

Billing Code 4810-25-P

FINANCIAL STABILITY OVERSIGHT COUNCIL

12 CFR Chapter XIII

Advance Notice of Proposed Rulemaking Regarding Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies

AGENCY: Financial Stability Oversight Council.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “DFA”) gives the Financial Stability Oversight Council (the “Council”) the authority to require that a nonbank financial company be supervised by the Board of Governors of the Federal Reserve System (“Board of Governors”) and subject to prudential standards if the Council determines that material financial distress at such a firm, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the firm, could pose a threat to the financial stability of the United States.

This advance notice of proposed rulemaking (ANPR) invites public comment on the criteria that should inform the Council’s designation of nonbank financial companies under the DFA.

DATES: Comments on this ANPR must be received by [INSERT DATE 30 DAYS AFTER FEDERAL REGISTER PUBLICATION]

ADDRESSES: Interested persons are invited to submit comments regarding this advance notice of proposed rulemaking according to the instructions for “Electronic Submission of Comments” below. All submissions must refer to the document title. The FSOC encourages the early submission of comments.

Electronic Submission of Comments. Interested persons must submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the FSOC to make them available to the public. Comments submitted electronically through the www.regulations.gov website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through the method specified above. Again, all submissions must refer to the docket number and title of the notice.

Public Inspection of Public Comments. All properly submitted comments will be available for inspection and downloading at www.regulations.gov.

Additional Instructions. Please note the number of the question to which you are responding at the top of each response. Though the responses will be screened for obscenities and appropriateness, in general comments received, including attachments and other supporting materials, are part of the public record and are immediately available to the public. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: For further information regarding this interim final rule contact the Office of Domestic Finance, Treasury, at (202) 622-1703.

All responses to this Notice and Request for Information should be submitted via www.regulations.gov to ensure consideration.

SUPPLEMENTARY INFORMATION:**I. BACKGROUND**

The Council was established by section 111 of the DFA for the purposes of “ (A) . . . identify[ing] risk to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (B) . . . promot[ing] market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and (C) . . . respond[ing] to emerging threats to the stability of the United States financial system.” The Council has ten voting members and 5 nonvoting members. The voting members consist of the Secretary of the Treasury who also is the Chairperson of the Council, the Chairman of the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Bureau of Consumer Financial Protection, the Chairman of the Securities and Exchange Commission, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the Commodity Futures Trading Commission, the Director of the Federal Housing Finance Agency, the Chairman of the National Credit Union Administration Board, and an independent member appointed by the President with the advice and consent of the Senate, having insurance expertise. The nonvoting members are the Director of the Office of Financial Research, the Director of the Federal Insurance Office, and a State insurance commissioner, a State banking supervisor, and a State securities commissioner, each designated by a selection process determined by their respective state supervisors or commissioners.

Through this ANPR the Council is seeking to gather information as it begins to develop the specific criteria and analytical framework by which it will designate nonbank financial companies¹ for enhanced supervision under the DFA.

a. Considerations in making a determination

Under the provisions of the DFA, in making a determination on whether the company should be subject to supervision by the Board of Governors, the Council must consider:

- (A) The extent of the leverage of the company;
- (B) The extent and nature of the off-balance-sheet exposures of the company;
- (C) The extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;
- (D) The importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;
- (E) The importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact that the failure of such company would have on the availability of credit in such communities;
- (F) The extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;
- (G) The nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

¹ As defined in Section 102(a)(4) of DFA.

- (H) The degree to which the company is already regulated by 1 or more primary financial regulatory agencies;
- (I) The amount and nature of the financial assets of the company;
- (J) The amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and
- (K) Any other risk-related factors that the Council deems appropriate.

The Council must consider similar factors in determining whether a foreign nonbank financial company should be designated and its U.S. operations and activities subject to supervision by the Board of Governors. In addition, the Council must consider the factors relevant to a U.S. or foreign nonbank financial company in determining whether a U.S. or foreign company, respectively, should be designated for supervision by the Board of Governors under the special anti-evasion provisions in section 113(c) of the DFA.

b. Process for making a determination

Under the provisions of the DFA, the Council must provide a nonbank financial firm with advance notice that it plans to designate the firm, and the firm has up to 30 days to request a hearing and an additional 30 days to submit material. Upon holding a hearing, the Council has up to 60 days to make a final determination. If a firm does not make a timely request for a hearing, the Council must notify the firm of its final determination within 40 days of the firm's receipt of advance notice from the Council. In making a determination, the Council must consult with the primary financial regulator, if any, of the affected firm, and with the appropriate foreign

regulatory authorities as appropriate.² Once designated, the Council must reevaluate its determination regarding each designated firm at least annually. Council designations are subject to judicial review. The Council is not requesting comments on these procedural requirements.

² Under Section 113(f), the Council may waive the requirements on an emergency basis if necessary to prevent or mitigate threats to financial stability.

II. CRITERIA FOR DESIGNATION

1. What metrics should the Council use to measure the factors it is required to consider when making determinations under Section 113 of DFA?
 - a. How should quantitative and qualitative considerations be incorporated into the determination process?
 - b. Are there some factors that should be weighted more heavily by the Council than other factors in the designation process?
2. What types of nonbank financial companies should the Council review for designation under DFA? Should the analytical framework, considerations, and measures used by the Council vary across industries? Across time? If so, how?
3. Since foreign nonbank companies can be designated, what role should international considerations play in designating companies? Are there unique considerations for foreign nonbank companies that should be taken into account?
4. Are there simple metrics that the Council should use to determine whether nonbank financial companies should even be considered for designation?
5. How should the Council measure and assess the scope, size, and scale of nonbank financial companies?
 - a. Should a risk-adjusted measure of a company's assets be used? If so, what methodology or methodologies should be used?
 - b. Section 113 of DFA requires the Council to consider the extent and nature of the off-balance-sheet exposures of a company. Given this requirement, what should be considered an off-balance sheet exposure and how should they be assessed? How

- should off-balance sheet exposures be measured (e.g., notional values, mark-to-market values, future potential exposures)? What measures of comparison are appropriate?
- c. How should the Council take managed assets into consideration in making designations? How should the term “managed assets” be defined? Should the type of asset management activity (e.g., hedge fund, private equity fund, mutual fund) being conducted influence the assessment under this criterion? How should terms, conditions, triggers, and other contractual arrangements that require the nonbank financial firm either to fund or to satisfy an obligation in connection with managed assets be considered?
 - d. During the financial crisis, some firms provided financial support to investment vehicles sponsored or managed by their firm despite having no legal obligation to do so. How should the Council take account of such implicit support?
6. How should the Council measure and assess the nature, concentration, and mix of activities of a nonbank financial firm?
- a. Section 113 of DFA requires the Council to consider the importance of the company as a source of credit for households, businesses, and State and local governments, and as a source of liquidity for the United States financial system. Given this requirement, are there measures of market concentration that can be used to inform the application of this criterion? How should these markets be defined? What other measures might be used to assess a nonbank financial firm’s importance under this criterion?

financial business lines? Should standards for leverage differ by types of financial activities or by industry? Should acceptable leverage standards recognize differences in regulation? Are there existing standards (e.g., the Basel III leverage ratio) for measuring leverage that could be used in assessing the leverage of nonbank financial companies?

9. How should the Council measure and assess the amount and types of liabilities, including the degree of reliance on short-term funding of a nonbank financial firm?
 - a. What factors should the Council consider in developing thresholds for identifying excessive reliance on short-term funding?
 - b. How should funding concentrations be measured?
 - c. Do some nonbank financial companies have funding sources that are contractually short-term but stable in practice (similar to “stable deposits” at banks)?
 - d. Should the assessment link the maturity structure of the liabilities to the maturity structure and quality of the assets of nonbank financial companies?
10. How should the Council take into account the fact that a nonbank financial firm (or one or more of its subsidiaries or affiliates) is already subject to financial regulation in the Council’s decision to designate a firm? Are there particular aspects of prudential regulation that should be considered as particularly important (e.g., capital regulation, liquidity requirements, consolidated supervision)? Should the Council take into account whether the existing regulation of the company comports with relevant national or international standards?
11. Should the degree of public disclosures and transparency be a factor in the assessment? Should asset valuation methodologies (e.g., level 2 and level 3 assets) and risk management practices be factored into the assessment?

12. During the financial crisis, the U.S. Government instituted a variety of programs that served to strengthen the resiliency of the financial system. Nonbank financial companies participated in several of these programs. How should the Council consider the Government's extension of financial assistance to nonbank financial companies in designating companies?
13. Please provide examples of best practices used by your organization or in your industry in evaluating and considering various types of risks that could be systemic in nature.
- a. How do you approach analyzing and quantifying interdependencies with other organizations?
 - b. When and if important counterparties or linkages are identified, how do you evaluate and quantify the risks that a firm is exposed to?
 - c. What other types of information would be effective in helping to identify and avoid excessive risk concentrations that could ultimately lead to systemic instability?
14. Should the Council define "material financial distress" or "financial stability"? If so, what factors should the Council consider in developing those definitions?
15. What other risk-related considerations should the Council take into account when establishing a framework for designating nonbank financial companies?

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