

January 24, 2021

The Honorable Janet Yellen  
Secretary of the Treasury  
Chair of the Financial Stability Oversight Council

Dear Secretary Yellen:

The undersigned organizations and academics write to urge you to prioritize restoring the Financial Stability Oversight Council's ability to fully execute its authority under the Dodd-Frank law. To do so, we strongly recommend repealing the 2019 guidance on designating non-banks as systemically important financial institutions (SIFIs)<sup>1</sup>; fully staffing the Office of Financial Research (OFR) to ensure robust data collection and analysis; and using the statutory authority given in Title I of Dodd-Frank to apply a racial equity lens when designating a non-bank financial company as a SIFI.<sup>2</sup>

We applaud the fact that you have already convened FSOC to consider emerging threats to financial stability. However, we believe that FSOC must also swiftly take steps to undo the damage to its critical financial stability authorities inflicted by the previous Administration.

The December 2019 FSOC guidance creates substantial impediments to designating large nonbank firms as systemically important financial institutions.<sup>3</sup> You, together with former Federal Reserve Chair Bernanke and former Treasury Secretaries Lew and Geithner, wrote a letter opposing this guidance when it was proposed.<sup>4</sup> In the letter, the four of you issued a stark warning to Secretary Mnuchin and Chair Powell:

“We caution against taking the steps outlined in the proposed guidance. We believe that these steps – in design and in practice – would neuter the designation authority. Though framed as procedural changes, these amendments amount to a substantial weakening of the post-crisis reforms. These changes would make it impossible to prevent the build-up of risk in financial institutions whose failure would threaten the stability of the system as a whole.”<sup>5</sup>

We agree with your letter, and these concerns remain valid and significant. The repeal of this guidance should therefore be an urgent matter for FSOC. The ability to subject non-banks to prudential regulation and consolidated supervision by the Federal Reserve is a powerful tool for stopping the next crisis. The 2008 financial crisis demonstrated the urgent need for this type of provision, as the failure or bailouts of

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<sup>1</sup> Financial Stability Oversight Council, “Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies,” 84 Federal Register 71,740 (Dec. 30, 2019).  
<https://home.treasury.gov/system/files/261/Authority-to-Require-Supervision-and-Regulation-of-Certain-Nonbank-Financial-Companies.pdf>

<sup>2</sup> Sections 113 and 120 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111-203, July 21, 2010, <https://www.congress.gov/bill/111th-congress/house-bill/4173/text>.

<sup>3</sup> Supra note 1

<sup>4</sup> Alan Rappeport, *Former Top Financial Regulators Warn Against Move to Ease Oversight of Firms*, N.Y. Times, May 13, 2019, <https://www.nytimes.com/2019/05/13/us/politics/financial-regulation-trump-administration.html>

<sup>5</sup> Id.

numerous large financial institutions that fell outside bank regulation—including Lehman Brothers and AIG—contributed to the severity of the financial crisis.

Unfortunately, the previous Administration did not heed your warning and effectively eliminated the FSOC’s ability to designate large nonbanks as systemically important by prescribing an “activities-based approach” in lieu of entity designation.<sup>6</sup> This is problematic for two reasons. First, it does not align with the statutory scheme laid out in the Dodd-Frank Act. The standard interpretation of the Dodd-Frank Act is that the Council has no direct authority over financial activities. The Council’s power with respect to activities is merely an advisory role under Section 120 of the Dodd-Frank Act in that it permits non-binding recommendations to the independent financial regulatory agencies. Secondly, activity and entity regulation must instead be viewed as complementary as opposed to substitutes. It is crucial to have supervisory insight into the major entities that are market leaders in particular financial activities.

These reasons, along with the other dangerous actions taken by FSOC and its member agencies during the Trump Administration, including removing the SIFI designation from AIG and Prudential, underscore why it is imperative the Treasury Department immediately start the process of repealing the 2019 SIFI guidance.<sup>7</sup>

In addition to repealing the 2019 guidance, The Treasury should focus the Office of Financial Research on acting swiftly on the crucial projects of developing and implementing a robust data collection strategy. A fully staffed and functional OFR will provide crucial information to both the Financial Stability Oversight Council and the public. During the Trump Administration and under the leadership of the current Director, the OFR had its funding slashed by 25% and its staffing by 50%.<sup>8</sup>

Without the OFR’s data collection and analysis, FSOC and the various financial regulators will have more trouble spotting emerging threats and developing a coordinated response. Moreover, publicly available research and analysis helps improve market discipline and regulatory accountability. Information is a crucial ingredient of effective financial regulation. A previous report by OFR identified securities lending

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<sup>6</sup> Americans for Financial Reform Ed Fund, “Comment on Proposed FSOC Guidance,” May 13, 2019, <https://ourfinancialsecurity.org/wp-content/uploads/2019/05/AFR-Education-Fund-Comment-on-Proposed-FSOC-Guidance.pdf>

<sup>7</sup> Financial Stability Oversight Council, “Notice and Explanation of the Basis for the Financial Stability Oversight Council’s Rescission of Its Determination Regarding American International Group, Inc. (AIG),” September 29, 2017, <https://home.treasury.gov/system/files/261/American%20International%20Group%2C%20Inc.%20%28Rescission%29.pdf>;

Financial Stability Oversight Council, “Notice and Explanation of the Basis for the Financial Stability Oversight Council’s Rescission of Its Determination Regarding Prudential Financial, Inc. (Prudential),” October 16, 2018, <https://home.treasury.gov/system/files/261/Prudential%20Financial%20Inc%20Rescission.pdf>.

<sup>8</sup> Gregg Gelzinis, Center for American Progress, 5 Priorities for the Financial Stability Oversight Council (Mar. 31, 2021). <https://www.americanprogress.org/issues/economy/reports/2021/03/31/497439/5-priorities-financialstability-oversight-council/>

and the Treasury market as examples of existing regulatory gaps, highlighting that OFR's work has tangible implications for how our global markets are governed.<sup>9</sup>

Lastly, we call on you to use the statutory authority given to FSOC to apply a racial equity and economic justice lens when evaluating whether non-banks should be designated as SIFIs. As underlined by a 2021 CAP report Dodd-Frank explicitly directed the FSOC to consider the impact that a nonbank financial company's failure could have on communities of color, as well as the potential for risky financial activities to impair the availability of financial services for these communities.<sup>10</sup> The global financial crisis of 2008 devastated middle and low income families in particular, worsened the Black wealth gap, and undermined the country's long term economic growth and job creation. History suggests that future financial crises will do the same.<sup>11</sup>

The experiences of 2008 and 2009 taught us that we need tools to prevent financial crises at the ready rather than wait for risks to metastasize and have bailouts presented as the only option. Even if you think that designating any particular nonbank as a SIFI is not currently warranted, it would be a grave mistake not to act now both to undo the 2019 guidance and use this opportunity to build a more robust FSOC, empowered by the OFR and a racial equity mandate granted by the law. We urge you to take swift action in these areas.

Sincerely,

20/20 Vision DC

Americans for Financial Reform Ed Fund  
Action Center on Race & the Economy (ACRE)  
Better Markets  
California Reinvestment Coalition  
Center for American Progress  
Center for Popular Democracy  
Center for Responsible Lending  
Committee for Better Banks  
Consumer Action  
Consumer Federation of America  
Institute for Agriculture and Trade Policy  
MHANY Management Inc.  
Mountain State Justice  
National CAPACD- National Coalition for Asian Pacific American Community Development  
National Fair Housing Alliance  
New Jersey Citizen Action

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<sup>9</sup> Office of Financial Research, "2012 Annual Report,"

<https://www.financialresearch.gov/annual-reports/files/office-of-financial-research-annual-report-2012.pdf>.

<sup>10</sup> Supra note 8

<sup>11</sup> Raghuram G. Rajan, *Fault Lines: How Hidden Fractures Still Threaten the World Economy*

New York Communities for Change

Open Markets Institute

Patricia A. McCoy, Professor of Law, Boston College Law School

Professor Arthur Wilmarth, Emeritus of Law, George Washington University Law School

Public Citizen

Revolving Door Project

RJM Consulting

SC Appleseed Legal Justice Center

Strong Economy for All Coalition

The Communication Workers of America

The National Council of Asian Pacific Americans (NCAPA)

THE ONE LESS FOUNDATION

Virginia Organizing

U.S. PIRG