



441 G St. N.W.  
Washington, DC 20548

B-335761

January 3, 2024

The Honorable Sherrod Brown  
Chairman  
The Honorable Tim Scott  
Ranking Member  
Committee on Banking, Housing, and Urban Affairs  
United States Senate

The Honorable Patrick McHenry  
Chairman  
The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
House of Representatives

Subject: *Financial Stability Oversight Council: Guidance on Nonbank Financial Company Determinations*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Financial Stability Oversight Council (“Council”) entitled “Guidance on Nonbank Financial Company Determinations.” We received the rule on November 15, 2023. It was published in the *Federal Register* as final interpretive guidance on November 17, 2023. 88 Fed. Reg. 80110. The effective date is January 16, 2024.

According to the Council, this final interpretive guidance describes the process the Council intends to undertake in determining whether to subject a nonbank financial company to prudential standards and supervision by the Board of Governors of the Federal Reserve System under section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Pub. L. No. 111-203, title I, § 113, 124 Stat. 1376, 1398–1402 (July 21, 2010), *codified at* 12 U.S.C. § 5323.

The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). This final interpretive guidance was published in the *Federal Register* on November 17, 2023. 88 Fed. Reg. 80110. The *Congressional Record* shows that the guidance was received by the Senate on November 28, 2023, and by the House of Representatives on December 6, 2023. 169 Cong. Rec. S5673 (daily ed. Nov. 29, 2023); 169 Cong. Rec. H6982 (daily ed. Dec. 14, 2023). The guidance has a stated effective date of January 16, 2024. Therefore, based on the dates of congressional receipt, the final interpretive guidance does not have the required 60-day delay in its effective date.

Enclosed is our assessment of the Council’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions

about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: Heidi Cohen  
Senior Legal Advisor for Regulatory Affairs  
Office of General Counsel, Treasury  
Financial Stability Oversight Council

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
FINANCIAL STABILITY OVERSIGHT COUNCIL  
ENTITLED  
“GUIDANCE ON NONBANK FINANCIAL COMPANY DETERMINATIONS”

(i) Cost-benefit analysis

The Financial Stability Oversight Council (“Council”) stated that under its proposed guidance, it would not conduct a cost-benefit analysis prior to a designation of a nonbank financial company. 88 Fed. Reg. 26234 (Apr. 28, 2023). According to the Council, it received and considered numerous comments both favoring retention of cost-benefit analysis as a step in the designation process and advocating its removal. The Council expressed in this final interpretive guidance that it does not believe that a cost-benefit analysis of individual designation determinations is legally required or reasonably estimable, useful, or appropriate in this context. Therefore, the Council noted that the guidance does not contemplate the Council conducting a cost-benefit analysis prior to a nonbank financial company designation.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

In its submission to us, the Council indicated that the requirement to prepare an analysis under the Act is not applicable to this final interpretive guidance.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

In its submission to us, the Council indicated that the requirement to prepare a written statement under the Act is not applicable to this final interpretive guidance.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act’s exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act’s requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act” in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory

Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

The Council did not discuss the Administrative Pay-As-You-Go-Act of 2023 in this final interpretive guidance.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On April 28, 2023, the Council published proposed interpretive guidance. 88 Fed. Reg. 26234. The Council received 47 comment letters in response to the proposed guidance, of which 13 were from various advocacy groups, 11 were from companies or trade associations in the investment management industry, 6 were from trade associations in the insurance industry, 7 were from other companies or trade associations, 5 were from current or former state or federal government officials, 2 were from groups of academics, and 3 were from other individuals. The Council responded to comments in this final interpretive guidance.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

The Council determined that this final interpretive guidance contains information collection requirements under the Act. According to the Council, the collection of information contained in the guidance has been reviewed and approved by OMB under OMB Control Number 1505-0244. The Council estimated that the total annual reporting burden associated with the collection of information in the guidance is 1,000 hours. Additionally, the Council estimated the cost associated with this information collection to be \$562,500.

Statutory authorization for the rule

The Council promulgated this final interpretive guidance pursuant to sections 5321–5323 of title 12, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

The Council stated that OMB determined that this final interpretive guidance is a “significant regulatory action” within the meaning of the Order and has reviewed the guidance.

Executive Order No. 13132 (Federalism)

The Council did not discuss federalism impacts of this final interpretive guidance in the guidance.