



April 10, 2018

Dear Representative:

On behalf of Americans for Financial Reform, we are writing to urge you to vote against H.R. 4061, which is being considered on the House floor today.<sup>1</sup> This bill adds numerous additional procedural obstacles to the already cumbersome and time-consuming process which the Financial Stability Oversight Council (FSOC) uses to designate large non-bank financial entities for increased oversight.

The 2008 financial crisis made it abundantly clear that proper consolidated oversight of large non-banks is critical to financial stability, and that problems can develop rapidly at such companies. Non-bank financial institutions, ranging from investment bank broker-dealers to insurance companies such as AIG, were central contributors to the 2008 crisis and the ensuing economic collapse. Since the crisis, regulators have raised significant concerns about potential systemic risks posed by large multi-trillion dollar asset managers. The FSOC's ability to designate non-bank financial companies for enhanced prudential supervision is a crucial line of defense against future systemic risks from non-banks.

This designation process already includes at least ten distinct major steps and numerous opportunities for appeal, including appeal to outside courts.<sup>2</sup> The current designation process typically takes well over a year to complete, even in a best case scenario. H.R. 4061 adds numerous new statutory procedural requirements to this already cumbersome process. These include at least an entire additional year for a company to test a self-created restructuring plan to avoid designation, as well as annual opportunities to contest and remove a designation once it was made. The procedural hurdles added by H.R. 4061 would greatly increase the time required to designate a company, and could permit a large financial firm that is skilled at manipulating the process to delay increased regulatory oversight almost indefinitely. It would provide giant global financial firms numerous opportunities to use insider lobbying and the courts to delay or prevent actions that financial regulators are attempting to take to safeguard economic stability.

H.R. 4061 would also fundamentally change the nature of the FSOC designation process. Currently, the standard for FSOC designation in Section 113(a)(1) of the Dodd-Frank Act is whether material financial distress at a large non-bank financial company could pose a threat to the financial stability of the United States. H.R. 4061 would add to this standard a requirement

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<sup>1</sup> Americans for Financial Reform is an unprecedented coalition of more than 200 national, state and local groups who have come together to reform the financial industry. Members of our coalition include consumer, civil rights, investor, retiree, community, labor, faith based and business groups. A list of AFR members is available at <http://ourfinancialsecurity.org/about/our-coalition/>

<sup>2</sup> See Financial Stability Oversight Council, "Authority to Require Supervision and Regulation of Certain Non-Bank Financial Companies: Final Rule and Interpretive Guidance", Federal Register, Volume 77, No. 70, April 11, 2012. <http://bit.ly/2HRoSnR>. Financial Stability Oversight Council, "Supplemental Procedures Relating To Non-Bank Financial Company Determinations", February 4, 2015. <http://bit.ly/2IGyPpn>

that the FSOC list specific identified risks (beyond instability potentially created by the failure of the company) and work with the company to alter such risks. This would involve the FSOC in the detailed oversight of the company's structure and organization, based on a detailed prediction of future events during a period of financial distress. Such a process requires the FSOC to perform, without sufficient resources or authority, the kind of oversight that is more suited to a specific primary regulator such as the Federal Reserve.

This kind of oversight is actual supervision, not a determination of systemic significance. FSOC is a council of regulators that was not created as a primary financial regulator. The FSOC mandate is to judge whether a company's financial distress could create financial stability risks, so that regulators can in turn enhance supervision. However, H.R. 4061 would require the FSOC to perform an impractical and unworkable supervisory function.

A presumption underlying H.R. 4061 appears to be that FSOC designation is unmanageably costly to designated companies. But we know that this is not true. The FSOC has already designated multiple companies, ranging from GE Capital to Prudential Financial, for increased systemic risk supervision. Companies designated by FSOC have continued to thrive in their business and have continued to make healthy profits. In the case of GE Capital, the company chose to restructure and was rapidly de-designated based on the FSOC's assessment of their new business model.

Maintaining adequate oversight of non-bank financial companies is crucial to financial stability. H.R. 4061 would massively and unnecessarily heighten barriers to such oversight and should be rejected.

Thank you for your attention to this matter. For more information please contact AFR's Policy Director, Marcus Stanley, at [marcus@ourfinancialsecurity.org](mailto:marcus@ourfinancialsecurity.org) or 202-466-3672.

Sincerely,  
Americans for Financial Reform