



Financial Services Management

GSIB Transparency

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H.R. 3948, Greater Supervision in Banking Act of 2021 (GSIB Act of 2021)

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Impact Assessment

- Much data GSIBs now consider proprietary would be made public.
- Much data GSIBs might find politically embarrassing or at the least controversial would also be disclosed.
- An array of climate-risk disclosures would raise challenging methodological and data-availability questions with which global and U.S. regulators are wrestling.
- Disclosures on "environmental racism" would prove particularly thorny in terms of both methodology and public response.
- GSIB data are likely not to be consistent or comparable, possibly permitting regulatory arbitrage.
- Differences between these disclosures and those required by the Fed and those of the SEC could be seen as grounds for investor litigation even if any FRB-prescribed calculation methodologies differ from those mandated by the SEC and can thus be explained. Activist-shareholder demands are sure to be heightened.
- Some data might lead regulators to seek rule or even statutory change or Members of Congress to call for it.

Overview

The House Financial Services Committee has approved legislation introduced by a progressive Democrat, Rep. Ayanna Pressley (D-MA), requiring GSIBs to disclose many quantitative and qualitative matters deemed necessary to assess the extent to which these very large banks engage in behavior that, while legal, treads on concerns related to systemic risk, racial equity, climate risk, incentive compensation, market concentration, and the Community Reinvestment Act. Many disclosures could bring to light information GSIBs have long considered proprietary that are required of none of their competitors nor of any other public company in the U.S. The extent to

which some required disclosures could even be quantified or compiled is in several cases thoroughly uncertain not only because the legislation's drafting is unclear, but also because there are currently no comparable, consistent, or even known ways to determine them. What observers would make of disclosures in terms of policy response is thus also likely subjective despite the bill's effort to craft objective analytical tools. However, GSIBs could be held to greater public and investor account.

Impact

GSIBs are defined in the U.S. by a Federal Reserve standard accompanied by regulatory reports and certain resulting public disclosures.¹ Some of the disclosures mandated by this bill build on current requirements, repeating demands for data on size but going on to cover a GSIB's subsidiary construct. These data are often already compiled by GSIBs either in connection with their GSIB-specific confidential filings or their resolution-planning requirements, but then not made public. The legislation's supporters believe these data would not only provide greater information on systemic risk, but perhaps also on tax avoidance; historically, it has remained confidential due to proprietary considerations such as ownership stakes and the complexity of providing both succinct and meaningful information.

As noted, much of the information demanded touches on politically-sensitive matters. These include disclosures of considerable complexity, detail, and uncertain substance related to a GSIB's trading desks. The purpose of these releases appears to be assessment of the extent to which the Volcker Rule as recently relaxed² effectively deters banned proprietary trading. However, as noted below, the bill's drafting does not distinguish prohibited from permissible trading, making an already-complex report still more challenging to compile and likely also less useful.

Other disclosures detailed below appear aimed at assessing the extent to which GSIBs provide services to low-income and minority-communities in compliance with the Community Reinvestment Act.³ All GSIBs would be required to make these disclosures even though four of the eight designated GSIBs do not generally provide retail banking services through brick-and-mortar branches, if they do so at all. Representations made about the total commitment of GSIBs to community finance based on averages across all GSIBs could also paint a misleading picture of actual activities by retail-focused companies.

Incentive compensation is another sore point. Federal regulators essentially gave up on complying with the Dodd-Frank requirement for rules aligning incentive compensation with safety and soundness, leaving a 2016 proposal unfinished to this day.⁴ Numerous new disclosures are intended to highlight not only incentive-compensation alignment, but also the pay disparities between senior offices and most employees as well as the minimum wages paid by banks germane to efforts to pass a federal minimum wage.

¹ See **GSIB8**, *Financial Services Management*, December 15, 2015.

² See *Client Report PROPTRADE26*, August 20, 2019.

³ See **CRA30**, *Financial Services Management*, October 13, 2020.

⁴ See **COMPENSATION33**, *Financial Services Management*, March 2, 2011.

However, climate-risk and environmental "racism" disclosures might prove both the most sensitive and the most challenging for GSIBs to compile. Required disclosures would include expansive and still more demanding versions of the "Scope 3" disclosures under consideration by global authorities and the SEC,⁵ as well as disclosures on the extent to which the GSIB restricts credit and other financial services to reduce climate risk. This disclosure is clearly aimed at pressing GSIBs to abandon fossil-fuel and similar entities, a demand strongly favored by progressive Democrats but just as strongly opposed by Republicans, who have bills pending to sanction any bank that does so.^{6,7}

The disclosures designed to assess a GSIB's "environmental racism" raise a host of new, politically charged issues with implications for CRA standards, bank-specific disclosures from the Biden Administration (see below), and activist-shareholder demands. Disclosures would be mandated for matters such as the extent to which prior consent has been obtained from those living close to financed "brown" activities (with many key definitions not made clear), the extent to which the GSIB's activities have "disproportionately" harmed communities of color or indigenous people (e.g., financing of oil facilities in low-income census tracts and for the companies that build them) and similar activities on indigenous lands "anywhere in the world." Disclosures are also to be made of any efforts to remediate environmental racism, an effort likely intended to force reparations in this arena.

What's Next

H.R. 3948 was introduced on June 16. The House Financial Services Committee reported it for floor consideration by a vote of 28-22 on June 23. Its prospects on the House floor are uncertain due to the narrow control Democrats have in that body. There is no companion or similar bill pending in the Senate. The measure's fate likely depends not so much on if it passes in the House but if it is at some point included in must-pass legislation.

While the legislative prospects for this measure are thus at best uncertain, the demands it makes are being heard in many other venues where targeted disclosures are possible. The most immediate of these is the climate-risk disclosures demanded by President Biden in an executive order on May 20.⁸ The federal banking agencies, SEC, and CFTC are independent agencies and not bound by this order, but the report Treasury will prepare within 180 days dictating near-term actions is to focus on disclosure; the independent agencies will doubtless then begin to act if they believe it feasible and appropriate to do so. The SEC has also already committed to develop climate-risk disclosures for publicly-traded companies along lines now racing to completion in an array of global bodies. FHFA has been considered an independent agency and thus not bound by this order, but a recent Supreme Court case removed the director's independence. It may thus not only take action along lines dictated in

⁵ See **GREEN6**, *Financial Services Management*, March 18, 2021.

⁶ See **ESG**, *Financial Services Management*, February 20, 2020.

⁷ See **SOCIALIMPACT**, *Financial Services Management*, April 5, 2019.

⁸ See **GREEN8**, *Financial Services Management*, May 25, 2021.

the Treasury report, but perhaps go farther given the high priority placed on climate risk and environmental justice in the housing sector.⁹

Analysis

Disclosures

GSIBs would need to disclose and the FRB would need to publish their disclosures on:

- a list of all subsidiaries and their relationship to business lines;
- the number and geographic location of all insured-depository branches;
- an array of data on enforcement actions, including those related to labor and safety along with the total number of relevant persons harmed;
- the number of employees dismissed for misconduct and if any were executives (undefined);
- capital-market activities, with data required also on trading-desk structure identifying each trading desk, what it traded, average trading inventory (calculated as defined in the bill) on long-, short-, securities positions and derivatives at each "individual" trading desk. The manner in which the GSIB complies with the Volcker Rule must also be detailed (including incentives to bar proprietary trading, with the bill not making clear if only impermissible proprietary trading is meant). Total trading profit and loss broken down in details prescribed in the bill is also to be posted;
- use of mandatory-arbitration clauses;
- compensation and clawback policies and how they are designed to promote accountability and how CEO and senior-officer compensation compares to median employee compensation (with this not making clear if only non-officers are to be considered as seems likely the bill's intent). A breakdown of compensation incentives (e.g., cross-selling) is also demanded along with the "minimum wage" paid to employees (presumably here meaning the lowest wage) and the number who receive it;
- whether third-party vendors pay minimum wage;
- board diversity and company diversity/inclusion policies;
- cybersecurity policy;
- the total number of whistleblower and employee ethics complaints, what these were about, and any resolutions;
- the GSIB's climate risk, its contribution to climate change, and its environmental "racism" impact in the U.S. and around the world. Reparations for environmental racism would also need to be detailed along with many other issues noted above; and
- recent M&A and its complexity impact, resulting retail-branch closures, and market-concentration impact. Any conditions placed on the transaction must also be disclosed along with a discussion of how the company's M&A has affected these factors over the past decade.

⁹ See **GSE-062821**, *GSE Activity Report*, June 28, 2021.