

111TH CONGRESS  
1ST SESSION

# S. 2756

To establish the Financial Services Systemic Risk Oversight Council, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 9, 2009

Mr. WARNER introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To establish the Financial Services Systemic Risk Oversight Council, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Financial Services Systemic Risk Oversight Council Act of 2009”.

### SEC. 2. FINANCIAL SERVICES SYSTEMIC RISK OVERSIGHT COUNCIL ESTABLISHED.

(a) ESTABLISHMENT.—There is established the Financial Services Systemic Risk Oversight Council, which shall be an independent establishment, as defined in [section 104](#) of title 5, United States Code.

(b) APPOINTMENT.—

(1) IN GENERAL.—The Chairman of the Council shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 6 years.

(2) PROHIBITION.—The Chairman may not hold any other office for which appointment by the President and confirmation by the Senate are required, during service as the Chairman.

(3) PROHIBITION ON POLITICAL CAMPAIGNING.—The Chairman may not participate in Federal election campaign activities.

(c) MEMBERS.—

(1) IN GENERAL.—The members of the Council shall be—

(A) the Chairman;

(B) the Secretary of the Treasury;

(C) the Chairman of the Board of Governors of the Federal Reserve System;

(D) the Comptroller of the Currency, or any successor thereto;

(E) the Director of the Office of Thrift Supervision, or any successor thereto;

(F) 1 individual, designated by the President, having expertise and experience in the protection of consumers of financial products, subject to paragraph (2)(B);

(G) the Chairman of the Securities and Exchange Commission;

(H) the Chairman of the Commodity Futures Trading Commission;

(I) the Chairman of the Federal Deposit Insurance Corporation; and

(J) 1 individual designated by the President.

(2) TERMS OF DESIGNATED MEMBERS.—

(A) LENGTH OF TERMS.—Each member designated by the President under subparagraph (F) or (J) of paragraph (1) shall serve for a term of 6 years, except that—

(i) the first individual designated under paragraph (1)(F) shall serve for a term of 5 years; and

(ii) the first individual designated under paragraph (1)(J) shall serve for a term of 3 years.

(B) SUCCESSIVE TERMS.—No member designated under subparagraph (A), (F), or (J) of paragraph (1) may serve for more than 2 consecutive terms.

(C) REMOVAL.—No member designated under subparagraph (F) or (J) of paragraph (1) may be removed, except for cause.

(3) SUCCESSION.—If Congress establishes an agency in the executive branch that acts as a consumer financial protection agency—

(A) the director of such office shall be a member of the Council;

(B) the individual designated by the President under paragraph (1)(F) shall not be a member of the Council; and

(C) the limitations under paragraph (2) shall not apply to the director of such office.

(d) TECHNICAL AND PROFESSIONAL ADVISORY COMMITTEES.—

(1) IN GENERAL.—The Council may establish an advisory, technical, or professional committees to assist the Council in carrying out the duties of the Council under this Act.

(2) MEMBERS.—A committee established under paragraph (1) may include a member of the Council.

(e) MEETINGS.—The Council shall meet—

(1) not less frequently than once each quarter;

(2) at such time as the Chairman determines is necessary; and

(3) upon the request of any member of the Council.

(f) AGENDA.—The Chairman shall prepare an agenda for each meeting that shall include any item requested by a member of the Council.

### **SEC. 3. DUTIES OF THE COUNCIL AND THE CHAIRMAN.**

(a) DUTIES OF THE COUNCIL.—The Council shall—

(1) be the systemic risk regulator for the financial system of the United States;

(2) advise the President on issues relating to systemic risk mitigation;

(3) monitor the financial markets and financial companies to identify and address potential systemic risk;

(4) evaluate the ability of the financial markets to function appropriately throughout the failure of United States financial companies and foreign financial companies in a way that minimizes systemic risk;

(5) ensure that each financial institution is adequately supervised and regulated for systemic risk purposes;

(6) establish criteria specifying the need for the assignment of a primary prudential regulator to a financial institution which may pose a systemic risk which are not already subject to Federal prudential regulation; and

(7) promote the integrity, efficiency, orderliness, and stability of the financial markets, by—

(A) making recommendations to the Federal financial regulators for the mitigation of systemic risk; and

(B) establishing minimum, mandatory prudential standards for the mitigation of systemic risk.

(b) DUTIES OF THE CHAIRMAN.—The Chairman shall—

(1) coordinate areas of overlapping or joint jurisdiction among the Federal financial regulators, by identifying regulations of the Federal financial regulators that should be amended—

(A) to ensure that financial markets and financial companies are—

(i) sufficiently regulated by the Federal financial regulators to mitigate systemic risk; and

(ii) subject to consistent regulations in the case of overlapping jurisdiction;

(B) to ensure that comparable financial products, activities, and institutions receive comparable regulation and supervision; and

(C) to improve the exchange of information by the Federal financial regulators;

(2) review the rules, regulations, and regulatory actions of each Federal financial regulator, as such rules, regulations, and actions relate to the mitigation

of systemic risk, and provide comments to each Federal financial regulator relating to such review;

(3) identify any deficiencies in the authority of a Federal financial regulator that would prevent the Federal financial regulator from issuing regulations to mitigate systemic risk;

(4) recommend to the Council any revision to the rules or regulations of a Federal financial regulator necessary to monitor or prevent systemic risk;

(5) ensure that the Council—

(A) collects and analyzes sufficiently comprehensive data relating to financial companies and financial markets, wherever possible from existing governmental agencies and sources, to identify systemic risks; and

(B) shares such information with the members of the Council;

(6) propose minimum prudential standards and risk management standards for consideration by the Council; and

(7) provide testimony before Congress that reflects his or her own views of systemic risk and its mitigation through financial regulation and market structures.

#### **SEC. 4. PRUDENTIAL REGULATION OF NONBANK FINANCIAL COMPANIES.**

(a) ASSIGNMENT OF A PRIMARY PRUDENTIAL REGULATOR FOR FINANCIAL COMPANIES.—

(1) DESIGNATION.—

(A) IN GENERAL.—Upon a majority vote of the members of the Council, the Council may, by rule or order, assign a primary prudential regulator to any United States financial company or foreign financial company for which the Council determines a primary prudential regulator is necessary to mitigate systemic risk related to the financial company.

(B) CRITERIA FOR ASSIGNMENT OF A PRIMARY PRUDENTIAL REGULATOR.—

(i) IN GENERAL.—In making an assignment under subparagraph (A), the Council shall consider—

(I) the amount and nature of the financial assets of the United States financial company or the foreign financial company;

(II) the amount and type of the liabilities of the United States financial company or the foreign financial company, including the degree of reliance by the United States financial company or the foreign financial company on short-term funding;

(III) the extent of the activities and risk of the United States financial company or the foreign financial company that are held off-balance sheet;

(IV) the extent of the transactions and relationships of the United States financial company or the foreign financial company with other major financial companies;

(V) the importance of the United States financial company or the foreign financial company as—

(aa) a source of credit for households, businesses, and State and local governments; and

(bb) a source of liquidity for the financial system;

(VI) any recommendation of a member of the Council relating to the United States financial company or the foreign financial company; and

(VII) any other factor that the Council determines is appropriate.

(ii) **SPECIFIC CRITERIA FOR FOREIGN FINANCIAL COMPANIES.**—In making an assignment under subparagraph (A) with respect to a foreign financial company, the Council shall consider—

(I) only the assets, liabilities, and activities of the foreign financial company that are held or conducted in the United States; and

(II) the principles of national treatment and equality of competitive opportunity.

(C) **PROHIBITION RELATING TO FOREIGN FINANCIAL COMPANIES.**—The Council may not assign a primary prudential regulator for a foreign financial company if the foreign financial company does not have substantial

assets , liabilities, counterparty relationships or operations in the United States.

(2) EVALUATION AND RECISSION OF ASSIGNMENT.—

(A) EVALUATION.—Not less frequently than annually, the Council shall evaluate each assignment made under paragraph (1).

(B) TERMINATION.—Subject to paragraph (3), if the Council determines that a United States financial company or a foreign financial company no longer meets the criteria for assignment under paragraph (1), the Council shall, by order, terminate the assignment under paragraph (1).

(3) NOTICE AND HEARING.—

(A) NOTICE.—The Council shall provide to a United States financial company or a foreign financial company notice of any assignment that the Council proposes to make under paragraph (1) or (2)(B) in relation to the United States financial company or foreign financial company.

(B) REQUEST FOR HEARING.—Not later than 30 days after the date of receipt of the notice under subparagraph (A), a United States financial company or foreign financial company may make a written request for a written or oral hearing by the Council to contest the proposed assignment under paragraph (1) or (2)(B).

(C) TIME AND PLACE OF HEARING.—Upon receipt of a timely request under subparagraph (B), the Council shall fix a date that is not more than 30 days after receipt of the request and place at which a United States financial company or foreign financial company may, in person or through counsel—

(i) submit written materials in relation to the proposed assignment under paragraph (1) or (2)(B); or

(ii) at the discretion of the Council, submit oral testimony and oral argument in relation to the proposed assignment under paragraph (1) or (2)(B).

(D) NOTICE OF DETERMINATION.—

(i) HEARING.—Not later than 60 days after the date of a hearing under subparagraph (C), and upon a majority vote of the members of the Council, the Council shall transmit to the United States financial company or foreign financial company—

(I) notice of the determination of the Council; and

(II) a statement of the basis for the determination of the Council.

(ii) NO HEARING.—If a United States financial company or a foreign financial company does not make a timely request under clause (ii), the Council shall notify the United States financial company or the foreign financial company, in writing, of any assignment under paragraph (1) or (2)(B), not later than 40 days after the date of receipt of the notice under subparagraph (A).

(E) EMERGENCY WAIVER OR MODIFICATION.—

(i) IN GENERAL.—The Council may waive or modify the requirements of this paragraph with respect to a United States financial company or a foreign financial company if the Council determines, by an affirmative vote of not fewer than 5 members (or, if there are fewer than 5 members then serving, by a unanimous vote of all members then serving) that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the United States financial company or foreign financial company to the financial stability of the United States.

(ii) NOTICE.—The Council shall provide notice to a United States financial company or a foreign financial company of a waiver or modification under clause (i) as soon as is practicable, and in no case later than 24 hours after the waiver or modification is made.

(iii) REQUEST FOR HEARING.—Not later than 10 days after the date of receipt of notice under clause (ii), the United States financial company or the foreign financial company may make a written request for a written or oral hearing by the Council to contest the waiver or modification.

(iv) TIME AND PLACE OF HEARING.—Upon receipt of a timely request under clause (iii), the Council shall fix a date that is not more than 30 days after the date of receipt of the request and place at which a United States financial company or foreign financial company may, in person or through counsel—

(I) submit written materials in relation to the waiver or modification under clause (i); or



(II) at the discretion of the Council, submit oral testimony and oral argument in relation to the waiver or modification under clause (i).

(v) NOTICE OF DETERMINATION.—Not later than 30 days after a hearing under clause (iv), and upon a majority vote of the members of the Council, the Council shall transmit to a United States financial company or a foreign financial company—

(I) notice of the determination of the Council in relation to the waiver or modification; and

(II) a statement of the basis for the determination of the Council.

(4) CONSULTATION REQUIRED.—If a United States financial company or a foreign financial company has 1 or more subsidiaries subject to regulation by a Federal financial regulator, the Council shall consult with the Federal financial regulator before making any assignment under paragraph (1) in relation to the United States financial company or foreign financial company.

(b) REGISTRATION OF FINANCIAL COMPANIES ASSIGNED A PRIMARY PRUDENTIAL REGULATOR.—

(1) REGISTRATION REQUIRED.—Not later than 180 days after the date an assignment is made under subsection (a)(1), a United States financial company or a foreign financial company that has been assigned a primary prudential regulator under subsection (a)(1) shall register with the Council, using such forms and providing such information as the Council may deem necessary or appropriate to carry out this Act.

(2) REGULATIONS.—The Council, in consultation with the appropriate Federal financial regulators, shall issue regulations to carry out this subsection.

(c) PRIMARY PRUDENTIAL REGULATOR.—Each primary prudential regulator shall act as the primary prudential regulator of the entire financial company, and each affiliate thereof.

(d) RESOLUTION PLANS FOR CERTAIN FINANCIAL COMPANIES.—

(1) RESOLUTION PLAN REQUIRED.—The Federal Deposit Insurance Corporation, in consultation with or at the direction of the Council (upon a majority vote of the members of the Council) shall require, by rule, a United States any financial company or foreign financial company that may pose a systemic risk to develop a plan for rapid and orderly resolution that—

(A) is designed to mitigate systemic risk; and

(B) does not contemplate and is not dependent upon the use of any extraordinary systemic resolution process that requires the approval of the President.

(2) REVISION OF PLANS.—

(A) REVISION OF PLANS.—The Federal Deposit Insurance Corporation may require a financial company to revise a plan developed under paragraph (1).

(B) PLAN NOT ESTABLISHED.—

(i) IN GENERAL.—If a plan cannot be established under this paragraph, the Federal Deposit Insurance Corporation may request any Federal financial regulator with jurisdiction over the financial company to take such steps as are necessary for an acceptable plan to be approved.

(ii) DISAGREEMENT BETWEEN FEDERAL DEPOSIT INSURANCE CORPORATION AND FEDERAL FINANCIAL REGULATOR.—If a Federal financial regulator fails to take the steps requested by the Federal Deposit Insurance Corporation under clause (i)—

(I) the Federal Deposit Insurance Corporation may submit a plan for the financial company to the Council; and

(II) the Council may, upon a majority vote of the members of the Council, require the financial company to adopt—

(aa) the plan described in subclause (I); or

(bb) any other plan selected by the Council.

(3) REGULATIONS.—The Federal Deposit Insurance Corporation shall issue such regulations as are necessary to carry out this subsection.

**SEC. 5. BACKUP REGULATORY AUTHORITY OF THE COUNCIL.**

(a) PURPOSES.—The purposes of this section are to ensure that—

(1) all regulations of the Federal financial regulators that relate to matters over which the Federal financial regulators have overlapping or joint jurisdiction are consistent;

(2) comparable financial products, activities, and companies receive comparable regulation and supervision; and

(3) regulations issued by the Federal financial regulators are sufficient to prevent and mitigate systemic risk.

(b) COORDINATION OF EXISTING REGULATIONS OF FEDERAL FINANCIAL REGULATORS.—

(1) JOINT RULEMAKING.—The Chairman may request that a Federal financial regulator participate in a joint rulemaking with another Federal financial regulator to improve coordination among Federal financial regulators.

(2) COORDINATION BY COUNCIL.—If a Federal financial regulator fails to participate in a joint rulemaking under subparagraph (B), upon a majority vote of the members of the Council, the Council may issue regulations for the purpose of improving coordination among Federal financial regulators.

(c) MINIMUM PRUDENTIAL STANDARDS AND RISK MANAGEMENT STANDARDS.—

(1) ESTABLISHMENT OF STANDARDS.—In order to mitigate risks to the United States financial system and to address systemic risk, upon a majority vote of the members of the Council, the Council shall—

(A) establish minimum prudential standards for United States financial companies and foreign financial companies, including—

(i) capital requirements;

(ii) leverage limits;

(iii) liquidity requirements;

(iv) underwriting standards;

(v) counterparty risk limits;

(vi) restrictions on activities;

(vii) margin requirements;

(viii) compensation standards; and

(ix) any other requirements, standards, or limits it deems necessary to mitigate systemic risk; and

(B) prescribe minimum risk management standards for United States financial companies and foreign financial companies to address issues, including—

(i) the risk management policies and procedures of United States financial companies or foreign financial companies;

(ii) the ability of United States financial companies or foreign financial companies to complete timely clearing and settlement of financial transactions; and

(iii) any other issue that the Council determines that it is necessary to address in order to—

(I) promote robust risk management by United States financial companies or foreign financial companies;

(II) promote safety and soundness of United States financial companies or foreign financial companies;

(III) reduce systemic risk; and

(IV) support the stability of the United States financial system.

(2) **RULE OF CONSTRUCTION RELATING TO CONFLICTING STANDARDS.**—A standard established by the Council under this subsection shall be construed as a minimum standard that may be exceeded by a standard established by the primary prudential regulator of a United States financial company, a foreign financial company, or financial market utility.

(d) **INSUFFICIENT REGULATIONS OR FAILURE TO ACT.**—The Chairman may issue findings relating to any regulation of a Federal financial regulator that the Chairman determines is not—

(1) sufficient to prevent or mitigate the effects of systemic risk; or

(2) consistent with regulations issued by the Council.

(e) **CONFLICT BETWEEN REGULATIONS OF THE COUNCIL AND REGULATIONS OF A FEDERAL FINANCIAL REGULATOR.**—If the Council determines that the provisions of a regulation of the Council and a regulation of a Federal financial regulator are inconsistent, the provisions of the regulation of the Council shall apply.

## **SEC. 6. ENFORCEMENT OF REGULATIONS AND ORDERS OF COUNCIL.**

(a) ENFORCEMENT BY APPROPRIATE FEDERAL FINANCIAL AGENCIES.—  
Subject to subsection (b), the appropriate Federal financial regulator shall enforce the regulations and orders of the Council.

(b) BACKUP AUTHORITY.—

(1) IN GENERAL.—If the Council determines that it is necessary to prevent or mitigate systemic risk, the Council may enforce the regulations and orders of the Council with respect to—

(A) a United States financial company;

(B) a foreign financial company operating in the United States; or

(C) a financial market utility.

(2) MANNER OF ENFORCEMENT.—In carrying out this subsection, the Council shall have the powers and duties of the appropriate Federal banking agencies under section 8 of the Federal Deposit Insurance Act ([12 U.S.C. 1818](#)), as if—

(A) the United States financial company, foreign financial company, or financial market utility were an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act ([12 U.S.C. 1813](#)); and

(B) the Council were the appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act ([12 U.S.C. 1813](#)).

(3) REGULATIONS.—The Council shall, by regulation, establish the conditions under which the Council will exercise enforcement authority under this subsection.

## **SEC. 7. RESOLUTION OF FINANCIAL COMPANIES PRESENTING SYSTEMIC RISK.**

(a) RECEIVERSHIP.—

(1) IN GENERAL.—The Council may recommend to the President that systemic resolution procedures be used to effect the orderly failure of a financial company, if a majority of the members of the Council finds that—

(A) a United States financial company or Foreign financial company operating in the United States is in default or in danger of default; and

(B) the financial company could pose a systemic risk to the United States.

(2) **DEFAULT OR DANGER OF DEFAULT.**—For purposes of this paragraph, a United States financial company or foreign financial company is in default or in danger of default if—

(A) an action under the provisions of title 11, United States Code, has been, or is reasonably likely to be commenced with respect to the financial company;

(B) the financial company is critically undercapitalized, as such term is defined by the appropriate regulator;

(C) the financial company has incurred, or is likely to incur, unavoidable losses that will deplete all or substantially all of the capital of the financial company;

(D) the assets of the financial company are, or are likely to be, less than the obligations of the financial company to creditors and others; or

(E) the financial company is, or is likely to be, unable to pay the obligations of the financial company (other than any obligation that is the subject of a bona fide dispute) in the normal course of business.

(3) **SYSTEMIC RISK.**—In determining whether a financial company poses a systemic risk for purposes of this subsection, the Council shall take into account—

(A) the amount and nature of the financial assets of the financial company;

(B) the amount and type of the liabilities of the financial company, including the degree of reliance by the financial company on short-term funding;

(C) the extent of the off-balance sheet exposures of the financial company;

(D) the extent of the transactions and relationships of the financial company with other major financial companies;

(E) the importance of the financial company as a source of—

(i) credit for individuals, businesses, and State and local governments; and

(ii) liquidity for the financial system; and

(F) any other factor that the Council determines is appropriate.

(b) **REPORT TO CONGRESS AND THE PRESIDENT.**—Upon making any recommendation to the President that systemic resolution procedures be used to effect the orderly failure of a financial company, the Council shall make a report to the President and to Congress explaining—

(1) how and why financial regulation failed to mitigate the systemic risk posed by the institution prior to its failure;

(2) why non-systemic resolution procedures were unsuitable for the financial company subject to the recommendation; and

(3) what steps are necessary to prevent a recurrence of the systemic risk posed by the failing institution from other sources.

## **SEC. 8. COLLECTION OF DATA AND INFORMATION BY COUNCIL.**

(a) **COLLECTION OF DATA BY COUNCIL.**—

(1) **DUTY TO COLLECT DATA.**—The Council shall collect and analyze sufficiently comprehensive data regarding the financial sector in order to understand and mitigate systemic risks.

(2) **POWER TO COLLECT DATA.**—The Council may collect data from any United States financial company or foreign financial company, whether or not the financial company is regulated by a member of the Council, to carry out this section.

(3) **BURDEN MINIMIZATION.**—The Council shall make every effort to utilize data already collected by other Federal agencies and departments.

(b) **SUBMISSION OF DATA AND INFORMATION REQUIRED.**—The Federal financial regulators shall, upon request, submit to the Chairman any data or information that the Chairman determines is necessary to carry out this Act.

(c) **DIRECTION TO OBTAIN DATA OR INFORMATION.**—

(1) **IN GENERAL.**—The Chairman may, if the Chairman determines that such action is necessary to carry out this Act, direct a Federal financial regulator, consistent with the authorities of such regulator, to require the production of any data or information from any entity regarding any activity that is financial in nature, as determined by the Chairman.

(2) COORDINATION BY COUNCIL.—Before directing a Federal financial regulator to require the production of data or information under paragraph (1) from an entity regulated a member of the Council, the Chairman shall coordinate with members of the Council to prevent duplicative requests for data and information.

(d) SUBMISSIONS BY FEDERAL FINANCIAL REGULATORS.—Any Federal financial regulator in possession of data or information relevant to preventing systemic risk shall provide such data or information to the Chairman in a timely manner.

(e) REQUESTS TO INSURERS FOR DATA AND INFORMATION.—The Chairman may request data and information from an insurer regulated by a State or the affiliate of such insurer relating to any product or activity of the insurer or affiliate that the Chairman determines is financial in nature.

(f) DATA AND INFORMATION SHARING.—The Chairman, in consultation with the members of the Council—

(1) shall—

(A) establish procedures to share data and information collected by the Council under this section with the members of the Council;

(B) develop an electronic process for sharing all information collected by the Council with the Chairman of the Board of Governors of the Federal Reserve System on a real-time basis; and

(C) issue any regulations necessary to carry out this subsection; and

(2) may designate the format in which requested data and information must be submitted to the Council, including any electronic, digital, or other format that facilitates the use of such data by the Council in its analysis.

(g) APPLICABLE PRIVILEGES NOT WAIVED.—A Federal financial regulator, State financial regulator, United States financial company, foreign financial company operating in the United States, financial market utility, or other person shall not be deemed to have waived any privilege otherwise applicable to any data or information by transferring the data or information to, or permitting that data or information to be used by—

(1) the Council;

(2) any Federal financial regulator or State financial regulator, in any capacity; or



(3) any other agency of the Federal Government (as defined in [section 6](#) of title 18, United States Code).

(h) DISCLOSURE EXEMPTION.—Any information obtained by the Council under this section shall be exempt from the disclosure requirements under section 552 of title 5, United States Code.

(i) CONSULTATION WITH FOREIGN GOVERNMENTS.—Under the supervision of the President, and in a manner consistent with section 207 of the Foreign Service Act of 1980 ([22 U.S.C. 3927](#)), the Chairman, in consultation with the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

(j) SUBPOENAS.—

(1) AUTHORITY.—The Chairman may, for the purpose of carrying out this section, require by subpoena, access to the documents of—

(A) any United States financial company or foreign financial company;  
and

(B) any Federal financial regulator.

(2) ISSUANCE AND ENFORCEMENT OF SUBPOENAS.—

(A) ISSUANCE.—Subpoenas issued under this section shall—

(i) bear the signature of the Chairman; and

(ii) be served by any person or class of persons designated by the Chairman for that purpose.

(B) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under this section, the United States district court for the District of Columbia may issue an order requiring compliance. Any failure to obey the order of the court may be punished by the court as a contempt that court.

## **SEC. 9. REPORTS OF FEDERAL FINANCIAL REGULATORS.**

(a) REPORT REQUIRED.—Each Federal financial regulator shall submit to the Council and to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives an annual report that contains—

(1) an explanation of how the regulations, examinations, and enforcement actions of the Federal financial regulator prevent, reduce, and mitigate the effects of systemic risk;

(2) an explanation of specific actions taken by the Federal financial regulator during the preceding fiscal year in response to any systemic risk under the jurisdiction of the Federal financial regulator;

(3) information relating to emerging sources of systemic risk—

(A) within the jurisdiction of the Federal financial regulator; and

(B) outside the jurisdiction of the Federal financial regulator; and

(4) recommendations, if any, for legislative or regulatory action which could prevent, reduce, or mitigate emerging systemic risk.

(b) **TIMING OF REPORT.**—Each Federal financial regulator shall submit the report required under subsection (a)—

(1) at a time that is prior to the first appearance required under section 10(a) of each calendar year; and

(2) determined by the Chairman, in consultation with the members of the Council.

## **SEC. 10. APPEARANCE AT HEARINGS AND REPORT BY COUNCIL.**

(a) **APPEARANCES BEFORE CONGRESS.**—

(1) **IN GENERAL.**—The Chairman of the Council shall appear before Congress at semi-annual hearings regarding—

(A) the efforts, activities, objectives and plans of the Council with respect to—

(i) the conduct of financial regulation;

(ii) the prevention of systemic risk; and

(iii) the mitigation of harm from systemic risk;

(B) the development of financial markets; and

(C) the prospects for the future of financial regulation of systemic risk.

(2) **TIMING OF APPEARANCES; COMMITTEES.**—The Chairman of the Council shall appear—

(A) before the Committee on Banking, Housing, and Urban Affairs of the Senate—

(i) in July of each odd-numbered calendar year;

(ii) in February of each even-numbered calendar year; and

(iii) upon request, after any appearance required under subparagraph (B); and

(B) before the Committee on Financial Services of the House of Representatives—

(i) in February of each odd-numbered calendar year;

(ii) in July of each even-numbered calendar year; and

(iii) upon request, after any appearance required under subparagraph (A).

(b) **REPORT.**—At each appearance required under subsection (a), the Council shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a written report that contains a description of—

(1) the conduct of financial regulation systemic risk prevention and mitigation, including actions taken by Federal financial regulators and the Council;

(2) developments in the financial markets; and

(3) prospects for the future, taking into account past and prospective developments—

(A) relating to the Federal financial regulators, as such developments are described in the reports of the Federal financial regulators under section 7; and

(B) outside the United States.

## **SEC. 11. CIVIL PENALTIES.**

(a) IN GENERAL.—Any person who violates this Act or fails to comply with a rule, regulation, or order of the Council issued under this Act shall be subject to a civil penalty in an amount established by the Council and published under subsection (b). Each such violation or failure shall constitute a separate civil offense.

(b) PUBLICATION.—The Council shall annually prescribe and publish in the Federal Register a schedule of the maximum authorized civil penalty for any violation of this Act or any regulatory action of the Council under this Act.

## **SEC. 12. FUNDING OF THE COUNCIL.**

(a) IN GENERAL.—

(1) DETERMINATION BY CHAIRMAN.—For each fiscal year, the Chairman shall determine the amount necessary for the Council to carry out its duties under this Act.

(2) FUNDING.—The Board of Governors of the Federal Reserve System shall transfer to the Council an amount equal to the amount described in paragraph (1).

(b) REGULATIONS.—The Chairman may issue such regulations as are necessary to carry out this section.

(c) ANNUAL REPORTS ON COUNCIL OPERATIONS.—

(1) IN GENERAL.—The Council shall annually submit a full report of its operations, activities, budget, receipts, and expenditures for the preceding 12-month period.

(2) MANNER OF SUBMISSION.—Such report shall be submitted to the President of the Senate and the Speaker of the House of Representatives (who shall cause the same to be printed for the information of Congress) and the President as soon as practicable after the first day of January each year.

(d) QUARTERLY REPORTS TO THE SECRETARY OF THE TREASURY.—

(1) FINANCIAL OPERATING PLANS AND FORECASTS.—Before the beginning of each fiscal quarter, the Council shall provide to the Secretary of the Treasury a copy of the financial operating plans and forecasts of the Council.

(2) RULE OF CONSTRUCTION.—The requirement to provide plans, forecasts, and reports to the Secretary of the Treasury under this subsection may not be construed as implying any obligation on the part of the Council to obtain the

consent or approval of such Secretary with respect to such plans, forecasts, and reports.

(e) AUDIT.—

(1) AUDIT REQUIRED.—The Comptroller General shall audit annually the operations and financial transactions of the Council in accordance with generally accepted government auditing standards.

(2) ACCESS TO BOOKS AND RECORDS.—All books, records, accounts, reports, files, and property belonging to or used by the Council, or by an independent certified public accountant retained to audit the Council's financial statements, shall be made available to the Comptroller General.

(3) REPORT.—A report of each audit conducted under paragraph (1) shall be made by the Comptroller General to the Congress not later than six and one-half months following the close of the last year covered by such audit. The report to the Congress shall set forth the scope of the audit and shall include a statement of expenses and information as may be deemed necessary to inform Congress of the operations and condition of the Council, together with such recommendations with respect thereto as the Comptroller General may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President, to the Secretary of the Treasury, and to the Council at the time submitted to the Congress.

(4) EMPLOYMENT AUTHORITY.—For the purpose of conducting such audit the Comptroller General is authorized in his discretion to employ by contract, without regard to section 3709 of the Revised Statutes, professional services of firms and organizations of certified public accountants, with the concurrence of the Council, for temporary periods or for special purposes. The Council shall reimburse the Government Accountability Office for the cost of any such audit as billed therefor by the Comptroller General, and the Government Accountability Office shall deposit the sums so reimbursed into the Treasury as miscellaneous receipts.

**SEC. 13. TRANSITIONAL ASSISTANCE FROM FEDERAL AGENCIES.**

(a) MEMBERS OF THE COUNCIL.—On the request of the Chairman and until such time as the Council has sufficient staff, a member of the Council shall provide to the permanent staff of the Council and any advisory, technical, or professional

committee established by the Council such technical assistance, professional support, or other services as are necessary for the Council to carry out this Act.

(b) OTHER DEPARTMENTS AND AGENCIES.—Upon the request of the Council, a Federal department or agency may provide to the Council, and any advisory, technical, or professional committee established by the Council, such services, funds, facilities, staff, and other support services as the Federal department or agency may determine advisable.

#### **SEC. 14. PERSONNEL MATTERS.**

(a) COUNCIL STAFF.—

(1) IN GENERAL.—The Chairman may appoint and terminate such personnel as may be necessary to enable to the Council to perform its duties. The Chairman may establish positions in the excepted service for employees of the Council.

(2) COMPENSATION.—The Chairman may fix the compensation of Council personnel without regard to the provisions of chapter 51 and subchapter III of [chapter 53](#) of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay for such personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(3) OTHER PERSONNEL AUTHORITIES.—The Chairman may exercise any personnel authority of any of the Federal financial regulators for the purposes of recruiting, hiring, or retention of Council personnel.

(b) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(c) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman may procure temporary and intermittent services under [section 3109\(b\)](#) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

#### **SEC. 15. APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**

The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to the Council, or to any advisory, technical, or professional committee established by the Council.

#### **SEC. 16. JUDICIAL REVIEW.**

Nothing in this Act affects any otherwise available judicial review of agency action or creates any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

#### **SEC. 17. CONFLICTING PROVISIONS TERMINATED.**

Executive Order Number 12631, issued by the President on March 18, 1988, may not be enforced on or after the date of enactment of this Act.

#### **SEC. 18. EXECUTIVE SCHEDULE MATTERS.**

Section 5312 of title 5, United States Code, is amended by adding at the end the following new item:

“Chairman of the Financial Services Systemic Risk Oversight Council.”.

#### **SEC. 19. RULE OF CONSTRUCTION.**

Nothing in this Act may be construed to interfere with the authority of—

- (1) the Board of Governors of the Federal Reserve System, with respect to monetary policy;
- (2) the Securities Exchange Commission to set or enforce standards for accounting or auditing practices or auditor independence; or
- (3) any Federal financial regulator to establish and enforce consumer and investor protection regulations.

#### **SEC. 20. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) INDEPENDENCE IN CONGRESSIONAL TESTIMONY AND RECOMMENDATIONS.—Section 111 of Public Law No. 93–495 ([12 U.S.C. 250](#)) is amended by inserting “the Financial Services Systemic Risk Oversight Council,” after “the Federal Housing Finance Agency,”.

(b) PAPERWORK REDUCTION.—[Section 3502\(5\)](#) of title 44, United States Code, is amended by inserting “the Financial Services Systemic Risk Oversight Council,” after “the Securities and Exchange Commission,”.

#### **SEC. 21. DEFINITIONS.**

In this Act—

- (1) the term “appropriate Federal financial regulator” means—

(A) the Office of the Comptroller of the Currency, in the case of a national bank, or a Federal branch or agency of a foreign bank;

(B) the Board of Governors of the Federal Reserve System, in the case of—

(i) a State member bank, as defined in section 3 of the Federal Deposit Insurance Act ([12 U.S.C. 1813](#));

(ii) a branch or agency of a foreign bank (other than a Federal branch, Federal agency, or insured State branch of a foreign bank);

(iii) a commercial lending company owned or controlled by a foreign bank;

(iv) an organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 et seq.);

(v) a bank holding company, as defined in section 2 of the Bank Holding Company Act of 1956 ([12 U.S.C. 1841](#));

(vi) an investment bank holding company, as defined in section 17(i)(5) of the Securities Exchange Act of 1934 ([15 U.S.C. 78q\(i\)\(5\)](#)); or

(vii) a United States financial company, a foreign financial company operating in the United States, or a financial market utility over which no other Federal or State regulatory agency has enforcement authority;

(C) the Federal Deposit Insurance Corporation, in the case of—

(i) a national nonmember bank or a State nonmember bank, as those terms are defined in section 3 of the Federal Deposit Insurance Act ([12 U.S.C. 1813](#)), the deposits of which are insured by the Federal Deposit Insurance Corporation; or

(ii) an insured State branch of a foreign bank;

(D) the Director of the Office of Thrift Supervision, in the case of—

(i) a savings association, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), the deposits of which are insured by the Federal Deposit Insurance Corporation; or

(ii) a savings and loan holding company, as defined in section 3 of the Federal Deposit Insurance Act ([12 U.S.C. 1813](#));



(E) the National Credit Union Administration Board, in the case of any insured credit union, as defined in section 101 of the Federal Credit Union Act ([12 U.S.C. 1752](#));

(F) the Securities and Exchange Commission, in the case of—

(i) a United States financial company or foreign financial company operating in the United States that is subject to regulation by the Commission; or

(ii) a financial market utility that is subject to regulation by the Commission and is not subject to regulation by any other Federal financial regulator; and

(G) the Commodity Futures Trading Commission, in the case of—

(i) a United States financial company or foreign financial company operating in the United States that is subject to regulation by the Commission; or

(ii) a financial market utility that is subject to regulation by the Commission and is not subject to regulation by any other Federal financial regulator;

(2) the term “Chairman” means the Chairman of the Financial Services Systemic Risk Oversight Council appointed under section 4;

(3) the term “Council” means the Financial Services Systemic Risk Oversight Council established under section 3;

(4) the terms “depository institution” and “insured depository institution” have the same meanings as in section 3 of the Federal Deposit Insurance Act ([12 U.S.C. 1813](#));

(5) the term “Federal financial regulator” means—

(A) the Comptroller of the Currency;

(B) the Board of Governors of the Federal Reserve System;

(C) the Federal Deposit Insurance Corporation;

(D) the National Credit Union Administration;

(E) the Securities and Exchange Commission;

(F) the Public Company Accounting Oversight Board;

(G) the Federal Housing Finance Agency;

(H) the Federal Trade Commission;

(I) the Farm Credit Administration;

(J) the Commodity Futures Trading Commission;

(K) the Department of Housing and Urban Development, in carrying out the duties of the Secretary of Housing and Urban Development under the Real Estate Settlement Procedures Act of 1974 ([12 U.S.C. 2601 et seq.](#));

(L) the Federal Housing Administration; and

(M) the Department of Veterans Affairs, in the case of a guarantee by the Secretary of Veterans Affairs of an extension of credit, including a mortgage loan and a small business loan;

(6) the term “activity that is financial in nature” means an activity—

(A) described in section 4(k)(4) of the Bank Holding Company Act of 1956 ([12 U.S.C. 1843\(k\)\(4\)](#)); or

(B) that the Board of Governors of the Federal Reserve System has determined is financial in nature under section 4(k) of the Bank Holding Company Act of 1956;

(7) the term “foreign financial company” means a bank holding company, as those terms are defined in section 2 of the Bank Holding Company Act of 1954 (12 U.S.C. 1841), and any affiliate thereof, or any other person that—

(A) is incorporated or organized in a country other than the United States; and

(B) is, directly or indirectly (including through a branch operating in the United States), engaged in any activity that is financial in nature in the United States;

(8) the term “financial market utility” means a corporation, company, association, firm, partnership, society, joint stock company, or other legal entity (other than a natural person) that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions—

(A) among United States financial companies or foreign financial companies in the United States; or

(B) between a United States financial company, or foreign financial company in the United States, and the corporation, company, association, firm, partnership, society, joint stock company, or other legal entity;

(9) the term “financial transaction” includes a fund transfer, a securities contract, a contract for sale of a commodity for future delivery, a forward contract, a repurchase agreement, a swap agreement, a foreign exchange contract, a financial derivatives contract, and any similar transaction that the Council determines, by rule or order, to be a financial transaction for purposes of this Act;

(10) the term “payment, clearing, or settlement activity” means an activity carried out by a United States financial company or a foreign financial company operating in the United States to facilitate the completion of a financial transaction, including—

(A) the calculation and communication of unsettled obligations between counterparties;

(B) the netting of transactions;

(C) the provision and maintenance of trade, contract, or instrument information;

(D) the management of risks and activities associated with continuing obligations;

(E) the transmittal and storage of payment instructions;

(F) the movement of funds;

(G) the final settlement of obligations; and

(H) other similar functions, as determined by the Council;

(11) the term “primary prudential regulator” means a Federal financial regulator designated by the Council as the primary prudential regulator of a financial company;

(12) the term “State” means any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands;

(13) the term “systemic risk” means the risk that the disruption or failure of a United States financial company, a foreign financial company operating in the United States, or a financial market utility could have a serious adverse effect on the economic conditions in or financial stability of the United States; and

(14) the term “United States financial company” means a bank holding company, as that term is defined in section 2 of the Bank Holding Company Act of 1954 (12 U.S.C. 1841), or any affiliate thereof, or any other person that is—

(A) incorporated or organized under the laws of the United States or any State; and

(B) in whole or in part engaged, directly or indirectly, in activities that are financial in nature.

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