

FSOC TRANSPARENCY AND ACCOUNTABILITY ACT

APRIL 19, 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. 3557]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3557) to amend the Financial Stability Act of 2010 to require the Financial Stability Oversight Council to hold open meetings and comply with the requirements of the Federal Advisory Committee Act, to provide additional improvements to the Council, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

On September 8, 2015, Representative Scott Garrett introduced H.R. 3557, the “FSOC Transparency and Accountability Act,” which amends Section 111 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) to improve the transparency, operations and accountability of the Financial Stability Oversight Council (FSOC). H.R. 3557 subjects the FSOC to both the Government in the Sunshine Act and the Federal Advisory Committee Act. The bill allows all members of the Commissions and Boards represented on the FSOC—such as the Securities and Exchange Commission (SEC), the Federal Reserve, the Commodity Futures Trading Commission, and the National Credit Union Administration—to attend and participate in the FSOC’s meetings.

The bill also requires that before the principal of a Commission or Board represented on the FSOC votes as an FSOC member on an issue before the FSOC, the Commission or Board must vote on the issue, and the principal must follow that vote at the FSOC meeting. Finally, H.R. 3557 permits Members of the Committee on Financial Services and the Committee on Banking, Housing, and Urban Affairs of the Senate to attend all FSOC meetings, whether or not the meeting is open to the public.

BACKGROUND AND NEED FOR LEGISLATION

The Dodd-Frank Act concentrates in the hands of the unelected and the unaccountable a level of discretionary power that is extraordinary in a democratic system of checks and balances. Nowhere is this bias in favor of regulatory fiat and technocratic expertise more evident than in the operations of the FSOC.

The proponents of the FSOC believed that by creating a 15-member committee that brought together the heads of the major financial regulatory agencies that had missed the last crisis—along with the heads of some newly-created agencies—they had succeeded in reducing the likelihood of future crises. There is, however, a significant flaw in the FSOC’s theory of regulation by super-committee: simply getting regulators in a room does not make them any more expert about the subjects over which they have jurisdiction, and it certainly does not give them expertise in the subjects over which they have no jurisdiction. Rather than leveraging the expertise of the regulators having primary responsibility for particular areas and institutions in the financial system, the FSOC’s voting structure ensures that FSOC Members who know little or nothing about these matters will vote on questions affecting entire industries.

Despite relying on the collective wisdom of regulators, the FSOC may well be the nation’s least transparent federal agency. Most of the time, the FSOC’s meetings are closed to the public, and the FSOC keeps sparse documents about its deliberations. Through March 2016, the FSOC had held 56 meetings at which substantive matters were considered, but the minutes for those meetings did not describe the FSOC members’ perspectives and insights concerning the matters discussed. A GAO official noted that the FSOC’s “current practices do not provide detailed records even for policymakers, including members of FSOC, to assess decisions.” Instead, the minutes simply list the names of persons attending each meeting, the names of presenters, and the subjects of their presentations together with cursory descriptions of them; it is impossible for anyone reading the minutes to know what the FSOC’s principals said or thought about the matters discussed at the meetings because that information is not summarized in the minutes. The minutes are often not more than five and a half pages long, with half the pages devoted to memorializing attendees’ names and the resolutions considered.

The FSOC’s secrecy about its meetings stands in stark contrast to the Federal Reserve, which is itself hardly a paragon of open government. The Federal Reserve releases transcripts of meetings of the Federal Open Market Committee (FOMC), its interest rate-setting committee, as well as background material relied on by meeting participants and lengthy minutes that describe in detail the issues considered and the participants’ perspectives on those

matters. Given the sensitive nature of the FOMC's work and the matters discussed, the FOMC releases information on a delayed basis after each meeting, thus striking a balance between protecting sensitive information that could move markets or affect financial institutions and allowing the public, Congress, and the media access to information that is of public concern. The FOMC's transparency demonstrates that the FSOC can and should do better at providing the public with information about its meetings.

The minimal detail of the FSOC's meeting records is of particular concern because the public cannot easily monitor the FSOC. The public cannot attend FSOC meetings because approximately two-thirds of them take place in executive session, even though the FSOC's governance documents exhort it to hold public meetings "whenever possible." The FSOC has also sealed off its meetings to regulators who are not FSOC members. For example, the FSOC denied the requests made by former SEC Commissioner Daniel Gallagher and current SEC Commissioner Michael Piwowar to attend FSOC meetings. And the FSOC has refused to allow Members of Congress to attend FSOC meetings: in 2014, Capital Markets and Government Sponsored Enterprises Subcommittee Chairman Scott Garrett asked to attend a FSOC meeting. His request was summarily denied.

Even Dennis Kelleher, the Chief Executive Officer of Better Markets, a non-profit that has consistently advocated for more intrusive regulation of the financial sector, is bothered by the FSOC's lack of transparency:

The FSOC's proceedings make the Politburo look open by comparison. No one in America even knows who they are. At the few open meetings they have, they snap their fingers and it's over, and they are all scripted. They treat their information as if it were state secrets.

HEARINGS

The Committee on Financial Services' held no hearings examining matters relating to H.R. 3557.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 3, 2015 and ordered H.R. 3557 to be reported favorably to the House without amendment by a recorded vote of 33 yeas to 24 nays (recorded vote no. FC-70), 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 in Committee was a motion by Chairman Hensarling to report the bill favorably to the House without amendment. That motion was agreed to by a recorded vote of 33 yeas to 24 nays (record vote no. FC-70), a quorum being present.

Record vote no. FC-70

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. 3557 will bring accountability and transparency to the FSOC's proceedings by allowing for the participation of all members of the Commissions or Boards that are represented on the FSOC, requiring that any vote cast by a voting member of the FSOC represent a majority position of the Commission or Board chaired by such member, and to allow members of Congress on the congressional committees with jurisdiction over the FSOC to attend all FSOC meetings.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

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

COMMITTEE COST ESTIMATE

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

CONGRESSIONAL BUDGET OFFICE ESTIMATES

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 10, 2016.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3557, the FSOC Transparency and Accountability Act.

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

Sincerely,

KEITH HALL.

Enclosure.

H.R. 3557—FSOC Transparency and Accountability Act

H.R. 3557 would allow all members of the governing bodies of certain agencies that are represented on the Financial Stability Oversight Council (FSOC)—the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Board of Governors of the Federal Reserve System (FRS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA)—to become voting members of the FSOC. The bill, however, would allow only a single vote to be cast by each entity. Further, H.R. 3557 would require each of those entities to determine its vote on FSOC issues following the voting process already in place at each agency.

The bill also would require the FSOC to comply with the Federal Advisory Committee Act (FACA) and to follow the “Government in the Sunshine Act,” which allows members of the public access, with certain exceptions, to agency meetings.

CBO estimates that enacting H.R. 3557 would reduce revenues by \$8 million and increase direct spending by an insignificant amount over the 2016–2026 period. We estimate that implementing the bill would increase net discretionary costs by \$4 million over the 2016–2021 period. Because enacting H.R. 3557 would affect both direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 3557 would not increase net direct spending or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2027.

Based on information from the Federal Reserve, CBO estimates that H.R. 3557 would reduce the Federal Reserve’s remittances to the Treasury, and therefore revenues, by \$8 million over the 2016–2026 period. That reduction in revenue, which would amount to less than \$500,000 in 2016 and about \$1 million in each subsequent year, reflects increased costs for the Federal Reserve to hire additional staff to support members of the Board of Governors regarding voting on items to be considered by the FSOC.

Based on information from the Department of the Treasury, FDIC, and NCUA, CBO estimates that enacting H.R. 3557 would have an insignificant effect on net direct spending over the 2016–2026 period. CBO expects FDIC and NCUA would spend less than \$500,000 per year to provide support to members of the governing board that would be voting on items to be considered by FSOC; further, those costs would be offset by fees charged by those agencies. CBO expects the annual costs to FSOC to comply with the new administrative requirements under the bill would be minimal in each year, and total less than \$500,000 over the 2016–2026 period. In addition, FSOC is authorized to levy an assessment on certain financial institutions to offset its operating costs. CBO expects FSOC would exercise that authority to offset the additional costs associated with H.R. 3557. We estimate that the annual increase in revenues from that levy also would be minimal, and also would total less than \$500,000 over the 2016–2026 period.

Based on information from the SEC and the CFTC, CBO estimates that the costs to both agencies to provide support to commission members that would be voting on items to be considered by FSOC would be roughly equal—about \$500,000 each, per year. Under current law, the SEC is authorized to collect fees sufficient to offset its appropriation each year. Therefore, we estimate that

the net cost to the SEC would be negligible each year, assuming appropriation action consistent with that authority. CBO estimates that implementing this provision would cost about \$4 million over the 2016–2021 period for CFTC’s portion of the total cost, assuming appropriation of the necessary amounts.

H.R. 3557 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Sarah Puro (for federal costs) and Nathaniel Frentz (for federal revenues). The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

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

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

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

EARMARK IDENTIFICATION

H.R. 3557 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. 3557 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. 3557 contains no directed rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 3557 as the “FSOC Transparency and Accountability Act.”

Section 2. Financial stability oversight council transparency

Amends section 111 of the Financial Stability Act of 2010 to make the FSOC subject to the Federal Advisory Committee Act and to insert a new subsection (g) to require the FSOC to abide by the Government in the Sunshine Act. Further, the bill amends Section 111(b) of the Act, to allow all members of the Commission and Board to attend and participate in FSOC meetings, and requires that each Commission or Board vote on the issue prior to the FSOC meeting and that the principal follow that vote in the FSOC meeting. Lastly, the bill amends Section 111(e) of the Act to allow Members of the Committee on Financial Services and the Committee on Banking, Housing, and Urban Affairs to attend all FSOC meetings.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

SECTION 111 OF THE FINANCIAL STABILITY ACT OF 2010

SEC. 111. FINANCIAL STABILITY OVERSIGHT COUNCIL ESTABLISHED.

(a) ESTABLISHMENT.—Effective on the date of enactment of this Act, there is established the Financial Stability Oversight Council.

(b) MEMBERSHIP.—The Council shall consist of the following members:

(1) VOTING MEMBERS.—The voting members, **[who shall each]** *who shall, except as provided below, each* have 1 vote on the Council shall be—

(A) the Secretary of the Treasury, who shall serve as Chairperson of the Council;

[(B) the Chairman of the Board of Governors;]

(B) each member of the Board of Governors, who shall collectively have 1 vote on the Council;

(C) the Comptroller of the Currency;

(D) the Director of the Bureau;

[(E) the Chairman of the Commission;

[(F) the Chairperson of the Corporation;

[(G) the Chairperson of the Commodity Futures Trading Commission;]

(E) each member of the Commission, who shall collectively have 1 vote on the Council;

(F) each member of the Corporation, who shall collectively have 1 vote on the Council;

(G) each member of the Commodity Futures Trading Commission, who shall collectively have 1 vote on the Council;

(H) the Director of the Federal Housing Finance Agency;

[(I) the Chairman of the National Credit Union Administration Board; and]

(I) each member of the National Credit Union Administration Board, who shall collectively have 1 vote on the Council;

(J) an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(2) NONVOTING MEMBERS.—The nonvoting members, who shall serve in an advisory capacity as a nonvoting member of the Council, shall be—

(A) the Director of the Office of Financial Research;

(B) the Director of the Federal Insurance Office;

(C) a State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners;

(D) a State banking supervisor, to be designated by a selection process determined by the State banking supervisors; and

(E) a State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners.

(3) NONVOTING MEMBER PARTICIPATION.—The nonvoting members of the Council shall not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council, except that the Chairperson may, upon an affirmative vote of the member agencies, exclude the nonvoting members from any of the proceedings, meetings, discussions, or deliberations of the Council when necessary to safeguard and promote the free exchange of confidential supervisory information.

(4) VOTING BY MULTI-PERSON ENTITY.—

(A) VOTING WITHIN THE ENTITY.—An entity described under subparagraph (B), (E), (F), (G) or (I) shall determine the entity's Council vote by using the voting process normally applicable to votes by the entity's members.

(B) CASTING OF ENTITY VOTE.—The 1 collective Council vote of an entity described under subparagraph (A) shall be cast by the head of such agency or, in the event such head is unable to cast such vote, the next most senior member of the entity available.

(c) TERMS; VACANCY.—

(1) TERMS.—The independent member of the Council shall serve for a term of 6 years, and each nonvoting member described in subparagraphs (C), (D), and (E) of subsection (b)(2) shall serve for a term of 2 years.

(2) VACANCY.—Any vacancy on the Council shall be filled in the manner in which the original appointment was made.

(3) ACTING OFFICIALS MAY SERVE.—In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—The Council may appoint such special advisory, technical, or profes-

sional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) MEETINGS.—

(1) TIMING.—The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.

(2) RULES FOR CONDUCTING BUSINESS.—The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code.

(3) STAFF ACCESS.—*Any member of the Council may select to have one or more individuals on the member's staff attend a meeting of the Council, including any meeting of representatives of the member agencies other than the members themselves.*

(4) CONGRESSIONAL OVERSIGHT.—*All meetings of the Council, whether or not open to the public, shall be open to the attendance by, and participation of, members of the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.*

(5) MEMBER AGENCY MEETINGS.—*Any meeting of representatives of the member agencies other than the members themselves shall be open to attendance by, and participation of, staff of the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.*

(f) VOTING.—Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the voting members then serving.

[(g) NONAPPLICABILITY OF FACAs.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.]

(g) OPEN MEETING REQUIREMENT.—*The Council shall be an agency for purposes of section 552b of title 5, United States Code (commonly referred to as the "Government in the Sunshine Act").*

(h) ASSISTANCE FROM FEDERAL AGENCIES.—Any department or agency of the United States may provide to the Council and any special advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

(i) COMPENSATION OF MEMBERS.—

(1) FEDERAL EMPLOYEE MEMBERS.—All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) COMPENSATION FOR NON-FEDERAL MEMBER.—Section 5314 of title 5, United States Code, is amended by adding at the end the following: "Independent Member of the Financial Stability Oversight Council (1)."

(j) **DETAIL OF GOVERNMENT EMPLOYEES.**—Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

MINORITY VIEWS

H.R. 3557 is designed to diminish and obstruct the Financial Stability Oversight Council's (the Council's) functions to protect our nation's economy. H.R. 3557, imposes restrictions on the Council (even though Congress specifically excluded the Council in the Dodd-Frank Act), politicizes its membership by adding in all of the regulators' commissioners and board members, and, in what is likely unconstitutional, gives each Member of the House Financial Services and Senate Banking Committees a right to participate in closed door Council meetings related to systemic risk.

The minority believes that transparency is essential to ensure that the American people are best served by their government. H.R. 3557 neither adds transparency nor increases the government's effectiveness. Rather, H.R. 3557 creates additional administrative burdens on the Council, potentially inhibits its ability to respond to financial crises, and creates the specter of political meddling in what should be independent, objective, and effective executive decision making.

For these reasons we oppose H.R. 3557.

MAXINE WATERS.
DENNY HECK.
JOHN C. CARNEY.
AL GREEN.
RUBÉN HINOJOSA.
STEPHEN F. LYNCH.
GREGORY W. MEEKS.
GWEN MOORE.
WM. LACY CLAY.
CAROLYN B. MALONEY.
KEITH ELLISON.
JOYCE BEATTY.

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