



May 13, 2026

Financial Stability Oversight Council
Attn: Eric Froman, Office of General Counsel
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Re: Notification of Proposed Interpretive Guidance: Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies (12 C.F.R. Part 1310), RIN 4030-ZA02

Dear Mr. Froman:

The Housing Policy Council¹ (“HPC”) appreciates the opportunity to submit comments on the Financial Stability Oversight Council’s (the “Council”) proposed revisions to its interpretive guidance on nonbank financial company determinations and the analytic framework for financial stability risks (the “Proposed Guidance”).²

HPC members have a direct interest in the Council’s authorities to identify risks to the financial stability of the United States and to designate nonbank financial companies for supervision by the Federal Reserve Board. HPC members are among the nation’s largest originators and servicers of residential mortgages. Our members also have business relationships with the nation’s leading companies engaged in the securitization of residential mortgages, including the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Corporation (“Freddie Mac”).

HPC supports the Proposed Guidance. As discussed below, the Proposed Guidance would reintroduce certain key interpretations that HPC supports but were removed in 2023, including the prioritization of the activities-based approach over company designations and the requirement that a designation be subject to a cost-benefit analysis. The Proposed Guidance also includes new provisions that would improve the ability of the Council to address risks to

¹ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth building for families. For more information, visit www.housingpolicycouncil.org.

² <https://home.treasury.gov/system/files/261/FSOC-2026-Proposed-Nonbanks-Guidance.pdf>.

financial stability, most notably a focus on the risk vulnerabilities created by regulations that are not fit for purpose.

The Activities-Based Approach

The Proposed Guidance would return to the 2019 “activities-based approach” to address risks to the financial stability of the United States. That approach relies upon federal and state regulators to address such risks before the Council would consider designating a nonbank financial company for supervision by the Federal Reserve Board.

HPC supports the reintroduction of the activities-based approach. The activities-based approach leverages the experience and expertise of relevant financial regulatory agencies, tailoring the response to the identified risk for the companies engaged in the activity and to their existing supervisory framework. The activities-based approach also reduces the potential for competitive market distortions that could arise from company specific designations.

The Council's 2020 activities-based review of the secondary mortgage market demonstrates the merits of leveraging Council member expertise to identify potential risks and mitigants. A working group composed of Council members reviewed secondary mortgage market activities with a focus on Fannie Mae and Freddie Mac (“the GSEs”) as the key providers of secondary market liquidity and on the regulatory framework governing those activities.³ The resulting report affirmed potential risks to financial stability arising from distress at the GSEs and identified regulatory measures that could help mitigate those risks. The Council reviewed in particular the then-proposed GSE capital regulation, presenting key findings in its report that were considered by the GSEs’ primary regulator before it finalized that rulemaking.

New Notification Process

We also support the proposed notification process that would supplement the section 120 process for addressing risks identified under the activities-based approach.⁴ The proposed notification would be an effective alternative to designation since it would motivate the appropriate financial regulatory agencies to undertake supervisory actions that address identified risks in a timely and effective manner. Under the notification process, a financial regulatory agency, after being notified by the Council of a risk posed by a financial activity or practice, would be required to provide the Council with detailed information regarding proposed supervisory actions to address the risk, the anticipated effects of those actions, and the expected timeline for implementation.

³ Financial Stability Oversight Council, *Statement on Activities-Based Review of Secondary Mortgage Market Activities* (Sept. 25, 2020), available at <https://home.treasury.gov/news/press-releases/sm1136>.

⁴ Under the section 120 process, the Council may make nonbinding recommendations to a financial regulatory agency to address the risks associated with a particular financial activity or practice.

Cost-Benefit Analysis

The Proposed Guidance would require the Council to perform a cost-benefit analysis before designating a nonbank financial company for supervision by the Federal Reserve Board, and the Council could make such a designation only if the expected benefits to financial stability from the designation would justify the expected costs that the designation would impose. This is another policy originally adopted by the Council in 2019 but removed in 2023. We support its reintroduction. A rigorous cost-benefit analysis is consistent with thoughtful decision making. Such an analysis would require the Council to consider relevant trade-offs and alternatives.

In 2023, the Council removed the cost-benefit analysis because it is not explicitly required by the Dodd-Frank Act. Yet, for over 30 years, since the issuance of Executive Order 12866, federal agencies have been required to conduct cost-benefit analysis of regulatory actions as a matter of good public policy.⁵ As stated in that Order, “The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society.” This policy should apply to the Council’s actions.

In 2023, the Council concluded that it was not feasible to conduct a realistic evaluation of the costs and benefits of a potential designation.⁶ The Proposed Guidance addresses this concern by including a list of potential costs that should be considered in connection with a proposed designation, including an assumption that the Council may consider the costs on the nonbank if the Federal Reserve imposed prudential standards similar to those imposed on bank holding companies with at least \$250 billion in assets under section 165 of the Dodd-Frank Act. The identification of these potential costs should help to inform and facilitate the cost-benefit analysis.

Risk Vulnerabilities

The Proposed Guidance includes an updated list of the types of vulnerabilities that most commonly contribute to potential risks to U.S. financial stability, including impediments to economic growth and economic security. According to the preamble to the Proposed Guidance, this would require the Council to work with member agencies to consider whether elements of the U.S. financial regulatory framework are fit for purpose or impose undue burdens that could constrain economic growth, thereby posing a potential risk to U.S. financial stability. We welcome this addition and support the Council in aligning actions taken pursuant to financial

⁵ Executive Order 12866, September 30, 1993.

⁶ 88 Federal Register 26238 (April 28, 2023) (“Further, even if the potential cost of designation were a “risk-related factor,” the Council does not believe that prescribing a cost-benefit analysis prior to a determination under section 113 is useful or appropriate. This is in part because it is not feasible to estimate with any certainty the likelihood, magnitude, or timing of a future financial crisis.”).

stability considerations with a broader interest in economic growth and dynamic financial markets.

The Likelihood of Material Financial Distress and the Threat to Financial Stability

The first determination standard in section 113 of the Dodd-Frank Act requires the Council to determine that material financial distress at the nonbank financial company could pose a threat to the financial stability of the United States. The Proposed Guidance would make two material changes related to this standard, both of which we support.

First, as part of an assessment of the benefits of a designation, the Proposed Guidance would require the Council to assess the likelihood of a nonbank financial company's material financial distress. This requirement was included in the Council's 2019 interpretive guidance but was removed in 2023. We support the reintroduction of this requirement. Under this requirement, the Council must focus on whether a company poses an actual risk to financial stability, not just a potential or speculative risk. Moreover, the requirement that the Council assess the likelihood of a nonbank financial company's material financial distress prevents inappropriate designations, which are not likely to be supported by an entity's primary functional regulator.

Second, the Proposed Guidance would revise the interpretation of what constitutes a "threat to the financial stability of the United States." Such a threat is defined as "the threat of an impairment of financial intermediation or of financial market functioning to a degree that would be sufficient to inflict severe damage on the broader U.S. economy." This proposed interpretation represents a higher threshold than the one established by the Council in 2023.⁷ Establishing this higher threshold is consistent with the statutory intent to direct scarce regulatory resources to address material risk to the system.

Addressing a Threat to Financial Stability

The Proposed Guidance would add a new procedural step to the designation process. It states that the Council would identify steps a nonbank financial company or financial regulatory agencies could take to address a potential threat to the financial stability of the United States. We support this change as it is in harmony with the fundamental objective here – to reduce systemic risk. As the Proposal suggests, it also would improve the ability of Council member agencies to quickly and efficiently address potential risks, which may reduce the likelihood of more intrusive interventions and the associated higher compliance costs.

⁷ The Council's current interpretation, which was adopted in 2023, interprets a threat to the financial stability of the United States to mean "events or conditions that could 'substantially impair' the financial system's ability to support economic activity."

Consolidation of Interpretive Guidance and Analytic Methodologies

The Proposed Guidance would merge the descriptions of its nonbank financial company designation process and its analytic methodologies for financial stability risks into a single document, reproducing the structure of the 2019 Interpretive Guidance. Incorporating guidance on the designation process and the analytic methodologies for financial stability risks would be beneficial for stakeholders. Consolidation reinforces the consistent justification and framework for these interrelated policies.

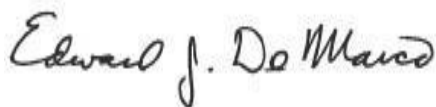
Stage 1 Review

In 2023, the Council removed a requirement for a formal vote to initiate the Stage 1 review of a company that was in the Council's 2019 interpretive guidance. We recommend that the Council use this opportunity to reinstate this requirement. Given the statutory duty of Council members to participate in the critical determination to designate a company (or not), and the significance of a designation, all stages of the designation process should be subject to consideration and formal agreement by the members of the Council. Delegating the start of the process to staff not only diminishes Council members' personal responsibility for the designation process but also could result in an inappropriate expenditure of the Council's resources. Moreover, as the Council stated when it initially imposed the voting requirement for Stage 1 in 2019, a formal vote by the Council before considering a nonbank financial company for a potential determination "will help ensure that sufficient analysis has been conducted in the activities-based approach."⁸

Conclusion

Financial stability is a matter of utmost concern to HPC and its members. For the reasons given above, we believe the Proposed Guidance will improve the ability of the Council, its member agencies and other financial regulators to identify and address risks to financial stability. If you have any questions regarding these comments, please do not hesitate to contact us.

Yours truly,



Edward J. DeMarco
President
Housing Policy Council

⁸ 84 Federal Register 71749 (December 30, 2019).