

CONSUMER FINANCIAL PROTECTION SAFETY AND
SOUNDNESS IMPROVEMENT ACT OF 2011

MAY 25, 2011.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. BACHUS, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1315]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1315) to amend the Dodd-Frank Wall Street Reform and Consumer Protection Act to strengthen the review authority of the Financial Stability Oversight Council of regulations issued by the Bureau of Consumer Financial Protection, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Consumer Financial Protection Safety and Soundness Improvement Act of 2011”.

SEC. 2. COUNCIL VOTING PROCEDURE.

Section 1023(c)(3)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended—

(1) by striking “ $\frac{2}{3}$ ” and inserting “a majority”; and

(2) by inserting before the period the following: “, excluding the Director of the Bureau”.

SEC. 3. REVIEW AUTHORITY OF THE COUNCIL.

Section 1023 of the Dodd-Frank Wall Street Reform and Consumer Protection Act is amended—

(1) in subsection (a)—

- (A) by striking “may” and inserting “shall”; and
 - (B) by striking “regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk” and inserting “regulation which is the subject of the petition is inconsistent with the safe and sound operations of United States financial institutions”; and
- (2) in subsection (c)—
- (A) in paragraph (3)(B)(ii), by striking “would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk” and inserting “is inconsistent with the safe and sound operations of United States financial institutions”;
 - (B) in paragraph (4)—
 - (i) by striking subparagraph (B); and
 - (ii) by redesignating subparagraph (C) as subparagraph (B);
 - (C) by striking paragraph (5);
 - (D) by redesignating paragraphs (6), (7), and (8) as paragraphs (5), (6), and (7), respectively; and
 - (E) by adding at the end the following new paragraph:

“(8) PUBLIC MEETINGS.—Any time the Council meets pursuant to this section to decide whether to issue a stay of, or set aside, any regulation, every portion of such meeting shall be open to public observation.”.

PURPOSE AND SUMMARY

H.R. 1315, the Consumer Financial Protection Safety and Soundness Improvement Act of 2011, amends Section 1023 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (P.L. 111–203) to streamline the Financial Stability Oversight Council’s (FSOC) review and oversight of Consumer Financial Protection Bureau (CFPB) rules and regulations that may undermine the safety and soundness of U.S. financial institutions. The bill makes four major changes: (1) it lowers the threshold required to set aside regulations from a two-thirds vote of the FSOC’s voting membership to a simple majority, excluding the CFPB; (2) it clarifies that the FSOC *must* set aside any CFPB regulation that is inconsistent with the safe and sound operations of U.S. financial institutions; (3) it eliminates the 45-day time limit for the FSOC to review and vote on regulations; and (4) it requires that all FSOC meetings be open to the public whenever it decides to stay or set aside a CFPB regulation.

BACKGROUND AND NEED FOR LEGISLATION

Rep. Sean Duffy introduced H.R. 1315 to enhance FSOC oversight and review of regulations proposed by the CFPB. Title I of the Dodd-Frank Act establishes the FSOC, and Section 112(a) charges the FSOC with identifying “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.” Ten voting members and five non-voting members comprise the FSOC. The ten voting members are the heads of nine federal financial regulatory agencies, including the CFPB, and an independent member with insurance expertise. In addition to the CFPB, the other agencies represented are the Department of the Treasury, the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC), the Commodity Futures Trading Com-

mission (CFTC), the Federal Housing Finance Agency (FHFA), and the National Credit Union Administration (NCUA).

Section 1023 of the Dodd-Frank Act allows the FSOC to review, stay, and block CFPB regulations if two-thirds of the FSOC membership “decides . . . that the regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.” The FSOC chair may stay the effectiveness of a regulation at the request of a single FSOC member for 90 days. If the FSOC chair does not stay the rule, the FSOC must vote within 45 days of the date the petition is filed. If the FSOC stays the rule, the vote must be taken before the stay elapses. If a vote is not taken within these time frames, the petition is deemed to have been dismissed.

H.R. 1315 reduces the vote required to set aside CFPB regulations from two-thirds of the FSOC’s voting membership to a simple majority, excluding the Director of the CFPB. Under the Dodd-Frank Act, even if six voting members of the FSOC believe that a CFPB rule could undermine the safety and soundness of U.S. financial institutions, if just two others side with the CFPB, the rule would become effective. Given that the safety and soundness of American financial institutions are at risk, a majority vote makes more sense: it lets the CFPB set rules that protect consumers; it sets an appropriate threshold for overturning a rule; and it also allows the FSOC to reject misguided rules that could destabilize U.S. financial institutions.

The bill also clarifies that the FSOC *must* set aside any CFPB regulation that is inconsistent with the safe and sound operations of U.S. financial institutions. The current standard in Section 1023 for overturning a CFPB rule is extremely high, as it requires a proposed CFPB rule to “put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk” in order to be overturned. Accordingly, a rule that severely threatens the viability of smaller financial institutions but does not put the *entire* financial system at risk would not meet the standard. The change proposed in H.R. 1315 ensures that a CFPB rule does not impair the safety and soundness of a U.S. financial institution, regardless of its size.

H.R. 1315 also removes any time restrictions for FSOC reviews. To give the FSOC the time necessary to fully consider the consequences of CFPB regulations on the safe and sound operation of the banking system—which may not be immediately apparent—the bill removes the time limits associated with this process.

HEARINGS

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on March 16, 2011 entitled “Oversight of the Consumer Financial Protection Bureau.” There was one witness:

- Ms. Elizabeth Warren, Special Advisor to the Secretary of the Treasury for the Consumer Financial Protection Bureau, Department of the Treasury

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on April 6, 2011 entitled, “Legislative Proposals to Improve the Structure of the Consumer Financial Protection Bureau.” The following witnesses testified:

- Ms. Leslie R. Andersen, President and Chief Executive Officer, Bank of Bennington on behalf of the American Bankers Association
- Ms. Lynette W. Smith, President and Chief Executive Officer, Washington Gas Light FCU on behalf of the National Association of Federal Credit Unions
- Mr. Jess Sharp, Executive Director, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce
- Mr. Hilary Shelton, Director, NAACP Washington Bureau and Senior VP for Advocacy and Policy, NAACP
- Mr. Noah H. Wilcox, President and Chief Executive Officer, Grand Rapids State Bank on behalf of the Independent Community Bankers of America
- Mr. Rod Staatz, President and Chief Executive Officer, SECU of Maryland on behalf of the Credit Union National Association
- Mr. Richard Hunt, President, Consumer Bankers Association
- Prof. Adam J. Levitin, Georgetown University Law Center

COMMITTEE CONSIDERATION

The Subcommittee on Financial Institutions and Consumer Credit met in open session on May 4, 2011 and ordered H.R. 1315, Consumer Financial Protection Safety and Soundness Improvement Act of 2011, as amended, favorably reported to the Full Committee by a record vote of 13 yeas and 7 nays (Record vote no. FI-7).

The Committee on Financial Services met in open session on May 12, 2011 and ordered H.R. 1315, the Consumer Financial Protection Safety and Soundness Improvement Act of 2011, as amended, favorably reported to the House by a record vote of 35 yeas and 22 nays (Record vote no. FC-36).

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. A motion by Chairman Bachus to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 35 yeas and 22 nays (Record vote no. FC-36). The names of Members voting for and against follow:

RECORD VOTE NO. FC-36

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus	X			Mr. Frank (MA)		X	
Mr. Hensarling	X			Ms. Waters		X	
Mr. King (NY)	X			Mrs. Maloney		X	
Mr. Royce	X			Mr. Gutierrez			
Mr. Lucas	X			Ms. Velázquez		X	
Mr. Paul				Mr. Watt		X	
Mr. Manzullo	X			Mr. Ackerman		X	
Mr. Jones	X			Mr. Sherman		X	
Mrs. Biggert	X			Mr. Meeks		X	
Mr. Gary G. Miller (CA)	X			Mr. Capuano		X	
Mrs. Capito	X			Mr. Hinojosa		X	
Mr. Garrett	X			Mr. Clay		X	
Mr. Neugebauer	X			Mrs. McCarthy (NY)			
Mr. McHenry	X			Mr. Baca		X	
Mr. Campbell	X			Mr. Lynch		X	
Mrs. Bachmann	X			Mr. Miller (NC)		X	
Mr. McCotter	X			Mr. David Scott (GA)		X	

RECORD VOTE NO. FC-36—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. McCarthy (CA)	X			Mr. Al Green (TX)		X	
Mr. Pearce	X			Mr. Cleaver		X	
Mr. Posey	X			Ms. Moore		X	
Mr. Fitzpatrick	X			Mr. Ellison			
Mr. Westmoreland	X			Mr. Perlmutter	X		
Mr. Luetkemeyer	X			Mr. Donnelly		X	
Mr. Huizenga	X			Mr. Carson	X		
Mr. Duffy	X			Mr. Himes		X	
Ms. Hayworth	X			Mr. Peters		X	
Mr. Renacci	X			Mr. Carney		X	
Mr. Hurt	X						
Mr. Dold	X						
Mr. Schweikert	X						
Mr. Grimm	X						
Mr. Canseco	X						
Mr. Stivers	X						
Mr. Fincher	X						

During consideration of H.R. 1315, the following amendments and motion were considered:

1. An amendment offered by Ms. Waters, no. 1, to provide that the FSOC can overturn a regulation with a 2/3 vote if a majority of the FSOC determines that the primary purpose of a regulation is to protect members of the armed services, was not agreed to by a record vote of 25 yeas and 32 nays (Record vote no. FC-33).

RECORD VOTE NO. FC-33

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez			
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manullo		X		Mr. Ackerman	X		
Mr. Jones	X			Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)			
Mr. McHenry		X		Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch	X		
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore	X		
Mr. Fitzpatrick		X		Mr. Ellison			
Mr. Westmoreland		X		Mr. Perlmutter	X		
Mr. Luetkemeyer		X		Mr. Donnelly	X		
Mr. Huizenga		X		Mr. Carson	X		
Mr. Duffy		X		Mr. Himes	X		
Ms. Hayworth		X		Mr. Peters	X		
Mr. Renacci		X		Mr. Carney	X		
Mr. Hurt		X					
Mr. Dold		X					
Mr. Schweikert		X					
Mr. Grimm		X					
Mr. Canseco		X					
Mr. Stivers		X					

RECORD VOTE NO. FC-33—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Fincher	X	.....			

2. A motion offered by Mr. Hensarling, to table Mr. Miller's appeal of the ruling of the Chair, was agreed to by a record vote of 10 yeas and 7 nays (Record vote no. FC-25).

RECORD VOTE NO. FC-25

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus	X	.....	.....	Mr. Frank (MA) .....	.....	X	.....
Mr. Hensarling	X	.....	.....	Ms. Waters .....	.....	X	.....
Mr. King (NY) .....	.....	.....	.....	Mrs. Maloney .....	.....	X	.....
Mr. Royce .....	.....	.....	.....	Mr. Gutierrez .....	.....	.....	.....
Mr. Lucas .....	.....	.....	.....	Ms. Velázquez .....	.....	.....	.....
Mr. Paul .....	.....	.....	.....	Mr. Watt .....	.....	X	.....
Mr. Manzullo .....	.....	.....	.....	Mr. Ackerman .....	.....	.....	.....
Mr. Jones .....	.....	.....	.....	Mr. Sherman .....	.....	X	.....
Mrs. Biggert	X	.....	.....	Mr. Meeks .....	.....	.....	.....
Mr. Gary G. Miller (CA) .....	.....	.....	.....	Mr. Capuano .....	.....	.....	.....
Mrs. Capito .....	.....	.....	.....	Mr. Hinojosa .....	.....	.....	.....
Mr. Garrett	X	.....	.....	Mr. Clay .....	.....	.....	.....
Mr. Neugebauer	X	.....	.....	Mrs. McCarthy (NY) .....	.....	.....	.....
Mr. McHenry .....	.....	.....	.....	Mr. Baca .....	.....	.....	.....
Mr. Campbell .....	.....	.....	.....	Mr. Lynch .....	.....	.....	.....
Mrs. Bachmann .....	.....	.....	.....	Mr. Miller (NC) .....	.....	X	.....
Mr. McCotter	X	.....	.....	Mr. David Scott (GA) .....	.....	.....	.....
Mr. McCarthy (CA) .....	.....	.....	.....	Mr. Al Green (TX) .....	.....	.....	.....
Mr. Pearce .....	.....	.....	.....	Mr. Cleaver .....	.....	.....	.....
Mr. Posey .....	.....	.....	.....	Ms. Moore .....	.....	.....	.....
Mr. Fitzpatrick .....	.....	.....	.....	Mr. Ellison .....	.....	X	.....
Mr. Westmoreland .....	.....	.....	.....	Mr. Perlmutter .....	.....	.....	.....
Mr. Luetkemeyer .....	.....	.....	.....	Mr. Donnelly .....	.....	.....	.....
Mr. Huizenga .....	.....	.....	.....	Mr. Carson .....	.....	.....	.....
Mr. Duffy	X	.....	.....	Mr. Himes .....	.....	.....	.....
Ms. Hayworth .....	.....	.....	.....	Mr. Peters .....	.....	.....	.....
Mr. Renacci .....	.....	.....	.....	Mr. Carney .....	.....	.....	.....
Mr. Hurt	X	.....	.....		
Mr. Dold	X	.....	.....		
Mr. Schweikert	X	.....	.....		
Mr. Grimm .....	.....	.....	.....	
Mr. Canseco .....	.....	.....	.....	
Mr. Stivers .....	.....	.....	.....	
Mr. Fincher .....	.....	.....	.....	

3. An amendment offered by Mr. Miller of NC, no. 4, to require that when an insured depository institution submits comments to a regulator and when the regulator determines that the rule would affect the safety and soundness of the institution, the regulator shall conduct a series of investigations into the institution's management and business decisions to determine whether any alleged safety and soundness concerns are actually attributable to the proposed rule or to other factors, and to require all regulators to consider the financial safety and soundness of the consumers who will be affected by the proposed rule when determining how to proceed, was not agreed to by a record vote of 24 yeas and 33 nays (Record vote no. FC-34).

RECORD VOTE NO. FC-34

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez			
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manzullo		X		Mr. Ackerman	X		
Mr. Jones		X		Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)			
Mr. McHenry		X		Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch	X		
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		
Mr. Posey		X		Ms. Moore	X		
Mr. Fitzpatrick		X		Mr. Ellison			
Mr. Westmoreland		X		Mr. Perlmutter	X		
Mr. Luetkemeyer		X		Mr. Donnelly	X		
Mr. Huizenga		X		Mr. Carson	X		
Mr. Duffy		X		Mr. Himes	X		
Ms. Hayworth		X		Mr. Peters	X		
Mr. Renacci		X		Mr. Carney	X		
Mr. Hurt		X					
Mr. Dold		X					
Mr. Schweikert		X					
Mr. Grimm		X					
Mr. Canseco		X					
Mr. Stivers		X					
Mr. Fincher		X					

4. An amendment offered by Ms. Waters, no. 5, to provide that the FSOC can overturn a regulation with a 2/3 vote if a majority of the FSOC determines that the primary purpose of a regulation is to protect older Americans, was not agreed to by a record vote of 25 yeas and 32 nays (Record vote no. FC-35).

RECORD VOTE NO. FC-35

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus		X		Mr. Frank (MA)	X		
Mr. Hensarling		X		Ms. Waters	X		
Mr. King (NY)		X		Mrs. Maloney	X		
Mr. Royce		X		Mr. Gutierrez			
Mr. Lucas		X		Ms. Velázquez	X		
Mr. Paul				Mr. Watt	X		
Mr. Manzullo		X		Mr. Ackerman	X		
Mr. Jones	X			Mr. Sherman	X		
Mrs. Biggert		X		Mr. Meeks	X		
Mr. Gary G. Miller (CA)		X		Mr. Capuano	X		
Mrs. Capito		X		Mr. Hinojosa	X		
Mr. Garrett		X		Mr. Clay	X		
Mr. Neugebauer		X		Mrs. McCarthy (NY)			
Mr. McHenry		X		Mr. Baca	X		
Mr. Campbell		X		Mr. Lynch	X		
Mrs. Bachmann		X		Mr. Miller (NC)	X		
Mr. McCotter		X		Mr. David Scott (GA)	X		
Mr. McCarthy (CA)		X		Mr. Al Green (TX)	X		
Mr. Pearce		X		Mr. Cleaver	X		

RECORD VOTE NO. FC-35—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Posey		X	.....	Ms. Moore	X	.....	.....
Mr. Fitzpatrick		X	.....	Mr. Ellison			
Mr. Westmoreland		X	.....	Mr. Perlmutter	X	.....	.....
Mr. Luetkemeyer		X	.....	Mr. Donnelly	X	.....	.....
Mr. Huizenga		X	.....	Mr. Carson	X	.....	.....
Mr. Duffy		X	.....	Mr. Himes	X	.....	.....
Ms. Hayworth		X	.....	Mr. Peters	X	.....	.....
Mr. Renacci		X	.....	Mr. Carney	X	.....	.....
Mr. Hurt		X	.....			
Mr. Dold		X	.....			
Mr. Schweikert		X	.....			
Mr. Grimm		X	.....			
Mr. Canseco		X	.....			
Mr. Stivers		X	.....			
Mr. Fincher		X	.....			

The following amendments and motion were also considered by the Committee:

1. An amendment offered by Mr. Miller of North Carolina, no. 2, to require that when an insured depository institution submits a comment to the CFPB it shall also provide appropriate Federal banking agencies with a report stating how the institution expects the proposed rule to affect the safety and soundness of the institution and a report detailing how a proposed rule affects the profitability of the institution, was not germane.

2. An amendment offered by Mrs. Maloney, no. 3, to prevent the FSOC from considering profitability when determining if a proposed rule affects the safe and sound operations of the financial institution, was offered and withdrawn.

3. A motion offered by Mrs. Biggert, to move the previous question on H.R. 1315 was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held a hearing and made findings that are reflected in 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 establishes the following performance related goals and objectives for this legislation:

The purpose of H.R. 1315 is to enhance FSOC oversight and review of regulations proposed by the CFPB. The bill achieves its purpose by making three changes to the Dodd-Frank Act. Firstly, H.R. 1315 changes the voting scheme required to set aside CFPB regulations from two-thirds of the FSOC's voting membership to a simple majority, excluding the Director of the CFPB. Secondly, the bill clarifies that the FSOC *must* set aside any CFPB regulation that is inconsistent with the safe and sound operations of U.S. financial institutions. Thirdly, H.R. 1315 removes any time restrictions imposed on the FSOC in reviewing CFPB regulations on the safe and sound operation of the banking system.

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:

MAY 20, 2011.

Hon. SPENCER BACHUS,
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. 1315, the Consumer Financial Protection Safety and Soundness Improvement Act of 2011.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 1315—Consumer Financial Protection Safety and Soundness
Improvement Act of 2011*

H.R. 1315 would amend the statute that authorizes the Financial Stability Oversight Council (FSOC) to delay implementation or set aside final regulations developed by the Consumer Financial Protection Bureau (CFPB). The FSOC may, under current law, stay the effective date of a regulation or set aside a regulation developed by the CFPB upon a vote of two-thirds of the members affirming that the regulation would put the safety and soundness of the United States banking system or the stability of the United States financial system at risk. H.R. 1315 would require the FSOC to take such action if a majority of the members affirm that a regulation is inconsistent with the safe and sound operations of domestic financial institutions.

Based on information from the Treasury, CBO estimates that enacting H.R. 1315 would not significantly affect direct spending and would not affect revenues. Because enacting H.R. 1315 could affect direct spending, pay-as-you-go procedures apply.

CBO expects that the number of regulations that could come to a vote by the FSOC would not change significantly as a result of the bill; further, changing the margin of votes to approve a stay or

set aside a regulation would probably not have a significant effect on the cost of operating the FSOC or the CFPB.

H.R. 1315 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

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

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

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

EARMARK IDENTIFICATION

H.R. 1315 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Act may be cited as the “Consumer Financial Protection Safety and Soundness Improvement Act of 2011.”

Section 2. Council voting procedure

Section Two would change the vote required to set aside a CFPB regulation from two-thirds of the FSOC membership to a simple majority, excluding the Director of the CFPB.

Section 3. Review authority of the Council

Section Three would clarify that the FSOC *must* set aside any CFPB regulation that is inconsistent with the safe and sound operations of U.S. financial institutions, rather than merely allowing the FSOC to review, stay or block CFPB regulations or provisions that would “put the safety and soundness of the United States banking system or the stability of the financial system at risk.”

Further, Section Three amends the time limits for the FSOC to review and vote on regulations. Section 1023 of the Dodd-Frank Act requires that the FSOC vote within the later of the following: (1) 45 days following the date of filing the petition, unless a stay is issued; or (2) the expiration of a stay issued by the FSOC. If a vote is not taken within these time limits, the petition is deemed to have been dismissed. Section Three removes these time limits.

Section Three also requires that all FSOC meetings be open to the public whenever it decides to stay or set aside a CFPB regulation.

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

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

* * * * *

TITLE X—BUREAU OF CONSUMER FINANCIAL PROTECTION

* * * * *

Subtitle B—General Powers of the Bureau

* * * * *

SEC. 1023. REVIEW OF BUREAU REGULATIONS.

(a) REVIEW OF BUREAU REGULATIONS.—On the petition of a member agency of the Council, the Council [may] *shall* set aside a final regulation prescribed by the Bureau, or any provision thereof, if the Council decides, in accordance with subsection (c), that the [regulation or provision would put the safety and soundness of the United States banking system or the stability of the financial system of the United States at risk] *regulation which is the subject of the petition is inconsistent with the safe and sound operations of United States financial institutions.*

* * * * *

(c) STAYS AND SET ASIDES.—

(1) * * *

* * * * *

(3) VOTE.—

(A) IN GENERAL.—The decision to issue a stay of, or set aside, any regulation under this section shall be made only with the affirmative vote in accordance with subparagraph (B) of [2/3] *a majority* of the members of the Council then serving, *excluding the Director of the Bureau.*

(B) AUTHORIZATION TO VOTE.—A member of the Council may vote to stay the effectiveness of, or set aside, a final regulation prescribed by the Bureau only if the agency or department represented by that member has—

(i) * * *

(ii) made an official determination, at a public meeting where applicable, that the regulation which is the subject of the petition [would put the safety and soundness of the United States banking system or the

stability of the financial system of the United States at risk] *is inconsistent with the safe and sound operations of United States financial institutions.*

(4) DECISIONS TO SET ASIDE.—

(A) * * *

[(B) TIMELY ACTION REQUIRED.—The Council may not issue a decision to set aside a regulation, or provision thereof, which is the subject of a petition under this section after the expiration of the later of—

[(i) 45 days following the date of filing of the petition, unless a stay is issued under paragraph (1); or

[(ii) the expiration of a stay issued by the Council under this section.]

[(C) (B) SEPARATE AUTHORITY.—The issuance of a stay under this section does not affect the authority of the Council to set aside a regulation.

[(5) DISMISSAL DUE TO INACTION.—A petition under this section shall be deemed dismissed if the Council has not issued a decision to set aside a regulation, or provision thereof, within the period for timely action under paragraph (4)(B).]

[(6) (5) PUBLICATION OF DECISION.—Any decision under this subsection to issue a stay of, or set aside, a regulation or provision thereof shall be published by the Council in the Federal Register as soon as practicable after the decision is made, with an explanation of the reasons for the decision.

[(7) (6) RULEMAKING PROCEDURES INAPPLICABLE.—The notice and comment procedures under section 553 of title 5, United States Code, shall not apply to any decision under this section of the Council to issue a stay of, or set aside, a regulation.

[(8) (7) JUDICIAL REVIEW OF DECISIONS BY THE COUNCIL.—A decision by the Council to set aside a regulation prescribed by the Bureau, or provision thereof, shall be subject to review under chapter 7 of title 5, United States Code.

(8) *PUBLIC MEETINGS.—Any time the Council meets pursuant to this section to decide whether to issue a stay of, or set aside, any regulation, every portion of such meeting shall be open to public observation.*

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MINORITY VIEWS

The Consumer Financial Protection Bureau (CFPB) is a very important part of the Wall Street Reform and Consumer Protection Act, as the title of the bill makes clear. Until passage of that Act, consumer protection in financial matters was in the hands of regulators who consistently treated consumer protection as a second class concern. Creating an independent bureau was intended to ensure that consumer interests are fully considered on the merits and not relegated to an afterthought.

H.R. 1315 would reverse this by restoring the prudential regulators' authority over consumer protection by providing that the Financial Stability Oversight Council (FSOC) could overrule, by majority vote, a CFPB regulation on any policy ground it deems appropriate. This would take away the very independence of the CFPB that the law intended to establish.

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