

FINANCIAL STABILITY OVERSIGHT COUNCIL  
IMPROVEMENT ACT OF 2017

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MARCH 9, 2018.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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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. 4061]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4061) 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

On October 10, 2017, Representative Dennis Ross introduced H.R. 4061, the “Financial Stability Oversight Council Improvement Act”, which amends Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to require the Financial Stability Oversight Council (FSOC), as it determines whether to subject a U.S. or a foreign nonbank financial company to supervision by the Board of Governors of the Federal Reserve System (Federal Reserve), to consider the appropriateness of imposing heightened prudential standards as opposed to other forms of regulation to mitigate identified risks to U.S. financial stability.

## BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 4061 is to enhance transparency and procedural fairness of the nonbank systemically important financial institution (SIFI) designation process. Criticisms about FSOC's opacity are well known and H.R. 4061 will in the words of the National Association of Insurance Commissioners "address many of our concerns and represent a positive step forward in improving FSOC's operations, processes, communication, and transparency." The proposed reforms in the Financial Stability Oversight Council Improvement Act address many of our concerns and represent a positive step forward in improving FSOC's operations, processes, communication, and transparency. The legislation would require the FSOC to evaluate the need to subject nonbanks to heightened prudential standards by the Federal Reserve and reevaluate annually and periodically, in coordination with the designated company and the appropriate prudential or market regulator, whether designated companies still pose a systemic risk to the financial system. Bank-style regulation, such as capital requirements, is fundamentally incompatible with the market-based entities, such as the asset management business model. Imposing bank-like standards on asset managers would increase costs and fees and reduce investment returns for savers. In a January 16, 2018 letter to the Committee, SIFMA noted, "Designating an asset management company as a systemically important financial institution has significant consequences, imposing stringent, bank-like capital standards resulting in undue and burdensome costs that would be passed onto investors, ultimately harming their retirement savings and future financial security." The financial regulatory regime can better serve investors if companies, identified by either the FSOC or their functional regulator, have the opportunity first to address identified risks and then modify their business, structure, or operations prior to a SIFI designation.

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 about a nonbank financial company, the nonbank financial company becomes subject to heightened prudential supervision and regulation by the Fed. Dodd-Frank requires the FSOC to consider a number of factors as it considers a SIFI determination. H.R. 4061 would add an additional factor to the FSOC's requirements before it can designate a nonbank financial company as systemically important. Specifically, H.R. 4061 requires the FSOC 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) of the Dodd-Frank Act requires the FSOC to provide a nonbank financial company a written notice of a proposed designation determination, including an explanation of the basis of the proposed determination. Dodd-Frank entitles the nonbank financial company to a hearing and can submit written materials to the FSOC to contest a proposed determination. H.R. 4061 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. For example, for an insurance company, the Dodd-Frank Act defines its primary financial regulatory agency as "the State insurance authority of the State in which an insurance company is domiciled." Therefore, if the FSOC is considering the designation of an insurance company, H.R. 4061 would require the FSOC to notify the applicable state insurance regulator early in the designation process and would have an opportunity to address risks that the FSOC identifies.

Upon its receipt of a notice of potential designation, H.R. 4061 would afford a nonbank the opportunity to submit written materials to the FSOC for consideration and meet with the FSOC to discuss the FSOC's analysis. The legislation requires the FSOC to give the nonbank financial company a list of the public sources of information that FSOC used to evaluate a potential designation. 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 two-thirds of the voting members of the FSOC, including the affirmative vote of the Treasury Secretary. The nonbank financial company's primary regulator 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 two-thirds of the voting members of the FSOC, including the affirmative vote of the Treasury Secretary, make a proposed designation of a nonbank. Prior to making a proposed designation, the legislation requires the FSOC to determine that any proposed regulations or other regulatory actions taken by the primary regulator are insufficient to mitigate the risks identified in the resolution. If the FSOC makes a proposed designation, H.R. 4061 requires FSOC 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 two-thirds 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. 4061 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 bill requires the FSOC, 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 legislation would permit the company 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. 4061 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.

On November 17, 2017, Treasury, in response to an April 21, 2017 Executive Order signed by President Trump, released a report on Financial Stability Oversight Council Designations that recommended many of the provisions in H.R. 4061, including engagement with nonbank financial companies under review, engagement with primary regulators, and increasing public transparency in regards to determinations or rescissions of determinations. Additionally the report recommends that FSOC provide a clear "off-ramp" for designated nonbank financial companies. Ultimately H.R. 4061 is smart regulation and as the Investment Company Institute noted that the legislation will make the "nonbank SIFI designation process more accountable and transparent, and ensures that a SIFI designation is only used when systemic risk cannot be addressed more effectively by an entity's primary regulator or by an action of the entity itself."

#### HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 4061 on April 26, 2017 and April 28, 2017.

## COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on January 17, 2018, and January 18, 2018, and ordered H.R. 4061 to be reported favorably to the House without amendment by a recorded vote of 45 yeas to 10 nays (Record vote no. FC-146), 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 45 yeas to 10 nays (Record vote no. FC-146), a quorum being present.

## Record vote no. FC-146

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Maxine Waters (CA) .....		X	
Mr. McHenry .....				Mrs. Carolyn B. Maloney (NY) .....		X	
Mr. King .....				Ms. Velázquez .....		X	
Mr. Royce (CA) .....	X			Mr. Sherman .....	X		
Mr. Lucas .....	X			Mr. Meeks .....	X		
Mr. Pearce .....	X			Mr. Capuano .....		X	
Mr. Posey .....	X			Mr. Clay .....			
Mr. Luetkemeyer .....	X			Mr. Lynch .....		X	
Mr. Huizenga .....	X			Mr. David Scott (GA) .....	X		
Mr. Duffy .....	X			Mr. Al Green (TX) .....		X	
Mr. Stivers .....				Mr. Cleaver .....		X	
Mr. Hultgren .....	X			Ms. Moore .....		X	
Mr. Ross .....	X			Mr. Ellison .....		X	
Mr. Pittenger .....	X			Mr. Perlmutter .....	X		
Mrs. Wagner .....	X			Mr. Himes .....	X		
Mr. Barr .....	X			Mr. Foster .....	X		
Mr. Rothfus .....	X			Mr. Kildee .....		X	
Mr. Messer .....				Mr. Delaney .....	X		
Mr. Tipton .....	X			Ms. Sinema .....	X		
Mr. Williams .....	X			Mrs. Beatty .....	X		
Mr. Poliquin .....	X			Mr. Heck .....	X		
Mrs. Love .....	X			Mr. Vargas .....	X		
Mr. Hill .....	X			Mr. Gottheimer .....	X		
Mr. Emmer .....	X			Mr. Gonzalez (TX) .....	X		
Mr. Zeldin .....	X			Mr. Crist .....	X		
Mr. Trott .....	X			Mr. Kihuen .....	X		
Mr. Loudermilk .....	X						
Mr. Mooney (WV) .....	X						
Mr. MacArthur .....	X						
Mr. Davidson .....	X						
Mr. Budd .....	X						
Mr. Kustoff (TN) .....	X						
Ms. Tenney .....	X						
Mr. Hollingsworth .....	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. 4061 will promote accountability in the designation of systemically important nonbank financial institutions for the 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.

## 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, March 8, 2018.*

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. 4061, the Financial Stability Oversight Council Improvement Act of 2017.

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

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 4061—Financial Stability Oversight Council Improvement Act of 2017*

Summary: H.R. 4061 would change the procedures that federal regulators follow for determining which nonbank financial institutions should be designated by the Financial Stability Oversight

Council (FSOC) as systemically important financial institutions (SIFIs). For example, the bill would increase the frequency and complexity of studies, reviews, and meetings that must be completed before the FSOC can designate a nonbank company as a SIFI. The bill also would allow companies to contest prior designations on the basis of the new criteria and procedures.

CBO estimates that enacting H.R. 4061 would increase net direct spending by \$29 million and reduce revenues by \$5 million over the 2019–2027 period. CBO estimates that, on net, budget deficits would increase by \$34 million over the 2018–2027 period. Because enacting H.R. 4061 would affect direct spending and revenues, pay-as-you-go procedures apply. CBO also estimates that implementing the bill would cost \$1 million over the 2019–2022 period, subject to the availability of appropriated funds.

CBO estimates that enacting H.R. 4061 would not increase net direct spending or on-budget deficits by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 4061 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA).

If the FSOC, the Federal Housing Finance Agency (FHFA), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), or the Securities and Exchange Commission (SEC) raises the fees they charge to offset the costs associated with implementing the bill, H.R. 4061 would increase the cost of an existing mandate on private entities required to pay those fees. Using information from the affected agencies, CBO estimates that the incremental cost of the mandate would be small. CBO estimates that the incremental cost of the mandate would fall well below the annual threshold for private-sector mandates established in UMRA (\$156 million in 2017, adjusted annually for inflation).

**Estimated cost to the Federal Government:** The estimated budgetary effect of H.R. 4061 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—										
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2019– 2022	2019– 2027
<b>INCREASES IN DIRECT SPENDING</b>											
<b>Additional Costs to Resolve</b>											
<b>Nonbank Financial Institutions:</b>											
Estimated Budget Authority ..	0	0	0	0	1	3	4	4	4	0	16
Estimated Outlays .....	0	0	0	0	1	3	4	4	4	0	16
<b>Administrative Costs to Financial Regulators:</b>											
Estimated Budget Authority ..	1	1	1	1	1	2	2	2	2	5	13
Estimated Outlays .....	1	1	1	1	1	2	2	2	2	5	13
<b>Total:</b>											
Estimated Budget Au- thority .....	1	1	1	1	2	5	6	6	6	5	29
Estimated Outlays .....	1	1	1	1	2	5	6	6	6	5	29
<b>DECREASES IN REVENUES</b>											
Estimated Revenues .....	*	-1	-1	-1	-1	-1	-1	-1	*	-2	-5
<b>NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES</b>											
Effect on the Deficit .....	1	2	2	2	3	6	6	6	6	7	34



	By fiscal year, in millions of dollars—										
	2019	2020	2021	2022	2023	2024	2025	2026	2027	2019– 2022	2019– 2027
INCREASES IN SPENDING SUBJECT TO APPROPRIATION											
Estimated Net Authorization Level	*	*	*	*	*	*	*	*	*	1	3
Estimated Outlays .....	*	*	*	*	*	*	*	*	*	1	3

Components may not sum to totals because of rounding; \* = between –\$500,000 and \$500,000.

**Basis of estimate:** For this estimate, CBO assumes that H.R. 4061 will be enacted late in 2018. Estimated spending is based on historical patterns for similar regulatory activities. The budgetary effects of the legislation would stem from increased administrative costs to the federal financial regulators and additional costs to resolve certain financial institutions.

### *Background*

Under current law, the voting membership of the FSOC consists of one independent member with insurance expertise and the heads of nine federal agencies—the FHFA, NCUA, OCC, SEC, the Consumer Financial Protection Bureau (CFPB), the Commodity Futures Trading Commission (CFTC), the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve System, and the Department of the Treasury.

The operating costs for six of those banking regulators (the CFPB, FDIC, FHFA, FSOC, NCUA, and OCC) are classified as direct spending. All of those agencies except the CFPB collect fees to offset their operating costs. Because of lags between the time that costs are incurred and fees are imposed, not all additional costs resulting from the bill would be recovered within the next 10 years. Costs incurred by the Federal Reserve would reduce remittances to the Treasury (such remittances are recorded as revenues). Any costs for the CFTC, SEC, and the Treasury are subject to the availability of annual appropriations. However, the SEC is authorized under current law to collect fees sufficient to offset its annual appropriation, and CBO estimates that the net costs to the SEC would be negligible, assuming appropriation actions consistent with that authority.

### *Additional costs to the FDIC to resolve failed financial institutions*

Under current law, nonbank SIFIs may be subject to what is known as enhanced prudential regulation by the Board of Governors of the Federal Reserve. Using information from national credit-rating agencies and other experts, CBO concludes that standards similar to those imposed on banking institutions improve the safety and soundness of the affected institutions. CBO estimates that such regulation lowers the FDIC's cost of resolving insolvent institutions through the Orderly Liquidation Fund (OLF), primarily because those measures should result in shareholders' and other creditors' absorbing a larger share of any losses in the event of insolvency.

Although only one nonbank institution is currently classified as a SIFI, CBO anticipates that others may be designated in the fu-

ture as a result of FSOC’s ongoing assessments of such companies.<sup>1</sup> Based on the scope of past oversight of nonbank SIFIs, CBO projects that under current law, the enhanced prudential regulation of such companies will reduce the net deficit over the 2019–2027 period by about \$60 million, less than one-half of one percent of CBO’s projected cost of the OLF over that period.

Based on recent trends in the pace of FSOC’s review of nonbank institutions, CBO anticipates that implementing the bill would roughly double the time needed to review and possibly approve any new designations. For this estimate, CBO assumes that such delays would result in a corresponding reduction in the assets of nonbank companies subject to enhanced prudential regulation relative to current law, resulting in a net increase in the deficit of \$15 million over the 2019–2027 period. That estimate reflects an increase in direct spending of \$16 million and an increase in revenues of \$1 million from fees paid by large financial institutions to offset costs incurred by the OLF. Most of the costs incurred in the 10-year period would be offset by fees collected after 2027.

#### *Additional administrative costs*

Compared with current procedures, H.R. 4061 would increase the frequency and complexity of studies, reviews, and meetings that must be completed for the FSOC to complete the designation process for nonbank financial institutions. CBO estimates an increase in work for the FSOC and other financial regulators that are charged with designating SIFIs. Using information from the affected financial regulators, CBO expects that the FSOC and federal financial regulators would need to hire about 15 additional employees (with average annual costs of around \$225,000 each) to comply with the requirements of the bill. CBO expects that those employees would primarily be at agencies with direct spending authority, although some could work for agencies whose spending is subject to appropriation.

In total, CBO estimates that enacting the administrative provisions of H.R. 4061 would cost \$35 million over the 2019–2027 period to conduct the expanded review and designation process. Of those costs:

- \$26 million would be for direct spending agencies and would be offset by \$13 million in fees,
- \$6 million would result from reduced remittances by the Federal Reserve, and
- \$3 million would be for agencies with spending subject to annual appropriations.

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.

<sup>1</sup>In 2014, four nonbank institutions were designated as SIDIs. By the end of fiscal year 2017, two of those companies had reduced the size of their operations and risks, resulting in a rescission of their designation. The status of a third firm is under judicial review. As a result, only one nonbank financial company currently is being regulated as a SIFI. See Standard & Poor’s, “Nonbank SIFI,” a Currently Symbolic Designation, Is Down to One Designee (October 2017).

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 4061, THE FINANCIAL STABILITY OVERSIGHT COUNCIL IMPROVEMENT ACT OF 2017, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON JANUARY 18, 2018

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018–2022	2018–2027
NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact .....	0	1	2	2	2	3	6	6	6	6	7	34
Memorandum:												
Changes in Outlays ..	0	1	1	1	1	2	5	6	6	6	5	29
Changes in Revenues	0	0	-1	-1	-1	-1	-1	-1	-1	0	-2	-5

Increase in long-term direct spending and deficits: CBO estimates that enacting H.R. 4061 would not increase net direct spending or on-budget deficits by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2028.

Mandates: If the FHFA, FSOC, NCUA, OCC, or SEC increased fees to offset the costs associated with implementing the bill, H.R. 4061 would increase the cost of an existing mandate on private entities required to pay those fees. Using information from the affected agencies, CBO estimates that the incremental cost of the mandate would fall well below the annual threshold for private-sector mandates established in UMRA (\$156 million in 2017, adjusted annually for inflation).

The bill contains no intergovernmental mandates as defined in UMRA.

Estimate prepared by: Federal Costs: Stephen Rabent (for the FSOC), Kathleen Gramp (for the OLF), and Sarah Puro (for the FDIC, the OCC, and the NCUA); Revenues: Nathaniel Frentz; Mandates: Rachel Austin.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

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

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

## DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

## DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

This section cites H.R. 4061 as the “Financial Stability Oversight Council Improvement Act of 2017”.

*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 two-thirds 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):

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):

**FINANCIAL STABILITY ACT OF 2010**

\* \* \* \* \*

**TITLE I—FINANCIAL STABILITY**

\* \* \* \* \*

**Subtitle A—Financial Stability Oversight Council**

\* \* \* \* \*

**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 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 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) ANTI-EVASION.—

(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 prudential 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, material 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 subsection (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 para-

graph (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 regulations 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.*

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## MINORITY VIEWS

H.R. 4061 is an attempt to prevent the Financial Stability Oversight Council (FSOC) from doing its statutorily-required job of preventing another financial crisis by bogging it and its designation process down in endless analysis and litigation. Congress created the FSOC when it passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) 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 granted the FSOC authority to determine that a U.S. nonbank financial company should be supervised by the Federal Reserve and subject to enhanced prudential standards if financial distress at, or the activities of the company, would pose a threat to U.S. financial stability.

The Dodd-Frank Act contains guidelines for identifying such systemically important financial institutions (SIFIs) and activities, including the consideration of 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. The Act also requires the FSOC to take certain steps to ensure transparency and due process. For example, after making a proposed designation, the FSOC must submit 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. In 2015, following months of evaluation and engagement with financial companies, trade associations, nonbank financial companies subject to previous FSOC determinations, public interest groups, and Congressional stakeholders, the FSOC adopted 17 changes 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 FSOC, its staff and their regulator; and making more information about FSOC designations public.

H.R. 4061 goes much further and more than doubles time it would take for the FSOC designate a company like American International Group (AIG). H.R. 4061 would take the FSOC's 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. H.R. 4061 seeks to provide institutions that the markets likely conclude are “too-big-to-fail” with a statutory roadmap to challenge the FSOC indefinitely.

For these reasons, we oppose this bill.

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