

May 14, 2026

Submitted electronically via: Regulations.gov

Financial Stability Oversight Council
Attn: Eric Froman, Office of the General Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue NW, Room 2308
Washington, DC 20220

**Re: Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies;
4030-[XXXX]**

Dear Mr. Froman:

MFA¹ appreciates the opportunity to comment on the Financial Stability Oversight Council's ("FSOC" or the "Council") proposed interpretive notice "Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies" (the "2026 Proposed Guidance" or "Proposal").²

MFA commends FSOC for proposing the 2026 interpretive guidance and for responding constructively to concerns raised by market participants regarding FSOC's prior attempts at devising a workable framework for consideration of nonbank activities or entities as systemically important. Over the past several years, the Council's approach to nonbank financial company determinations has vacillated markedly: from FSOC's activities-based and analytically disciplined 2019 guidance ("2019 Guidance"),³ to its 2023 guidance ("2023 Guidance")⁴ that departed sharply from the principles of the 2019 Guidance and applicable caselaw, and now back toward a more balanced and structured framework in the 2026 Proposed Guidance.

¹ Managed Funds Association ("MFA"), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

² FSOC, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 91 FR 15551 (Mar. 30, 2026), avail. at <https://public-inspection.federalregister.gov/2026-06114.pdf>.

³ FSOC, Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies, 84 Fed. Reg. 71,740 (Dec. 30, 2019), avail. at <https://www.govinfo.gov/content/pkg/FR-2019-12-30/pdf/2019-27108.pdf>.

⁴ FSOC, Guidance on Nonbank Financial Company Determinations, 88 Fed. Reg. 80,110 (Nov. 17, 2023), avail. at <https://www.govinfo.gov/content/pkg/FR-2023-11-17/pdf/2023-25053.pdf>.

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This regulatory “ping-pong,” as we noted in our comment letter in response to the 2023 Guidance (the “**MFA 2023 Comment Letter**”) has created understandable uncertainty for market participants attempting to assess whether particular activities -- or an entity itself -- could ultimately be deemed systemically important.⁵ Market participants deserve a more durable solution to assessing any potential systemic risk posed by nonbanks.

While MFA views the 2026 Proposed Guidance as a significant improvement and an important step toward stability and predictability for nonbanks and the broader industry, interpretive guidance alone remains vulnerable to future reversal. For this reason, it is critical that Congress enact the FSOC Improvement Act,⁶ which would provide durable statutory direction to FSOC and greater certainty to the industry regarding how systemic importance is assessed, when entity-specific designation is appropriate, and how firms and their primary regulators can address potential risks without resorting to blunt, firm-wide designations. MFA welcomes FSOC support of this important legislation.

Executive Summary

MFA supports the goals of the 2026 Proposed Interpretive Guidance, with several clarifications and enhancements discussed below, and views it as a material improvement over the Council’s 2023 framework. The Proposal meaningfully restores analytical discipline, transparency, and predictability to FSOC’s nonbank designation process. In particular, MFA welcomes five core improvements, namely that the Proposal:

- 1. Re-establishes activities-based oversight as the default.** An activities-based approach to identifying, assessing, and addressing any potential systemic risk is more predictable, better aligned with functional regulator expertise, and less likely to create competitive distortions than firm-specific designation. MFA supports FSOC’s focus on clearly articulated categories of vulnerabilities -- such as leverage amplification, liquidity mismatch, interconnectedness, concentration and substitutability, and operational dependence -- assessed using macroeconomic and market indicators as context rather than mechanical triggers.
- 2. Replaces the 2023 “nature-of-risk” flexibility with a structured, sequenced framework.** The 2026 approach improves durability by restoring Step One and Step Two discipline, emphasizing standardized analysis, documented escalation criteria, and meaningful engagement with primary regulators before any consideration of entity-specific designation.

⁵ The MFA 2023 Comment Letter outlined in detail the negative consequences to the asset management industry resulting from FSOC’s shift away from an activities-based approach. See MFA, Comment Letter on FSOC Proposals (July 27, 2023), avail. at <https://www.mfaalts.org/wp-content/uploads/2023/07/mfa-Final-Comment-Letter-on-FSOC-Proposals-072723-.pdf>.

⁶ Financial Stability Oversight Council Improvement Act of 2025, H.R. 3682, 119th Cong. (2025) (as passed by House, pending before the S. Comm. on Banking, Hous., & Urb. Aff.), avail at <https://www.congress.gov/bill/119th-congress/house-bill/3682>.

3. **Consolidates designation guidance and analytic methodologies.** MFA supports consolidation, provided FSOC preserves transparency, maintains procedural guardrails, and commits to notice-and-comment for material analytical changes. Clear “how-to-apply” explanations, definitions, and cross-references are essential to avoid interpretive drift.
4. **Reinstates cost-benefit analysis requirement.** MFA strongly supports requiring FSOC to assess costs and benefits prior to any designation, including second-order effects such as activity migration, liquidity impacts, and interaction costs with existing regulatory regimes. CBA should be structured, transparent, and tied to measurable financial-stability outcomes.
5. **Requires assessment of the likelihood of material financial distress.** MFA supports this improvement and urges FSOC to apply a scenario-based, mitigant-aware framework that evaluates probability, transmission, and impact across multiple time horizons -- not bright-line numerical triggers.

Taken together, these changes move FSOC toward a framework that is more predictable for markets, more deferential to the expertise of functional regulators, and more likely to withstand judicial scrutiny. Congressional action, however, is the only solution that would durably codify designation as a last resort and provide lasting certainty to both regulators and market participants.

I. Responses to the 2026 Proposed Guidance Questions

MFA responds to the following questions presented in the 2026 Proposed Guidance.

A. Overview of Changes From 2023 Interpretive Guidance

The 2026 Proposed Guidance did not contain any questions on this Section A.

B. Changes to Analytic Methodologies

Question 1: What specific factors impacting economic growth and economic security should the Council focus on in an effort to identify potential risks to U.S. financial stability?

MFA supports FSOC’s consideration of economic growth and economic security, provided these concepts are applied transparently and remain tethered to the Council’s statutory mission. Economic growth and security should not be treated as independent risk categories or used to characterize ordinary capital formation or liquidity provision as inherently risky. In MFA’s view, FSOC should focus on a limited set of factors with a clear connection to financial stability.

To improve transparency, MFA recommends that FSOC illustrate -- through guidance or staff materials -- how economic growth and security considerations inform the Council’s existing framing questions, rather than operating as open-ended justifications for escalation.

Question 2: The Proposed Guidance adds asset valuations to the list of vulnerabilities that the Council would consider when identifying and assessing potential risks to U.S. financial

stability, while removing destabilizing activities, a vulnerability that appeared in the 2023 Analytic Framework. Are these changes appropriate, and should additional modifications be made to the list of vulnerabilities that the Council would consider?

MFA supports removing “destabilizing activities.” The term is imprecise and risks circularity, which undermines transparency and consistent application.

MFA does not support treating asset valuations as a standalone independent vulnerability. Price movements are part of normal market functioning. We note that valuation becomes relevant to financial stability only when valuation shocks interact with other potential vulnerabilities that FSOC has enumerated (*e.g.*, leverage, funding fragility, liquidity mismatch, concentrated exposures, procyclical margining) and credible transmission channels that can impair intermediation or market functioning at the “threat” threshold. Any potential vulnerability relating to asset valuations can be addressed through an activities-based lens, focused on process and controls. Neither price levels or volatility by themselves are potential indicators of systemic risk.

C. Activities-Based Approach

QUESTION 1: Does the Council’s proposal described above to prioritize its efforts to identify, assess, and address potential risks to U.S. financial stability through a process that begins with an activities-based approach, first introduced under the 2019 Interpretive Guidance, enable the Council to achieve its statutory purposes? Should the Council’s proposed approach to the activities-based approach be modified for other considerations?

Yes. MFA strongly supports prioritizing an activities-based approach and treating entity-specific determinations under Section 113 of the Dodd-Frank Act as a last resort.⁷ This sequencing better advances FSOC’s statutory purposes by focusing first on systemwide sources of risk, leveraging primary regulators’ expertise and tools, and reducing competitive distortions relative to firm-specific action.

The 2023 “nature-of-risk” approach weakened predictability and made escalation pathways opaque. The 2026 Proposed Guidance improves durability by restoring structured sequencing and emphasizing coordination with the entity’s primary regulators.

MFA recommends that FSOC reinforce this prioritization by clarifying (i) the escalation record FSOC expects before concluding activities-based tools are inadequate (including documented consultation and explanation of why existing tools are insufficient), and (ii) that entity-specific designation remains a last resort after all other options have failed.

⁷ See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, tit. I, § 113, 124 Stat. 1376, 1398–1402 (2010) (codified at 12 U.S.C. § 5323).

QUESTION 3: Does the Council’s approach under the 2023 Interpretive Guidance, in which it stated that it would not prioritize an activities-based approach but instead respond to a particular risk to financial stability depending on the nature of the risk, better enable the Council to respond to threats to U.S. financial stability than prioritizing an activities-based approach as contemplated by the Proposed Guidance?

No. The 2023 “nature-of-risk” approach undermined predictability and market discipline by making escalation indeterminate and difficult to operationalize. MFA notes that the 2023 approach also increased the risk of firms making significant business decisions based on the risk of FSOC designation versus normal market considerations.

The 2026 Proposal is more effective and more legally durable because it restores structured sequencing, reinforces functional-regulator engagement, and improves analytic discipline through clearer “threat” framing, cost-benefit analysis, and likelihood assessment. MFA recommends FSOC finalize the 2026 Proposed Guidance with explicit escalation criteria and a documented record explaining why activities-based measures are impracticable or insufficient before any entity-specific pathway is considered and reaffirm that entity-specific designation is reserved for rare cases.

D. Consolidation of Interpretive Guidance and Analytic Methodologies

QUESTION 1: Will the consolidation of the Council’s nonbank financial company designation guidance and analytic methodologies in a single document create a more efficient and accessible document?

Yes, generally -- so long as consolidation preserves transparency, procedural discipline, and meaningful opportunities for notice-and-comment on material analytical changes. A single document can reduce fragmentation, improve accessibility, and support more consistent internal and external understanding.

E. Cost Benefit Analysis

MFA supports the Proposal’s reinstatement of a required cost-benefit analysis as an integral part of the FSOC analysis to develop support for any designation. MFA’s concerns with the 2023 Interpretive Guidance stemmed from its departure from controlling judicial precedent -- most notably *MetLife, Inc. v. Financial Stability Oversight Council*. In *MetLife*, the U.S. District Court for the District of Columbia vacated FSOC’s nonbank designation as arbitrary and capricious, holding that FSOC departed from its own guidance without reasoned explanation and failed to meaningfully consider the costs of designation, in violation of basic principles of administrative law.⁸ In particular, *MetLife* stands for the proposition that FSOC must follow its stated analytical framework -- or explain departures -- and must grapple meaningfully with the consequences of designation before acting and determine, after notice and opportunity for a hearing, that the benefits outweigh the costs and designation is appropriate.

⁸ *MetLife, Inc. v. Fin. Stability Oversight Council*, 177 F. Supp. 3d 219, 227–40 (D.D.C. 2016) (rescinding designation where FSOC, inter alia, departed from guidance and failed to consider costs).

Against that backdrop, MFA commented in response to the 2023 Guidance that it weakened FSOC’s legal footing by de-emphasizing cost-benefit analysis, minimizing assessment of a firm’s vulnerability to material financial distress, and loosening procedural safeguards.⁹ By contrast, the 2026 Proposed Guidance moves materially closer to the *MetLife* framework by restoring cost-benefit analysis, reinstating likelihood assessment, and clarifying a more disciplined standard for identifying threats to financial stability -- changes that enhance predictability, credibility, and legal durability.

QUESTION 1. Is the proposed framework for assessing the benefits and costs of a potential determination appropriate? How should the Council assess benefits and costs that are difficult to monetize or quantify?

Yes, directionally. MFA strongly supports reinstating a cost-benefit analysis (“CBA”) as a precondition to designation, but FSOC should specify how it will assess non-monetizable impacts to avoid criticism that it is conducting a “CBA in name only.” MFA recommends a structured approach that includes: (i) a consistent qualitative rubric (e.g., high/medium/low) tied to defined criteria such as breadth, severity, duration, and substitutability; (ii) bounded quantitative ranges with sensitivity analysis where point estimates are speculative; and (iii) a clear “theory of change” linking designation to reduced risk and explaining why less intrusive activities-based alternatives would be insufficient.

QUESTION 4: Should the Council consider additional factors when considering the benefits or costs of a designation to the U.S. economy?

Yes. FSOC should expressly consider economy-level impacts tied to economic growth and security, including: effects on credit availability and pricing; market liquidity and resiliency; U.S. competitiveness (including incentives for activity relocation outside the U.S. perimeter); and whether designation materially reduces the likelihood or severity of outcomes requiring official-sector support. These factors should be applied in a disciplined way and tied to the identified threat and transmission channels.

QUESTION 5: Should the Council consider additional benefits to the company, or additional benefits to the U.S. financial system/economy, arising from designation other than those listed in section IV? How should the Council quantify such benefits? What sources should the Council rely upon?

MFA recommends that FSOC consider additional benefits only where clearly supported by evidence and tied to the specific threat and transmission channel. Potential benefits may include improved governance/risk management from supervision, but only where functional regulation does not already achieve comparable outcomes, and reduced contagion risk where designation demonstrably constrains a specific channel. MFA discourages FSOC from presuming company-level benefits from designation, and should treat any perceived funding advantage or implicit support as a

⁹ See *supra* note 5.

cost, not a benefit, given FSOC’s market-discipline mandate. Where quantification is feasible, MFA recommends that FSOC use event studies and stress-episode analyses from primary-regulator data where possible.

F. Likelihood of Material Financial Distress

QUESTION 1: Is the proposed framework for assessing likelihood appropriate?

Yes, directionally. MFA supports requiring likelihood assessment because it reduces reliance on worst-case severity narratives untethered from probability. Combined with CBA and a clearer threat threshold, this should improve transparency, predictability, and legal durability. FSOC should add specificity to avoid an “I know it when I see it” approach, a key flaw of the 2023 Guidance, by requiring scenario-based analysis (baseline and stress), a clear mitigants overlay (including existing regulatory constraints and market practices), and explicit treatment of uncertainty using ranges and sensitivity analysis.

G. Process for Member Agencies to Address Potential Risks

QUESTION 1: Will the proposed new process described above for making recommendations to agencies enable the Council to respond to potential risks to U.S. financial stability in a timely and effective manner?

Yes, provided FSOC adds implementation detail that makes the mechanism usable and accountable. MFA supports the process because it strengthens an activities-first pathway to identifying, assessing and addressing potential risks that is more concrete than informal coordination and less disruptive than firm-specific designation. To ensure the process is timely and effective, FSOC should provide a detailed process involving timelines, notice and response requirements and clarify how this mechanism reinforces designation as a last resort, including the record FSOC will build before concluding tools (activities-based or otherwise) are impracticable or insufficient.

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MFA appreciates FSOC’s work to improve the clarity, transparency, and analytical rigor of its approach to nonbank financial company determinations. MFA is supportive of the 2026 Proposed Guidance and believes it represents a meaningful improvement from the 2023 approach by appropriately reprioritizing an activities-based approach to identifying, assessing and addressing potential risks reintroducing cost-benefit and likelihood analyses, clarifying the threat threshold, and creating a more constructive pathway for remediation before escalation.

MFA reiterates our support of Congressional enactment of the FSOC Improvement Act,¹⁰ which would provide durable statutory direction to FSOC and greater certainty to the industry regarding how any potential systemic risks are assessed, when entity-specific designation is appropriate, and how firms and their primary regulators can address potential risks without resorting to blunt, firm-wide designations.

¹⁰ See *supra* note 6.

We would welcome the opportunity to meet with Council staff to discuss these comments and to provide industry context on how private funds are regulated, how risks transmit (or do not transmit) through fund structures, and how activities-based tools can address potential vulnerabilities efficiently without unintended consequences. You may contact the undersigned (jflores@mfaalts.org) or Jeff Himstreet (jhimstreet@mfaalts.org).

Respectfully submitted,

/s/ Jillien Flores

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