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MORTGAGE BANKERS ASSOCIATION

May 13, 2026

Mr. 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 Non-bank Financial Companies (RIN 4030-[XXXX]) (91 Fed. Reg. 15,551-15,566, March 30, 2026);**

Dear Mr. Froman,

The Mortgage Bankers Association<sup>1</sup> (“MBA”) appreciates the opportunity to comment on the Financial Stability Oversight Council’s (“FSOC” or “Council”) proposed revision to its interpretive guidance (the “Proposal”) related to the designation of certain nonbank financial companies.

### **Executive Summary**

MBA represents more than 2,200 member companies, including bank and nonbank lenders, servicers and sub-servicers in both the residential and commercial markets. MBA

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<sup>1</sup> The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,200 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: [www.mba.org](http://www.mba.org).

supports FSOC's goal to ensure healthy and stable financial markets and broadly agrees with the Council's approach for evaluating whether to designate a nonbank financial company. MBA agrees with the Proposal's reinstatement of the core elements of FSOC's 2019 Interpretive Guidance, including the use -- prior to designation -- of an activities-based approach to identify, assess, and address potential risks, as well as the performance of a cost-benefit analysis. MBA also supports the addition of a pre-designation "off-ramp" to provide an opportunity for nonbank financial companies and regulators to reduce risks prior to designation.

MBA further recommends that the Council consider several additional refinements to improve the Proposal before it is finalized:

- Remove "asset valuation" as a separate vulnerability;
- As part of the activities-based approach, assess the likelihood of the shock's impact reaching a high enough level to cause significant damage to the broader U.S. economy;
- As part of the cost-benefit analyses, consider the suitability of Federal Reserve prudential supervision and how the substitutability between firms may affect the costs and benefits of designation; and
- Factor in how subsequent regulatory changes would have affected historical examples of material financial distress.

### **FSOC Should Remove "Asset Valuation" as a Separate Vulnerability**

MBA does not agree with the Proposal's addition of "asset valuation" to the list of vulnerabilities that the Council would consider when identifying and assessing potential risks to U.S. financial stability. The concern about sharp reductions in the valuation of particular assets is most likely to be a problem if they create liquidity risk, which is already listed as a separate vulnerability. The Council also already includes "asset liquidation" as a transmission channel, further reducing the need for "asset valuation" as a separate vulnerability. Given the overlap with both a currently-listed vulnerability and transmission channel, a separate vulnerability on "asset valuation" is unlikely to identify new risk and may lead to a distortion in the Council's risk assessment if it effectively identifies the same risk twice. As such, it would be better to subsume any discussion of asset valuation risk under "liquidity risk and maturity mismatch," or through the "asset liquidation transmission channel" rather than creating a separate vulnerability.

If the Council decides to continue to consider "asset valuation" as a separate item, the Council should also consider any guarantees or insurance on the asset as another potential mitigant.

## **As Part of the Activities-Based Approach, FSOC Should Consider the Likelihood of Significant Damage to the Broader U.S. Economy**

MBA supports the inclusion of the activities-based approach in the Proposal. Combined, the two steps of the activities-based approach will help the Council identify and assess risks that cannot be adequately addressed through the Council's other tools, such as recommendations to other federal agencies. The first step of identifying and assessing potential risks to U.S. financial stability is critical for the Council's work. The four framing questions are appropriate for evaluating potential risks to financial stability, but MBA believes the analysis could be improved by factoring in the likelihood that a shock's impact will reach a high enough level to cause significant damage to the broader U.S. economy. Assessing the likelihood is an important step that can help the Council tailor the risk response and determine which risks warrant additional consideration.

The second step of the activities-based approach is equally important to help reserve designation for the rare instance when the Council's other authorities are inadequate. The mortgage sector is already subjected to regulation and oversight from state banking agencies that serve as the primary financial regulators of independent mortgage banks ("IMBs"), as well as from federal agencies that provide counterparty risk oversight, such as Ginnie Mae and the Federal Housing Finance Agency ("FHFA") through its conservatorship of Fannie Mae and Freddie Mac. In addition, IMBs are subject to the same consumer protection laws as banks and credit unions, enforced by the Consumer Financial Protection Bureau ("CFPB") and state attorneys general.

Consequently, as part of the second step of the activities-based approach, MBA recommends that the Council consider recommendations to not only the relevant federal and state financial regulators, but also to other federal agencies that have relevant existing authorities, as appropriate. For example, for the housing finance sector, these could include FHFA and CFPB, as well as the Department of Housing and Urban Development ("HUD") and the Department of Veterans Affairs ("VA"). Although none of these agencies serve as the primary financial regulator of IMBs, these agencies each have authorities that could meaningfully reduce systemic risk in the sector, as the Council acknowledged in its 2024 Report on Nonbank Mortgage Servicing, which included recommendations for Ginnie Mae to reduce liquidity pressures on mortgage servicers.

## **The Cost-Benefit Analyses Should Be Further Refined**

MBA supports the inclusion of the cost-benefit analyses in FSOC's proposal, with a few refinements. The Proposal's reinstatement of the cost-benefit analysis aligns with

congressional intent to tread lightly with respect to entity designation.<sup>2,3</sup> It also follows the requirement of a cost/benefit analysis that the United States District Court for the District of Columbia in *MetLife*<sup>4</sup> affirmed.

When evaluating the benefits of new or additional prudential supervision from the Federal Reserve, the Council should consider the appropriateness of the Federal Reserve's supervisory expertise for the specific financial services provided by and the business model of the nonbank financial company. To the extent that other agencies have more relevant expertise, there may be greater benefit for the Council to use the second step of the activities-based approach to make prudential recommendations to those agencies. The Council should factor this in as it assesses the benefit of the prudential supervision by the Federal Reserve that comes with designation.

Additionally, in its cost-benefit analysis, the Council should factor in substitutability. In industries with significant substitutability across firms, the failure of a single firm is less likely to trigger a financial crisis, because other firms can step in to provide comparable goods and services. As a result, designating one or two firms in such markets may be more likely to result in goods and services shifting away from the designated company to comparable non-designated companies, thereby reducing the benefit of designation while increasing regulatory costs and impairing the operations of the designated firm.

### **If Historical Examples are Used to Assess the Likelihood of Material Financial Distress, the Council Should Consider Recent Changes in the Regulatory Environment**

The MBA agrees that it is important for the Council to evaluate the likelihood of material financial distress for a potentially designated company as part of its impact assessment of a Council designation. In the Proposal, the Council offers historical examples as one method for assessing the likelihood of material financial distress. As with any analysis that uses historical examples, it is important to understand how the regulatory context has shifted in the intervening years. This is particularly pertinent for the mortgage industry since 2008. Assessments of mortgage company failures from the 2008 Financial Crisis may overestimate the likelihood if they do not account for how the regulatory environment has shifted since then. As such, MBA recommends that any assessment of the likelihood of

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<sup>2</sup> Economic Growth, Regulatory Relief, and Consumer Protection Act, Section 401

<sup>3</sup> Of note, even today's largest non-bank mortgage servicers have balance sheet assets well below the original asset threshold Congress established for banks in 2010 and many times smaller than any of the non-bank entities FSOC has previously attempted to designate.

<sup>4</sup> *Metlife, Inc. v. Fin. Stability Oversight Council*, 177 F. Supp. 3d 219 (D.D.C. 2016)

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material financial distress consider how the regulatory environment under which the company operates has changed.

## **Conclusion**

MBA appreciates your consideration of its comments with regard to the proposed interpretive guidance and supports the goals of FSOC to ensure a safe, stable, and sustainable financial services marketplace. Should you have any questions or wish to discuss any aspects of these comments, please contact Kait Hildner at (202) 557-2933 or via email at [khildner@mba.org](mailto:khildner@mba.org) or Justin Wiseman at (202) 557-2854 or via email at [jwiseman@mba.org](mailto:jwiseman@mba.org).

Sincerely,

A handwritten signature in cursive script, appearing to read "Pete Mills".

Pete Mills  
Senior Vice President  
Residential Policy and Strategic Industry Engagement  
Mortgage Bankers Association