



July 27, 2023

Financial Stability Oversight Council
Attention: Mr. Eric Froman
1500 Pennsylvania Avenue, NW, Room 2308
Washington, DC 20220

Dear Mr. Froman,

Americans for Financial Reform Education Fund (“AFREF” or “we”) greatly appreciates the opportunity to comment on the Financial Services Oversight Council’s (“Council”) notification of and request for public comment on the **12 CFR Part 1310 Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies**. This proposal was released on April 21, 2023, together with the Council’s proposed Analytic Framework for Financial Stability Risk Identification, Assessment and Response (also 12 CFR Part 1310), for which AFR has submitted comments in a separate letter.

We strongly support the proposed Interpretive Guidance and believe it is urgently necessary to replace the 2019 guidance and restore the Council’s ability to execute its financial stability responsibilities through the systemic risk regulation of nonbanks. According to Title 1 of the Dodd-Frank Act, the Council is responsible for identifying risks to financial stability, promoting market discipline, and responding to emerging threats to the stability of the U.S. financial system.

Elimination of 2019 Guidance

AFREF agrees with the elimination of the 2019 Interpretive Guidance, which was a fundamentally sharp departure from the Council’s original approach to nonbank SIFI designations. The 2019 Guidance contains numerous embedded requirements and assumptions that undermine financial stability oversight by making a SIFI designation extremely difficult, if not impossible, to carry out. This includes a required focus on ‘Activities-based’ regulation and only allowing Systemically Important Financial Institution (“SIFI”) designations in cases of proven material financial distress, substantiated by quantitative evidence, and clearance of the cost-benefit test.

Restoration of Council Authorities

The proposed Interpretive Guidance empowers the Council to make use of its Dodd-Frank granted powers to deploy entity-based oversight of systemic risk if, and when, the need arises.

The key Dodd-Frank authority granted to the Council was the power to designate entities for prudential regulation by the Federal Reserve Board to address systemic gaps in oversight of nonbanks and the risks presented by the unregulated, “shadow bank” sector to financial system stability. Re-affirming this authority, the proposed Interpretive Guidance asserts that nonbank SIFI designations are permissible whenever material financial distress at a firm “could pose a threat” to U.S. financial stability, not “does threaten” U.S. financial stability.

Oversight of ‘Mega’ Nonbank Financial Institutions

The proposed Interpretive Guidance is important for the purpose of requiring a robust assessment if mergers among nonbank financial institutions would result in a “too-big-to-fail” SIFI. Despite exponential growth in assets accumulating on nonbank balance sheets, much of which is [subprime](#), our laws and regulations have not kept up, leaving policymakers and regulators in the dark as to the risky practices in some nonbanks that could affect other financial institutions, companies, and their workers. For these reasons, we strongly urge the Council and the Federal Reserve to move swiftly to designate relevant non-bank entities and formalize nonbank SIFI supervision, respectively.

Thank you for the opportunity to comment and for considering our responses to the proposal questions below. AFREF urges the Council to finalize the Interpretive Guidance and promptly use this tool to assess the largest, highest risk profile nonbanks for their systemic importance.

Sincerely,

Americans for Financial Reform Education Fund

FINANCIAL STABILITY OVERSIGHT COUNCIL 12 CFR Part 1310 Authority To Require Supervision and Regulation of Certain Nonbank Financial Companies

Appendix

Questions for Comment

1. Does the proposal (described above not to include in the Interpretive Guidance a description of the Council's substantive analytic approach to evaluating nonbank financial companies in the context of a designation under section 113 of the Dodd-Frank Act,) in favor of a separate framework that describes the Council's analytic approach without regard to the origin of a particular risk or the authority the Council may use to mitigate such risk, allow the Council to achieve its statutory purposes? Should the Council's proposed approach be modified for other considerations?

Yes. AFREF believes the proposal in favor of a separate framework on the Council's analytic approach allows the Council to achieve its statutory purposes.

2. Are there additional statutory terms beyond "company," "nonbank financial company supervised by the Board of Governors," and "material financial distress" for which the Council should set forth its interpretation in the Proposed Guidance?

No. AFREF does not recommend additional statutory terms, recognizing however that it may be necessary to re-consider the need for additional statutory terms in the future.

3. Would the Council's elimination of the 2019 Interpretive Guidance's interpretation of "threat to the financial stability of the United States" as meaning "the threat of an impairment of financial intermediation or of financial market functioning that would be sufficient to inflict severe damage on the broader economy" enable it to achieve its statutory purposes? When the Council interprets the statutory phrase "threat to the financial stability of the United States," are there additional factors it should consider?

Yes. AFREF believes the elimination of the 2019 Guidance's interpretation of "threat to the financial stability of the United States" would enable the Council to achieve its statutory purposes. We do not believe that there are other factors to consider.

4. Would removal of the prioritization of the "activities-based approach" from the interpretive guidance enable the Council to achieve its statutory purposes? Should the Council's proposed approach be modified for other considerations?

Yes. We agree that the removal of the prioritization of the "activities-based approach" from the interpretive guidance enables the Council to achieve its statutory purposes. We do not see the need to consider additional modifications.

5. Are there additional steps the Council should take to ensure all its authorities for addressing potential risks to U.S. financial stability are equally available and appropriately exercised?

No. AFREF does not believe additional steps are necessary to ensure all of the Council's authorities for addressing potential risks to U.S. financial stability are equally available and appropriately exercised. We strongly urge prompt finalization and implementation of the guidance.

6. Would the proposed staff-level process for identifying nonbank financial companies for preliminary evaluation enable the Council to achieve its statutory purposes? Does the Proposed Guidance identify the appropriate procedures the Council should follow as it considers a company for potential designation? Are there other means of identifying companies for preliminary review the Council should consider, such as the application of specific metrics for different sectors of the nonbank financial system?

Yes. We believe that the proposed staff-level process for identifying nonbank financial companies for preliminary evaluation enables the Council to achieve its statutory purposes. We believe Proposed Guidance identifies the appropriate procedures for the Council to follow as it considers a company for potential designation.

7. If the Council were to establish a set of uniform quantitative metrics to identify nonbank financial companies for further evaluation, as it did through the Stage 1 thresholds in the 2012 Interpretive Guidance, what metrics should the Council consider?

AFREF believes the Council should consider the original Stage 1 quantitative thresholds to identify nonbank financial companies for further evaluation.

8. Does the Council's proposal described above to remove from the interpretive guidance provisions the discussion of the Council conducting a cost-benefit analysis and assessing the likelihood of a company's material financial distress allow the Council to achieve its statutory purposes? Should the Council's proposed approach be modified for other considerations?

Yes. AFREF agrees that the proposed Interpretive Guidance will be strengthened, allowing for the Council to achieve its statutory purposes, with the removal of the cost benefit analysis and the assessment of a company's material financial distress from the current guidance.

9. Are there additional points the Council should consider regarding the usefulness, practicality, or feasibility of conducting a cost-benefit analysis regarding the designation of a company under Title I, Section 113?

No. AFREF does not recommend additional points for consideration regarding cost-benefit.

10. What data or factors should the Council consider in evaluating the potential risk to U.S. financial stability that could be posed by the failure of a company, should that company experience material financial distress?

AFREF believes the data and factors in the Council's original Stage 1 review should be reinstated for purposes of informing Stage 1 review and assessment. This includes establishing and applying quantitative thresholds for reviewing potential designees.

11. If the Council were to identify a nonbank financial company as likely to experience material financial distress, what, if any, effects would such identification have when it became public knowledge?

The effects of publicly identifying a nonbank company as likely to experience material financial distress are dependent on the circumstances. In many cases investors will already have information that leads them to concerns.