

CONSUMER FINANCIAL PROTECTION SAFETY AND
SOUNDNESS IMPROVEMENT ACT OF 2013

FEBRUARY 6, 2014.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

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. 3193]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3193) to amend the Consumer Financial Protection Act of 2010 to strengthen the review authority of the Financial Stability Oversight Council of regulations issued by the Bureau of Consumer Financial Protection, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 3193, the Consumer Financial Protection Safety and Soundness Improvement Act of 2013, amends the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”) to improve the Financial Stability Oversight Council’s (FSOC) review of regulations of the Consumer Financial Protection Bureau (CFPB) that may undermine the safety and soundness of U.S. financial institutions.

BACKGROUND AND NEED FOR LEGISLATION

Under section 1023 of the Dodd-Frank Act, CFPB regulations may not be set aside unless two-thirds of the FSOC’s voting membership votes to do so and the FSOC determines that the regula-

tion “puts the safety and soundness of the United States banking system or the stability of the financial system at risk.”¹ The supermajority threshold and the requirement that the regulation have a pervasive negative effect on the entire banking system are too stringent, especially when the regulations in question have been crafted by a Federal agency that lacks checks and balances in numerous other respects, and when one of the members voting on whether to set aside a CFPB regulation is the CFPB Director himself.

H.R. 3193 changes the vote required to set aside a CFPB regulation from two-thirds of the FSOC voting membership to a simple majority, excluding the Director of the CFPB. It modifies the standard for the FSOC’s review to permit a CFPB regulation be set aside if it is “inconsistent with the safe and sound operations of U.S. financial institutions.”

The legislation amends the time limits for the FSOC to review and vote on CFPB regulations, by striking section 1023 of the Dodd-Frank Act, which requires that the FSOC vote within the later of the following: (1) 45 days following the date of filing the petition challenging the CFPB regulation, unless a stay is issued; or (2) the expiration of a stay issued by the FSOC.

Finally, the bill amends section 1022 of the Dodd-Frank Act to specify that in prescribing a rule, the CFPB must consider “the impact of such rule on the financial safety and soundness of an insured depository institution.”

HEARINGS

The Committee on Financial Services’ Subcommittee on Financial Institutions and Consumer Credit held a hearing on H.R. 3193 on October 29, 2013.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 20, 2013, and ordered H.R. 3193 to be reported favorably to the House without amendment by a recorded vote of 32 yeas to 25 nays (recorded vote no. FC-43), a quorum being present.

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.

1. A motion by Chairman Hensarling to report the bill (H.R. 3193) without amendment to the House with a favorable recommendation was agreed to by a record vote of 32 yeas to 25 nays (recorded vote no. FC-43).

Record vote no. FC-43

¹The FSOC is an inter-agency body created by the Title I of the Dodd-Frank Act that is charged with identifying risks to the financial stability of the United States, promoting market discipline, and responding to emerging threats to the U.S. financial system. It is chaired by the Secretary of the Treasury, and consists of ten voting members, including the CFPB Director.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings 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 states that H.R. 3193, among other things, modifies the standard under which the FSOC may set aside a CFPB regulation.

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:

FEBRUARY 5, 2014.

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. 3193, the Consumer Financial Protection Safety and Soundness Improvement Act of 2013.

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,
Director.

Enclosure.

H.R. 3193—Consumer Financial Protection Safety and Soundness Improvement Act of 2013

Summary: H.R. 3193 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 bill also would require the CFPB, when developing a new rule, to consider the impact of

the rule on the financial soundness of an insured depository institution.

CBO estimates that enacting H.R. 3193 would increase direct spending by \$5 million over the 2014–2024 period; therefore, pay-as-you-go procedures apply. CBO estimates that enacting H.R. 3193 would not have a significant effect on revenues and implementing the bill would not affect discretionary costs.

H.R. 3193 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the federal government: The CFPB is permanently authorized to spend amounts transferred from the Federal Reserve; because that activity is not subject to appropriation, CFPB expenditures are recorded in the budget as direct spending.

CBO assumes that the bill will be enacted near the middle of fiscal year 2014 and that spending will follow historical patterns for the CFPB. H.R. 3193 would broaden the scope of items the CFPB must consider when prescribing new rules under consumer financial laws. Currently, the CFPB must consider both the potential costs to consumers and the effect on certain entities and consumers in rural areas. H.R. 3193 would direct the CFPB to consider the impact of a potential new rule on the financial safety or soundness of an insured depository institution as well.

Based on information from the CFPB, CBO estimates that the cost to enact H.R. 3193 would total \$5 million over the 2014–2024 period for additional staff costs associated with the new rulemaking requirement. We expect that the cost in any given year would not be significant.

The bill also would change the conditions under which the FSOC would stay the effective date or set aside a regulation developed by the CFPB. Based on information from the Treasury, CBO estimates that enacting those provisions of H.R. 3193 would not have a significant effect on direct spending or revenues.

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 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. 3193, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON FINANCIAL SERVICES ON NOVEMBER 21, 2013

	By fiscal year, in millions of dollars—														2014–2019	2014–2024
	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024					
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	0	0	3	5	

Note: Components may not sum to totals because of rounding.

Intergovernmental and private-sector impact: H.R. 3193 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Susan Willie; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Paige Piper/Bach.

Estimate 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. 3193 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee states that no provision of H.R. 3193 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee states that H.R. 3193 does not direct any rulemaking.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 3193 as the “Consumer Financial Protection Safety and Soundness Improvement Act of 2013.”

Section 2. Council voting procedure

This section changes the required 2/3 vote of the FSOC to set aside a CFPB regulation to a majority, excluding the Director of the CFPB.

Section 3. Review authority of the council

This section requires the FSOC to review a CFPB regulation if the regulation is “inconsistent with the safe and sound operations of United States financial institutions.” Under current law, FSOC review is permissive (not required) and the standard is whether the

CFPB regulation puts the “safety and soundness of the United States banking system or the stability of the financial system of the United States at risk.”

Section 4. Safety and soundness check

This section requires the Director of the CFPB, when proposing a rule under federal consumer financial laws, to consider the rule’s impact on the financial safety or soundness of an insured depository institution.

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):

CONSUMER FINANCIAL PROTECTION ACT OF 2010

**TITLE X—BUREAU OF CONSUMER
FINANCIAL PROTECTION**

* * * * *

Subtitle B—General Powers of the Bureau

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SEC. 1022. RULEMAKING AUTHORITY.

(a) * * *

(b) RULEMAKING, ORDERS, AND GUIDANCE.—

(1) * * *

(2) STANDARDS FOR RULEMAKING.—In prescribing a rule under the Federal consumer financial laws—

(A) the Bureau shall consider—

(i) the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; **[and]**

(ii) the impact of proposed rules on covered persons, as described in section 1026, and the impact on consumers in rural areas; *and*

(iii) *the impact of such rule on the financial safety or soundness of an insured depository institution;*

* * * * *

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 $[\frac{2}{3}]$ 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.

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MINORITY VIEWS

The Consumer Financial Protection Bureau (CFPB or Bureau) is the only bank regulator whose rules can be overturned by a vote of its fellow regulators on the Financial Stability Oversight Council (FSOC); an extraordinary limit on the CFPB's powers. The CFPB is also constrained by rulemaking requirements that do not exist at the other independent financial regulators. H.R. 3193 lowers the bar for overturning CFPB rules in two ways—decreasing the number of votes required by the FSOC and increasing the number of reasons a rule can be overturned.

Currently, 2/3 of the regulators on the Financial Stability Oversight Council must agree to overturn a CFPB rule. This bill lowers that threshold to a simple majority. The FSOC, which is composed of many of the same regulators who neglected to appropriately consider consumer protections in the run up to the 2008 Financial Crisis, would only need 5 votes, rather than the current 7, to overturn a CFPB rulemaking.

The bill also lowers the threshold the FSOC needs to consider overturning a CFPB rulemaking, by establishing a broad and vague standard that a rulemaking shall be reviewed if it is merely “inconsistent with the safe and sound operations of United States financial institutions.” By lowering the standard for overturning a rule the bill implies that consumer protection is somehow incompatible with the safe and sound operation of the financial system. However, it is readily apparent from the 2008 Financial Crisis that an increased focus on consumer protection would have benefitted the safety and soundness of the financial system, and that short-term profitability of complex financial products was not a reliable indicator of a financial institution's health. Prudential regulators cannot be empowered to undermine consumer protection regulations to preserve business models that rely on unfair, deceptive, or abusive acts and practices. It is in fact crucial to the safety and soundness of the financial system to have a strong and independent consumer financial product regulator.

The Dodd-Frank Wall Street Reform and Consumer Protection Act contains numerous provisions to enhance the safety and soundness of the financial system, including the creation of the Consumer Financial Protection Bureau. Opponents of the Dodd-Frank Act have steadfastly opposed all efforts to increase financial stability. It is clear that the purpose of H.R. 3193 is neither to increase regulatory certainty nor financial stability, but to impede the CFPB in its mission of protecting American consumers.

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