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(Original Signature of Member)

114TH CONGRESS
1ST SESSION

H. R.

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

Mr. Ross introduced the following bill; which was referred to the Committee
on _____

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”.

1 **SEC. 2. SIFI DESIGNATION PROCESS.**

2 Section 113 of the Financial Stability Act of 2010
3 (12 U.S.C. 5323) is amended—

4 (1) in subsection (a)(2)—

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

7 (B) by redesignating subparagraph (K) as
8 subparagraph (L); and

9 (C) by inserting after subparagraph (J)
10 the following:

11 “(K) the appropriateness of the imposition
12 of prudential standards as opposed to other
13 forms of regulation to mitigate the identified
14 risks; and”;

15 (2) in subsection (b)(2)—

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

18 (B) by redesignating subparagraph (K) as
19 subparagraph (L);

20 (C) by inserting after subparagraph (J)
21 the following:

22 “(K) the appropriateness of the imposition
23 of prudential standards as opposed to other
24 forms of regulation to mitigate the identified
25 risks; and”; and

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

3 “(d) REEVALUATION AND RESCISSION.—

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

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

23 “(B) provide an opportunity for the
24 nonbank financial company to meet with the

1 Council to present the information described in
2 subparagraph (A); and

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

13 “(2) PERIODIC REEVALUATION.—

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

24 “(B) PROCEDURES.—Upon receipt of a
25 written request under paragraph (A), the Coun-

1 cil shall fix a time (not earlier than 30 days
2 after the date of receipt of the request) and
3 place at which such company may appear, per-
4 sonally or through counsel, to—

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

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

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

23 “(D) EXPLANATION FOR CERTAIN COMPA-
24 NIES.—With respect to a reevaluation under
25 this paragraph where the determination being

1 reevaluated was made before the date of enact-
2 ment of this paragraph, the nonbank financial
3 company may require the Council, as part of
4 such reevaluation, to explain with specificity the
5 basis for such determination.

6 “(3) RESCISSION OF DETERMINATION.—

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

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

1 may grant one or more extensions of the imple-
2 mentation period. After the end of the imple-
3 mentation period, including any extensions
4 granted by the Council, the Council shall pro-
5 ceed to a vote as described under subparagraph
6 (A).”;

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

9 “(e) REQUIREMENTS FOR PROPOSED DETERMINA-
10 TION, NOTICE AND OPPORTUNITY FOR HEARING, AND
11 FINAL DETERMINATION.—

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

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

23 “(B) an opportunity to submit written ma-
24 terials for consideration by the Council as part

1 of the Council's initial evaluation of the risk
2 profile and characteristics of the company;

3 "(C) an opportunity to meet with the
4 Council to discuss the Council's analysis; and

5 "(D) a list of the public sources of infor-
6 mation being considered by the Council as part
7 of such analysis.

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

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

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

1 agency with at least 180 days from the receipt
2 of the resolution to—

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

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

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

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

24 “(ii) has determined not to subject the
25 company to further review, which action

1 shall not preclude the Council from issuing
2 a notice to the company under subpara-
3 graph (1)(A) at a future time; and

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

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

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

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

1 the United States and the Council's anal-
2 ysis of the company;

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

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

9 “(3) PROPOSED DETERMINATION.—

10 “(A) VOTING.—The Council may, 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, propose to make a determina-
14 tion in accordance with the provisions of sub-
15 section (a) or (b), as applicable, with respect to
16 a nonbank financial company.

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

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

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

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

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

24 “(iii) the period allowed by the Coun-
25 cil under paragraph (2)(B) has elapsed

1 and the primary financial regulatory agen-
2 cy has taken no action in response to the
3 resolution.

4 “(4) NOTICE OF PROPOSED DETERMINATION.—

5 The Council shall—

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

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

25 “(5) HEARING.—

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

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

20 “(i) submit written materials (which
21 may include a plan to modify the com-
22 pany’s business, structure, or operations);
23 or

24 “(ii) provide oral testimony and oral
25 argument to the members of the Council.

1 “(6) COUNCIL CONSIDERATION OF COMPANY
2 PLAN.—

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

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

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

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

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

1 grant one or more extensions of the implemen-
2 tation period.

3 “(D) OVERSIGHT OF IMPLEMENTATION.—

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

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

19 “(E) AUTHORITY TO RESCIND AP-
20 PROVAL.—

21 “(i) IN GENERAL.—During the imple-
22 mentation period described under subpara-
23 graph (C), including any extensions grant-
24 ed by the Council, the Council shall retain
25 the authority to rescind its approval of the

1 plan if the Council finds, by a vote of not
2 fewer than $\frac{2}{3}$ of the voting members then
3 serving, including an affirmative vote by
4 the Chairperson, that the company's imple-
5 mentation of the plan is no longer suffi-
6 cient to mitigate or prevent the risks iden-
7 tified in the resolution described under
8 paragraph (2)(A).

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

17 “(F) ACTIONS AFTER IMPLEMENTATION.—

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

1 the resolution described under paragraph
2 (2)(A).

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

16 “(7) FINAL COUNCIL DECISIONS.—

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

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

23 “(ii) the Council’s approval of a plan
24 submitted by the nonbank financial com-

1 pany under paragraph (5) or revised under
2 paragraph (6); or

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

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

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

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

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

1 “(j) PUBLIC DISCLOSURE REQUIREMENT.—The
2 Council shall—

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

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

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

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

1 “(k) PERIODIC ASSESSMENT OF THE IMPACT OF
2 DESIGNATIONS.—

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

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

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

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

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

24 “(B) identifies whether any of the Coun-
25 cil’s determinations should be rescinded or

1 whether related regulations or regulatory guid-
2 ance should be modified, streamlined, expanded,
3 or repealed.”.

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

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