

TO REQUIRE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM AND THE FINANCIAL STABILITY OVERSIGHT COUNCIL TO CARRY OUT CERTAIN REQUIREMENTS UNDER THE FINANCIAL STABILITY ACT OF 2010 BEFORE MAKING ANY NEW DETERMINATION UNDER SECTION 113 OF SUCH ACT, AND FOR OTHER PURPOSES

DECEMBER 16, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3857]

The Committee on Financial Services, to whom was referred the bill (H.R. 3857) to require the Board of Governors of the Federal Reserve System and the Financial Stability Oversight Council to carry out certain requirements under the Financial Stability Act of 2010 before making any new determination under section 113 of such Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 3857 would prevent the FSOC from designating any nonbank financial institution for heightened Fed supervision until 90 days after: the Federal Reserve establishes prudential standards for nonbank financial companies and bank holding companies, as required by Section 165(a) and (b) of the Dodd-Frank Act; the Federal Reserve promulgates regulations setting forth criteria for exempting certain types of classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision, as required by Section 170 of Dodd-Frank; and the FSOC reevaluates within calendar year 2016 each previous SIFI designation and rescinds any such designation if it determines that the nonbank financial company no longer meets the standards for designation and submits a report to the House and Senate Banking Committees ex-

plaining the reasons that the Council did not rescind any such designation.

BACKGROUND AND NEED FOR LEGISLATION

Under Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), the Financial Stability Oversight Council (FSOC) is authorized to determine that a nonbank financial company will be subject to the consolidated supervision of the Federal Reserve and enhanced regulatory prudential standards if the company's material financial distress—or the nature, scope, size, scale, concentration, interconnectedness, or mix of its activities—could pose a threat to U.S. financial stability. Although the term does not expressly appear in the Dodd-Frank Act, companies designated by the FSOC for Federal Reserve supervision are commonly referred to as “systemically important financial institutions,” or “SIFIs.”

The intended purpose of the enhanced prudential regulation as authorized under Section 165, is to avert or minimize risks to the financial stability of the United States in the event of a failure of a SIFI. Section 165 also requires the Federal Reserve to develop enhanced prudential standards to strengthen regulation and supervision of both large bank holding companies and nonbank SIFIs designated by the FSOC.

The implementation of the regulatory scheme relating to nonbank SIFIs continues on an uncertain course as the Federal Reserve has not yet proposed comprehensive prudential regulations regarding the oversight and supervision of such entities.

Additionally, Section 170 of Dodd-Frank Act directs the Federal Reserve, in consultation with the FSOC, to issue regulations exempting certain classes or categories of companies from supervision by the Federal Reserve. However, to date no such regulations have been issued. Promulgating a rule provides meaningful information to market participants, and provides notice to nonbank financial companies and the public as to what is intended, so that there will be more certainty around the process.

In testimony before the committee on April 30, 2015, executive vice president and chief financial officer of Prudential Financial, Inc., Robert Falzon stated:

If you think about the objective of this regulation, it is not to simply classify companies as systemic and then . . . hold them into that designation for a long term but rather to encourage them to reduce those activities that are leading to systemic risk in the U.S. economy. Without the tools to identify the activities that give rise to that risk we're unable to address appropriately our activities in a way that would be constructive and responsive to the intent of the regulation.

In a letter of support for H.R. 3857 dated November 2, 2015, the U.S. Chamber of Commerce wrote:

[H.R. 3857] would allow the federal government to appropriately identify and address systemic risk in a more efficient way while providing businesses with clear rules of the road.

HEARINGS

The Committee on Financial Services held no hearings examining matters relating to H.R. 3857.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 3, 2015 and November 4, 2015 and ordered H.R. 3857 to be reported favorably to the House without amendment by a recorded vote of 33 yeas to 24 nays (recorded vote no. FC-73), 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 33 yeas to 24 nays (Record vote no. FC-73), a quorum being present.

[Please see attached vote tallies.]

Record vote no. FC-73

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

COMMITTEE OVERSIGHT FINDINGS

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

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 3857 will provide clarity to markets and nonbank financial companies by streamlining the designation process and exempting certain classes of companies from heightened prudential standards.

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 to be prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

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

CONGRESSIONAL BUDGET OFFICE ESTIMATES

With respect to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, an estimate and comparison prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not submitted to the Committee before the filing of this report.

FEDERAL MANDATES STATEMENT

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

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

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

EARMARK IDENTIFICATION

H.R. 3857 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(g) of H. Res. 5, 114th Cong. (2015), the Committee states that no provision of H.R. 3857 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 114th Cong. (2015), the Committee states that H.R. 3857 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Requirements related to the Financial Stability Act of 2010

This Section states that the Board of Governors of the Federal Reserve System and the Financial Stability Oversight Council must carry out certain requirements establishing prudential standards for nonbank financial companies, criteria from exempting certain classes of nonbank financial companies from supervision, reevaluations of nonbank financial companies that no longer meet the new standards and reports to Congress, under the Financial Stability Act of 2010 before making any new determination under section 113 of such Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

H.R. 3857 does not repeal or amend any section of a statute. Therefore, the Office of Legislative Counsel did not prepare the report contemplated by Clause 3(e)(1)(B) of rule XIII of the House of Representatives.

MINORITY VIEWS

H.R. 3857 is one of several Republican proposals to severely obstruct the ability of the Financial Stability Oversight Council (FSOC) to function in a timely manner to ensure our nation's stability. Specifically, the bill would prohibit the FSOC from designating additional non-bank financial companies as systemically important until 90 days after both (1) the Federal Reserve Board promulgates rules for those companies on enhanced prudential requirements and criteria for exempting types of assets or companies from Fed supervision; and (2) the FSOC, within 2016, reevaluates each designated company, rescinds designations where appropriate, and then reports to the House Financial Services and Senate Banking Committees on why it did not rescind any determination. Such a lengthy delay is unacceptable and puts the U.S. economy at risk for another financial crisis fueled by companies like AIG, which had little to no regulatory oversight.

Since its creation in 2010 with the Dodd-Frank Act, the FSOC has been working diligently to comply with its statutory duty to identify firms that pose a systemic risk to the stability of our financial system and, therefore, merit increased regulation by the Fed. This approach has been thorough and fact-based, leading to the designations of AIG, GE Capital, Prudential, and MetLife. Moreover, the FSOC has endeavored to provide the public and industry with transparency over its designation and reevaluation process.

For its part, the Fed has taken a cautious approach to the regulation of designated firms, stating that enhanced prudential standards for these companies will reflect an evaluation of the business model, capital structure, and risk profile of each designated nonbank financial company. Such an approach is beneficial to both the Fed and the designated firms, as it puts companies on notice of future regulation so that they may provide the Fed with sufficient information to enable it to tailor its rules.

H.R. 3857 ignores these efforts and requires the FSOC to halt further designations until after the Fed finishes all of its enhanced prudential regulations and promulgates exemptions from Fed supervision. This delay to oversight and regulation of our nation's riskiest financial institutions fails to protect the American public and is opposed by the Department of Treasury and Better Markets. Indeed, according to Treasury Secretary Lew, this and similar Republican proposals "would severely undermine and impair the Council," and "is the wrong approach and wrong lesson from a crisis that far too many American families continue to recover from."

For these reasons we oppose H.R. 3857.

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

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