



**Billing Code 4810-25-P**

**FINANCIAL STABILITY OVERSIGHT COUNCIL**

**12 CFR Part 1310**

**RIN 4030-AA03**

**Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies**

**AGENCY:** Financial Stability Oversight Council.

**ACTION:** Final rule.

**SUMMARY:** The Financial Stability Oversight Council (the “Council”) is adopting a rule stating that the Council shall not amend or rescind its interpretive guidance on nonbank financial company determinations without providing the public with notice and an opportunity to comment consistent with the Administrative Procedure Act.

**DATES:** Effective date: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**FOR FURTHER INFORMATION CONTACT:** Bimal Patel, Office of Domestic Finance, Treasury, at (202) 622-2850; Eric Froman, Office of the General Counsel, Treasury, at (202) 622-1942; or Mark Schlegel, Office of the General Counsel, Treasury, at (202) 622-1027.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 111 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5321) (the “Dodd-Frank Act”) established the Financial Stability Oversight Council. The purposes of the Council under section 112 of the Dodd-Frank Act (12 U.S.C. 5322) are (A) to identify risks to the financial stability of the United States that could arise from the material

financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and (C) to respond to emerging threats to the stability of the United States financial system.

The Dodd-Frank Act also authorizes the Council to determine that certain nonbank financial companies will be subject to supervision by the Board of Governors of the Federal Reserve System (the “Federal Reserve”) and prudential standards. On April 11, 2012, the Council issued interpretive guidance (the “2012 Interpretive Guidance”) regarding the manner in which the Council makes determinations under section 113 of the Dodd-Frank Act, as an appendix to a final rule (together, the “2012 Rule and Interpretive Guidance”). The 2012 Rule and Interpretive Guidance were codified at part 1310 to title 12 of the Code of Federal Regulations.

The Council is modifying the rule text in the 2012 Final Rule and Interpretive Guidance by adding a new section (12 CFR 1310.3) stating that the Council shall not amend or rescind the interpretive guidance set forth in appendix A to part 1310 without providing the public with notice and an opportunity to comment.

The Council is adopting this rule pursuant to its authority under section 111(e)(2) of the Dodd-Frank Act, which authorizes the Council to adopt such rules as may be necessary for the conduct of the business of the Council, and states that such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5, United States Code. This new section is a rule of agency procedure, and is therefore not subject to the requirement to

provide public notice and an opportunity to comment under the Administrative Procedure Act.<sup>1</sup>

As a result, the Council is adopting it in final form. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

Contemporaneous with the publication of this final rule, the Council is separately publishing proposed interpretive guidance that would replace the 2012 Interpretive Guidance. That proposal includes a request for public comment.

## **II. Amendment to 12 CFR Part 1310**

In order to promote the Council's engagement with market participants and other interested parties, the Council is adding a new section to the rules referenced above, stating that the Council shall not amend or rescind the interpretive guidance set forth in appendix A to the rules without providing the public with notice and an opportunity to comment under the Administrative Procedure Act.

### **List of subjects in 12 CFR Part 1310**

Brokers, Investments, Securities.

In accordance with the foregoing, the Council amends 12 CFR part 1310 as follows:

### **PART 1310—AUTHORITY TO REQUIRE SUPERVISION AND REGULATION OF CERTAIN NONBANK FINANCIAL COMPANIES**

1. The authority citation for part 1310 continues to read as follows:

Authority: 12 U.S.C. 5321; 12 U.S.C. 5322; 12 U.S.C. 5323.

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<sup>1</sup> See 5 U.S.C. 553(b)(A).

2. Add § 1310.3 to read as follows:

**§ 1310.3 Amendments.**

The Council shall not amend or rescind appendix A to this part without providing the public with notice and an opportunity to comment in accordance with the procedures applicable to legislative rules under 5 U.S.C. 553.

Dated: March 6, 2019.

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Bimal Patel,  
Deputy Assistant Secretary for the Financial Stability Oversight Council, Department of  
the Treasury.

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