

114TH CONGRESS
1ST SESSION

H. R. 1550

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 2015

Mr. ROSS (for himself and Mr. DELANEY) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Financial Stability
5 Oversight Council Improvement Act of 2015”.

6 **SEC. 2. SIFI DESIGNATION PROCESS.**

7 Section 113 of the Financial Stability Act of 2010
8 (12 U.S.C. 5323) is amended—

1 (1) in subsection (a)(2)—

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

4 (B) by redesignating subparagraph (K) as
5 subparagraph (L); and

6 (C) by inserting after subparagraph (J)
7 the following:

8 “(K) the appropriateness of the imposition
9 of prudential standards as opposed to other
10 forms of regulation to mitigate the identified
11 risks; and”;

12 (2) in subsection (b)(2)—

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

15 (B) by redesignating subparagraph (K) as
16 subparagraph (L);

17 (C) by inserting after subparagraph (J)
18 the following:

19 “(K) the appropriateness of the imposition
20 of prudential standards as opposed to other
21 forms of regulation to mitigate the identified
22 risks; and”; and

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

25 “(d) REEVALUATION AND RESCISSION.—

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

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

20 “(B) provide an opportunity for the
21 nonbank financial company to meet with the
22 Council to present the information described in
23 subparagraph (A); and

24 “(C) if the Council does not rescind the de-
25 termination, provide notice to the nonbank fi-

1 nancial company, its primary financial regu-
2 latory agency and the primary financial regu-
3 latory agency of any of the company's signifi-
4 cant subsidiaries of the reasons for the Coun-
5 cil's decision, which notice shall address with
6 specificity how the Council assessed the mate-
7 rial factors presented by the company under
8 subparagraphs (A) and (B).

9 “(2) PERIODIC REEVALUATION.—

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

20 “(B) PROCEDURES.—Upon receipt of a
21 written request under paragraph (A), the Coun-
22 cil shall fix a time (not earlier than 30 days
23 after the date of receipt of the request) and
24 place at which such company may appear, per-
25 sonally or through counsel, to—

1 “(i) submit written materials (which
2 may include a plan to modify the com-
3 pany’s business, structure, or operations,
4 which shall specify the length of the imple-
5 mentation period); and

6 “(ii) provide oral testimony and oral
7 argument before the members of the Coun-
8 cil.

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

19 “(D) EXPLANATION FOR CERTAIN COMPA-
20 NIES.—With respect to a reevaluation under
21 this paragraph where the determination being
22 reevaluated was made before the date of enact-
23 ment of this paragraph, the nonbank financial
24 company may require the Council, as part of

1 such reevaluation, to explain with specificity the
2 basis for such determination.

3 “(3) RESCISSION OF DETERMINATION.—

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

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

1 granted by the Council, the Council shall pro-
2 ceed to a vote as described under subparagraph
3 (A).”;

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

6 “(e) REQUIREMENTS FOR PROPOSED DETERMINA-
7 TION, NOTICE AND OPPORTUNITY FOR HEARING, AND
8 FINAL DETERMINATION.—

9 “(1) NOTICE OF IDENTIFICATION FOR INITIAL
10 EVALUATION AND OPPORTUNITY FOR VOLUNTARY
11 SUBMISSION.—Upon identifying a nonbank financial
12 company for comprehensive analysis of the potential
13 for the nonbank company to pose a threat to the fi-
14 nancial stability of the United States, the Council
15 shall provide the nonbank financial company with—

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

20 “(B) an opportunity to submit written ma-
21 terials for consideration by the Council as part
22 of the Council’s initial evaluation of the risk
23 profile and characteristics of the company;

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

1 “(D) a list of the public sources of infor-
2 mation being considered by the Council as part
3 of such analysis.

4 “(2) REQUIREMENTS BEFORE MAKING A PRO-
5 POSED DETERMINATION.—Before making a pro-
6 posed determination with respect to a nonbank fi-
7 nancial company under paragraph (3), the Council
8 shall—

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

16 “(B) with respect to nonbank financial
17 company with a primary financial regulatory
18 agency, provide a copy of the resolution de-
19 scribed under subparagraph (A) to the primary
20 financial regulatory agency and provide such
21 agency with at least 180 days from the receipt
22 of the resolution to—

23 “(i) consider the risks identified in the
24 resolution; and

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

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

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

20 “(ii) has determined not to subject the
21 company to further review, which action
22 shall not preclude the Council from issuing
23 a notice to the company under subpara-
24 graph (1)(A) at a future time; and

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

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

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

18 “(iii) an explanation of how any re-
19 quest by the Council for information from
20 the nonbank financial company relates to
21 potential risks to the financial stability of
22 the United States and the Council’s anal-
23 ysis of the company;

24 “(iv) written notice when the Council
25 deems its evidentiary record regarding

1 such nonbank financial company to be
2 complete; and

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

5 “(3) PROPOSED DETERMINATION.—

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

13 “(B) DEADLINE FOR MAKING A PROPOSED
14 DETERMINATION.—With respect to a nonbank
15 financial company provided with a written no-
16 tice under paragraph (2)(C)(i), if the Council
17 does not provide the company with the written
18 notice of a proposed determination described
19 under paragraph (4) within the 180-day period
20 following the date on which the Council notifies
21 the company under paragraph (2)(C) that the
22 evidentiary record is complete, the Council may
23 not make such a proposed determination with
24 respect to such company unless the Council re-

1 repeats the procedures described under paragraph
2 (2).

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

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

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

21 “(iii) the period allowed by the Coun-
22 cil under paragraph (2)(B) has elapsed
23 and the primary financial regulatory agen-
24 cy has taken no action in response to the
25 resolution.

1 “(4) NOTICE OF PROPOSED DETERMINATION.—

2 The Council shall—

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

18 “(B) provide the primary financial regu-
19 latory agency of the nonbank financial company
20 a copy of the nonpublic written explanation of
21 the Council’s proposed determination.

22 “(5) HEARING.—

23 “(A) IN GENERAL.—Not later than 30
24 days after the date of receipt of any notice of
25 a proposed determination under paragraph (4),

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

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

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

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

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

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

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

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

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

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

1 “(D) OVERSIGHT OF IMPLEMENTATION.—

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

10 “(ii) INSPECTIONS.—The Council may
11 direct the primary financial regulatory
12 agency of a nonbank financial company or
13 its subsidiaries (or, if none, the Board of
14 Governors) to inspect the company or its
15 subsidiaries for the purpose of evaluating
16 the implementation of the company’s plan.

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

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

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

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

15 “(F) ACTIONS AFTER IMPLEMENTATION.—

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

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

14 “(7) FINAL COUNCIL DECISIONS.—

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

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

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

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

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

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

18 (5) in subsection (g), strike “before the Council
19 makes any final determination” and insert “from
20 the outset of the Council’s consideration of the com-
21 pany, including before the Council makes any pro-
22 posed or final determination”; and

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

24 “(j) PUBLIC DISCLOSURE REQUIREMENT.—The
25 Council shall—

1 “(1) in each case where a nonbank financial
2 company has been notified that it is subject to the
3 Council’s review and the company has publicly dis-
4 closed such fact, confirm that the nonbank financial
5 company is subject to the Council’s review, in re-
6 sponse to a request from a third party;

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

14 “(3) include, in the annual report required by
15 section 112, the number of nonbank financial com-
16 panies from the previous year subject to preliminary
17 analysis, further review, and subject to a proposed
18 or final determination; and

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

24 “(k) PERIODIC ASSESSMENT OF THE IMPACT OF
25 DESIGNATIONS.—

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

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

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

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

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

22 “(B) identifies whether any of the Coun-
23 cil’s determinations should be rescinded or
24 whether related regulations or regulatory guid-

1 ance should be modified, streamlined, expanded,
2 or repealed.”.

3 **SEC. 3. RULE OF CONSTRUCTION.**

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

○