION.—With respect to a nonbank financial company provided with a written notice under paragraph (2)(C)(i), if the Council does not provide the company with the written notice of a proposed determination described under paragraph (4) within the 180-day period following the date on which the Council notifies the company under paragraph (2)(C) that the evidentiary record is complete, the Council

may not make such a proposed determination with respect to such company unless the Council repeats the procedures described under paragraph (2).

(C) *REVIEW OF ACTIONS OF PRIMARY FINANCIAL REGULATORY AGENCY.*—With respect to a nonbank financial company with a primary financial regulatory agency, the Council may not vote under subparagraph (A) to make a proposed determination unless—

(i) the Council first determines that any proposed regulations or other regulatory actions taken by the primary financial regulatory agency after receipt of the resolution described under paragraph (2)(A) are insufficient to mitigate the risks identified in the resolution;

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

(iii) the period allowed by the Council under paragraph (2)(B) has elapsed and the primary financial regulatory agency has taken no action in response to the resolution.

(4) *NOTICE OF PROPOSED DETERMINATION.*—The Council shall—

(A) provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this title, an explanation of the specific risks to the financial stability of the United States presented by the nonbank financial company, and a detailed explanation of why existing regulations or other regulatory action by the company's primary financial regulatory agency, if any, is insufficient to mitigate such risk; and

(B) provide the primary financial regulatory agency of the nonbank financial company a copy of the nonpublic written explanation of the Council's proposed determination.

(5) *HEARING.*—

(A) *IN GENERAL.*—Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (4), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination, including the opportunity to present a plan to modify the company's business, structure, or operations in order to mitigate the risks identified in the notice, and which plan shall also include any steps the company expects to take during the implementation period to mitigate such risks.

(B) *GRANT OF HEARING.*—Upon receipt of a timely request, the Council shall fix a time (not earlier than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to—

(i) submit written materials (which may include a plan to modify the company's business, structure, or operations); or

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

(6) COUNCIL CONSIDERATION OF COMPANY PLAN.—

(A) IN GENERAL.—If a nonbank financial company submits a plan in accordance with paragraph (5), the Council shall, prior to making a final determination—

(i) consider whether the plan, if implemented, would mitigate the risks identified in the notice under paragraph (4); and

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

(B) VOTING.—Approval by the Council of a plan submitted under paragraph (5) or revised under subparagraph (A)(ii) shall require a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson.

(C) IMPLEMENTATION OF APPROVED PLAN.—With respect to a nonbank financial company's plan approved by the Council under subparagraph (B), the company shall have one year to implement the plan, except that the Council, in its sole discretion and upon request from the nonbank financial company, may grant one or more extensions of the implementation period.

(D) OVERSIGHT OF IMPLEMENTATION.—

(i) PERIODIC REPORTS.—The Council, acting through the Office of Financial Research, may require the submission of periodic reports from a nonbank financial company for the purpose of evaluating the company's progress in implementing a plan approved by the Council under subparagraph (B).

(ii) INSPECTIONS.—The Council may direct the primary financial regulatory agency of a nonbank financial company or its subsidiaries (or, if none, the Board of Governors) to inspect the company or its subsidiaries for the purpose of evaluating the implementation of the company's plan.

(E) AUTHORITY TO RESCIND APPROVAL.—

(i) IN GENERAL.—During the implementation period described under subparagraph (C), including any extensions granted by the Council, the Council shall retain the authority to rescind its approval of the plan if the Council finds, by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, that the company's implementation of the plan is no longer sufficient to mitigate or prevent the risks identified in the resolution described under paragraph (2)(A).

(ii) FINAL DETERMINATION VOTE.—The Council may proceed to a vote on final determination under subsection (a) or (b), as applicable, not earlier than 10 days after providing the nonbank financial company

with written notice that the Council has rescinded the approval of the company's plan pursuant to clause (i).

(F) ACTIONS AFTER IMPLEMENTATION.—

(i) EVALUATION OF IMPLEMENTATION.—After the end of the implementation period described under subparagraph (C), including any extensions granted by the Council, the Council shall consider whether the plan, as implemented by the nonbank financial company, adequately mitigates or prevents the risks identified in the resolution described under paragraph (2)(A).

(ii) VOTING.—If, after performing an evaluation under clause (i), not fewer than $\frac{2}{3}$ of the voting members of the Council then serving, including an affirmative vote by the Chairperson, determine that the plan, as implemented, adequately mitigates or prevents the identified risks, the Council shall not make a final determination under subsection (a) or (b), as applicable, with respect to the nonbank financial company and shall notify the company of the Council's decision to take no further action.

(7) FINAL COUNCIL DECISIONS.—

(A) IN GENERAL.—Not later than 90 days after the date of a hearing under paragraph (5), the Council shall notify the nonbank financial company of—

(i) a final determination under subsection (a) or (b), as applicable;

(ii) the Council's approval of a plan submitted by the nonbank financial company under paragraph (5) or revised under paragraph (6); or

(iii) the Council's decision to take no further action with respect to the nonbank financial company.

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

(C) NOTICE TO PRIMARY FINANCIAL REGULATORY AGENCY.—In the case of a final determination under subsection (a) or (b), the Council shall provide the primary financial regulatory agency of the nonbank financial company a copy of the nonpublic written explanation of the Council's final determination.

(f) EMERGENCY EXCEPTION.—

(1) IN GENERAL.—The Council may waive or modify the requirements of subsection (e) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than $\frac{2}{3}$ of the voting members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) NOTICE.—The Council shall provide notice of a waiver or modification under this subsection to the nonbank financial

company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) INTERNATIONAL COORDINATION.—In making a determination under paragraph (1), the Council shall consult with the appropriate home country supervisor, if any, of the foreign nonbank financial company that is being considered for such a determination.

(4) OPPORTUNITY FOR HEARING.—The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification under this subsection, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(5) NOTICE OF FINAL DETERMINATION.—Not later than 30 days after the date of any hearing under paragraph (4), the Council shall notify the subject nonbank financial company of the final determination of the Council under this subsection, which shall contain a statement of the basis for the decision of the Council.

(g) CONSULTATION.—The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section [before the Council makes any final determination] *from the outset of the Council's consideration of the company, including before the Council makes any proposed or final determination* with respect to such nonbank financial company under subsection (a), (b), or (c).

(h) JUDICIAL REVIEW.—If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(2), (e)(3), or (f)(5), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

(i) INTERNATIONAL COORDINATION.—In exercising its duties under this title with respect to foreign nonbank financial companies, foreign-based bank holding companies, and cross-border activities and markets, the Council shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

(j) PUBLIC DISCLOSURE REQUIREMENT.—*The Council shall—*

(1) in each case where a nonbank financial company has been notified that it is subject to the Council's review and the company has publicly disclosed such fact, confirm that the nonbank

financial company is subject to the Council's review, in response to a request from a third party;

(2) upon making a final determination, publicly provide a written explanation of the basis for its decision with sufficient detail to provide the public with an understanding of the specific bases of the Council's determination, including any assumptions related thereof, subject to the requirements of section 112(d)(5);

(3) include, in the annual report required by section 112, the number of nonbank financial companies from the previous year subject to preliminary analysis, further review, and subject to a proposed or final determination; and

(4) within 90 days after the enactment of this subsection, publish information regarding its methodology for calculating any quantitative thresholds or other metrics used to identify nonbank financial companies for analysis by the Council.

(k) PERIODIC ASSESSMENT OF THE IMPACT OF DESIGNATIONS.—

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

(A) conduct a study of the Council's determinations that nonbank financial companies shall be supervised by the Board of Governors and shall be subject to prudential standards; and

(B) comprehensively assess the impact of such determinations on the companies for which such determinations were made and the wider economy, including whether such determinations are having the intended result of improving the financial stability of the United States.

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

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

(B) identifies whether any of the Council's determinations should be rescinded or whether related regulations or regulatory guidance should be modified, streamlined, expanded, or repealed.

MINORITY VIEWS

H.R. 1550 represents yet another attempt to prevent the Financial Stability Oversight Council (the Council) from doing its congressionally-mandated job of preventing another financial crisis by bogging it and its designation process down in endless analysis and litigation. The Council is a regulatory body created in the Dodd-Frank Wall Street Reform and Consumer Protection Act for the purpose of identifying and responding to risks to financial stability, as well as, eliminating expectations the government will shield market participants from losses. Congress specifically directed the Council to determine whether a U.S. nonbank financial company should be supervised by the Federal Reserve and subject to enhanced prudential standards if the Council concludes that financial distress at or the activities of the company would pose a threat to U.S. financial stability.

While the Dodd-Frank Act contains guidelines for identifying systemically important institutions and activities (including the direction that the Council consider risks like leverage, off-balance sheet exposures, transactions and relationships with other financial companies, the impact of the company as a creditor, assets and liabilities, current regulation and supervision, and the company's financial activities), Congress provided the Council with broad discretion in designating an institution, but required certain steps to ensure transparency and due process. For example, after making a proposed designation, the Council submits a report to the House Financial Services and Senate Banking Committees detailing the reasons for making its designation and provide notice and an explanation to the nonbank financial company. The company is given 30 days after receipt of the notice to contest FSOC's determination and an additional 30 days after a final determination to appeal the determination in U.S. courts.

Pursuant to the Dodd-Frank Act, the Council established a three-stage process for the designation of nonbank financial companies. Earlier this year following months of evaluation and engagement with financial companies, trade associations, nonbank financial companies subject to previous Council determinations, public interest groups, and Congressional stakeholders, the Council adopted 17 changes and Supplemental Procedures designed to promote transparency related to the evaluation of nonbank financial companies. Generally, these changes include: informing companies earlier in the process that they are under review; providing the company with additional opportunities to engage with and present information to the Council, its staff and their regulator; and making more information about Council designations public.

H.R. 1550, however, goes further merely codifying the Council's changes, and instead more than doubles time it would take for the Council to designate a company like American International Group

or AIG. Department of the Treasury Secretary Jack Lew, the Chair of the Council, explained to the Committee, “A misleading case has been made that the Council has overstepped in its effort to protect the financial system. But in the five years since the Council was established, it has identified only four nonbank financial companies whose material financial distress could pose a threat to U.S. financial stability.” H.R. 1550 would take an already lengthy and deliberative two-year process to more than four years. Such delays would allow companies to avoid prudential measures intended to mitigate threats to our economy for the benefit of their own shareholders. Rather than merely codify the changes made earlier this year, H.R. 1550 seeks to by statute provide institutions that the markets likely conclude are “too-big-to-fail” with a roadmap to challenge the Council’s, as one witness described, “indefinitely.”

For these reasons, we oppose this bill.

MAXINE WATERS.
WM. LACY CLAY.
RUBÉN HINOJOSA.
KEITH ELLISON.
AL GREEN.

