

## **FACT SHEET: The Financial Stability Oversight Council's Proposed Interpretive Guidance on Nonbank Financial Company Determinations**

April 21, 2023

The Financial Stability Oversight Council (Council) today released for public comment a proposed update to its interpretative guidance on nonbank financial company designations.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) authorizes the Council to designate a nonbank financial company for Federal Reserve supervision and prudential standards, if the Council determines that material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to U.S. financial stability. Congress created the designation authority to fill a regulatory gap that became apparent during the financial crisis in 2007-09, when financial distress at large, complex, highly interconnected, highly leveraged, and inadequately regulated nonbank financial companies devastated the financial system.

In 2012, the Council issued a final rule and interpretive guidance describing the Council's procedures and approach to nonbank financial company designations. In 2019, the Council issued modifications to the 2012 interpretive guidance.

The new proposed guidance would revise and update the 2019 guidance. If the proposed guidance is finalized, it will replace the 2019 guidance found at Appendix A to 12 CFR 1310 but would not modify the Council's rules at 12 CFR 1310.1-.23. With this proposed interpretive guidance, the Council seeks to establish a durable process for designations of nonbank financial companies under section 113 of the Dodd-Frank Act. The proposed guidance is intended to enhance the Council's ability to address risks to financial stability, provide transparency to the public, and ensure a rigorous and clear designation process.

Unlike the guidance adopted by the Council in 2019, the proposed guidance focuses exclusively on the procedures that the Council would apply in reviewing a nonbank financial company for potential designation. Under the proposed guidance, the Council would generally expect to follow a two-stage process of evaluation and analysis when determining whether a nonbank financial company should be subject to Federal Reserve supervision and prudential standards.

- *Stage 1.* During the first stage of the process, a nonbank financial company identified for review will be subject to a preliminary analysis, based on quantitative and qualitative information available to the Council primarily through public and regulatory sources. During Stage 1, the Council will notify the firm of the review and permit, but not require, the company to submit relevant information and will consult with the company's primary financial regulatory agency, as appropriate.
- *Stage 2.* Following Stage 1, any nonbank financial company that is selected for additional review will receive notice that it is being considered for a proposed designation that the company will be supervised by the Federal Reserve and be subject to prudential standards and that the company will be subject to in-depth evaluation during the second stage of review. Stage 2 will also involve the evaluation of additional information collected directly from the nonbank financial company.

- *Proposed and final designations.* At the end of Stage 2, the Council may consider whether to make a proposed designation of the nonbank financial company. If the Council makes a proposed designation, the nonbank financial company may request a hearing. After making a proposed designation and holding any written or oral hearing if requested, the Council may vote to make a final designation.
- *Annual reevaluations of previous designations.* For any company designated by the Council, the proposed guidance specifies that the Council would encourage the company or its regulators to take steps to mitigate the identified risks. The Council will reevaluate the designation at least annually and rescind the designation if the Council determines that the company no longer meets the statutory standards for a designation. During the Council's annual reevaluations, the company will have an opportunity to meet with representatives of the Council to discuss the review and present information. The company may also submit written information. If the company explains changes it could make to its business to address the identified risks, Council representatives will endeavor to provide feedback on the extent to which the changes would mitigate the identified risks. Further, if the Council votes not to rescind a designation, the Council will provide the company with a written explanation addressing the material factors in the analysis.

With respect to the Council's procedures for designations and annual reevaluations of designations described above, the proposed guidance would preserve the significant engagement and communication between the Council and a nonbank financial company under review for potential designation, and with the company's primary regulator, that were called for in the guidance the Council adopted in 2019. The proposed guidance is intended to enable the Council to use its statutory authorities as appropriate while maintaining rigorous procedural protections for nonbank financial companies that may be reviewed for potential designation.

The Council has also issued for public comment a separate proposed analytic framework that sets forth the Council's proposed approach to identifying, evaluating, and addressing potential risks to financial stability. The proposed analytic framework describes vulnerabilities, metrics, and transmission channels that the Council would apply in evaluating risks to financial stability, regardless of whether those risks arise from activities, firms, or otherwise, including in the context of a nonbank financial company designation. The proposed guidance and proposed analytic framework would improve the Council's ability to respond to potential risks to financial stability.

[The full text of the proposed guidance is available here.](#)