

115TH CONGRESS  
2D SESSION

# H. R. 4061

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IN THE SENATE OF THE UNITED STATES

APRIL 12, 2018

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

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## AN ACT

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

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

1 **SECTION 1. SHORT TITLE.**

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

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

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

7 (1) in subsection (a)(2)—

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

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

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

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

18 (2) in subsection (b)(2)—

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

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

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

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

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

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

5 “(d) REEVALUATION AND RESCISSION.—

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

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

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

5           “(C) if the Council does not rescind the de-  
6 termination, provide notice to the nonbank fi-  
7 nancial company, its primary financial regu-  
8 latory agency and the primary financial regu-  
9 latory agency of any of the company’s signifi-  
10 cant subsidiaries of the reasons for the Coun-  
11 cil’s decision, which notice shall address with  
12 specificity how the Council assessed the mate-  
13 rial factors presented by the company under  
14 subparagraphs (A) and (B).

15           “(2) PERIODIC REEVALUATION.—

16           “(A) REVIEW.—Every 5 years after the  
17 date of a final determination with respect to a  
18 nonbank financial company under subsection  
19 (a) or (b), as applicable, the nonbank financial  
20 company may submit a written request to the  
21 Council for a reevaluation of such determina-  
22 tion. Upon receipt of such a request, the Coun-  
23 cil shall conduct a reevaluation of such deter-  
24 mination and hold a vote on whether to rescind  
25 such determination.

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

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

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

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

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

9           “(3) RESCISSION OF DETERMINATION.—

10           “(A) IN GENERAL.—If the Council, by a  
11 vote of not fewer than  $\frac{2}{3}$  of the voting members  
12 then serving, including an affirmative vote by  
13 the Chairperson, determines under this sub-  
14 section that a nonbank financial company no  
15 longer meets the standards for a final deter-  
16 mination under subsection (a) or (b), as appli-  
17 cable, the Council shall rescind such determina-  
18 tion.

19           “(B) APPROVAL OF COMPANY PLAN.—Ap-  
20 proval by the Council of a plan submitted or re-  
21 vised in accordance with paragraph (2) shall re-  
22 quire a vote of not fewer than  $\frac{2}{3}$  of the voting  
23 members then serving, including an affirmative  
24 vote by the Chairperson. If such plan is ap-  
25 proved by the Council, the company shall imple-

1           ment the plan during the period identified in  
2           the plan, except that the Council, in its sole dis-  
3           cretion and upon request from the company,  
4           may grant one or more extensions of the imple-  
5           mentation period. After the end of the imple-  
6           mentation period, including any extensions  
7           granted by the Council, the Council shall pro-  
8           ceed to a vote as described under subparagraph  
9           (A).”;

10           (4) by amending subsection (e) to read as fol-  
11           lows:

12           “(e) REQUIREMENTS FOR PROPOSED DETERMINA-  
13           TION, NOTICE AND OPPORTUNITY FOR HEARING, AND  
14           FINAL DETERMINATION.—

15                   “(1) NOTICE OF IDENTIFICATION FOR INITIAL  
16           EVALUATION AND OPPORTUNITY FOR VOLUNTARY  
17           SUBMISSION.—Upon identifying a nonbank financial  
18           company for comprehensive analysis of the potential  
19           for the nonbank company to pose a threat to the fi-  
20           nancial stability of the United States, the Council  
21           shall provide the nonbank financial company with—

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

10 “(3) PROPOSED DETERMINATION.—

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

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

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

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

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

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

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

6           “(4) NOTICE OF PROPOSED DETERMINATION.—

7           The Council shall—

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

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

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

3 “(5) HEARING.—

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

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

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

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

2           or

3           “(ii) provide oral testimony and oral

4           argument to the members of the Council.

5           “(6) COUNCIL CONSIDERATION OF COMPANY

6           PLAN.—

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

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

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

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

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

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

7           “(D) OVERSIGHT OF IMPLEMENTATION.—

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

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

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



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

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

22          “(F) ACTIONS AFTER IMPLEMENTATION.—

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

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

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

21 “(7) FINAL COUNCIL DECISIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9   **SEC. 3. RULE OF CONSTRUCTION.**

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

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

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

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

Passed the House of Representatives April 11, 2018.

Attest:

KAREN L. HAAS,

*Clerk.*