May 14, 2026

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

RE: Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies (RIN 4030 – ZA02)

Dear Mr. Froman:

The undersigned associations write to express our support for the Financial Stability Oversight Council's ("FSOC") proposed interpretive guidance ("Proposed Guidance")[1] governing the designation of nonbank financial companies as systemically important financial institutions ("SIFIs").

[1] U.S. Treasury, Financial Stability Oversight Council, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies (March 30, 2026).

The Proposed Guidance largely reinstates key provisions of the 2019 interpretive guidance ("2019 Guidance")[2] while incorporating several new processes into FSOC's procedures and analytic methodologies. The Proposed Guidance reflects analytical rigor, objectivity, transparency, and due process at FSOC, with the intent of ensuring that well-regulated nonbank financial companies are not designated without appropriate justification and evaluation.

Our organizations supported the 2019 Guidance, which appropriately balanced FSOC's mandate to identify and address emerging threats to U.S. financial stability with important due process protections for any nonbank financial company under consideration for supervision by the Federal Reserve Board. The 2019 Guidance prioritized an activities-based approach to addressing any potential systemic risk and included a clear commitment to conduct a cost-benefit analysis and assess the likelihood of financial distress or failure for any nonbank financial company under consideration for designation. Relying on the clear parameters set forth in the 2019 Guidance, nonbank financial companies across a variety of industry sectors, on their own initiative and/or in coordination with their primary regulator, took steps to enhance their resilience and resolvability.

The 2023 Guidance[3] represented a significant procedural and substantive departure from FSOC's approach to addressing potential systemic risks. The changes implemented in 2023 would have made it easier to designate nonbank financial companies, including the following:

- First, FSOC eliminated the requirement under the 2019 Guidance to prioritize an activities-based approach to assessing potential risks to U.S. financial stability, while easing the path for designation so that it is no longer a tool of last resort.
- Second, FSOC expanded the industries and activities that could be designated.
- Third, FSOC lowered the threshold for what constitutes a systemic threat, giving it authority to investigate companies that may not pose a threat to the financial stability of the broader U.S. economy.
- Fourth, FSOC eliminated its commitment to conduct a cost-benefit analysis for a nonbank financial company under consideration for designation.

[2] U.S. Treasury, Financial Stability Oversight Council, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies (December 30, 2019).

[3] *U.S. Treasury, Financial Stability Oversight Council,* Guidance on Nonbank Financial Company Determinations (November 17, 2023).

- Fifth, FSOC eliminated its commitment to assess the likelihood of material financial distress for a nonbank financial company under consideration for designation.
- Sixth, the Analytic Framework finalized in tandem with the 2023 Guidance lacked transparency and failed to clarify how FSOC weighs the statutorily listed vulnerabilities to assess risks and determine nonbank designations.

As our organizations emphasized in our July 14, 2025 letter to Treasury Secretary Bessent, the designation of a nonbank financial company should be a tool of last resort.[4] Designation results in the supervision of a nonbank financial company by the Federal Reserve Board. The onerous and costly supervision, examination, and regulation requirements associated with such supervision are not appropriate for nonbank financial companies and may conflict with the business model of a company or impair the economics of offering certain products or services. Although Congress granted FSOC the authority to designate nonbank financial companies as SIFIs, we agree with the Proposed Guidance that designations without clear systemic risk justifications undermine our capital markets' competitiveness and may increase vulnerability to economic shocks. Specifically, designated companies could become more vulnerable to "competitive distortions" where "market shares and pricing may shift for reasons unrelated to efficiency or product quality" without increasing systemic risk protection.[5] Concerns with being subject to inapt bank-like regulation could have a chilling effect on these companies' willingness to grow and innovate, potentially leading to negative market impacts and customers facing higher costs and less choice in financial products.

Consistent with the themes highlighted in our July 2025 letter, we focus our comments below on the Proposed Guidance's positive changes related to the (1) activities-based approach to addressing any potential systemic risk; (2) cost-benefit analysis; and (3) assessment of the likelihood of material financial distress.

Restoring Priority to the Activities-Based Approach to Addressing Any Potential Systemic Risk

Under the Proposed Guidance, FSOC would reprioritize the activities-based approach to addressing any potential systemic risk, consistent with the Council's goal of identifying and effectively addressing potential risks to U.S. financial stability on a system-wide basis. An activities-based approach is aligned with the important lessons learned from the 2016 decision to invalidate MetLife's designation as a SIFI by the U.S.

[4] U.S. Chamber of Commerce and Various Financial Trade Associations, Letter encouraging FSOC to restore the 2019 Guidance (July 14, 2025).

[5] Proposed Guidance at 15558.

District Court for the District of Columbia in MetLife, Inc. v. Fin. Stability Oversight Council (the "MetLife case").[6]

The proposed two-step process for the utilization of the activities-based approach – first, monitoring financial markets and developments on a system-wide basis and second, working with the relevant agency to respond to any potential risk – would ensure that the Council appropriately relies on the expertise of federal and state regulators to address specific potential risks to financial stability before FSOC considers a nonbank financial company for potential designation. Leveraging the expertise of primary financial regulators is a critical component of the activities-based approach to addressing potential risks on a system-wide basis.

Since truly systemic risks are likely to transcend individual companies and span industries and markets, adopting an activities-based approach would allow FSOC to focus first on activities that could present risk to the system, rather than on individual companies. This approach would allow FSOC to better accomplish its mandate to identify risks to U.S. financial stability and respond more nimbly to emerging threats.

We also support FSOC's intention to add to the activities-based approach by establishing a process by which FSOC may, in certain cases, notify a member agency of a potential risk to U.S. financial stability. Under this process, FSOC would allow a specified period for the agency to respond in writing regarding the actions it proposes to take to address the potential risk. We also welcome FSOC's addition of a new procedural step in the SIFI designation process by which FSOC would identify steps that a nonbank financial company or financial regulatory agency could take to mitigate a potential threat to U.S. financial stability. We agree with FSOC that providing an opportunity to mitigate identified risks enhances transparency and would result in a more effective approach to addressing a potential threat.[7]

Reinstating a Cost-Benefit Analysis

Our organizations strongly support FSOC's intention to perform a cost-benefit analysis prior to making a determination to designate a nonbank financial company as a SIFI. Despite the importance of this critical due process safeguard having been affirmed by the court in the MetLife case, the 2023 Guidance eliminated it without reasonable justification.

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[6] *MetLife, Inc. v. Fin. Stability Oversight Council*, 177 F. Supp. 3d 219 (D.D.C. 2016).

[7] U.S. Treasury, Press Release, Financial Stability Oversight Council Issues Proposed Guidance on Nonbank Financial Company Designations (March 25, 2026).

Requiring a cost-benefit analysis will enable FSOC to make objective assessments regarding potential systemic risks. Without a cost-benefit analysis, FSOC cannot adequately assess whether SIFI designation would do more harm than good to the U.S. economy, the nonbank financial company under review, and customers. A cost-benefit analysis also supports the evaluation of reasonably effective alternatives, including actions pursued through an activities-based approach, that may be less costly than designation. In addition, a robust cost-benefit analysis can help FSOC determine whether a proposed designation would effectively mitigate the identified threat and whether it would result in significant competitive disadvantages relative to peer firms not subject to Federal Reserve supervision.

As it did in 2019, FSOC should commit to designating a nonbank financial company only as a measure of last resort, and only where the expected benefits to financial stability from Federal Reserve Board supervision and prudential standards justify the expected costs such a designation would impose.

Reinstating the Assessment of the Likelihood of Material Financial Distress

Our organizations also strongly support FSOC's intention to assess the likelihood of material financial distress prior to making a determination to designate a nonbank financial company as a SIFI. As with a cost-benefit analysis, this is a critical due process safeguard affirmed by the court in the MetLife case.

Materiality and a discernible risk of company distress or failure should be essential elements of any FSOC decision to review an activity or entity. By eliminating the requirement to consider a company's likelihood of financial distress, the 2023 Guidance allows FSOC to treat an entity with only a remote chance of impacting financial stability the same as an entity with a more imminent risk. Since we do not believe that this was the intent of the Dodd-Frank Act, we appreciate FSOC's proposal to reinstate the assessment of the likelihood of material financial distress.

Conclusion

The Proposed Guidance represents a return to procedures that appropriately balance FSOC's mandate to identify and address emerging threats to U.S. financial stability with the incorporation of important due process and cost-benefit provisions for any nonbank financial company under consideration for supervision by the Federal Reserve Board. We are encouraged by FSOC's intention to proceed with a transparent and analytically rigorous process as it attends to its mandate.

Our organizations welcome the opportunity to work with you as FSOC finalizes and implements the Proposed Guidance.

Sincerely,

U.S. Chamber of Commerce
Alternative Investment Management Association
American Council of Life Insurers
American Property Casualty Insurance Association
Blockchain Association
Crypto Council for Innovation
Financial Technology Association
Finseca
Insured Retirement Institute (IRI)
Investment Adviser Association
Investment Company Institute
LSTA, Inc.
MFA
Mortgage Bankers Association
Nareit
National Association of Mutual Insurance Companies
Reinsurance Association of America (RAA)
SIFMA AMG
The Digital Chamber
The Real Estate Roundtable