

under this subsection, not later than 10 days after the date of receipt of notice of the waiver or modification by the company. Upon receipt of a timely request, the Council shall fix a time (not later than 15 days after the date of receipt of the request) and place at which the nonbank financial company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(5) Notice of final determination

Not later than 30 days after the date of any hearing under paragraph (4), the Council shall notify the subject nonbank financial company of the final determination of the Council under this subsection, which shall contain a statement of the basis for the decision of the Council.

(g) Consultation

The Council shall consult with the primary financial regulatory agency, if any, for each nonbank financial company or subsidiary of a nonbank financial company that is being considered for supervision by the Board of Governors under this section before the Council makes any final determination with respect to such nonbank financial company under subsection (a), (b), or (c).

(h) Judicial review

If the Council makes a final determination under this section with respect to a nonbank financial company, such nonbank financial company may, not later than 30 days after the date of receipt of the notice of final determination under subsection (d)(2), (e)(3), or (f)(5), bring an action in the United States district court for the judicial district in which the home office of such nonbank financial company is located, or in the United States District Court for the District of Columbia, for an order requiring that the final determination be rescinded, and the court shall, upon review, dismiss such action or direct the final determination to be rescinded. Review of such an action shall be limited to whether the final determination made under this section was arbitrary and capricious.

(i) International coordination

In exercising its duties under this subchapter with respect to foreign nonbank financial companies, foreign-based bank holding companies, and cross-border activities and markets, the Council shall consult with appropriate foreign regulatory authorities, to the extent appropriate.

(Pub. L. 111-203, title I, § 113, July 21, 2010, 124 Stat. 1398.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(1), (b)(1), (c)(1), (3), (6), (e)(1), and (i), was in the original “this title”, meaning title I of Pub. L. 111-203, July 21, 2010, 124 Stat. 1391, which is classified principally to this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

This Act, referred to in subsec. (c)(6), is Pub. L. 111-203, July 21, 2010, 124 Stat. 1376, known as the Dodd-

Frank Wall Street Reform and Consumer Protection Act, which enacted this chapter and chapters 108 (§ 8201 et seq.) and 109 (§ 8301 et seq.) of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5324. Registration of nonbank financial companies supervised by the Board of Governors

Not later than 180 days after the date of a final Council determination under section 5323 of this title that a nonbank financial company is to be supervised by the Board of Governors, such company shall register with the Board of Governors, on forms prescribed by the Board of Governors, which shall include such information as the Board of Governors, in consultation with the Council, may deem necessary or appropriate to carry out this subchapter.

(Pub. L. 111-203, title I, § 114, July 21, 2010, 124 Stat. 1403.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this title”, meaning title I of Pub. L. 111-203, July 21, 2010, 124 Stat. 1391, which is classified principally to this subchapter. For complete classification of title I to the Code, see Short Title note set out under section 5301 of this title and Tables.

§ 5325. Enhanced supervision and prudential standards for nonbank financial companies supervised by the Board of Governors and certain bank holding companies

(a) In general

(1) Purpose

In order to prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress, failure, or ongoing activities of large, interconnected financial institutions, the Council may make recommendations to the Board of Governors concerning the establishment and refinement of prudential standards and reporting and disclosure requirements applicable to nonbank financial companies supervised by the Board of Governors and large, interconnected bank holding companies, that—

(A) are more stringent than those applicable to other nonbank financial companies and bank holding companies that do not present similar risks to the financial stability of the United States; and

(B) increase in stringency, based on the considerations identified in subsection (b)(3).

(2) Recommended application of required standards

In making recommendations under this section, the Council may—

(A) differentiate among companies that are subject to heightened standards on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the financial activities of their subsidiaries), size, and any other risk-related

factors that the Council deems appropriate; or

(B) recommend an asset threshold that is higher than the applicable threshold for the application of any standard described in subsections (c) through (g).

(b) Development of prudential standards

(1) In general

The recommendations of the Council under subsection (a) may include—

- (A) risk-based capital requirements;
- (B) leverage limits;
- (C) liquidity requirements;
- (D) resolution plan and credit exposure report requirements;
- (E) concentration limits;
- (F) a contingent capital requirement;
- (G) enhanced public disclosures;
- (H) short-term debt limits; and
- (I) overall risk management requirements.

(2) Prudential standards for foreign financial companies

In making recommendations concerning the standards set forth in paragraph (1) that would apply to foreign nonbank financial companies supervised by the Board of Governors or foreign-based bank holding companies, the Council shall—

- (A) give due regard to the principle of national treatment and equality of competitive opportunity; and
- (B) take into account the extent to which the foreign nonbank financial company or foreign-based bank holding company is subject on a consolidated basis to home country standards that are comparable to those applied to financial companies in the United States.

(3) Considerations

In making recommendations concerning prudential standards under paragraph (1), the Council shall—

- (A) take into account differences among nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), based on—
 - (i) the factors described in subsections (a) and (b) of section 5323 of this title;
 - (ii) whether the company owns an insured depository institution;
 - (iii) nonfinancial activities and affiliations of the company; and
 - (iv) any other factors that the Council determines appropriate;

(B) to the extent possible, ensure that small changes in the factors listed in subsections (a) and (b) of section 5323 of this title would not result in sharp, discontinuous changes in the prudential standards established under section 5365 of this title; and

(C) adapt its recommendations as appropriate in light of any predominant line of business of such company, including assets under management or other activities for which particular standards may not be appropriate.

(c) Contingent capital

(1) Study required

The Council shall conduct a study of the feasibility, benefits, costs, and structure of a contingent capital requirement for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), which study shall include—

(A) an evaluation of the degree to which such requirement would enhance the safety and soundness of companies subject to the requirement, promote the financial stability of the United States, and reduce risks to United States taxpayers;

(B) an evaluation of the characteristics and amounts of contingent capital that should be required;

(C) an analysis of potential prudential standards that should be used to determine whether the contingent capital of a company would be converted to equity in times of financial stress;

(D) an evaluation of the costs to companies, the effects on the structure and operation of credit and other financial markets, and other economic effects of requiring contingent capital;

(E) an evaluation of the effects of such requirement on the international competitiveness of companies subject to the requirement and the prospects for international coordination in establishing such requirement; and

(F) recommendations for implementing regulations.

(2) Report

The Council shall submit a report to Congress regarding the study required by paragraph (1) not later than 2 years after July 21, 2010.

(3) Recommendations

(A) In general

Subsequent to submitting a report to Congress under paragraph (2), the Council may make recommendations to the Board of Governors to require any nonbank financial company supervised by the Board of Governors and any bank holding company described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(B) Factors to consider

In making recommendations under this subsection, the Council shall consider—

(i) an appropriate transition period for implementation of a conversion under this subsection;

(ii) the factors described in subsection (b)(3);

(iii) capital requirements applicable to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), and subsidiaries thereof;

(iv) results of the study required by paragraph (1); and

(v) any other factor that the Council deems appropriate.

(d) Resolution plan and credit exposure reports

(1) Resolution plan

The Council may make recommendations to the Board of Governors concerning the requirement that each nonbank financial company supervised by the Board of Governors and each bank holding company described in subsection (a) report periodically to the Council, the Board of Governors, and the Corporation, the plan of such company for rapid and orderly resolution in the event of material financial distress or failure.

(2) Credit exposure report

The Council may make recommendations to the Board of Governors concerning the advisability of requiring each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) to report periodically to the Council, the Board of Governors, and the Corporation on—

- (A) the nature and extent to which the company has credit exposure to other significant nonbank financial companies and significant bank holding companies; and
- (B) the nature and extent to which other such significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(e) Concentration limits

In order to limit the risks that the failure of any individual company could pose to nonbank financial companies supervised by the Board of Governors or bank holding companies described in subsection (a), the Council may make recommendations to the Board of Governors to prescribe standards to limit such risks, as set forth in section 5365 of this title.

(f) Enhanced public disclosures

The Council may make recommendations to the Board of Governors to require periodic public disclosures by bank holding companies described in subsection (a) and by nonbank financial companies supervised by the Board of Governors, in order to support market evaluation of the risk profile, capital adequacy, and risk management capabilities thereof.

(g) Short-term debt limits

The Council may make recommendations to the Board of Governors to require short-term debt limits to mitigate the risks that an over-accumulation of such debt could pose to bank holding companies described in subsection (a), nonbank financial companies supervised by the Board of Governors, or the financial system.

(Pub. L. 111–203, title I, §115, July 21, 2010, 124 Stat. 1403; Pub. L. 115–174, title IV, §401(c)(1)(A), May 24, 2018, 132 Stat. 1358.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a)(2)(B). Pub. L. 115–174 substituted “the applicable threshold” for “\$50,000,000,000”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Except as otherwise provided, amendment by Pub. L. 115–174 effective 18 months after May 24, 2018, see section 401(d) of Pub. L. 115–174, set out as a note under section 5365 of this title.

CONSTRUCTION OF 2018 AMENDMENT

For construction of amendment by Pub. L. 115–174 as applied to certain foreign banking organizations, see section 401(g) of Pub. L. 115–174, set out as a note under section 5365 of this title.

§ 5326. Reports

(a) In general

Subject to subsection (b), the Council, acting through the Office of Financial Research, may require a bank holding company with total consolidated assets of \$250,000,000,000 or greater or a nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit certified reports to keep the Council informed as to—

- (1) the financial condition of the company;
- (2) systems for monitoring and controlling financial, operating, and other risks;
- (3) transactions with any subsidiary that is a depository institution; and
- (4) the extent to which the activities and operations of the company and any subsidiary thereof, could, under adverse circumstances, have the potential to disrupt financial markets or affect the overall financial stability of the United States.

(b) Use of existing reports

(1) In general

For purposes of compliance with subsection (a), the Council, acting through the Office of Financial Research, shall, to the fullest extent possible, use—

- (A) reports that a bank holding company, nonbank financial company supervised by the Board of Governors, or any functionally regulated subsidiary of such company has been required to provide to other Federal or State regulatory agencies or to a relevant foreign supervisory authority;
- (B) information that is otherwise required to be reported publicly; and
- (C) externally audited financial statements.

(2) Availability

Each bank holding company described in subsection (a) and nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, shall provide to the Council, at the request of the Council, copies of all reports referred to in paragraph (1).

(3) Confidentiality

The Council shall maintain the confidentiality of the reports obtained under subsection (a) and paragraph (1)(A) of this subsection.

(Pub. L. 111–203, title I, §116, July 21, 2010, 124 Stat. 1406; Pub. L. 115–174, title IV, §401(c)(1)(B), May 24, 2018, 132 Stat. 1358.)