July 14, 2025

The Honorable Scott Bessent
Secretary of the Treasury
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Bessent:

The undersigned associations are writing to you in your capacity as Chairman of the Financial Stability Oversight Council ("FSOC" or "the Council"). We strongly encourage FSOC to restore the 2019 Guidance[1] governing the designation of nonbank financial institutions as systemically important financial institutions ("SIFI").

Since the Dodd-Frank Act created FSOC in 2010, each administration has significantly altered the guidance surrounding the possible designation of nonbank financial companies. Our organizations supported the 2019 Guidance, which prioritized an activities-based approach to systemic risk and instituted strong due process provisions, including 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. The most recent 2023 Guidance[2] took a

[1] U.S. Treasury, Financial Stability Oversight Council, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies (December 4, 2019).
[2] U.S. Treasury, Financial Stability Oversight Council, Guidance on Nonbank Financial Company Determinations (November 17, 2023).

step backwards by widening the definition of "threat to the financial stability of the US," expanding the industries and activities that could be designated, and eliminating the aforementioned due process provisions.

We were encouraged by your comments during the House Financial Services Committee hearing on May 7, 2025, in which you stated that an effort is already underway by FSOC to reassess the 2023 Guidance. It is imperative to return to the 2019 Guidance to restore transparency and due process at FSOC so that well-regulated nonbanks are not designated without appropriate justification. We also encourage FSOC to consider ways, including consultation with Congress, it can limit inappropriate changes to its nonbank guidance and analytic framework under future administrations that is biased towards designation.

As FSOC reevaluates the 2023 Guidance, we ask you to take into account the following considerations:

The 2019 Guidance promoted careful systemic risk analysis and transparency.

The 2019 Guidance appropriately balanced FSOC's mandate to identify and address emerging threats to U.S. financial stability while also incorporating important due process provisions for any nonbank company under consideration for supervision by the Federal Reserve Board. 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 removes transparency and due process in the designation process for nonbanks.

The 2023 Guidance represents a significant departure from the 2019 Guidance. First, FSOC abandoned the requirement under the 2019 Guidance to prioritize an activities-based approach to assessing potential risks to U.S. financial stability while elevating its designation tool so that it is no longer a tool of last resort. Second, FSOC expanded the industries and activities that could be designated. Third, it also broadened the definition of what constitutes a systemic threat so that it now has the authority to investigate any entity over mere speculative risks – even for companies or entities that may not be a threat to the financial stability of the broader U.S. economy. Furthermore, the Analytic Framework that was 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.

The activities-based approach is an effective tool.

The 2019 Guidance, which focuses on systemically important activities, rather than entities, is an effective methodology. The purpose of utilizing an activities-based approach is to focus on the unregulated areas of the nonbank financial system that present systemic risks that may escape other regulatory scrutiny. The activities-based approach means that FSOC will prioritize identifying potential risks on a system-wide basis and then work with the relevant federal and state financial regulatory agencies to address the risks identified. Such an approach has been effective because it appropriately relies on federal and state regulators to address specific risks to financial stability before FSOC would consider a nonbank financial company for potential designation. An activities-based approach considers important lessons learned from the 2012 Guidance and the 2016 decision to invalidate MetLife's designation as a SIFI by the U.S. District Court for the District of Columbia in *MetLife, Inc. v. Fin. Stability Oversight Council* (the *"MetLife* case"*)*.[3]

Importance of primary regulators.

Primary financial regulators are a key component of the activities-based approach to addressing risks on a system-wide basis. Truly systemic risks will transcend individual companies and are likely to span industries and markets. The Council can best accomplish its goals of identifying risks to U.S. financial stability and responding to emerging threats by facilitating information-sharing and coordination among primary regulators – not by supplanting their judgment or regulatory frameworks or by subjecting individual nonbanks to bank-style designation by the Federal Reserve Board.

Designation should be a tool of last resort.

Designations should not be a metric for achieving FSOC's mandate and could make the U.S. financial system less competitive and more vulnerable to economic shock. While FSOC has been empowered by Congress to designate nonbank financial companies as SIFIs, that tool should be a measure of last resort. Designation of a nonbank as a SIFI by FSOC poses a material change to how the company is regulated. The designation results in bank-style supervision of a nonbank by the Federal Reserve Board that includes new onerous requirements for supervision, examination, and regulation that impose significant costs. These requirements – designed for large, complex banking organizations – are not appropriate for nonbanks and may conflict with the business model of a company or impair the economics of offering certain products or services. Concerningly, neither the nonbank nor FSOC knows the specific

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

requirements that would be imposed until the Federal Reserve Board establishes them *after* a vote by FSOC.

Restoring transparency and due process.

We are highly concerned that the 2023 Guidance eliminated important due process considerations from the 2019 Guidance for nonbank financial companies under consideration for heightened supervision.

First, the 2023 Guidance eliminated FSOC's commitment to conduct a cost-benefit analysis before it designates a company – a requirement that was affirmed by the court in the *MetLife* case. FSOC should not designate a nonbank financial company as systemically important unless it can demonstrate that such designation would effectively mitigate systemic risk posed by that entity. That analysis should also include the cost to a nonbank entity to exist under a designation structure given the resulting competitive disadvantages it will face vis-à-vis its peers not under Federal Reserve supervision. By refusing to consider cost in a SIFI determination, it would be impossible for FSOC to assess whether a nonbank designation would do significantly more harm than good. FSOC should also demonstrate there are no reasonably effective alternatives, including actions that could be pursued via an activities-based approach, that are less costly than designating a company as a SIFI. As it did in 2019, FSOC should commit itself to designating a nonbank entity only as a measure of last resort and if the expected benefits to financial stability from Federal Reserve Board supervision and prudential standards justify the expected costs that such a designation would impose.

Second, the 2023 Guidance also eliminated the requirement to consider a company's likelihood of material financial distress before designating the company as a SIFI. Materiality and discernible risk of company 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, FSOC could treat an entity with only a 1% chance of impacting financial stability the same as an entity with a 99% chance. While we support FSOC's mission of addressing risks to U.S. financial stability, the decision in 2023 to eliminate the provision requiring FSOC to consider the likelihood of financial stress demonstrated its intention to make it easier to designate nonbank entities as SIFIs. Such an objective contravenes congressional intent that SIFI designation be used sparingly.

Conclusion

We share the objective of FSOC, acting in coordination with other financial regulators, to address concerns with systemic risk and financial stability in the U.S.

The best way to do so is to restore the 2019 Guidance that prioritizes an activities-based approach to systemic risk and enhances transparency and due process reforms, such as requiring a cost-benefit analysis and an assessment of the likelihood of financial distress for nonbanks under consideration for designation.

Further, we encourage FSOC to explore ways, including consultation with Congress, to limit future arbitrary changes to the nonbank guidance and analytic framework. This would avoid placing undue burdens on nonbanks to navigate unnecessary changes to the nonbank designation guidance when a new administration takes office.

Our organizations welcome the opportunity to work with you as FSOC reassesses the 2023 Guidance.

Sincerely,

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
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
U.S. Chamber of Commerce

cc: Jerome H. Powell, Chair, Board of Governors of the Federal Reserve System
Rodney E. Hood, Acting Comptroller of the Currency, Office of the Comptroller of the Currency
Russell Vought, Acting Director, Bureau of Consumer Financial Protection

Paul S. Atkins, Chairman, Securities and Exchange Commission
Travis Hill, Acting Chairman, Federal Deposit Insurance Corporation
Caroline D. Pham, Acting Chairman, Commodity Futures Trading Commission
William J. Pulte, Director, Federal Housing Finance Agency
Kyle S. Hauptman, Chairman, National Credit Union Administration
Thomas E. Workman, Independent Member with Insurance Expertise