

SYSTEMIC RISK DESIGNATION IMPROVEMENT ACT OF  
2017

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NOVEMBER 28, 2017.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

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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. 3312]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3312) to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to specify when bank holding companies may be subject to certain enhanced supervision, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment (stated in terms of the page and line numbers of the introduced bill) is as follows:

Page 11, line 3, strike “1-year” and insert “18-month”.

PURPOSE AND SUMMARY

Introduced by Representative Luetkemeyer on October 12, 2017, H.R. 3312, the “Systemic Risk Designation Improvement Act of 2017,” amends Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act to remove the \$50 billion asset threshold used to automatically designate certain financial institutions as “systemically important financial institutions” and instead subjects these financial institutions to enhanced regulatory standards based on the institutions activities.

The bill also authorizes the Financial Stability Oversight Council (FSOC) to subject a bank holding company to enhanced supervision

and prudential standards by the Board of Governors of the Federal Reserve System (the Federal Reserve), if an institution has been identified as global systemically important bank (G-SIB) under the indicator-based measurement approach established under section 217.402 of title 12, Code of Federal Regulations. This measurement is based on a particular institution's "systemic indicator scores," that reflects size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity relative to the other U.S. and foreign banking organizations identified by the Basel Committee on Banking Supervision and any other banking organization included in the Basel Committee's sample for a given year.

This bill also substitutes G-SIB status in place of the current monetary threshold as the determinant for the Federal Reserve's authority over bank holding company acquisition restrictions, prohibitions on interlocks between management of different financial companies, and enhanced supervision and prudential standards.

The changes made by H.R. 3312 take effect after the end of an 18 month period following the date of the enactment.

#### BACKGROUND AND NEED FOR LEGISLATION

Title I of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) contains two central elements purportedly designed to address systemic risk. The first is the establishment of the Financial Stability Oversight Council (FSOC), which is charged with monitoring systemic risk in the U.S. financial sector and coordinating regulatory responses by its member agencies. The second element is the automatic designation of banks with more than \$50 billion in assets as "systemically important financial institutions" and then subjects these institutions to enhanced regulatory standards.

#### *FSOC*

Title I, Subtitle A, of the Dodd-Frank Act created the FSOC and authorizes the body "to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies (BHCs) or nonbank financial companies, or that could arise outside the financial services marketplace; [and] to respond to emerging threats to the stability of the United States financial system."<sup>1</sup> This broad authority also allows the FSOC to designate non-bank institutions as systemically important financial institutions (SIFIs) and subject to increased supervision and regulation by the Federal Reserve Board.

In making its decision on whether to designate, the FSOC may consider several factors, including the firm's leverage, its off-balance sheet exposures, its relationship with other financial institutions, the firm's size and "interconnectedness," the firm's reliance on short-term funding, and "any other factors the [FSOC] deems appropriate." Yet these determinative factors fundamentally lacked specificity. While the Dodd-Frank Act mentions many factors as being part of the evaluation process, no determinant is weighted more heavily, so as to signal or require designation, making the process appear highly subjective. In addition to the undifferen-

<sup>1</sup> 12 U.S.C. 5322.

tiated criteria upon which FSOC structures its evaluations, FSOC is further authorized to consider “any other risk-related factors the Council deems appropriate,” which broadens that authority. Therefore, the current process makes it difficult for companies to assess whether they risk SIFI designation and allows for broad changes in the direction of regulation when administrations change.

### *Section 165*

Section 165 of the Dodd-Frank Act requires the Federal Reserve Board to apply enhanced prudential standards to bank holding companies (BHCs) with total consolidated assets of \$50 billion or more. These standards are designed to “mitigate risks to the financial stability of the United States from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions.” The enhanced prudential standards established by the Federal Reserve Board under Section 165 (including rules related to capital, leverage, liquidity, concentration limits, short-term debt limits, enhanced disclosures, risk management, and resolution plans) must be more stringent than those standards applicable to other bank holding companies.<sup>2</sup> The standards also increase in stringency based on several factors, including the size and risk characteristics of a company subject to the rule, and the Federal Reserve Board must take into account the difference among bank holding companies and nonbank financial companies based on the same factors.<sup>3</sup> In practice, the application of enhanced prudential standards to BHCs with assets of \$50 billion or more has created a de facto designation of these institutions as “systemically important financial institutions” (SIFIs).

However, since the passage of the Dodd-Frank Act, the discussion has focused on the appropriate measurement of systemic importance and the regulatory burden imposed by enhanced prudential standards once there has been the designation of an institution. Numerous commentators, including former Congressman Barney Frank, have expressed concerns regarding the arbitrary threshold used by the Dodd-Frank Act to designate bank holding companies as systemically important.

H.R. 3312 repeals the automatic SIFI designation for banks with consolidated assets exceeding \$50 billion. Before a determination is made to require enhanced supervision, the legislation requires the regulators to undertake a review of an institution’s size, interconnectedness, substitutability, global cross-jurisdictional activity, and complexity. Through this process, regulators will be able to better tailor regulations to the risk posed by different kinds of banking organizations. As a result, financial institutions will be able to allocate more resources to provide credit for small businesses and consumers, enhance consumer choice, encourage economic growth, expand a banking organization’s current activities, enter markets or asset classes, and increase competition in the marketplace for the delivery of financial products and services.

In a letter of support for H.R. 3312 dated October 10, 2017, the American Bankers Association wrote:

<sup>2</sup> 12 U.S.C. 5365(a)(1)(A).

<sup>3</sup> See 12 U.S.C. 5365(a)(1)(B). Under section 165(a)(1)(B) of the Dodd-Frank Act, the enhanced prudential standards must increase in stringency based on the considerations listed in section 165(b)(3).

Under the Dodd Frank Act (DFA), an institution with \$50 billion or more in consolidated assets is automatically deemed to be a “systemically important financial institution” or a “SIFI”, and subject to higher levels of regulation regardless of the real “risk” it might pose to the financial system. This arbitrary size threshold—and the significant regulatory requirements that come with it—has unnecessarily ensnared many banks without cause, limiting their abilities to provide needed credit and other services to consumers, businesses and their communities.

This legislation would replace the DFA’s automatic SIFI designation with a process for the Federal Reserve Board (Fed) to make a determination that an individual financial institution, or group of institutions, is systemically important and subject to enhanced supervision and prudential regulation. The Fed would make its determination by analyzing a variety of relevant measures of risk outlined in the bill, rather than being bound by the sole criterion of asset size—which taken alone is a poor measure of risk—and allow the regulators to “tailor” their supervision and reduce regulatory burdens as appropriate.

Size-only regulation is a simple shortcut means of supervising financial institutions and it is inappropriate and needlessly burdensome for many financial institutions with noncomplex operations and business models. It increases costs and reduces products and services to bank customers.

In a letter of support for H.R. 3312 dated October 11, 2017, the Financial Services RoundTable wrote:

H.R. 3312 is bipartisan legislation that changes the current designation method for enhanced supervision of banks by replacing the \$50 billion asset threshold with business activity standards to determine an institution’s systemic risk. Assessing business activities and the associated risks is a better measurement of the need for enhanced supervision versus a single, arbitrary measure. An approach based on business activities is in line with the Federal Reserve’s method for evaluating globally systemic institutions.

The use of a single measure for determining the need for enhanced supervision automatically subjects certain financial institutions to enhanced supervision, even though many of those institutions do not impose systemic risk to the financial system. Such an incomplete and inefficient approach to determine systemic risk imposes undue costs, and inhibits growth opportunities for consumers, businesses and communities that come with access to responsible lending.

Assessing an institution through various factors as opposed to asset size only will allow for a comprehensive assessment of risk to the overall financial system. H.R. 3312 advances that goal and will lead to more effective tailored regulations. Reviewing the impact of financial regulations on banks of all sizes to ensure they are appropriately calibrated and not unnecessarily holding back lending, will

allow financial institutions to better serve consumers and businesses while helping to grow the economy.

#### HEARINGS

The Committee on Financial Services' Subcommittee on Financial Institutions and Consumer Credit held a hearing examining matters relating to H.R. 3312 on September 7, 2017.

#### COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 11, 2017 and October 12, 2017 and ordered H.R. 3312 to be reported favorably to the House as amended by a recorded vote of 47 yeas to 12 nays (Record vote no. FC-81), a quorum being present. Before the motion to report was offered, the Committee adopted an amendment offered by Mr. Foster by voice vote.

#### 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 as amended. The motion was agreed to by a recorded vote of 47 yeas to 12 nays (Record vote no. FC-81), a quorum being present.

## Record vote no. FC-81

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling .....	X			Ms. Maxine Waters (CA) .....		X	
Mr. McHenry .....	X			Mrs. Carolyn B. Maloney (NY) .....		X	
Mr. King .....	X			Ms. Velázquez .....		X	
Mr. Royce (CA) .....	X			Mr. Sherman .....	X		
Mr. Lucas .....	X			Mr. Meeks .....	X		
Mr. Pearce .....	X			Mr. Capuano .....		X	
Mr. Posey .....	X			Mr. Clay .....		X	
Mr. Luetkemeyer .....	X			Mr. Lynch .....		X	
Mr. Huizenga .....	X			Mr. David Scott (GA) .....	X		
Mr. Duffy .....	X			Mr. Al Green (TX) .....		X	
Mr. Stivers .....	X			Mr. Cleaver .....		X	
Mr. Hultgren .....	X			Ms. Moore .....			
Mr. Ross .....	X			Mr. Ellison .....		X	
Mr. Pittenger .....	X			Mr. Perlmutter .....		X	
Mrs. Wagner .....	X			Mr. Himes .....	X		
Mr. Barr .....	X			Mr. Foster .....	X		
Mr. Rothfus .....	X			Mr. Kildee .....		X	
Mr. Messer .....	X			Mr. Delaney .....	X		
Mr. Tipton .....	X			Ms. Sinema .....	X		
Mr. Williams .....	X			Mrs. Beatty .....	X		
Mr. Poliquin .....	X			Mr. Heck .....	X		
Mrs. Love .....	X			Mr. Vargas .....		X	
Mr. Hill .....	X			Mr. Gottheimer .....	X		
Mr. Emmer .....	X			Mr. Gonzalez (TX) .....	X		
Mr. Zeldin .....	X			Mr. Crist .....	X		
Mr. Trott .....	X			Mr. Kihuen .....	X		
Mr. Loudermilk .....	X						
Mr. Mooney (WV) .....	X						
Mr. MacArthur .....	X						
Mr. Davidson .....	X						
Mr. Budd .....	X						
Mr. Kustoff (TN) .....	X						
Ms. Tenney .....	X						
Mr. Hollingsworth .....	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. 3312 will reduce excessive regulatory burdens by repealing provisions of the Dodd-Frank Act whereby bank holding companies with \$50 billion or more in assets are automatically subject to enhanced prudential supervision by the Federal Reserve Board of Governors and providing authority to designate BHCs for supervision on a case-by-case basis.

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, November 13, 2017.*

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. 3312, the Systemic Risk Designation Improvement Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp and Sarah Puro (for federal costs), and Nathaniel Frentz (for revenues).

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*H.R. 3312—Systemic Risk Designation Improvement Act of 2017*

Summary: H.R. 3312 would amend current law to change the process and procedures for determining which bank holding companies should be designated as systemically important financial institutions (SIFIs). Under current law, all banks with consolidated assets exceeding \$50 billion are automatically designated as SIFIs and are subject to additional requirements imposed by the financial regulators. H.R. 3312 would repeal the automatic designation for most banks and assign the responsibility for making such designations to the Federal Reserve.

Based on information from the federal financial regulators, CBO estimates that enacting the legislation would increase net direct spending by \$53 million and increase revenues by \$10 million over the next 10 years, leading to a net increase in the deficit of \$43 million over the 2018–2027 period. Some of that cost would be recovered from financial institutions in years after 2027. Pay-as-you-go procedures apply because enacting the bill would affect direct spending and revenues.

CBO estimates that enacting H.R. 3312 would not increase net direct spending or on-budget deficits by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3312 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would increase the cost of an existing private-sector mandate on entities that pay fees to the Federal Reserve and the Financial Stability Oversight Council (FSOC), but CBO estimates that the incremental cost of the mandate would be well below the annual threshold for private-sector mandates established in UMRA (\$156 million in 2017, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 3312 is shown in the following table. The costs of this legislation fall within budget function 370 (advancement of commerce).

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018– 2022	2018– 2027
NET INCREASE OR DECREASE (–) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES												
Administrative Costs to the Federal Reserve, FSOC, and the OFR .....	1	1	1	1	1	–2	*	*	*	*	5	3
Additional Costs to the FDIC to Resolve Failed Financial Institutions <sup>a</sup> .....	0	0	6	11	8	5	3	2	2	3	25	40
Total Change in the Deficit .....	1	1	7	12	9	3	3	2	2	3	30	43
Memorandum: Components of the Net Change in the Deficit												
INCREASES IN DIRECT SPENDING												
Estimated Budget Authority .....	0	0	7	12	9	7	5	4	4	5	28	53
Estimated Outlays .....	0	0	7	12	9	7	5	4	4	5	28	53
INCREASES OR DECREASES (–) IN REVENUES												
Revenues .....	–1	–1	*	*	0	4	2	2	2	2	–2	10

Amounts may not sum to totals because of rounding. \* = Between –\$500,000 and \$500,000; FSOC = Financial Stability Oversight Council; OFR = Office of Financial Research; FDIC = Federal Deposit Insurance Corporation.

<sup>a</sup>Costs to resolve financial institutions are eventually offset by assessments on federally insured depository institutions and other large financial firms.

Basis of estimate: The budgetary effects of the legislation would stem from changes in administrative costs primarily at the Federal



Reserve and from the small chance that the Federal Deposit Insurance Corporation (FDIC) would incur additional costs to resolve failed financial institutions. For this estimate, CBO assumes that the bill will be enacted during fiscal year 2018. Estimated spending is based on historical patterns.

*Administrative costs to the Federal Reserve, the Financial Stability Oversight Council, and the Office of Financial Research*

Enacting H.R. 3312 would change the framework under which financial institutions are designated as SIFIs. Under current law, all banks with consolidated assets exceeding \$50 billion are automatically designated as SIFIs. Eighteen months after enactment, H.R. 3312 would repeal that automatic designation for most banks—those that are not designated as globally significant by the Basel Committee—and assign the responsibility for additional designations to the Federal Reserve. (The eight banks that are currently designated as globally significant would retain that designation.)

The Federal Reserve Board of Governors spends about \$700 million a year on enhanced prudential regulation and supervision of SIFIs.<sup>1</sup> Based on an analysis of information from the Federal Reserve, CBO expects that they would temporarily reassign a number of staff members whose responsibilities currently include supervision and regulation of SIFIs to complete the new rulemakings and evaluations of bank holding companies required by the bill. CBO expects that the initial evaluations would be made within the first several years, after which the total number of staff supervising and regulating SIFIs would be the same as under current law. However, the cost estimate reflects the probability that the Federal Reserve would have to hire additional legal staff to evaluate and defend SIFI designations. Administrative costs to the Federal Reserve are reflected in the federal budget as a reduction in remittances to the Treasury (which are recorded in the budget as revenues). The costs of any new legal staff would be offset over time by assessments on SIFIs. As a result, CBO estimates that administrative costs to the Federal Reserve, net of fees, would decrease revenues by \$2 million over the 2018–2027 period. The remainder would be recovered after 2027.

H.R. 3312 would require FSOC to consult with the Federal Reserve and review any rules the agency develops to designate additional bank holding companies as SIFIs. Under the bill, FSOC would be required to approve additional designations proposed by the Federal Reserve. CBO expects that the Federal Reserve also would consult with the Office of Financial Research (OFR) on any additional designations. Based on information from the agencies, CBO estimates that administrative costs for FSOC and the OFR to provide additional support to the Federal Reserve and to review any proposed designations would increase the deficit by \$1 million over the 2018–2027 period. That amount includes increases in direct spending of \$4 million and increases in revenues of \$3 million (net of effects on income and payroll taxes). Under current law, expenses of FSOC are considered to be expenses of the OFR, which is recorded in the budget as a change in direct spending. The OFR

<sup>1</sup>For a definition of enhanced prudential regulations see *Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations* in the *Federal Register*, March 27, 2014.

is authorized to levy assessments on certain financial institutions to offset its operating costs. These assessments are recorded in the budget as revenues.

*Additional costs to the FDIC to resolve failed financial institutions*

Under current law, firms that are designated as SIFIs are subject to enhanced prudential regulation by financial regulators. Among other things, those regulations require SIFIs to undergo special stress tests, develop resolution plans, and maintain certain levels of liquidity and financial capacity to absorb losses. Based on an analysis of information from national credit rating agencies and academic, industry, and regulatory experts, CBO concludes that the added capital and transparency that results from enhanced prudential regulation improves the safety and soundness of the affected firms. CBO expects that the value of that enhanced prudential regulation will reduce losses incurred by regulated institutions by about \$450 million over the 2018–2027 period. On balance, CBO estimates that such regulation lowers the FDIC’s gross cost to resolve insolvent firms (whether through the Orderly Liquidation Fund or the Deposit Insurance Fund) because those measures should result in shareholders and other creditors absorbing a larger share of any losses in the event of insolvency.

CBO expects that enacting H.R. 3312 would primarily affect the SIFI designation of banks with consolidated assets of less than \$250 billion that are not designated as globally significant. Those banks account for roughly 25 percent of assets held at bank holding companies currently designated as SIFIs. Based on the most recent banking profile published on October 26, 2017, by the OFR, CBO anticipates that under the bill the Federal Reserve Board would designate banks with assets of more than \$250 billion as SIFIs and would complete that designation process by 2020.<sup>2</sup> Using that OFR profile, CBO also expects that the handful of institutions with consolidated assets of less than \$100 billion would no longer be classified as SIFIs. Because of the uncertainty surrounding the Federal Reserve Board’s designation of banks with consolidated assets between \$100 billion and \$250 billion, CBO assumes for this estimate that roughly one-half of the assets at those banks (excluding those continuing to be designated as globally significant) would no longer be subject to enhanced prudential regulation under H.R. 3312.

Assets at the institutions that CBO estimates would no longer be subject to enhanced prudential regulation under H.R. 3312 account for roughly 10 percent to 15 percent of total assets currently subject to such regulation. CBO estimates that removing the SIFI designation from some financial institutions would increase gross losses to the FDIC by about \$50 million. CBO expects that about \$10 million of losses incurred by the FDIC would be recouped over the 2018–2027 period, but that most of those costs would be offset after 2027 by income to the FDIC from fees paid by insured depository institutions, which are recorded in the budget as offsets to direct spending, and by fees paid by certain large financial institutions which are recorded in the budget as revenues. As a result,

<sup>2</sup>See [www.financialresearch.gov/viewpoint-papers/files/OFRvp\\_17-04\\_Systemically-Important-Banks.pdf](http://www.financialresearch.gov/viewpoint-papers/files/OFRvp_17-04_Systemically-Important-Banks.pdf)

CBO estimates that additional costs to the FDIC would result in net deficit increases of \$40 million over the 2018–2027 period.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3312, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON OCTOBER 12, 2017

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018–2022	2018–2027
NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact .....	1	1	7	12	9	3	3	2	2	3	30	43
Memorandum:												
Changes in Outlays .....	0	0	7	12	9	7	5	4	4	5	28	53
Changes in Revenues .....	–1	–1	0	0	0	4	2	2	2	2	–2	10

Increase in long-term direct spending and deficits: CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2028.

Mandates: H.R. 3312 contains no intergovernmental mandates as defined UMRA. CBO expects the Federal Reserve and FSOC would increase assessments to offset the costs of implementing the additional regulatory activities required by H.R. 3312. Thus, the bill would increase the cost of an existing mandate on private entities required to pay those assessments. Based on information from FSOC and the Federal Reserve, CBO estimates that the incremental cost of the assessments would be below \$3 million annually and would be under the annual threshold for private-sector mandates established in UMRA (\$156 million in 2017, adjusted annually for inflation).

Estimate prepared by: Federal costs: Kathleen Gramp and Sarah Puro; Federal revenues: Nathaniel Frentz; Mandates: Rachel Austin.

Estimate 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.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

#### 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

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

#### DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

#### DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee estimates that the bill requires no directed rulemakings within the meaning of such section.

#### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

##### *Section 1. Short title*

This section cites H.R. 3312 as the ‘Systemic Risk Designation Improvement Act of 2017.’

##### *Section 2: Revisions to Council authority*

This section makes certain technical and conforming changes to the authority of the FSOC under Sections 112, 115, 116, 121, and 155 of the Dodd-Frank Act.

##### *Section 3. Revisions to Board authority*

This section replaces the \$50 billion threshold, and provides that a bank holding company or category of bank holding companies, not identified as global systemically important banks (G–SIB), shall be subject to enhanced supervision and prudential regulation upon determination by the Federal Reserve that the material financial distress, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the individual bank holding company, could pose a threat to the financial stability of the United States. In making a determination the Federal Reserve is required to consider an institution’s “systemic indicator scores,”

reflecting size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity relative to the other U.S. and foreign banking organizations identified by the Basel Committee on Banking Supervision and any other banking organization included in the Basel Committee's sample for a given year.

The FSOC must approve, by a vote of no fewer than 2/3 of the voting members then serving, including an affirmative vote by the Chairperson, the metrics used in establishing any regulation developed by the Federal Reserve to designate additional bank holding companies.

An institution that has been identified as a G-SIB under the indicator-based measurement approach established under section 217.402 of title 12, Code of Federal Regulations is automatically subject to enhanced prudential standards.

This section also makes certain technical and conforming changes to the authority of the Federal Reserve Board of Governors under Sections 163, 164, and 165 of the Dodd-Frank Act.

*Section 4. Rule of construction*

This section maintains the Board of Governors of the Federal Reserve System's authority to apply enhanced supervisory standards to bank holding companies based on 217.402 of title 12, Code of Federal Regulations.

*Section 5. Effective date*

This section effectuates amendments to the bill eighteen months following the date of enactment of H.R. 3312.

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 italics, and existing law in which no change is proposed is shown in roman):

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):

**DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT**

\* \* \* \* \*

**TITLE I—FINANCIAL STABILITY**

\* \* \* \* \*

## Subtitle A—Financial Stability Oversight Council

\* \* \* \* \*

### SEC. 112. COUNCIL AUTHORITY.

#### (a) PURPOSES AND DUTIES OF THE COUNCIL.—

##### (1) IN GENERAL.—The purposes of the Council are—

(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace;

(B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and

(C) to respond to emerging threats to the stability of the United States financial system.

##### (2) DUTIES.—The Council shall, in accordance with this title—

(A) collect information from member agencies, other Federal and State financial regulatory agencies, the Federal Insurance Office and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;

(B) provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council;

(C) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

(D) to monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and to advise Congress and make recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets;

(E) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

(F) recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;

(G) identify gaps in regulation that could pose risks to the financial stability of the United States;

(H) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, or because of their activities pursuant to section 113;

(I) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors, *which have been identified as global systemically important bank holding companies pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l) of section 165*;

(J) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in title VIII);

(K) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;

(L) review and, as appropriate, may submit comments to the Commission and any standard-setting body with respect to an existing or proposed accounting principle, standard, or procedure;

(M) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the Council; and

(N) annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market and regulatory developments, including insurance and accounting regulations and standards, along with an assessment of those developments on the stability of the financial system;

(iii) potential emerging threats to the financial stability of the United States;

(iv) all determinations made under section 113 or title VIII, and the basis for such determinations;

(v) all recommendations made under section 119 and the result of such recommendations; and

(vi) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

(b) STATEMENTS BY VOTING MEMBERS OF THE COUNCIL.—At the time at which each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to

ensure financial stability and to mitigate systemic risk that would negatively affect the economy, submit a signed statement to Congress stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to Congress stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(c) **TESTIMONY BY THE CHAIRPERSON.**—The Chairperson shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at an annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives, and plans of the Council; and

(2) to discuss and answer questions concerning such report.

(d) **AUTHORITY TO OBTAIN INFORMATION.**—

(1) **IN GENERAL.**—The Council may receive, and may request the submission of, any data or information from the Office of Financial Research, member agencies, and the Federal Insurance Office, as necessary—

(A) to monitor the financial services marketplace to identify potential risks to the financial stability of the United States; or

(B) to otherwise carry out any of the provisions of this title.

(2) **SUBMISSIONS BY THE OFFICE AND MEMBER AGENCIES.**—Notwithstanding any other provision of law, the Office of Financial Research, any member agency, and the Federal Insurance Office, are authorized to submit information to the Council.

(3) **FINANCIAL DATA COLLECTION.**—

(A) **IN GENERAL.**—The Council, acting through the Office of Financial Research, may require the submission of periodic and other reports from any nonbank financial company or bank holding company for the purpose of assessing the extent to which a financial activity or financial market in which the nonbank financial company or bank holding company participates, or the nonbank financial company or bank holding company itself, poses a threat to the financial stability of the United States.

(B) **MITIGATION OF REPORT BURDEN.**—Before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agencies.

(C) **MITIGATION IN CASE OF FOREIGN FINANCIAL COMPANIES.**—Before requiring the submission of reports from a company that is a foreign nonbank financial company or foreign-based bank holding company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign reg-



ulator of such company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

(4) BACK-UP EXAMINATION BY THE BOARD OF GOVERNORS.—If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company pose a threat to the financial stability of the United States, based on information or reports obtained under paragraphs (1) and (3), discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the U.S. nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this title.

(5) CONFIDENTIALITY.—

(A) IN GENERAL.—The Council, the Office of Financial Research, and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this title.

(B) RETENTION OF PRIVILEGE.—The submission of any nonpublicly available data or information under this subsection and subtitle B shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(C) FREEDOM OF INFORMATION ACT.—Section 552 of title 5, United States Code, including the exceptions thereunder, shall apply to any data or information submitted under this subsection and subtitle B.

\* \* \* \* \*

**SEC. 115. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.**

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress, failure, or ongoing activities of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and [large, interconnected bank holding companies] *bank holding companies which have been identified as global systemically important bank holding companies pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l) of section 165, that—*

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) RECOMMENDED APPLICATION OF REQUIRED STANDARDS.—In making recommendations under this section, **[the Council may—]**

**[(A) differentiate]** *the Council may differentiate* among companies that are subject to heightened standards on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Council deems appropriate**[/; or/]**.

**[(B) recommend an asset threshold that is higher than \$50,000,000,000 for the application of any standard described in subsections (c) through (g).]**

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—The recommendations of the Council under subsection (a) may include—

- (A) risk-based capital requirements;
- (B) leverage limits;
- (C) liquidity requirements;
- (D) resolution plan and credit exposure report requirements;
- (E) concentration limits;
- (F) a contingent capital requirement;
- (G) enhanced public disclosures;
- (H) short-term debt limits; and
- (I) overall risk management requirements.

(2) PRUDENTIAL STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall—

- (A) give due regard to the principle of national treatment and equality of competitive opportunity; and
- (B) take into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) CONSIDERATIONS.—In making recommendations concerning prudential standards under paragraph (1), the Council shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

- (i) the factors described in subsections (a) and (b) of section 113;
- (ii) whether the company owns an insured depository institution;
- (iii) nonfinancial activities and affiliations of the company; and
- (iv) any other factors that the Council determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113

would not result in sharp, discontinuous changes in the prudential standards established under section 165; and

(C) adapt its recommendations as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(c) CONTINGENT CAPITAL.—

(1) STUDY REQUIRED.—The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of contingent capital that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) REPORT.—The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after the date of enactment of this Act.

(3) RECOMMENDATIONS.—

(A) IN GENERAL.—Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(B) FACTORS TO CONSIDER.—In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) CREDIT EXPOSURE REPORT.—The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) CONCENTRATION LIMITS.—In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 165.

(f) ENHANCED PUBLIC DISCLOSURES.—The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) SHORT-TERM DEBT LIMITS.—The Council may make recommendations to the Board of Governors to require short-term debt limits to mitigate the risks that an over-accumulation of such debt could pose to bank holding companies described in subsection (a), nonbank financial companies supervised by the Board of Governors, or the financial system.

**SEC. 116. REPORTS.**

(a) IN GENERAL.—Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company [with total consolidated assets of \$50,000,000,000 or greater] *which has been identified as a global systemically important bank holding company pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l) of section 165* or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

(1) the financial condition of the company;

(2) systems for monitoring and controlling financial, operating, and other risks;

(3) transactions with any subsidiary that is a depository institution; and

(4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) USE OF EXISTING REPORTS.—

(1) IN GENERAL.—For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

(A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies or to a relevant foreign supervisory authority;

(B) information that is otherwise required to be reported publicly; and

(C) externally audited financial statements.

(2) AVAILABILITY.—Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) CONFIDENTIALITY.—The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

\* \* \* \* \*

**SEC. 121. MITIGATION OF RISKS TO FINANCIAL STABILITY.**

(a) MITIGATORY ACTIONS.—If the Board of Governors determines that a bank holding company [with total consolidated assets of \$50,000,000,000 or more] *which has been identified as a global systemically important bank holding company pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l) of section 165*, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an affirmative vote of not fewer than  $\frac{2}{3}$  of the voting members of the Council then serving, shall—

(1) limit the ability of the company to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

(2) restrict the ability of the company to offer a financial product or products;

(3) require the company to terminate one or more activities;

(4) impose conditions on the manner in which the company conducts 1 or more activities; or

(5) if the Board of Governors determines that the actions described in paragraphs (1) through (4) are inadequate to mitigate a threat to the financial stability of the United States in its recommendation, require the company to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

(b) NOTICE AND HEARING.—

(1) IN GENERAL.—The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) HEARING.—Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Board of Governors to contest the proposed mitigatory action. Upon receipt of a timely request, the Board of Governors shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Board of Governors, in consultation with the Council, oral testimony and oral argument).

(3) DECISION.—Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Board of Governors shall notify the company of the final decision of the Board of Governors, including the results of the vote of the Council, as described in subsection (a).

(c) FACTORS FOR CONSIDERATION.—The Board of Governors and the Council shall take into consideration the factors set forth in subsection (a) or (b) of section 113, as applicable, in making any determination under subsection (a).

(d) APPLICATION TO FOREIGN FINANCIAL COMPANIES.—The Board of Governors may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies—

(1) giving due regard to the principle of national treatment and equality of competitive opportunity; and

(2) taking into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

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## Subtitle B—Office of Financial Research

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### SEC. 155. FUNDING.

(a) FINANCIAL RESEARCH FUND.—

(1) FUND ESTABLISHED.—There is established in the Treasury of the United States a separate fund to be known as the “Financial Research Fund”.

(2) FUND RECEIPTS.—All amounts provided to the Office under subsection (c), and all assessments that the Office receives under subsection (d) shall be deposited into the Financial Research Fund.

(3) INVESTMENTS AUTHORIZED.—

(A) AMOUNTS IN FUND MAY BE INVESTED.—The Director may request the Secretary to invest the portion of the Financial Research Fund that is not, in the judgment of the Director, required to meet the needs of the Office.

(B) ELIGIBLE INVESTMENTS.—Investments shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Financial Research Fund, as determined by the Director.

(4) INTEREST AND PROCEEDS CREDITED.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Financial Research Fund shall be credited to and form a part of the Financial Research Fund.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall be immediately available to the Office, and shall remain available until expended, to pay the expenses of the Office in carrying out the duties and responsibilities of the Office.

(2) FEES, ASSESSMENTS, AND OTHER FUNDS NOT GOVERNMENT FUNDS.—Funds obtained by, transferred to, or credited to the Financial Research Fund shall not be construed to be Government funds or appropriated moneys.

(3) AMOUNTS NOT SUBJECT TO APPORTIONMENT.—Notwithstanding any other provision of law, amounts in the Financial Research Fund shall not be subject to apportionment for purposes of chapter 15 of title 31, United States Code, or under any other authority, or for any other purpose.

(c) INTERIM FUNDING.—During the 2-year period following the date of enactment of this Act, the Board of Governors shall provide to the Office an amount sufficient to cover the expenses of the Office.

(d) PERMANENT SELF-FUNDING.—Beginning 2 years after the date of enactment of this Act, the Secretary shall establish, by regulation, and with the approval of the Council, an assessment schedule, including the assessment base and rates, applicable to bank holding companies [with total consolidated assets of 50,000,000,000 or greater] which have been identified as global systemically important bank holding companies pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l) of section 165 and nonbank financial companies supervised by the Board of Governors, that takes into account differences among such companies, based on the considerations for establishing the prudential standards under section 115, to collect assessments equal to the total expenses of the Office.

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**Subtitle C—Additional Board of Governors  
Authority for Certain Nonbank Financial  
Companies and Bank Holding Companies**

\* \* \* \* \*

**SEC. 163. ACQUISITIONS.**

(a) **ACQUISITIONS OF BANKS; TREATMENT AS A BANK HOLDING COMPANY.**—For purposes of section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842), a nonbank financial company supervised by the Board of Governors shall be deemed to be, and shall be treated as, a bank holding company.

(b) **ACQUISITION OF NONBANK COMPANIES.**—

(1) **PRIOR NOTICE FOR LARGE ACQUISITIONS.**—Notwithstanding section 4(k)(6)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(6)(B)), a bank holding company [with total consolidated assets equal to or greater than \$50,000,000,000] *which has been identified as a global systemically important bank holding company pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l) of section 165* or a nonbank financial company supervised by the Board of Governors shall not acquire direct or indirect ownership or control of any voting shares of any company (other than an insured depository institution) that is engaged in activities described in section 4(k) of the Bank Holding Company Act of 1956 having total consolidated assets of \$10,000,000,000 or more, without providing written notice to the Board of Governors in advance of the transaction.

(2) **EXEMPTIONS.**—The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for the exemptions in section 4(c) or section 4(k)(4)(E) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c) and (k)(4)(E)).

(3) **NOTICE PROCEDURES.**—The notice procedures set forth in section 4(j)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(1)), without regard to section 4(j)(3) of that Act, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company [with total consolidated assets equal to or greater than \$50,000,000,000] *which has been identified as a global systemically important bank holding company pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l) of section 165* or a nonbank financial company supervised by the Board of Governors, as described in paragraph (1), including any such company engaged in activities described in section 4(k) of that Act.

(4) **STANDARDS FOR REVIEW.**—In addition to the standards provided in section 4(j)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(j)(2)), the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

(5) **HART-SCOTT-RODINO FILING REQUIREMENT.**—Solely for purposes of section 7A(c)(8) of the Clayton Act (15 U.S.C. 18a(c)(8)), the transactions subject to the requirements of paragraph (1) shall be treated as if Board of Governors approval is not required.



**SEC. 164. PROHIBITION AGAINST MANAGEMENT INTERLOCKS BETWEEN CERTAIN FINANCIAL COMPANIES.**

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the Board of Governors shall not exercise the authority provided in section 7 of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company **[with total consolidated assets equal to or greater than \$50,000,000,000]** *which has been identified as a global systemically important bank holding company pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l) of section 165, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).*

**SEC. 165. ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS FOR NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS AND CERTAIN BANK HOLDING COMPANIES.**

(a) IN GENERAL.—

(1) PURPOSE.—In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 115, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies **[with total consolidated assets equal to or greater than \$50,000,000,000]** *which have been identified as global systemically important bank holding companies pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l) that—*

(A) are more stringent than the standards and requirements applicable to nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) TAILORED APPLICATION.—

**[(A) IN GENERAL.—]** In prescribing more stringent prudential standards under this section, the Board of Governors **[may]** *shall*, on its own or pursuant to a recommendation by the Council in accordance with section 115, differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

**[(B) ADJUSTMENT OF THRESHOLD FOR APPLICATION OF CERTAIN STANDARDS.—]** The Board of Governors may, pursuant to a recommendation by the Council in accordance

with section 115, establish an asset threshold above \$50,000,000,000 for the application of any standard established under subsections (c) through (g).】

(b) DEVELOPMENT OF PRUDENTIAL STANDARDS.—

(1) IN GENERAL.—

(A) REQUIRED STANDARDS.—The Board of Governors shall establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements and leverage limits, unless the Board of Governors, in consultation with the Council, determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company (such as investment company activities or assets under management) or structure, in which case, the Board of Governors shall apply other standards that result in similarly stringent risk controls;

(ii) liquidity requirements;

(iii) overall risk management requirements;

(iv) resolution plan and credit exposure report requirements; and

(v) concentration limits.

(B) ADDITIONAL STANDARDS AUTHORIZED.—The Board of Governors may establish additional prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures;

(iii) short-term debt limits; and

(iv) such other prudential standards as the Board or Governors, on its own or pursuant to a recommendation made by the Council in accordance with section 115, determines are appropriate.

(2) STANDARDS FOR FOREIGN FINANCIAL COMPANIES.—In applying the standards set forth in paragraph (1) to any foreign nonbank financial company supervised by the Board of Governors or foreign-based bank holding company, the Board of Governors shall—

(A) give due regard to the principle of national treatment and equality of competitive opportunity; and

(B) take into account the extent to which the foreign financial company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) CONSIDERATIONS.—In prescribing prudential standards under paragraph (1), the Board of Governors shall—

(A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—

(i) the factors described in subsections (a) and (b) of section 113;

(ii) whether the company owns an insured depository institution;

(iii) nonfinancial activities and affiliations of the company; and

(iv) any other risk-related factors that the Board of Governors determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 113 would not result in sharp, discontinuous changes in the prudential standards established under paragraph (1) of this subsection;

(C) take into account any recommendations of the Council under section 115; and

(D) adapt the required standards as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(4) CONSULTATION.—Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

(5) REPORT.—The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) CONTINGENT CAPITAL.—

(1) IN GENERAL.—Subsequent to submission by the Council of a report to Congress under section 115(c), the Board of Governors may issue regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(2) FACTORS TO CONSIDER.—In issuing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 115(c);

(B) an appropriate transition period for implementation of contingent capital under this subsection;

(C) the factors described in subsection (b)(3)(A);

(D) capital requirements applicable to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof; and

(E) any other factor that the Board of Governors deems appropriate.

(d) RESOLUTION PLAN AND CREDIT EXPOSURE REPORTS.—

(1) RESOLUTION PLAN.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, which shall include—

(A) information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company;

(B) full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company;

(C) identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and

(D) any other information that the Board of Governors and the Corporation jointly require by rule or order.

(2) CREDIT EXPOSURE REPORT.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation on—

(A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and

(B) the nature and extent to which other significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) REVIEW.—The Board of Governors and the Corporation shall review the information provided in accordance with this subsection by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) NOTICE OF DEFICIENCIES.—If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11, United States Code—

(A) the Board of Governors and the Corporation shall notify the company of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a timeframe determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, United States Code, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

## (5) FAILURE TO RESUBMIT CREDIBLE PLAN.—

(A) IN GENERAL.—If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) DIVESTITURE.—The Board of Governors and the Corporation, in consultation with the Council, may jointly direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, United States Code, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolution plan with such revisions as were required under paragraph (4)(B).

(6) NO LIMITING EFFECT.—A resolution plan submitted in accordance with this subsection shall not be binding on a bankruptcy court, a receiver appointed under title II, or any other authority that is authorized or required to resolve the nonbank financial company supervised by the Board, any bank holding company, or any subsidiary or affiliate of the foregoing.

(7) NO PRIVATE RIGHT OF ACTION.—No private right of action may be based on any resolution plan submitted in accordance with this subsection.

(8) RULES.—Not later than 18 months after the date of enactment of this Act, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

## (e) CONCENTRATION LIMITS.—

(1) STANDARDS.—In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) LIMITATION ON CREDIT EXPOSURE.—The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and sur-

plus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) CREDIT EXPOSURE.—For purposes of paragraph (2), “credit exposure” to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company, and all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(C) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(D) all purchases of or investment in securities issued by the company;

(E) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(F) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) CONTRIBUTION RULE.—For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) RULEMAKING.—The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) EXEMPTIONS.—This subsection shall not apply to any Federal home loan bank. The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term “credit exposure” for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) TRANSITION PERIOD.—

(A) IN GENERAL.—This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after the date of enactment of this Act.

(B) EXTENSION AUTHORIZED.—The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) ENHANCED PUBLIC DISCLOSURES.—The Board of Governors may prescribe, by regulation, periodic public disclosures by nonbank financial companies supervised by the Board of Governors

and bank holding companies described in subsection (a) in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) SHORT-TERM DEBT LIMITS.—

(1) IN GENERAL.—In order to mitigate the risks that an over-accumulation of short-term debt could pose to financial companies and to the stability of the United States financial system, the Board of Governors may, by regulation, prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any bank holding company described in subsection (a) and any nonbank financial company supervised by the Board of Governors.

(2) BASIS OF LIMIT.—Any limit prescribed under paragraph (1) shall be based on the short-term debt of the company described in paragraph (1) as a percentage of capital stock and surplus of the company or on such other measure as the Board of Governors considers appropriate.

(3) SHORT-TERM DEBT DEFINED.—For purposes of this subsection, the term “short-term debt” means such liabilities with short-dated maturity that the Board of Governors identifies, by regulation, except that such term does not include insured deposits.

(4) RULEMAKING AUTHORITY.—In addition to prescribing regulations under paragraphs (1) and (3), the Board of Governors may prescribe such regulations, including definitions consistent with this subsection, and issue such orders, as may be necessary to carry out this subsection.

(5) AUTHORITY TO ISSUE EXEMPTIONS AND ADJUSTMENTS.—Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board of Governors may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a company described in paragraph (1) that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(h) RISK COMMITTEE.—

(1) NONBANK FINANCIAL COMPANIES SUPERVISED BY THE BOARD OF GOVERNORS.—The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 113(e)(3) with respect to such nonbank financial company supervised by the Board of Governors.

(2) CERTAIN BANK HOLDING COMPANIES.—

(A) MANDATORY REGULATIONS.—The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than \$10,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) PERMISSIVE REGULATIONS.—The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than \$10,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or ap-

propriate by the Board of Governors to promote sound risk management practices.

(3) RISK COMMITTEE.—A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) RULEMAKING.—The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(i) STRESS TESTS.—

(1) BY THE BOARD OF GOVERNORS.—

(A) ANNUAL TESTS REQUIRED.—The Board of Governors, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, shall conduct annual analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) TEST PARAMETERS AND CONSEQUENCES.—The Board of Governors—

(i) shall provide for at least 3 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline, adverse, and severely adverse;

(ii) may require the tests described in subparagraph (A) at bank holding companies and nonbank financial companies, in addition to those for which annual tests are required under subparagraph (A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in subparagraph (A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; and

(v) shall publish a summary of the results of the tests required under subparagraph (A) or clause (ii) of this subparagraph.

(2) BY THE COMPANY.—



(A) REQUIREMENT.—A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct semiannual stress tests. All other financial companies that have total consolidated assets of more than \$10,000,000,000 and are regulated by a primary Federal financial regulatory agency shall conduct annual stress tests. The tests required under this subparagraph shall be conducted in accordance with the regulations prescribed under subparagraph (C).

(B) REPORT.—A company required to conduct stress tests under subparagraph (A) shall submit a report to the Board of Governors and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require.

(C) REGULATIONS.—Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, shall issue consistent and comparable regulations to implement this paragraph that shall—

(i) define the term “stress test” for purposes of this paragraph;

(ii) establish methodologies for the conduct of stress tests required by this paragraph that shall provide for at least 3 different sets of conditions, including baseline, adverse, and severely adverse;

(iii) establish the form and content of the report required by subparagraph (B); and

(iv) require companies subject to this paragraph to publish a summary of the results of the required stress tests.

(j) LEVERAGE LIMITATION.—

(1) REQUIREMENT.—The Board of Governors shall require a bank holding company [with total consolidated assets equal to or greater than \$50,000,000,000] *which has been identified as a global systemically important bank holding company pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l) or a nonbank financial company supervised by the Board of Governors to maintain a debt to equity ratio of no more than 15 to 1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States. Nothing in this paragraph shall apply to a Federal home loan bank.*

(2) CONSIDERATIONS.—In making a determination under this subsection, the Council shall consider the factors described in subsections (a) and (b) of section 113 and any other risk-related factors that the Council deems appropriate.

(3) REGULATIONS.—The Board of Governors shall promulgate regulations to establish procedures and timelines for complying with the requirements of this subsection.

(k) INCLUSION OF OFF-BALANCE-SHEET ACTIVITIES IN COMPUTING CAPITAL REQUIREMENTS.—

(1) IN GENERAL.—In the case of any bank holding company described in subsection (a) or nonbank financial company supervised by the Board of Governors, the computation of capital for purposes of meeting capital requirements shall take into account any off-balance-sheet activities of the company.

(2) EXEMPTIONS.—If the Board of Governors determines that an exemption from the requirement under paragraph (1) is appropriate, the Board of Governors may exempt a company, or any transaction or transactions engaged in by such company, from the requirements of paragraph (1).

(3) OFF-BALANCE-SHEET ACTIVITIES DEFINED.—For purposes of this subsection, the term “off-balance-sheet activities” means an existing liability of a company that is not currently a balance sheet liability, but may become one upon the happening of some future event, including the following transactions, to the extent that they may create a liability:

(A) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(B) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(C) Risk participations in bankers’ acceptances.

(D) Sale and repurchase agreements.

(E) Asset sales with recourse against the seller.

(F) Interest rate swaps.

(G) Credit swaps.

(H) Commodities contracts.

(I) Forward contracts.

(J) Securities contracts.

(K) Such other activities or transactions as the Board of Governors may, by rule, define.

(l) *ADDITIONAL BANK HOLDING COMPANIES SUBJECT TO ENHANCED SUPERVISION AND PRUDENTIAL STANDARDS BY TAILORED REGULATION.*—

(1) *DETERMINATION.*—*The Board of Governors may, within the limits of its existing resources—*

*(A) determine that a bank holding company that has not been identified as a global systemically important bank holding company pursuant to section 217.402 of title 12, Code of Federal Regulations, shall be subject to certain enhanced supervision or prudential standards under this section, tailored to the risks presented, based on the considerations in paragraph (3), where material financial distress at the bank holding company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the individual bank holding company, could pose a threat to the financial stability of the United States; or*

*(B) by regulation determine that a category of bank holding companies that have not been identified as global systemically important bank holding companies pursuant to section 217.402 of title 12, Code of Federal Regulations, shall be subject to certain enhanced supervision or prudential standards under this section, tailored to the risk presented by the category of bank holding companies, based on the considerations in paragraph (3), where material finan-*

*cial distress at the category of bank holding companies, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the category of bank holding companies, could pose a threat to the financial stability of the United States.*

(2) COUNCIL APPROVAL OF REGULATIONS WITH RESPECT TO CATEGORIES.—*Notwithstanding paragraph (1)(B), a regulation issued by the Board of Governors to make a determination under such paragraph (1)(B) shall not take effect unless the Council, by a vote of not fewer than 2/3 of the voting members then serving, including an affirmative vote by the Chairperson, approves the metrics used by the Board of Governors in establishing such regulation.*

(3) CONSIDERATIONS.—*In making any determination under paragraph (1), the Board of Governors shall consider the following factors:*

(A) *The size of the bank holding company.*

(B) *The interconnectedness of the bank holding company.*

(C) *The extent of readily available substitutes or financial institution infrastructure for the services of the bank holding company.*

(D) *The global cross-jurisdictional activity of the bank holding company.*

(E) *The complexity of the bank holding company.*

(4) CONSISTENT APPLICATION OF CONSIDERATIONS.—*In making a determination under paragraph (1), the Board of Governors shall ensure that bank holding companies that are similarly situated with respect to the factors described under paragraph (3), are treated similarly for purposes of any enhanced supervision or prudential standards applied under this section.*

(5) USE OF CURRENTLY REPORTED DATA TO AVOID UNNECESSARY BURDEN.—*For purposes of making a determination under paragraph (1), the Board of Governors shall make use of data already being reported to the Board of Governors, including from calculating a bank holding company’s systemic indicator score, in order to avoid placing an unnecessary burden on bank holding companies.*

(m) SYSTEMIC IDENTIFICATION.—*With respect to the identification of bank holding companies as global systemically important bank holding companies pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l), the Board of Governors shall—*

(1) *publish, including on the Board of Governors’s website, a list of all bank holding companies that have been so identified, and keep such list current; and*

(2) *solicit feedback from the Council on the identification process and on the application of such process to specific bank holding companies.*

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**FEDERAL RESERVE ACT**

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SEC. 11. The Board of Governors of the Federal Reserve System shall be authorized and empowered:

(a)(1) To examine at its discretion the accounts, books and affairs of each Federal reserve bank and of each member bank and to require such statements and reports as it may deem necessary. The said board shall publish once each week a statement showing the condition of each Federal reserve bank and a consolidated statement for all Federal reserve banks. Such statements shall show in detail the assets and liabilities of the Federal reserve banks, single and combined, and shall furnish full information regarding the character of the money held as reserve and the amount, nature and maturities of the paper and other investments owned or held by Federal reserve banks.

(2) To require any depository institution specified in this paragraph to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates. Such reports shall be made (A) directly to the Board in the case of member banks and in the case of other depository institutions whose reserve requirements under section 19 of this Act exceed zero, and (B) for all other reports to the Board through the (i) Federal Deposit Insurance Corporation in the case of insured State savings associations that are insured depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), State non-member banks, savings banks, and mutual savings banks, (ii) National Credit Union Administration Board in the case of insured credit unions, (iii) the Comptroller of the Currency in the case of any Federal savings association which is an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or which is a member as defined in section 2 of the Federal Home Loan Bank Act, and (iv) such State officer or agency as the Board may designate in the case of any other type of bank, savings association, or credit union. The Board shall endeavor to avoid the imposition of unnecessary burdens on reporting institutions and the duplication of other reporting requirements. Except as otherwise required by law, any data provided to any department, agency, or instrumentality of the United States pursuant to other reporting requirements shall be made available to the Board. The Board may classify depository institutions for the purposes of this paragraph and may impose different requirements on each such class.

(b) To permit, or, on the affirmative vote of at least five members of the Board of Governors of the Federal Reserve System to require Federal reserve banks to rediscount the discounted paper of other Federal reserve banks at rates of interest to be fixed by the Board of Governors of the Federal Reserve System.

(c) To suspend for a period not exceeding thirty days, and from time to time to renew such suspension for periods not exceeding fifteen days, any reserve requirements specified in this Act.

(d) To supervise and regulate through the Secretary of the Treasury the issue and retirement of Federal reserve notes, except for the cancellation and destruction, and accounting with respect to such cancellation and destruction, of notes unfit for circulation, and to prescribe rules and regulations under which such notes may be

delivered by the Secretary of the Treasury to the Federal reserve agents applying therefor.

(e) To add to the number of cities classified as Reserve cities under existing law in which national banking associations are subject to the Reserve requirements set forth in section twenty of this Act; or to reclassify existing Reserve cities or to terminate their designation as such.

(f) To suspend or remove any officer or director of any Federal reserve bank, the cause of such removal to be forthwith communicated in writing by the Board of Governors of the Federal Reserve System to the removed officer or director and to said bank.

(g) To require the writing off of doubtful or worthless assets upon the books and balance sheets of Federal reserve banks.

(h) To suspend, for the violation of any of the provisions of this Act, the operations of any Federal reserve bank, to take possession thereof, administer the same during the period of suspension, and, when deemed advisable, to liquidate or reorganize such bank.

(i) To require bonds of Federal reserve agents, to make regulations for the safeguarding of all collateral, bonds, Federal reserve notes, money or property of any kind deposited in the hands of such agents, and said board shall perform the duties, functions, or services specified in this Act, and make all rules and regulations necessary to enable said board effectively to perform the same.

(j) To exercise general supervision over said Federal reserve banks.

(k) To delegate, by published order or rule and subject to the Administrative Procedure Act, any of its functions, other than those relating to rulemaking or pertaining principally to monetary and credit policies, to one or more administrative law judges, members or employees of the Board, or Federal Reserve banks. The assignment of responsibility for the performance of any function that the Board determines to delegate shall be a function of the Chairman. The Board shall, upon the vote of one member, review action taken at a delegated level within such time and in such manner as the Board shall by rule prescribe. The Board of Governors may not delegate to a Federal reserve bank its functions for the establishment of policies for the supervision and regulation of depository institution holding companies and other financial firms supervised by the Board of Governors.

(l) To employ such attorneys, experts, assistants, clerks, or other employees as may be deemed necessary to conduct the business of the board. All salaries and fees shall be fixed in advance by said board and shall be paid in the same manner as the salaries of the members of said board. All such attorneys, experts, assistants, clerks, and other employees shall be appointed without regard to the provisions of the Act of January sixteenth, eighteen hundred and eighty-three (volume twenty-two, United States Statutes at Large, page four hundred and three), and amendments thereto, or any rule or regulation made in pursuance thereof: *Provided*, That nothing herein shall prevent the President from placing said employees in the classified service.

(n) To examine, at the Board's discretion, any depository institution, and any affiliate of such depository institution, in connection with any advance to, any discount of any instrument for, or any re-

quest for any such advance or discount by, such depository institution under this Act.

(o) **AUTHORITY TO APPOINT CONSERVATOR OR RECEIVER.**—The Board may appoint the Federal Deposit Insurance Corporation as conservator or receiver for a State member bank under section 11(c)(9) of the Federal Deposit Insurance Act.

(p) **AUTHORITY.**—The Board may act in its own name and through its own attorneys in enforcing any provision of this title, regulations promulgated hereunder, or any other law or regulation, or in any action, suit, or proceeding to which the Board is a party and which involves the Board's regulation or supervision of any bank, bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956), or other entity, or the administration of its operations.

(q) **UNIFORM PROTECTION AUTHORITY FOR FEDERAL RESERVE FACILITIES.**—

(1) Notwithstanding any other provision of law, to authorize personnel to act as law enforcement officers to protect and safeguard the premises, grounds, property, personnel, including members of the Board, of the Board, or any Federal reserve bank, and operations conducted by or on behalf of the Board or a reserve bank.

(2) The Board may, subject to the regulations prescribed under paragraph (5), delegate authority to a Federal reserve bank to authorize personnel to act as law enforcement officers to protect and safeguard the bank's premises, grounds, property, personnel, and operations conducted by or on behalf of the bank.

(3) Law enforcement officers designated or authorized by the Board or a reserve bank under paragraph (1) or (2) are authorized while on duty to carry firearms and make arrests without warrants for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States committed or being committed within the buildings and grounds of the Board or a reserve bank if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony. Such officers shall have access to law enforcement information that may be necessary for the protection of the property or personnel of the Board or a reserve bank.

(4) For purposes of this subsection, the term "law enforcement officers" means personnel who have successfully completed law enforcement training and are authorized to carry firearms and make arrests pursuant to this subsection.

(5) The law enforcement authorities provided for in this subsection may be exercised only pursuant to regulations prescribed by the Board and approved by the Attorney General.

(r)(1) Any action that this Act provides may be taken only upon the affirmative vote of 5 members of the Board may be taken upon the unanimous vote of all members then in office if there are fewer than 5 members in office at the time of the action.

(2)(A) Any action that the Board is otherwise authorized to take under section 13(3) may be taken upon the unanimous vote of all available members then in office, if—

(i) at least 2 members are available and all available members participate in the action;

(ii) the available members unanimously determine that—

(I) unusual and exigent circumstances exist and the borrower is unable to secure adequate credit accommodations from other sources;

(II) action on the matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system of the United States;

(III) despite the use of all means available (including all available telephonic, telegraphic, and other electronic means), the other members of the Board have not been able to be contacted on the matter; and

(IV) action on the matter is required before the number of Board members otherwise required to vote on the matter can be contacted through any available means (including all available telephonic, telegraphic, and other electronic means); and

(iii) any credit extended by a Federal reserve bank pursuant to such action is payable upon demand of the Board.

(B) The available members of the Board shall document in writing the determinations required by subparagraph (A)(ii), and such written findings shall be included in the record of the action and in the official minutes of the Board, and copies of such record shall be provided as soon as practicable to the members of the Board who were not available to participate in the action and to the Chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate and to the Chairman of the Committee on Financial Services of the House of Representatives.

(s) FEDERAL RESERVE TRANSPARENCY AND RELEASE OF INFORMATION.—

(1) IN GENERAL.—In order to ensure the disclosure in a timely manner consistent with the purposes of this Act of information concerning the borrowers and counterparties participating in emergency credit facilities, discount window lending programs, and open market operations authorized or conducted by the Board or a Federal reserve bank, the Board of Governors shall disclose, as provided in paragraph (2)—

(A) the names and identifying details of each borrower, participant, or counterparty in any credit facility or covered transaction;

(B) the amount borrowed by or transferred by or to a specific borrower, participant, or counterparty in any credit facility or covered transaction;

(C) the interest rate or discount paid by each borrower, participant, or counterparty in any credit facility or covered transaction; and

(D) information identifying the types and amounts of collateral pledged or assets transferred in connection with participation in any credit facility or covered transaction.

(2) MANDATORY RELEASE DATE.—In the case of—

(A) a credit facility, the Board shall disclose the information described in paragraph (1) on the date that is 1 year after the effective date of the termination by the Board of the authorization of the credit facility; and

(B) a covered transaction, the Board shall disclose the information described in paragraph (1) on the last day of the eighth calendar quarter following the calendar quarter in which the covered transaction was conducted.

(3) EARLIER RELEASE DATE AUTHORIZED.—The Chairman of the Board may publicly release the information described in paragraph (1) before the relevant date specified in paragraph (2), if the Chairman determines that such disclosure would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose or conduct of covered transactions.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) CREDIT FACILITY.—The term “credit facility” has the same meaning as in section 714(f)(1)(A) of title 31, United States Code.

(B) COVERED TRANSACTION.—The term “covered transaction” means—

(i) any open market transaction with a nongovernmental third party conducted under the first undesignated paragraph of section 14 or subparagraph (a), (b), or (c) of the 2nd undesignated paragraph of such section, after the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act; and

(ii) any advance made under section 10B after the date of enactment of that Act.

(5) TERMINATION OF CREDIT FACILITY BY OPERATION OF LAW.—A credit facility shall be deemed to have terminated as of the end of the 24-month period beginning on the date on which the credit facility ceases to make extensions of credit and loans, unless the credit facility is otherwise terminated by the Board before such date.

(6) CONSISTENT TREATMENT OF INFORMATION.—Except as provided in this subsection or section 13(3)(D), or in section 714(f)(3)(C) of title 31, United States Code, the information described in paragraph (1) and information concerning the transactions described in section 714(f) of such title, shall be confidential, including for purposes of section 552(b)(3) of title 5 of such Code, until the relevant mandatory release date described in paragraph (2), unless the Chairman of the Board determines that earlier disclosure of such information would be in the public interest and would not harm the effectiveness of the relevant credit facility or the purpose of conduct of the relevant transactions.

(7) PROTECTION OF PERSONAL PRIVACY.—This subsection and section 13(3)(C), section 714(f)(3)(C) of title 31, United States Code, and subsection (a) or (c) of section 1109 of the Dodd-Frank Wall Street Reform and Consumer Protection Act shall not be construed as requiring any disclosure of nonpublic personal information (as defined for purposes of section 502 of the Gramm-Leach-Bliley Act (12 U.S.C. 6802)) concerning any individual who is referenced in collateral pledged or assets transferred in connection with a credit facility or covered transaction, unless the person is a borrower, participant, or counterparty under the credit facility or covered transaction.



## (8) STUDY OF FOIA EXEMPTION IMPACT.—

(A) STUDY.—The Inspector General of the Board of Governors of the Federal Reserve System shall—

(i) conduct a study on the impact that the exemption from section 552(b)(3) of title 5 (known as the Freedom of Information Act) established under paragraph (6) has had on the ability of the public to access information about the administration by the Board of Governors of emergency credit facilities, discount window lending programs, and open market operations; and

(ii) make any recommendations on whether the exemption described in clause (i) should remain in effect.

(B) REPORT.—Not later than 30 months after the date of enactment of this section, the Inspector General of the Board of Governors of the Federal Reserve System shall submit a report on the findings of the study required under subparagraph (A) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, and publish the report on the website of the Board.

(9) RULE OF CONSTRUCTION.—Nothing in this section is meant to affect any pending litigation or lawsuit filed under section 552 of title 5, United States Code (popularly known as the Freedom of Information Act), on or before the date of enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[(s)] (t) ASSESSMENTS, FEES, AND OTHER CHARGES FOR CERTAIN COMPANIES.—

(1) IN GENERAL.—The Board shall collect a total amount of assessments, fees, or other charges from the companies described in paragraph (2) that is equal to the total expenses the Board estimates are necessary or appropriate to carry out the supervisory and regulatory responsibilities of the Board with respect to such companies.

(2) COMPANIES.—The companies described in this paragraph are—

(A) all bank holding companies [having total consolidated assets of \$50,000,000,000 or more] *which have been identified as global systemically important bank holding companies pursuant to section 217.402 of title 12, Code of Federal Regulations, or subjected to a determination under subsection (l) of section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act;*

(B) all savings and loan holding companies having total consolidated assets of \$50,000,000,000 or more; and

(C) all nonbank financial companies supervised by the Board under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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## MINORITY VIEWS

H.R. 3312 is another step back from the progress Congress has made to ensure that oversight of the top one percent of the nation's largest banks is appropriately robust to protect taxpayers and promote stable economic growth.

Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which establishes a tiered and tailored regulatory framework for overseeing financial institutions. Instead of imposing a one-size-fits-all approach for regulating all firms, one of the hallmark features of the Dodd-Frank Act, is that the law appropriately applies the toughest rules on the largest and most complex financial firms, which as we saw in the 2007–2008 financial crisis, can destabilize the financial system and inflict long-lasting damage to the economy and the constituents we serve.

As former Federal Reserve Board Governor Daniel Tarullo put it: “A key regulatory innovation in Dodd-Frank was regulatory tiering—the creation of different classes of banking organizations, based dominantly though not exclusively on asset size, to which different regulations were to apply. Underlying this tiering was the principle that progressively more stringent regulation should apply to the different classes of banks based on their relative importance to the financial system, and thus the harm that could be expected to the system if they failed.”<sup>1</sup>

While the Dodd-Frank Act has strengthened consumer protections and the financial system is much safer, it is worth noting the banking industry has been making record profits, including the largest banks with more than \$50 billion in assets. Lending to businesses has also increased 75 percent since the Dodd-Frank Act was signed into law.

Congress has monitored the law's implementation progress carefully and, in situations where it has been warranted, has passed targeted legislation or encouraged regulators to further tailor rules to reduce unnecessary compliance requirements on community financial institutions while maintaining robust standards and appropriate protections that are in the public interest.

H.R. 3312, however, would weaken some of the most important rules under the Dodd-Frank Act by eliminating the \$50 billion minimum threshold to apply enhanced prudential standards to the top one percent of all banks by asset size in the country. These enhanced standards include capital, liquidity, leverage, living will, stress test, risk management and other critical prudential requirements that are at the core of promoting financial stability and a safe and sound banking system. The Dodd-Frank Act clearly re-

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<sup>1</sup>Remarks by Daniel K. Tarullo, *Tailoring Community Bank Regulation and Supervision*, at ICBA's 2015 Washington Policy Summit (Apr. 30, 2015).

quires these enhanced and important standards be implemented in a tiered and tailored way and, importantly, that regulators have exercised this mandate to do so. For example, the most stringent capital requirements only apply to global systemically important banks (G-SIBs), not the other bank holding companies with more than \$50 billion in assets. Another tier of enhanced prudential standards only apply to bank holding companies with more than \$250 billion in assets, and less stringent requirements are applied to smaller banks with more than \$50 billion in assets.

These tiered and tailored enhanced prudential standards could certainly be refined and tiered further. However, this sweeping bill goes well beyond modest improvements and would undermine the tiered regulatory framework under the Dodd-Frank Act in a manner that could make it harder for banks with less than \$50 billion to compete with these very large banks.

H.R. 3312 would also likely accelerate the consolidation trends where community banks are acquired by larger banks. Importantly, the only banks that would obtain relief under this bill are the largest banks in the country. Currently, 99 percent of all banks are much smaller and have far less than \$50 billion in assets. Large banks that are no longer subject to enhanced prudential standards because of H.R. 3312 will be regulated much more like their smaller peers instead of like the large enterprises they are.

While G-SIBs would remain subject to heightened standards, the bill would make it much more difficult to apply enhanced standards to most other large banks. The bill would allow the Federal Reserve to either designate individual banks, or a group designation process through regulation that two-thirds of the Financial Stability Oversight Council (FSOC) would have to approve. Unfortunately, this means applying enhanced prudential standards, if the bill were enacted, would be much more difficult. For example, individual banks that are designated would likely challenge this designation in court. In addition, a minority of FSOC members could block the application of enhanced prudential standards to a group of the largest banks, even if a majority of FSOC members, including the Federal Reserve Board Chair and the Secretary of the Treasury, agree that they should be applied.

Furthermore, the designation process under H.R. 3312 would be subject to a very proscriptive and detailed set of criteria. But the bill would only allow a short, 18 month time period before large banks, which are currently subject to more stringent prudential requirements, would become exempt without a designation. It is worth noting that it generally takes FSOC two years to designate a non-bank for enhanced supervision. It is unclear how many large banks the Federal Reserve realistically could designate in 18 months given that it must use existing resources to carry out this new task and meet specified criteria that could be challenged in a court of law by any designated bank.

While we are open to examining how the enhanced prudential standards under the Dodd-Frank Act are currently being tiered and tailored for the nation's largest banks and targeted improvements to the existing framework, we strongly oppose this sweeping proposal that would put community banks at a competitive disadvantage to their much larger peers while undermining U.S. financial

stability and eroding the safety and soundness of the banking system.

For these reasons, we oppose H.R. 3312.

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