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 of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code.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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

§ 5303. Antitrust savings clause

Nothing in this Act, or any amendment made by this Act, shall be construed to modify, impair, or supersede the operation of any of the antitrust laws, unless otherwise specified. For purposes of this section, the term ''antitrust laws'' has the same meaning as in subsection (a) of section 12 of title 15, except that such term includes section 45 of title 15, to the extent that such section 45 applies to unfair methods of competition.

(Pub. L. 111–203, § 6, July 21, 2010, 124 Stat. 1390.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in text, 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 of Title 15, Commerce and Trade, and enacted, amended, and repealed numerous other sections and notes in the Code.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.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

SUBCHAPTER I—FINANCIAL STABILITY

§ 5311. Definitions

(a) In general

For purposes of this subchapter, unless the context otherwise requires, the following definitions shall apply:

(1) Bank holding company

The term ''bank holding company'' has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841). A foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956 [12 U.S.C. 1841 et seq.], pursuant to section 3106(a) of this title, shall be treated as a bank holding company for purposes of this subchapter.

(2) Chairperson

The term ''Chairperson'' means the Chairperson of the Council.

(3) Member agency

The term ''member agency'' means an agency represented by a voting member of the Council.

(4) Nonbank financial company definitions

(A) Foreign nonbank financial company

The term ''foreign nonbank financial company'' means a company (other than a company that is, or is treated in the United States as, a bank holding company) that is—

(i) incorporated or organized in a country other than the United States; and

(ii) predominantly engaged in, including through a branch in the United States, financial activities, as defined in paragraph (6).

(B) U.S. nonbank financial company

The term ''U.S. nonbank financial company'' means a company (other than a bank holding company, a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.), or a national securities exchange (or parent thereof), clearing agency (or parent thereof, unless the parent is a bank holding company), security-based swap execution facility, or security-based swap data repository registered with the Commission, or a board of trade designated as a contract market (or parent thereof), or a derivatives clearing organization (or parent thereof, unless the parent is a bank holding company), swap execution facility or a swap data repository registered with the Commodity Futures Trading Commission), that is—

(i) incorporated or organized under the laws of the United States or any State; and

(ii) predominantly engaged in financial activities, as defined in paragraph (6).

(C) Nonbank financial company

The term ''nonbank financial company'' means a U.S. nonbank financial company and a foreign nonbank financial company.

(D) Nonbank financial company supervised by the Board of Governors

The term ''nonbank financial company supervised by the Board of Governors'' means a nonbank financial company that the Council has determined under section 5323 of this title shall be supervised by the Board of Governors.

(5) Office of Financial Research

The term ''Office of Financial Research'' means the office established under section 5342 of this title.

(6) Predominantly engaged

A company is ''predominantly engaged in financial activities'' if—

(A) the annual gross revenues derived by the company and all of its subsidiaries from activities that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956 [12 U.S.C. 1843(k)]) and, if applicable, from the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated annual gross revenues of the company; or

(B) the consolidated assets of the company and all of its subsidiaries related to activi-

ties that are financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956) and, if applicable, related to the ownership or control of one or more insured depository institutions, represents 85 percent or more of the consolidated assets of the company.

(7) Significant institutions

The terms ''significant nonbank financial company'' and ''significant bank holding company'' have the meanings given those terms by rule of the Board of Governors, but in no instance shall the term ''significant nonbank financial company'' include those entities that are excluded under paragraph (4)(B).

(b) Definitional criteria

The Board of Governors shall establish, by regulation, the requirements for determining if a company is predominantly engaged in financial activities, as defined in subsection (a)(6).

(c) Foreign nonbank financial companies

For purposes of the application of parts A and C (other than section 5323(b) of this title) with respect to a foreign nonbank financial company, references in this subchapter to ''company'' or ''subsidiary'' include only the United States activities and subsidiaries of such foreign company, except as otherwise provided.

(Pub. L. 111–203, title I, §102, July 21, 2010, 124 Stat. 1391.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a) and (c), 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.

The Bank Holding Company Act of 1956, referred to in subsec. (a)(1), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

The Farm Credit Act of 1971, referred to in subsec. (a)(4)(B), is Pub. L. 92–181, Dec. 10, 1971, 85 Stat. 583, which is classified principally to chapter 23 (§2001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2001 of this title and Tables.

Part C, referred to in subsec. (c), was in the original ''subtitle C'', meaning subtitle C (§§161–176) of title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1420, which is classified principally to part C (§5361 et seq.) of this subchapter. For complete classification of subtitle C to the Code, see Tables.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Subchapter effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of this title.

SHORT TITLE

This subchapter known as the ''Financial Stability Act of 2010'', see Short Title note set out under section 5301 of this title.

PART A—FINANCIAL STABILITY OVERSIGHT COUNCIL

§ 5321. Financial Stability Oversight Council established

(a) Establishment

Effective on July 21, 2010, there is established the Financial Stability Oversight Council.

(b) Membership

The Council shall consist of the following members:

(1) Voting members

The voting members, who shall each have 1 vote on the Council shall be—

(A) the Secretary of the Treasury, who shall serve as Chairperson of the Council;

(B) the Chairman of the Board of Governors;

(C) the Comptroller of the Currency;

(D) the Director of the Bureau;

(E) the Chairman of the Commission;

(F) the Chairperson of the Corporation;

(G) the Chairperson of the Commodity Futures Trading Commission;

(H) the Director of the Federal Housing Finance Agency;

(I) the Chairman of the National Credit Union Administration Board; and

(J) an independent member appointed by the President, by and with the advice and consent of the Senate, having insurance expertise.

(2) Nonvoting members

The nonvoting members, who shall serve in an advisory capacity as a nonvoting member of the Council, shall be—

(A) the Director of the Office of Financial Research;

(B) the Director of the Federal Insurance Office;

(C) a State insurance commissioner, to be designated by a selection process determined by the State insurance commissioners;

(D) a State banking supervisor, to be designated by a selection process determined by the State banking supervisors; and

(E) a State securities commissioner (or an officer performing like functions), to be designated by a selection process determined by such State securities commissioners.

(3) Nonvoting member participation

The nonvoting members of the Council shall not be excluded from any of the proceedings, meetings, discussions, or deliberations of the Council, except that the Chairperson may, upon an affirmative vote of the member agencies, exclude the nonvoting members from any of the proceedings, meetings, discussions, or deliberations of the Council when necessary to safeguard and promote the free exchange of confidential supervisory information.

(c) Terms; vacancy

(1) Terms

The independent member of the Council shall serve for a term of 6 years, and each nonvoting member described in subparagraphs (C), (D), and (E) of subsection (b)(2) shall serve for a term of 2 years.

(2) Vacancy

Any vacancy on the Council shall be filled in the manner in which the original appointment was made.

(3) Acting officials may serve

In the event of a vacancy in the office of the head of a member agency or department, and pending the appointment of a successor, or during the absence or disability of the head of a member agency or department, the acting head of the member agency or department shall serve as a member of the Council in the place of that agency or department head.

(4) Term of independent member

Notwithstanding paragraph (1), if a successor to the independent member of the Council serving under subsection (b)(1)(J) is not appointed and confirmed by the end of the term of service of such member, such member may continue to serve until the earlier of—

(A) 18 months after the date on which the term of service ends; or

(B) the date on which a successor to such member is appointed and confirmed.

(d) Technical and professional advisory committees

The Council may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Council, including an advisory committee consisting of State regulators, and the members of such committees may be members of the Council, or other persons, or both.

(e) Meetings

(1) Timing

The Council shall meet at the call of the Chairperson or a majority of the members then serving, but not less frequently than quarterly.

(2) Rules for conducting business

The Council shall adopt such rules as may be necessary for the conduct of the business of the Council. Such rules shall be rules of agency organization, procedure, or practice for purposes of section 553 of title 5.

(f) Voting

Unless otherwise specified, the Council shall make all decisions that it is authorized or required to make by a majority vote of the voting members then serving.

(g) Nonapplicability of chapter 10 of title 5

Chapter 10 of title 5 shall not apply to the Council, or to any special advisory, technical, or professional committee appointed by the Council, except that, if an advisory, technical, or professional committee has one or more members who are not employees of or affiliated with the United States Government, the Council shall publish a list of the names of the members of such committee.

(h) Assistance from Federal agencies

Any department or agency of the United States may provide to the Council and any special advisory, technical, or professional committee appointed by the Council, such services, funds, facilities, staff, and other support services as the Council may determine advisable.

(i) Compensation of members

(1) Federal employee members

All members of the Council who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(2) Omitted

(j) Detail of Government employees

Any employee of the Federal Government may be detailed to the Council without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege. An employee of the Federal Government detailed to the Council shall report to and be subject to oversight by the Council during the assignment to the Council, and shall be compensated by the department or agency from which the employee was detailed.

(Pub. L. 111–203, title I, § 111, July 21, 2010, 124 Stat. 1392; Pub. L. 115–61, § 2, Sept. 27, 2017, 131 Stat. 1158; Pub. L. 117–286, § 4(a)(58), Dec. 27, 2022, 136 Stat. 4311.)

Editorial Notes

CODIFICATION

Section is comprised of section 111 of Pub. L. 111–203. Subsec. (i)(2) of section 111 of Pub. L. 111–203 amended section 5314 of Title 5, Government Organization and Employees.

AMENDMENTS

2022—Subsec. (g). Pub. L. 117–286 substituted ''chapter 10 of title 5'' for ''FACA'' in heading and ''Chapter 10 of title 5'' for ''The Federal Advisory Committee Act (5 U.S.C. App.)'' in text.

2017—Subsec. (c)(4). Pub. L. 115–61 added par. (4).

§ 5322. Council authority

(a) Purposes and duties of the Council

(1) In general

The purposes of the Council 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.

(2) Duties

The Council shall, in accordance with this subchapter—

(A) collect information from member agencies, other Federal and State financial regulatory agencies, the Federal Insurance

Office and, if necessary to assess risks to the United States financial system, direct the Office of Financial Research to collect information from bank holding companies and nonbank financial companies;

(B) provide direction to, and request data and analyses from, the Office of Financial Research to support the work of the Council;

(C) monitor the financial services marketplace in order to identify potential threats to the financial stability of the United States;

(D) to[1] monitor domestic and international financial regulatory proposals and developments, including insurance and accounting issues, and to advise Congress and make recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets;

(E) facilitate information sharing and coordination among the member agencies and other Federal and State agencies regarding domestic financial services policy development, rulemaking, examinations, reporting requirements, and enforcement actions;

(F) recommend to the member agencies general supervisory priorities and principles reflecting the outcome of discussions among the member agencies;

(G) identify gaps in regulation that could pose risks to the financial stability of the United States;

(H) require supervision by the Board of Governors for nonbank financial companies that may pose risks to the financial stability of the United States in the event of their material financial distress or failure, or because of their activities pursuant to section 5323 of this title;

(I) make recommendations to the Board of Governors concerning the establishment of heightened prudential standards for risk-based capital, leverage, liquidity, contingent capital, resolution plans and credit exposure reports, concentration limits, enhanced public disclosures, and overall risk management for nonbank financial companies and large, interconnected bank holding companies supervised by the Board of Governors;

(J) identify systemically important financial market utilities and payment, clearing, and settlement activities (as that term is defined in subchapter IV);

(K) make recommendations to primary financial regulatory agencies to apply new or heightened standards and safeguards for financial activities or practices that could create or increase risks of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and United States financial markets;

(L) review and, as appropriate, may submit comments to the Commission and any standard-setting body with respect to an existing or proposed accounting principle, standard, or procedure;

(M) provide a forum for—

(i) discussion and analysis of emerging market developments and financial regulatory issues; and

(ii) resolution of jurisdictional disputes among the members of the Council; and

(N) annually report to and testify before Congress on—

(i) the activities of the Council;

(ii) significant financial market and regulatory developments, including insurance and accounting regulations and standards, along with an assessment of those developments on the stability of the financial system;

(iii) potential emerging threats to the financial stability of the United States;

(iv) all determinations made under section 5323 of this title or subchapter IV, and the basis for such determinations;

(v) all recommendations made under section 5329 of this title and the result of such recommendations; and

(vi) recommendations—

(I) to enhance the integrity, efficiency, competitiveness, and stability of United States financial markets;

(II) to promote market discipline; and

(III) to maintain investor confidence.

(b) Statements by voting members of the Council

At the time at which each report is submitted under subsection (a), each voting member of the Council shall—

(1) if such member believes that the Council, the Government, and the private sector are taking all reasonable steps to ensure financial stability and to mitigate systemic risk that would negatively affect the economy, submit a signed statement to Congress stating such belief; or

(2) if such member does not believe that all reasonable steps described under paragraph (1) are being taken, submit a signed statement to Congress stating what actions such member believes need to be taken in order to ensure that all reasonable steps described under paragraph (1) are taken.

(c) Testimony by the Chairperson

The Chairperson shall appear before the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate at an annual hearing, after the report is submitted under subsection (a)—

(1) to discuss the efforts, activities, objectives, and plans of the Council; and

(2) to discuss and answer questions concerning such report.

(d) Authority to obtain information

(1) In general

The Council may receive, and may request the submission of, any data or information from the Office of Financial Research, member agencies, and the Federal Insurance Office, as necessary—

(A) to monitor the financial services marketplace to identify potential risks to the financial stability of the United States; or

(B) to otherwise carry out any of the provisions of this subchapter.

[1] So in original. The word ''to'' probably should not appear.

(2) Submissions by the office and member agencies

Notwithstanding any other provision of law, the Office of Financial Research, any member agency, and the Federal Insurance Office, are authorized to submit information to the Council.

(3) Financial data collection

(A) In general

The Council, acting through the Office of Financial Research, may require the submission of periodic and other reports from any nonbank financial company or bank holding company for the purpose of assessing the extent to which a financial activity or financial market in which the nonbank financial company or bank holding company participates, or the nonbank financial company or bank holding company itself, poses a threat to the financial stability of the United States.

(B) Mitigation of report burden

Before requiring the submission of reports from any nonbank financial company or bank holding company that is regulated by a member agency or any primary financial regulatory agency, the Council, acting through the Office of Financial Research, shall coordinate with such agencies and shall, whenever possible, rely on information available from the Office of Financial Research or such agencies.

(C) Mitigation in case of foreign financial companies

Before requiring the submission of reports from a company that is a foreign nonbank financial company or foreign-based bank holding company, the Council shall, acting through the Office of Financial Research, to the extent appropriate, consult with the appropriate foreign regulator of such company and, whenever possible, rely on information already being collected by such foreign regulator, with English translation.

(4) Back-up examination by the Board of Governors

If the Council is unable to determine whether the financial activities of a U.S. nonbank financial company pose a threat to the financial stability of the United States, based on information or reports obtained under paragraphs (1) and (3), discussions with management, and publicly available information, the Council may request the Board of Governors, and the Board of Governors is authorized, to conduct an examination of the U.S. nonbank financial company for the sole purpose of determining whether the nonbank financial company should be supervised by the Board of Governors for purposes of this subchapter.

(5) Confidentiality

(A) In general

The Council, the Office of Financial Research, and the other member agencies shall maintain the confidentiality of any data, information, and reports submitted under this subchapter.

(B) Retention of privilege

The submission of any nonpublicly available data or information under this subsection and part B shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or State law (including the rules of any Federal or State court) to which the data or information is otherwise subject.

(C) Freedom of Information Act

Section 552 of title 5, including the exceptions thereunder, shall apply to any data or information submitted under this subsection and part B.

(Pub. L. 111–203, title I, § 112, July 21, 2010, 124 Stat. 1394.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(2) and (d)(1)(B), (4), (5)(A), 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.

§ 5323. Authority to require supervision and regulation of certain nonbank financial companies

(a) U.S. nonbank financial companies supervised by the Board of Governors

(1) Determination

The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, may determine that a U.S. nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this subchapter, if the Council determines that material financial distress at the U.S. nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the U.S. nonbank financial company, could pose a threat to the financial stability of the United States.

(2) Considerations

In making a determination under paragraph (1), the Council shall consider—

(A) the extent of the leverage of the company;

(B) the extent and nature of the off-balance-sheet exposures of the company;

(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) the importance of the company as a source of credit for households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(E) the importance of the company as a source of credit for low-income, minority, or underserved communities, and the impact

that the failure of such company would have on the availability of credit in such communities;

(F) the extent to which assets are managed rather than owned by the company, and the extent to which ownership of assets under management is diffuse;

(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) the degree to which the company is already regulated by 1 or more primary financial regulatory agencies;

(I) the amount and nature of the financial assets of the company;

(J) the amount and types of the liabilities of the company, including the degree of reliance on short-term funding; and

(K) any other risk-related factors that the Council deems appropriate.

(b) Foreign nonbank financial companies supervised by the Board of Governors

(1) Determination

The Council, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, may determine that a foreign nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards, in accordance with this subchapter, if the Council determines that material financial distress at the foreign nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the foreign nonbank financial company, could pose a threat to the financial stability of the United States.

(2) Considerations

In making a determination under paragraph (1), the Council shall consider—

(A) the extent of the leverage of the company;

(B) the extent and nature of the United States related off-balance-sheet exposures of the company;

(C) the extent and nature of the transactions and relationships of the company with other significant nonbank financial companies and significant bank holding companies;

(D) the importance of the company as a source of credit for United States households, businesses, and State and local governments and as a source of liquidity for the United States financial system;

(E) the importance of the company as a source of credit for low-income, minority, or underserved communities in the United States, and the impact that the failure of such company would have on the availability of credit in such communities;

(F) the extent to which assets are managed rather than owned by the company and the extent to which ownership of assets under management is diffuse;

(G) the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company;

(H) the extent to which the company is subject to prudential standards on a consolidated basis in its home country that are administered and enforced by a comparable foreign supervisory authority;

(I) the amount and nature of the United States financial assets of the company;

(J) the amount and nature of the liabilities of the company used to fund activities and operations in the United States, including the degree of reliance on short-term funding; and

(K) any other risk-related factors that the Council deems appropriate.

(c) Antievasion

(1) Determinations

In order to avoid evasion of this subchapter, the Council, on its own initiative or at the request of the Board of Governors, may determine, on a nondelegable basis and by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, that—

(A) material financial distress related to, or the nature, scope, size, scale, concentration, interconnectedness, or mix of, the financial activities conducted directly or indirectly by a company incorporated or organized under the laws of the United States or any State or the financial activities in the United States of a company incorporated or organized in a country other than the United States would pose a threat to the financial stability of the United States, based on consideration of the factors in subsection (a)(2) or (b)(2), as applicable;

(B) the company is organized or operates in such a manner as to evade the application of this subchapter; and

(C) such financial activities of the company shall be supervised by the Board of Governors and subject to prudential standards in accordance with this subchapter, consistent with paragraph (3).

(2) Report

Upon making a determination under paragraph (1), the Council shall submit a report to the appropriate committees of Congress detailing the reasons for making such determination.

(3) Consolidated supervision of only financial activities; establishment of an intermediate holding company

(A) Establishment of an intermediate holding company

Upon a determination under paragraph (1), the company that is the subject of the determination may establish an intermediate holding company in which the financial activities of such company and its subsidiaries shall be conducted (other than the activities described in section 5367(b)(2) of this title) in compliance with any regulations or guidance provided by the Board of Governors. Such intermediate holding company shall be subject to the supervision of the Board of Governors and to prudential standards under this subchapter as if the intermediate holding com-

pany were a nonbank financial company supervised by the Board of Governors.

(B) Action of the Board of Governors

To facilitate the supervision of the financial activities subject to the determination in paragraph (1), the Board of Governors may require a company to establish an intermediate holding company, as provided for in section 5367 of this title, which would be subject to the supervision of the Board of Governors and to prudential standards under this subchapter, as if the intermediate holding company were a nonbank financial company supervised by the Board of Governors.

(4) Notice and opportunity for hearing and final determination; judicial review

Subsections (d) through (h) shall apply to determinations made by the Council pursuant to paragraph (1) in the same manner as such subsections apply to nonbank financial companies.

(5) Covered financial activities

For purposes of this subsection, the term ''financial activities''—

(A) means activities that are financial in nature (as defined in section 1843(k) of this title);

(B) includes the ownership or control of one or more insured depository institutions; and

(C) does not include internal financial activities conducted for the company or any affiliate thereof, including internal treasury, investment, and employee benefit functions.

(6) Only financial activities subject to prudential supervision

Nonfinancial activities of the company shall not be subject to supervision by the Board of Governors and prudential standards of the Board. For purposes of this Act, the financial activities that are the subject of the determination in paragraph (1) shall be subject to the same requirements as a nonbank financial company supervised by the Board of Governors. Nothing in this paragraph shall prohibit or limit the authority of the Board of Governors to apply prudential standards under this subchapter to the financial activities that are subject to the determination in paragraph (1).

(d) Reevaluation and rescission

The Council shall—

(1) not less frequently than annually, reevaluate each determination made under subsections (a) and (b) with respect to such nonbank financial company supervised by the Board of Governors; and

(2) rescind any such determination, if the Council, by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, determines that the nonbank financial company no longer meets the standards under subsection (a) or (b), as applicable.

(e) Notice and opportunity for hearing and final determination

(1) In general

The Council shall provide to a nonbank financial company written notice of a proposed determination of the Council, including an explanation of the basis of the proposed determination of the Council, that a nonbank financial company shall be supervised by the Board of Governors and shall be subject to prudential standards in accordance with this subchapter.

(2) Hearing

Not later than 30 days after the date of receipt of any notice of a proposed determination under paragraph (1), the nonbank financial company may request, in writing, an opportunity for a written or oral hearing before the Council to contest the proposed determination. Upon receipt of a timely request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(3) Final determination

Not later than 60 days after the date of a hearing under paragraph (2), the Council shall notify the nonbank financial company of the final determination of the Council, which shall contain a statement of the basis for the decision of the Council.

(4) No hearing requested

If a nonbank financial company does not make a timely request for a hearing, the Council shall notify the nonbank financial company, in writing, of the final determination of the Council under subsection (a) or (b), as applicable, not later than 10 days after the date by which the company may request a hearing under paragraph (2).

(f) Emergency exception

(1) In general

The Council may waive or modify the requirements of subsection (e) with respect to a nonbank financial company, if the Council determines, by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson, that such waiver or modification is necessary or appropriate to prevent or mitigate threats posed by the nonbank financial company to the financial stability of the United States.

(2) Notice

The Council shall provide notice of a waiver or modification under this subsection to the nonbank financial company concerned as soon as practicable, but not later than 24 hours after the waiver or modification is granted.

(3) International coordination

In making a determination under paragraph (1), the Council shall consult with the appropriate home country supervisor, if any, of the foreign nonbank financial company that is being considered for such a determination.

(4) Opportunity for hearing

The Council shall allow a nonbank financial company to request, in writing, an opportunity for a written or oral hearing before the Council to contest a waiver or modification

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 overaccumulation 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.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–174 substituted ''$250,000,000,000'' for ''$50,000,000,000'' in introductory provisions.

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.

§ 5327. Treatment of certain companies that cease to be bank holding companies

(a) Applicability

This section shall apply to—

(1) any entity that—

(A) was a bank holding company having total consolidated assets equal to or greater than $50,000,000,000 as of January 1, 2010; and

(B) received financial assistance under or participated in the Capital Purchase Program established under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.]; and

(2) any successor entity (as defined by the Board of Governors, in consultation with the Council) to an entity described in paragraph (1).

(b) Treatment

If an entity described in subsection (a) ceases to be a bank holding company at any time after January 1, 2010, then such entity shall be treated as a nonbank financial company supervised by the Board of Governors, as if the Council had made a determination under section 5323 of this title with respect to that entity.

(c) Appeal

(1) Request for hearing

An entity may request, in writing, an opportunity for a written or oral hearing before the Council to appeal its treatment as a nonbank financial company supervised by the Board of Governors in accordance with this section. Upon receipt of the request, the Council shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such entity may appear, personally or through counsel, to submit written materials (or, at the sole discretion of the Council, oral testimony and oral argument).

(2) Decision

(A) Proposed decision

A Council decision to grant an appeal under this subsection shall be made by a vote of not fewer than ⅔ of the voting members then serving, including an affirmative vote by the Chairperson. Not later than 60 days after the date of a hearing under paragraph (1), the Council shall submit a report to, and may testify before, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the proposed decision of the Council regarding an appeal under paragraph (1), which report shall include a statement of the basis for the proposed decision of the Council.

(B) Notice of final decision

The Council shall notify the subject entity of the final decision of the Council regarding an appeal under paragraph (1), which notice shall contain a statement of the basis for the final decision of the Council, not later than 60 days after the later of—

(i) the date of the submission of the report under subparagraph (A); or

(ii) if, not later than 1 year after the date of submission of the report under subparagraph (A), the Committee on Banking, Housing, and Urban Affairs of the Senate or the Committee on Financial Services of the House of Representatives holds one or more hearings regarding such report, the date of the last such hearing.

(C) Considerations

In making a decision regarding an appeal under paragraph (1), the Council shall consider whether the company meets the standards under section 5323(a) or 5323(b) of this title, as applicable, and the definition of the term ''nonbank financial company'' under section 5311 of this title. The decision of the Council shall be final, subject to the review under paragraph (3).

(3) Review

If the Council denies an appeal under this subsection, the Council shall, not less frequently than annually, review and reevaluate the decision.

(Pub. L. 111–203, title I, § 117, July 21, 2010, 124 Stat. 1406.)

Editorial Notes

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (a)(1)(B), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§ 5201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

§ 5328. Council funding

Any expenses of the Council shall be treated as expenses of, and paid by, the Office of Financial Research.

(Pub. L. 111–203, title I, § 118, July 21, 2010, 124 Stat. 1408.)

§ 5329. Resolution of supervisory jurisdictional disputes among member agencies

(a) Request for Council recommendation

The Council shall seek to resolve a dispute among 2 or more member agencies, if—

(1) a member agency has a dispute with another member agency about the respective ju-

risdiction over a particular bank holding company, nonbank financial company, or financial activity or product (excluding matters for which another dispute mechanism specifically has been provided under title X);[1]

(2) the Council determines that the disputing agencies cannot, after a demonstrated good faith effort, resolve the dispute without the intervention of the Council; and

(3) any of the member agencies involved in the dispute—

(A) provides all other disputants prior notice of the intent to request dispute resolution by the Council; and

(B) requests in writing, not earlier than 14 days after providing the notice described in subparagraph (A), that the Council seek to resolve the dispute.

(b) Council recommendation

The Council shall seek to resolve each dispute described in subsection (a)—

(1) within a reasonable time after receiving the dispute resolution request;

(2) after consideration of relevant information provided by each agency party to the dispute; and

(3) by agreeing with 1 of the disputants regarding the entirety of the matter, or by determining a compromise position.

(c) Form of recommendation

Any Council recommendation under this section shall—

(1) be in writing;

(2) include an explanation of the reasons therefor; and

(3) be approved by the affirmative vote of ⅔ of the voting members of the Council then serving.

(d) Nonbinding effect

Any recommendation made by the Council under subsection (c) shall not be binding on the Federal agencies that are parties to the dispute.

(Pub. L. 111–203, title I, §119, July 21, 2010, 124 Stat. 1408.)

Editorial Notes

REFERENCES IN TEXT

Title X, referred to in subsec. (a)(1), is title X of Pub. L. 111–203, July 21, 2010, 124 Stat. 1955, known as the Consumer Financial Protection Act of 2010, which enacted subchapter V (§5481 et seq.) of this chapter and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of title X to the Code, see Short Title note set out under section 5301 of this title and Tables.

§5330. Additional standards applicable to activities or practices for financial stability purposes

(a) In general

The Council may provide for more stringent regulation of a financial activity by issuing recommendations to the primary financial regulatory agencies to apply new or heightened standards and safeguards, including standards enumerated in section 5325 of this title, for a financial activity or practice conducted by bank holding companies or nonbank financial companies under their respective jurisdictions, if the Council determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of such activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, financial markets of the United States, or low-income, minority, or underserved communities.

(b) Procedure for recommendations to regulators

(1) Notice and opportunity for comment

The Council shall consult with the primary financial regulatory agencies and provide notice to the public and opportunity for comment for any proposed recommendation that the primary financial regulatory agencies apply new or heightened standards and safeguards for a financial activity or practice.

(2) Criteria

The new or heightened standards and safeguards for a financial activity or practice recommended under paragraph (1)—

(A) shall take costs to long-term economic growth into account; and

(B) may include prescribing the conduct of the activity or practice in specific ways (such as by limiting its scope, or applying particular capital or risk management requirements to the conduct of the activity) or prohibiting the activity or practice.

(c) Implementation of recommended standards

(1) Role of primary financial regulatory agency

(A) In general

Each primary financial regulatory agency may impose, require reports regarding, examine for compliance with, and enforce standards in accordance with this section with respect to those entities for which it is the primary financial regulatory agency.

(B) Rule of construction

The authority under this paragraph is in addition to, and does not limit, any other authority of a primary financial regulatory agency. Compliance by an entity with actions taken by a primary financial regulatory agency under this section shall be enforceable in accordance with the statutes governing the respective jurisdiction of the primary financial regulatory agency over the entity, as if the agency action were taken under those statutes.

(2) Imposition of standards

The primary financial regulatory agency shall impose the standards recommended by the Council in accordance with subsection (a), or similar standards that the Council deems acceptable, or shall explain in writing to the Council, not later than 90 days after the date on which the Council issues the recommendation, why the agency has determined not to follow the recommendation of the Council.

(d) Report to Congress

The Council shall report to Congress on—

[1] See References in Text note below.

(1) any recommendations issued by the Council under this section;

(2) the implementation of, or failure to implement, such recommendation on the part of a primary financial regulatory agency; and

(3) in any case in which no primary financial regulatory agency exists for the nonbank financial company conducting financial activities or practices referred to in subsection (a), recommendations for legislation that would prevent such activities or practices from threatening the stability of the financial system of the United States.

(e) Effect of rescission of identification

(1) Notice

The Council may recommend to the relevant primary financial regulatory agency that a financial activity or practice no longer requires any standards or safeguards implemented under this section.

(2) Determination of primary financial regulatory agency to continue

(A) In general

Upon receipt of a recommendation under paragraph (1), a primary financial regulatory agency that has imposed standards under this section shall determine whether such standards should remain in effect.

(B) Appeal process

Each primary financial regulatory agency that has imposed standards under this section shall promulgate regulations to establish a procedure under which entities under its jurisdiction may appeal a determination by such agency under this paragraph that standards imposed under this section should remain in effect.

(Pub. L. 111–203, title I, § 120, July 21, 2010, 124 Stat. 1408.)

§ 5331. Mitigation of risks to financial stability

(a) Mitigatory actions

If the Board of Governors determines that a bank holding company with total consolidated assets of $250,000,000,000 or more, or a nonbank financial company supervised by the Board of Governors, poses a grave threat to the financial stability of the United States, the Board of Governors, upon an affirmative vote of not fewer than ⅔ of the voting members of the Council then serving, shall—

(1) limit the ability of the company to merge with, acquire, consolidate with, or otherwise become affiliated with another company;

(2) restrict the ability of the company to offer a financial product or products;

(3) require the company to terminate one or more activities;

(4) impose conditions on the manner in which the company conducts 1 or more activities; or

(5) if the Board of Governors determines that the actions described in paragraphs (1) through (4) are inadequate to mitigate a threat to the financial stability of the United States in its recommendation, require the company to sell or otherwise transfer assets or off-balance-sheet items to unaffiliated entities.

(b) Notice and hearing

(1) In general

The Board of Governors, in consultation with the Council, shall provide to a company described in subsection (a) written notice that such company is being considered for mitigatory action pursuant to this section, including an explanation of the basis for, and description of, the proposed mitigatory action.

(2) Hearing

Not later than 30 days after the date of receipt of notice under paragraph (1), the company may request, in writing, an opportunity for a written or oral hearing before the Board of Governors to contest the proposed mitigatory action. Upon receipt of a timely request, the Board of Governors shall fix a time (not later than 30 days after the date of receipt of the request) and place at which such company may appear, personally or through counsel, to submit written materials (or, at the discretion of the Board of Governors, in consultation with the Council, oral testimony and oral argument).

(3) Decision

Not later than 60 days after the date of a hearing under paragraph (2), or not later than 60 days after the provision of a notice under paragraph (1) if no hearing was held, the Board of Governors shall notify the company of the final decision of the Board of Governors, including the results of the vote of the Council, as described in subsection (a).

(c) Factors for consideration

The Board of Governors and the Council shall take into consideration the factors set forth in subsection (a) or (b) of section 5323 of this title, as applicable, in making any determination under subsection (a).

(d) Application to foreign financial companies

The Board of Governors may prescribe regulations regarding the application of this section to foreign nonbank financial companies supervised by the Board of Governors and foreign-based bank holding companies—

(1) giving due regard to the principle of national treatment and equality of competitive opportunity; and

(2) taking 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.

(Pub. L. 111–203, title I, § 121, July 21, 2010, 124 Stat. 1410; Pub. L. 115–174, title IV, § 401(c)(1)(C), May 24, 2018, 132 Stat. 1358.)

Editorial Notes

AMENDMENTS

2018—Subsec. (a). Pub. L. 115–174 substituted ''$250,000,000,000'' for ''$50,000,000,000'' in introductory provisions.

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.

§ 5332. GAO audit of Council

(a) Authority to audit

The Comptroller General of the United States may audit the activities of—

(1) the Council; and

(2) any person or entity acting on behalf of or under the authority of the Council, to the extent that such activities relate to work for the Council by such person or entity.

(b) Access to information

(1) In general

Notwithstanding any other provision of law, the Comptroller General shall, upon request and at such reasonable time and in such reasonable form as the Comptroller General may request, have access to—

(A) any records or other information under the control of or used by the Council;

(B) any records or other information under the control of a person or entity acting on behalf of or under the authority of the Council, to the extent that such records or other information is relevant to an audit under subsection (a); and

(C) the officers, directors, employees, financial advisors, staff, working groups, and agents and representatives of the Council (as related to the activities on behalf of the Council of such agent or representative), at such reasonable times as the Comptroller General may request.

(2) Copies

The Comptroller General may make and retain copies of such books, accounts, and other records, access to which is granted under this section, as the Comptroller General considers appropriate.

(Pub. L. 111–203, title I, §122, July 21, 2010, 124 Stat. 1411.)

§ 5333. Study of the effects of size and complexity of financial institutions on capital market efficiency and economic growth

(a) Study required

(1) In general

The Chairperson of the Council shall carry out a study of the economic impact of possible financial services regulatory limitations intended to reduce systemic risk. Such study shall estimate the benefits and costs on the efficiency of capital markets, on the financial sector, and on national economic growth, of—

(A) explicit or implicit limits on the maximum size of banks, bank holding companies, and other large financial institutions;

(B) limits on the organizational complexity and diversification of large financial institutions;

(C) requirements for operational separation between business units of large financial institutions in order to expedite resolution in case of failure;

(D) limits on risk transfer between business units of large financial institutions;

(E) requirements to carry contingent capital or similar mechanisms;

(F) limits on commingling of commercial and financial activities by large financial institutions;

(G) segregation requirements between traditional financial activities and trading or other high-risk operations in large financial institutions; and

(H) other limitations on the activities or structure of large financial institutions that may be useful to limit systemic risk.

(2) Recommendations

The study required by this section shall include recommendations for the optimal structure of any limits considered in subparagraphs (A) through (E), in order to maximize their effectiveness and minimize their economic impact.

(b) Report

Not later than the end of the 180-day period beginning on July 21, 2010, and not later than every 5 years thereafter, the Chairperson shall issue a report to the Congress containing any findings and determinations made in carrying out the study required under subsection (a).

(Pub. L. 111–203, title I, §123, July 21, 2010, 124 Stat. 1412.)

§ 5334. Data standards

(a) Definitions

In this section—

(1) the term ''covered agencies'' means—

(A) the Department of the Treasury;

(B) the Board of Governors;

(C) the Office of the Comptroller of the Currency;

(D) the Bureau;

(E) the Commission;

(F) the Corporation;

(G) the Federal Housing Finance Agency;

(H) the National Credit Union Administration Board; and

(I) any other primary financial regulatory agency designated by the Secretary;

(2) the terms ''data asset'', ''machine-readable'', ''metadata'', and ''open license'' have the meanings given the terms in section 3502 of title 44; and

(3) the term ''data standard'' means a standard that specifies rules by which data is described and recorded.

(b) Rules

(1) Proposed rules

Not later than 18 months after December 23, 2022, the heads of the covered agencies shall jointly issue proposed rules for public comment that establish data standards for—

(A) the collections of information reported to each covered agency by financial entities under the jurisdiction of the covered agency; and

(B) the data collected from covered agencies on behalf of the Council.

(2) Final rules

Not later than 2 years after December 23, 2022, the heads of the covered agencies shall jointly promulgate final rules that establish the data standards described in paragraph (1).

(c) Data standards

(1) Common identifiers; quality

The data standards established in the final rules promulgated under subsection (b)(2) shall—

(A) include common identifiers for collections of information reported to covered agencies or collected on behalf of the Council, which shall include a common nonproprietary legal entity identifier that is available under an open license for all entities required to report to covered agencies; and

(B) to the extent practicable—

(i) render data fully searchable and machine-readable;

(ii) enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data, as defined by the underlying regulatory information collection requirements;

(iii) ensure that a data element or data asset that exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata;

(iv) be nonproprietary or made available under an open license;

(v) incorporate standards developed and maintained by voluntary consensus standards bodies; and

(vi) use, be consistent with, and implement applicable accounting and reporting principles.

(2) Consultation; interoperability

In establishing data standards in the final rules promulgated under subsection (b)(2), the heads of the covered agencies shall—

(A) consult with other Federal departments and agencies and multi-agency initiatives responsible for Federal data standards; and

(B) seek to promote interoperability of financial regulatory data across members of the Council.

(d) Effective date

The data standards established in the final rules promulgated under subsection (b)(2) shall take effect not later than 2 years after the date on which those final rules are promulgated under that subsection.

(Pub. L. 111–203, title I, § 124, as added Pub. L. 117–263, div. E, title LVIII, § 5811(a), Dec. 23, 2022, 136 Stat. 3422.)

Statutory Notes and Related Subsidiaries

RULES OF CONSTRUCTION APPLICABLE TO PUB. L. 117–263

Pub. L. 117–263, div. E, title LVIII, § 5813, Dec. 23, 2022, 136 Stat. 3424, provided that: ''Nothing in this subtitle [subtitle A (§§ 5811–5813) of title LVIII of div. E of Pub. L. 117–263, enacting this section, section 5335 of this title, and provisions set out as a note under section 5335 of this title], or the amendments made by this subtitle, shall be construed to require the Secretary of the Treasury to collect or make publicly available additional information under the Financial Stability Act of 2010 (12 U.S.C. 5311 et seq.), beyond information that was collected or made publicly available under that Act, as of the day before the date of enactment of this Act [Dec. 23, 2022].''

Pub. L. 117–263, div. E, title LVIII, § 5891, Dec. 23, 2022, 136 Stat. 3438, provided that:

''(a) NO EFFECT ON INTELLECTUAL PROPERTY.—Nothing in this title [see Short Title of 2022 Amendment note set out under section 78a of Title 15, Commerce and Trade], or the amendments made by this title, may be construed to alter the legal protections, as in effect on the day before the date of enactment of this Act [Dec. 23, 2022], of copyrighted material or other intellectual property rights of any non-Federal person.

''(b) NO EFFECT ON MONETARY POLICY.—Nothing in this title, or the amendments made by this title, may be construed to apply to activities conducted, or data standards used, in connection with monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

''(c) PRESERVATION OF AGENCY AUTHORITY TO TAILOR REQUIREMENTS.—Nothing in this title, or the amendments made by this title, may be construed to prohibit the head of a covered agency, as defined in section 124(a) of the Financial Stability Act of 2010 [12 U.S.C. 5334(a)], as added by section 5811(a) of this title, from tailoring those standards when those standards are adopted under this title and the amendments made by this title.''

Pub. L. 117–263, div. E, title LVIII, § 5892, Dec. 23, 2022, 136 Stat. 3438, provided that:

''(a) IN GENERAL.—Nothing in this title [see Short Title of 2022 Amendment note set out under section 78a of Title 15, Commerce and Trade], or the amendments made by this title, shall require the disclosure to the public of—

''(1) information that would be exempt from disclosure under section 552 of title 5, United States Code (commonly known as the 'Freedom of Information Act'); or

''(2) information protected under—

''(A) section 552a of title 5, United States Code (commonly known as the 'Privacy Act of 1974');

''(B) section 6103 of the Internal Revenue Code of 1986 [26 U.S.C. 6103]; or

''(C) any law administered, or regulation promulgated, by the Financial Crimes Enforcement Network of the Department of the Treasury.

''(b) EXISTING AGENCY REGULATIONS.—Nothing in this title, or the amendments made by this title, shall be construed to require the Secretary of the Treasury, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Bureau of Consumer Financial Protection, the Board of Governors of the Federal Reserve System, the National Credit Union Administration Board, the Director of the Federal Housing Finance Agency, or the head of any other primary financial regulatory agency (as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301)) designated by the Secretary of the Treasury to amend regulations and procedures, as in effect on the day before the date of enactment of this Act [Dec. 23, 2022], regarding the sharing and disclosure of nonpublic information, including confidential supervisory information.

''(c) DATA PRIVACY AND PERSONALLY IDENTIFIABLE INFORMATION.—Nothing in this title, or the amendments made by this title, shall be construed to require the Secretary of the Treasury, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Bureau of Consumer Financial Protection, the Board of Governors of the Federal Reserve System, the National Credit Union Administration Board, the Director of the Federal Housing Finance Agency, or the head of any other primary financial regulatory agency (as defined in section 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5301)) designated by the Secretary of the Treasury to disclose to the public any information that can be used to distinguish or trace the identity of an individual, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.''

§ 5335. Open data publication

All public data assets published by the Secretary under this part shall be—

(1) made available as an open Government data asset (as defined in section 3502 of title 44);

(2) freely available for download;

(3) rendered in a human-readable format; and

(4) accessible via application programming interface where appropriate.

(Pub. L. 111–203, title I, §125, as added Pub. L. 117–263, div. E, title LVIII, §5812(a), Dec. 23, 2022, 136 Stat. 3423.)

Statutory Notes and Related Subsidiaries

RULEMAKING

Pub. L. 117–263, div. E, title LVIII, §5812(c), Dec. 23, 2022, 136 Stat. 3423, provided that:

''(1) IN GENERAL.—The Secretary of the Treasury shall issue rules to carry out the amendments made by this section [enacting this section], which shall take effect not later than 2 years after the date on which final rules are promulgated under section 124(b)(2) of the Financial Stability Act of 2010 [12 U.S.C. 5334(b)(2)], as added by section 5811(a) of this title.

''(2) DELEGATION.—Notwithstanding any other provision of law, the Secretary of the Treasury may delegate the functions required under the amendments made by this subtitle [subtitle A (§§5811–5813) of title LVIII of div. E of Pub. L. 117–263, enacting this section and section 5334 of this title] to an appropriate office within the Department of the Treasury.''

RULE OF CONSTRUCTION

Enactment of section not to be construed to require certain additional information to be collected or disclosed, see section 5813 of Pub. L. 117–263, set out as a note under section 5334 of this title.

PART B—OFFICE OF FINANCIAL RESEARCH

§ 5341. Definitions

For purposes of this part—

(1) the terms ''Office'' and ''Director'' mean the Office of Financial Research established under this part and the Director thereof, respectively;

(2) the term ''financial company'' has the same meaning as in subchapter II, and includes an insured depository institution and an insurance company;

(3) the term ''Data Center'' means the data center established under section 5344 of this title;

(4) the term ''Research and Analysis Center'' means the research and analysis center established under section 5344 of this title;

(5) the term ''financial transaction data'' means the structure and legal description of a financial contract, with sufficient detail to describe the rights and obligations between counterparties and make possible an independent valuation;

(6) the term ''position data''—

(A) means data on financial assets or liabilities held on the balance sheet of a financial company, where positions are created or changed by the execution of a financial transaction; and

(B) includes information that identifies counterparties, the valuation by the financial company of the position, and information that makes possible an independent valuation of the position;

(7) the term ''financial contract'' means a legally binding agreement between 2 or more counterparties, describing rights and obligations relating to the future delivery of items of intrinsic or extrinsic value among the counterparties; and

(8) the term ''financial instrument'' means a financial contract in which the terms and conditions are publicly available, and the roles of one or more of the counterparties are assignable without the consent of any of the other counterparties (including common stock of a publicly traded company, government bonds, or exchange traded futures and options contracts).

(Pub. L. 111–203, title I, §151, July 21, 2010, 124 Stat. 1412.)

Editorial Notes

REFERENCES IN TEXT

Subchapter II, referred to in par. (2), was in the original ''title II'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to subchapter II (§5381 et seq.) of this chapter. For complete classification of title II to the Code, see Tables.

§ 5342. Office of Financial Research established

(a) Establishment

There is established within the Department of the Treasury the Office of Financial Research.

(b) Director

(1) In general

The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Term of service

The Director shall serve for a term of 6 years, except that, in the event that a successor is not nominated and confirmed by the end of the term of service of a Director, the Director may continue to serve until such time as the next Director is appointed and confirmed.

(3) Executive level

The Director shall be compensated at Level III of the Executive Schedule.

(4) Prohibition on dual service

The individual serving in the position of Director may not, during such service, also serve

as the head of any financial regulatory agency.

(5) Responsibilities, duties, and authority

The Director shall have sole discretion in the manner in which the Director fulfills the responsibilities and duties and exercises the authorities described in this part.

(c) Budget

The Director, in consultation with the Chairperson, shall establish the annual budget of the Office.

(d) Office personnel

(1) In general

The Director, in consultation with the Chairperson, may fix the number of, and appoint and direct, all employees of the Office.

(2) Compensation

The Director, in consultation with the Chairperson, shall fix, adjust, and administer the pay for all employees of the Office, without regard to chapter 51 or subchapter III of chapter 53 of title 5, relating to classification of positions and General Schedule pay rates.

(3), (4) Omitted

(e) Assistance from Federal agencies

Any department or agency of the United States may provide to the Office and any special advisory, technical, or professional committees appointed by the Office, such services, funds, facilities, staff, and other support services as the Office may determine advisable. Any Federal Government employee may be detailed to the Office without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) Procurement of temporary and intermittent services

The Director may procure temporary and intermittent services under section 3109(b) of title 5 at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for Level V of the Executive Schedule under section 5316 of such title.

(g) Post-employment prohibitions

The Secretary, with the concurrence of the Director of the Office of Government Ethics, shall issue regulations prohibiting the Director and any employee of the Office who has had access to the transaction or position data maintained by the Data Center or other business confidential information about financial entities required to report to the Office from being employed by or providing advice or consulting services to a financial company, for a period of 1 year after last having had access in the course of official duties to such transaction or position data or business confidential information, regardless of whether that entity is required to report to the Office. For employees whose access to business confidential information was limited, the regulations may provide, on a case-by-case basis, for a shorter period of post-employment prohibition, provided that the shorter period does not compromise business confidential information.

(h) Technical and professional advisory committees

The Office, in consultation with the Chairperson, may appoint such special advisory, technical, or professional committees as may be useful in carrying out the functions of the Office, and the members of such committees may be staff of the Office, or other persons, or both.

(i) Fellowship program

The Office, in consultation with the Chairperson, may establish and maintain an academic and professional fellowship program, under which qualified academics and professionals shall be invited to spend not longer than 2 years at the Office, to perform research and to provide advanced training for Office personnel.

(Pub. L. 111–203, title I, § 152, July 21, 2010, 124 Stat. 1413.)

Editorial Notes

REFERENCES IN TEXT

Level III of the Executive Schedule, referred to in subsec. (b)(3), is set out in section 5314 of Title 5, Government Organization and Employees.

CODIFICATION

Section is comprised of section 152 of Pub. L. 111–203. Subsecs. (d)(3), (4) and (j) of section 152 amended section 1833b of this title and sections 3132 and 5314 of Title 5, Government Organization and Employees, respectively.

§ 5343. Purpose and duties of the Office

(a) Purpose and duties

The purpose of the Office is to support the Council in fulfilling the purposes and duties of the Council, as set forth in part A, and to support member agencies, by—

(1) collecting data on behalf of the Council, and providing such data to the Council and member agencies;

(2) standardizing the types and formats of data reported and collected;

(3) performing applied research and essential long-term research;

(4) developing tools for risk measurement and monitoring;

(5) performing other related services;

(6) making the results of the activities of the Office available to financial regulatory agencies; and

(7) assisting such member agencies in determining the types and formats of data authorized by this Act to be collected by such member agencies.

(b) Administrative authority

The Office may—

(1) share data and information, including software developed by the Office, with the Council, member agencies, and the Bureau of Economic Analysis, which shared data, information, and software—

(A) shall be maintained with at least the same level of security as is used by the Office; and

(B) may not be shared with any individual or entity without the permission of the Council;

(2) sponsor and conduct research projects; and

(3) assist, on a reimbursable basis, with financial analyses undertaken at the request of other Federal agencies that are not member agencies.

(c) Rulemaking authority

(1) Scope

The Office, in consultation with the Chairperson, shall issue rules, regulations, and orders only to the extent necessary to carry out the purposes and duties described in paragraphs (1), (2), and (7) of subsection (a).

(2) Standardization

Member agencies, in consultation with the Office, shall implement regulations promulgated by the Office under paragraph (1) to standardize the types and formats of data reported and collected on behalf of the Council, as described in subsection (a)(2). If a member agency fails to implement such regulations prior to the expiration of the 3-year period following the date of publication of final regulations, the Office, in consultation with the Chairperson, may implement such regulations with respect to the financial entities under the jurisdiction of the member agency. This paragraph shall not supersede or interfere with the independent authority of a member agency under other law to collect data, in such format and manner as the member agency requires.

(d) Testimony

(1) In general

The Director of the Office shall report to and testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives annually on the activities of the Office, including the work of the Data Center and the Research and Analysis Center, and the assessment of the Office of significant financial market developments and potential emerging threats to the financial stability of the United States.

(2) No prior review

No officer or agency of the United States shall have any authority to require the Director to submit the testimony required under paragraph (1) or other congressional testimony to any officer or agency of the United States for approval, comment, or review prior to the submission of such testimony. Any such testimony to Congress shall include a statement that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

(e) Additional reports

The Director may provide additional reports to Congress concerning the financial stability of the United States. The Director shall notify the Council of any such additional reports provided to Congress.

(f) Subpoena

(1) In general

The Director may require from a financial company, by subpoena, the production of the data requested under subsection (a)(1) and section 5344(b)(1) of this title, but only upon a written finding by the Director that—

(A) such data is required to carry out the functions described under this part; and

(B) the Office has coordinated with the relevant primary financial regulatory agency, as required under section 5344(b)(1)(B)(ii) of this title.

(2) Format

Subpoenas under paragraph (1) shall bear the signature of the Director, and shall be served by any person or class of persons designated by the Director for that purpose.

(3) Enforcement

In the case of contumacy or failure to obey a subpoena, the subpoena shall be enforceable by order of any appropriate district court of the United States. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(Pub. L. 111–203, title I, §153, July 21, 2010, 124 Stat. 1415.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(7), 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.

§ 5344. Organizational structure; responsibilities of primary programmatic units

(a) In general

There are established within the Office, to carry out the programmatic responsibilities of the Office—

(1) the Data Center; and

(2) the Research and Analysis Center.

(b) Data Center

(1) General duties

(A) Data collection

The Data Center, on behalf of the Council, shall collect, validate, and maintain all data necessary to carry out the duties of the Data Center, as described in this part. The data assembled shall be obtained from member agencies, commercial data providers, publicly available data sources, and financial entities under subparagraph (B).

(B) Authority

(i) In general

The Office may, as determined by the Council or by the Director in consultation with the Council, require the submission of periodic and other reports from any financial company for the purpose of assessing the extent to which a financial activity or financial market in which the financial company participates, or the financial company itself, poses a threat to the financial stability of the United States.

(ii) Mitigation of report burden

Before requiring the submission of a report from any financial company that is regulated by a member agency, any primary financial regulatory agency, a foreign supervisory authority, or the Office shall coordinate with such agencies or authority, and shall, whenever possible, rely on information available from such agencies or authority.

(iii) Collection of financial transaction and position data

The Office shall collect, on a schedule determined by the Director, in consultation with the Council, financial transaction data and position data from financial companies.

(C) Rulemaking

The Office shall promulgate regulations pursuant to subsections (a)(1), (a)(2), (a)(7), and (c)(1) of section 5343 of this title regarding the type and scope of the data to be collected by the Data Center under this paragraph.

(2) Responsibilities

(A) Publication

The Data Center shall prepare and publish, in a manner that is easily accessible to the public—

(i) a financial company reference database;

(ii) a financial instrument reference database; and

(iii) formats and standards for Office data, including standards for reporting financial transaction and position data to the Office.

(B) Confidentiality

The Data Center shall not publish any confidential data under subparagraph (A).

(3) Information security

The Director shall ensure that data collected and maintained by the Data Center are kept secure and protected against unauthorized disclosure.

(4) Catalog of financial entities and instruments

The Data Center shall maintain a catalog of the financial entities and instruments reported to the Office.

(5) Availability to the Council and member agencies

The Data Center shall make data collected and maintained by the Data Center available to the Council and member agencies, as necessary to support their regulatory responsibilities.

(6) Other authority

The Office shall, after consultation with the member agencies, provide certain data to financial industry participants and to the general public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, business confidential information is properly protected, and the sharing of such information poses no significant threats to the financial system of the United States.

(c) Research and Analysis Center

(1)[1] General duties

The Research and Analysis Center, on behalf of the Council, shall develop and maintain independent analytical capabilities and computing resources—

(A) to develop and maintain metrics and reporting systems for risks to the financial stability of the United States;

(B) to monitor, investigate, and report on changes in systemwide risk levels and patterns to the Council and Congress;

(C) to conduct, coordinate, and sponsor research to support and improve regulation of financial entities and markets;

(D) to evaluate and report on stress tests or other stability-related evaluations of financial entities overseen by the member agencies;

(E) to maintain expertise in such areas as may be necessary to support specific requests for advice and assistance from financial regulators;

(F) to investigate disruptions and failures in the financial markets, report findings, and make recommendations to the Council based on those findings;

(G) to conduct studies and provide advice on the impact of policies related to systemic risk; and

(H) to promote best practices for financial risk management.

(d) Reporting responsibilities

(1) Required reports

Not later than 2 years after July 21, 2010, and not later than 120 days after the end of each fiscal year thereafter, the Office shall prepare and submit a report to Congress.

(2) Content

Each report required by this subsection shall assess the state of the United States financial system, including—

(A) an analysis of any threats to the financial stability of the United States;

(B) the status of the efforts of the Office in meeting the mission of the Office; and

(C) key findings from the research and analysis of the financial system by the Office.

(Pub. L. 111–203, title I, § 154, July 21, 2010, 124 Stat. 1416.)

§ 5345. Funding

(a) Financial Research Fund

(1) Fund established

There is established in the Treasury of the United States a separate fund to be known as the ''Financial Research Fund''.

(2) Fund receipts

All amounts provided to the Office under subsection (c),[1] and all assessments that the

[1] So in original. No par. (2) has been enacted.

[1] So in original. Comma probably should not appear.

Office receives under subsection (d) shall be deposited into the Financial Research Fund.

(3) Investments authorized

(A) Amounts in fund may be invested

The Director may request the Secretary to invest the portion of the Financial Research Fund that is not, in the judgment of the Director, required to meet the needs of the Office.

(B) Eligible investments

Investments shall be made by the Secretary in obligations of the United States or obligations that are guaranteed as to principal and interest by the United States, with maturities suitable to the needs of the Financial Research Fund, as determined by the Director.

(4) Interest and proceeds credited

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Financial Research Fund shall be credited to and form a part of the Financial Research Fund.

(b) Use of funds

(1) In general

Funds obtained by, transferred to, or credited to the Financial Research Fund shall be immediately available to the Office, and shall remain available until expended, to pay the expenses of the Office in carrying out the duties and responsibilities of the Office.

(2) Fees, assessments, and other funds not Government funds

Funds obtained by, transferred to, or credited to the Financial Research Fund shall not be construed to be Government funds or appropriated moneys.

(3) Amounts not subject to apportionment

Notwithstanding any other provision of law, amounts in the Financial Research Fund shall not be subject to apportionment for purposes of chapter 15 of title 31, or under any other authority, or for any other purpose.

(c) Interim funding

During the 2-year period following July 21, 2010, the Board of Governors shall provide to the Office an amount sufficient to cover the expenses of the Office.

(d) Permanent self-funding

Beginning 2 years after July 21, 2010, the Secretary shall establish, by regulation, and with the approval of the Council, an assessment schedule, including the assessment base and rates, applicable to bank holding companies with total consolidated assets of $$250,000,000,000[2] or greater and nonbank financial companies supervised by the Board of Governors, that takes into account differences among such companies, based on the considerations for establishing the prudential standards under section 5325 of this title, to collect assessments equal to the total expenses of the Office.

(Pub. L. 111–203, title I, §155, July 21, 2010, 124 Stat. 1418; Pub. L. 115–174, title IV, §401(c)(1)(D), May 24, 2018, 132 Stat. 1358.)

[2] See Codification and 2018 Amendment notes below.

Editorial Notes

CODIFICATION

Amendment by Pub. L. 115–174 was executed to subsec. (d) of this section as it appeared in the enrolled bill for H.R. 4173 (111th Congress, 2d session), which contained the text ''$50,000,000,000''. As published in the Statutes at Large for Pub. L. 111–203, text appeared as ''50,000,000,000''.

AMENDMENTS

2018—Subsec. (d). Pub. L. 115–174 substituted ''$250,000,000,000'' for ''50,000,000,000''. See Codification note above.

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.

§ 5346. Transition oversight

(a) Purpose

The purpose of this section is to ensure that the Office—

(1) has an orderly and organized startup;

(2) attracts and retains a qualified workforce; and

(3) establishes comprehensive employee training and benefits programs.

(b) Reporting requirement

(1) In general

The Office shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that includes the plans described in paragraph (2).

(2) Plans

The plans described in this paragraph are as follows:

(A) Training and workforce development plan

The Office shall submit a training and workforce development plan that includes, to the extent practicable—

(i) identification of skill and technical expertise needs and actions taken to meet those requirements;

(ii) steps taken to foster innovation and creativity;

(iii) leadership development and succession planning; and

(iv) effective use of technology by employees.

(B) Workplace flexibility plan

The Office shall submit a workforce flexibility plan that includes, to the extent practicable—

(i) telework;

(ii) flexible work schedules;

(iii) phased retirement;
(iv) reemployed annuitants;
(v) part-time work;
(vi) job sharing;
(vii) parental leave benefits and childcare assistance;
(viii) domestic partner benefits;
(ix) other workplace flexibilities; or
(x) any combination of the items described in clauses (i) through (ix).

(C) Recruitment and retention plan

The Office shall submit a recruitment and retention plan that includes, to the extent practicable, provisions relating to—
(i) the steps necessary to target highly qualified applicant pools with diverse backgrounds;
(ii) streamlined employment application processes;
(iii) the provision of timely notification of the status of employment applications to applicants; and
(iv) the collection of information to measure indicators of hiring effectiveness.

(c) Expiration

The reporting requirement under subsection (b) shall terminate 5 years after July 21, 2010.

(d) Rule of construction

Nothing in this section may be construed to affect—
(1) a collective bargaining agreement, as that term is defined in section 7103(a)(8) of title 5, that is in effect on July 21, 2010; or
(2) the rights of employees under chapter 71 of title 5.

(Pub. L. 111–203, title I, § 156, July 21, 2010, 124 Stat. 1419.)

PART C—ADDITIONAL BOARD OF GOVERNORS AUTHORITY FOR CERTAIN NONBANK FINANCIAL COMPANIES AND BANK HOLDING COMPANIES

§ 5361. Reports by and examinations of nonbank financial companies by the Board of Governors

(a) Reports

(1) In general

The Board of Governors may require each nonbank financial company supervised by the Board of Governors, and any subsidiary thereof, to submit reports under oath, to keep the Board of Governors informed as to—
(A) the financial condition of the company or subsidiary, systems of the company or subsidiary for monitoring and controlling financial, operating, and other risks, and the extent to which the activities and operations of the company or subsidiary pose a threat to the financial stability of the United States; and
(B) compliance by the company or subsidiary with the requirements of this subchapter.

(2) Use of existing reports and information

In carrying out subsection (a), the Board of Governors shall, to the fullest extent possible, use—
(A) reports and supervisory information that a nonbank financial company or subsidiary thereof has been required to provide to other Federal or State regulatory agencies;
(B) information otherwise obtainable from Federal or State regulatory agencies;
(C) information that is otherwise required to be reported publicly; and
(D) externally audited financial statements of such company or subsidiary.

(3) Availability

Upon the request of the Board of Governors, a nonbank financial company supervised by the Board of Governors, or a subsidiary thereof, shall promptly provide to the Board of Governors any information described in paragraph (2).

(4) Data standards for reports under this subsection

(A) In general

The Board of Governors shall adopt data standards for all information that, through a collection of information, is regularly filed with or submitted to the Board of Governors under this subsection by any nonbank financial company supervised by the Board of Governors or any subsidiary thereof.

(B) Consistency

The data standards required under subparagraph (A) shall incorporate, and ensure compatibility with (to the extent feasible), all applicable data standards established in the rules promulgated under section 5334 of this title, including, to the extent practicable, by having the characteristics described in clauses (i) through (vi) of subsection (c)(1)(B) of section 5334 of this title.

(b) Examinations

(1) In general

Subject to paragraph (2), the Board of Governors may examine any nonbank financial company supervised by the Board of Governors and any subsidiary of such company, to inform the Board of Governors of—
(A) the nature of the operations and financial condition of the company and such subsidiary;
(B) the financial, operational, and other risks of the company or such subsidiary that may pose a threat to the safety and soundness of such company or subsidiary or to the financial stability of the United States;
(C) the systems for monitoring and controlling such risks; and
(D) compliance by the company or such subsidiary with the requirements of this subchapter.

(2) Use of examination reports and information

For purposes of this subsection, the Board of Governors shall, to the fullest extent possible, rely on reports of examination of any subsidiary depository institution or functionally regulated subsidiary made by the primary financial regulatory agency for that subsidiary, and on information described in subsection (a)(2).

(c) Coordination with primary financial regulatory agency

The Board of Governors shall—

(1) provide reasonable notice to, and consult with, the primary financial regulatory agency for any subsidiary before requiring a report or commencing an examination of such subsidiary under this section; and

(2) avoid duplication of examination activities, reporting requirements, and requests for information, to the fullest extent possible.

(Pub. L. 111–203, title I, §161, July 21, 2010, 124 Stat. 1420; Pub. L. 117–263, div. E, title LVIII, §5861(a), Dec. 23, 2022, 136 Stat. 3434.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(1)(B) and (b)(1)(D), 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.

AMENDMENTS

2022—Subsec. (a)(4). Pub. L. 117–263 added par. (4).

Statutory Notes and Related Subsidiaries

RULE OF CONSTRUCTION REGARDING NO NEW DISCLOSURE REQUIREMENTS

Amendment by Pub. L. 117–263 not to be construed to require certain additional information to be collected or disclosed, see section 5864 of Pub. L. 117–263, set out as a note under section 253 of this title.

§ 5362. Enforcement

(a) In general

Except as provided in subsection (b), a nonbank financial company supervised by the Board of Governors and any subsidiaries of such company (other than any depository institution subsidiary) shall be subject to the provisions of subsections (b) through (n) of section 1818 of this title, in the same manner and to the same extent as if the company were a bank holding company, as provided in section 1818(b)(3) of this title.

(b) Enforcement authority for functionally regulated subsidiaries

(1) Referral

If the Board of Governors determines that a condition, practice, or activity of a depository institution subsidiary or functionally regulated subsidiary of a nonbank financial company supervised by the Board of Governors does not comply with the regulations or orders prescribed by the Board of Governors under this Act, or otherwise poses a threat to the financial stability of the United States, the Board of Governors may recommend, in writing, to the primary financial regulatory agency for the subsidiary that such agency initiate a supervisory action or enforcement proceeding. The recommendation shall be accompanied by a written explanation of the concerns giving rise to the recommendation.

(2) Back-up authority of the Board of Governors

If, during the 60-day period beginning on the date on which the primary financial regulatory agency receives a recommendation under paragraph (1), the primary financial regulatory agency does not take supervisory or enforcement action against a subsidiary that is acceptable to the Board of Governors, the Board of Governors (upon a vote of its members) may take the recommended supervisory or enforcement action, as if the subsidiary were a bank holding company subject to supervision by the Board of Governors.

(Pub. L. 111–203, title I, §162, July 21, 2010, 124 Stat. 1421.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(1), 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.

§ 5363. Acquisitions

(a) Acquisitions of banks; treatment as a bank holding company

For purposes of section 1842 of this title, a nonbank financial company supervised by the Board of Governors shall be deemed to be, and shall be treated as, a bank holding company.

(b) Acquisition of nonbank companies

(1) Prior notice for large acquisitions

Notwithstanding section 1843(k)(6)(B) of this title, a bank holding company with total consolidated assets equal to or greater than $250,000,000,000 or a nonbank financial company supervised by the Board of Governors shall not acquire direct or indirect ownership or control of any voting shares of any company (other than an insured depository institution) that is engaged in activities described in section 1843(k) of this title having total consolidated assets of $10,000,000,000 or more, without providing written notice to the Board of Governors in advance of the transaction.

(2) Exemptions

The prior notice requirement in paragraph (1) shall not apply with regard to the acquisition of shares that would qualify for the exemptions in section 1843(c) of this title or section 1843(k)(4)(E) of this title.

(3) Notice procedures

The notice procedures set forth in section 1843(j)(1) of this title, without regard to section 1843(j)(3) of this title, shall apply to an acquisition of any company (other than an insured depository institution) by a bank holding company with total consolidated assets equal to or greater than $250,000,000,000 or a nonbank financial company supervised by the Board of Governors, as described in paragraph

(1), including any such company engaged in activities described in section 1843(k) of this title.

(4) Standards for review

In addition to the standards provided in section 1843(j)(2) of this title, the Board of Governors shall consider the extent to which the proposed acquisition would result in greater or more concentrated risks to global or United States financial stability or the United States economy.

(5) Hart-Scott-Rodino filing requirement

Solely for purposes of section 18a(c)(8) of title 15, the transactions subject to the requirements of paragraph (1) shall be treated as if Board of Governors approval is not required.

(Pub. L. 111–203, title I, § 163, July 21, 2010, 124 Stat. 1422; Pub. L. 115–174, title IV, § 401(c)(1)(E), May 24, 2018, 132 Stat. 1358.)

Editorial Notes

AMENDMENTS

2018—Subsec. (b)(1), (3). Pub. L. 115–174 substituted ''$250,000,000,000'' 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.

§ 5364. Prohibition against management interlocks between certain financial companies

A nonbank financial company supervised by the Board of Governors shall be treated as a bank holding company for purposes of the Depository Institutions[1] Management Interlocks Act (12 U.S.C. 3201 et seq.), except that the Board of Governors shall not exercise the authority provided in section 7[2] of that Act (12 U.S.C. 3207) to permit service by a management official of a nonbank financial company supervised by the Board of Governors as a management official of any bank holding company with total consolidated assets equal to or greater than $250,000,000,000, or other nonaffiliated nonbank financial company supervised by the Board of Governors (other than to provide a temporary exemption for interlocks resulting from a merger, acquisition, or consolidation).

(Pub. L. 111–203, title I, § 164, July 21, 2010, 124 Stat. 1423; Pub. L. 115–174, title IV, § 401(c)(1)(F), May 24, 2018, 132 Stat. 1358.)

Editorial Notes

REFERENCES IN TEXT

The Depository Institution Management Interlocks Act, referred to in text, is title II of Pub. L. 95–630, Nov. 10, 1978, 92 Stat. 3672, which is classified principally to chapter 33 (§ 3201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of this title and Tables.

AMENDMENTS

2018—Pub. L. 115–174 substituted ''$250,000,000,000'' 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.

§ 5365. 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 or failure, or ongoing activities, of large, interconnected financial institutions, the Board of Governors shall, on its own or pursuant to recommendations by the Council under section 5325 of this title, establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies with total consolidated assets equal to or greater than $250,000,000,000 that—

(A) are more stringent than the standards and requirements applicable to 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) Tailored application

(A) In general

In prescribing more stringent prudential standards under this section, the Board of Governors shall, on its own or pursuant to a recommendation by the Council in accordance with section 5325 of this title, differentiate among companies 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 Board of Governors deems appropriate.

(B) Adjustment of threshold for application of certain standards

The Board of Governors may, pursuant to a recommendation by the Council in accordance with section 5325 of this title, establish an asset threshold above the applicable threshold for the application of any standard

[1] So in original. Probably should be ''Institution''.

[2] So in original. There is no section 7 of such Act.

established under subsections (c) through (g).

(C) Risks to financial stability and safety and soundness

The Board of Governors may by order or rule promulgated pursuant to section 553 of title 5 apply any prudential standard established under this section to any bank holding company or bank holding companies with total consolidated assets equal to or greater than $100,000,000,000 to which the prudential standard does not otherwise apply provided that the Board of Governors—

(i) determines that application of the prudential standard is appropriate—

(I) to prevent or mitigate risks to the financial stability of the United States, as described in paragraph (1); or

(II) to promote the safety and soundness of the bank holding company or bank holding companies; and

(ii) takes into consideration the bank holding company's or bank holding companies' capital structure, riskiness, complexity, financial activities (including financial activities of subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate.

(b) Development of prudential standards

(1) In general

(A) Required standards

The Board of Governors shall establish prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that shall include—

(i) risk-based capital requirements and leverage limits, unless the Board of Governors, in consultation with the Council, determines that such requirements are not appropriate for a company subject to more stringent prudential standards because of the activities of such company (such as investment company activities or assets under management) or structure, in which case, the Board of Governors shall apply other standards that result in similarly stringent risk controls;

(ii) liquidity requirements;

(iii) overall risk management requirements;

(iv) resolution plan requirements; and

(v) concentration limits.

(B) Additional standards authorized

The Board of Governors may establish additional prudential standards for nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a), that include—

(i) a contingent capital requirement;

(ii) enhanced public disclosures, including credit exposure reports;

(iii) short-term debt limits; and

(iv) such other prudential standards as the Board or Governors, on its own or pursuant to a recommendation made by the Council in accordance with section 5325 of this title, determines are appropriate.

(2) Standards for foreign financial companies

In applying the standards set forth in paragraph (1) to any foreign nonbank financial company supervised by the Board of Governors or foreign-based bank holding company, the Board of Governors 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 financial 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 prescribing prudential standards under paragraph (1), the Board of Governors 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 risk-related factors that the Board of Governors 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 paragraph (1) of this subsection;

(C) take into account any recommendations of the Council under section 5325 of this title; and

(D) adapt the required standards 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.

(4) Consultation

Before imposing prudential standards or any other requirements pursuant to this section, including notices of deficiencies in resolution plans and more stringent requirements or divestiture orders resulting from such notices, that are likely to have a significant impact on a functionally regulated subsidiary or depository institution subsidiary of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors shall consult with each Council member that primarily supervises any such subsidiary with respect to any such standard or requirement.

(5) Report

The Board of Governors shall submit an annual report to Congress regarding the implementation of the prudential standards required pursuant to paragraph (1), including the use of such standards to mitigate risks to the financial stability of the United States.

(c) Contingent capital

(1) In general

Subsequent to submission by the Council of a report to Congress under section 5325(c) of this title, the Board of Governors may issue regulations that require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to maintain a minimum amount of contingent capital that is convertible to equity in times of financial stress.

(2) Factors to consider

In issuing regulations under this subsection, the Board of Governors shall consider—

(A) the results of the study undertaken by the Council, and any recommendations of the Council, under section 5325(c) of this title;

(B) an appropriate transition period for implementation of contingent capital under this subsection;

(C) the factors described in subsection (b)(3)(A);

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

(E) any other factor that the Board of Governors deems appropriate.

(d) Resolution plan and credit exposure reports

(1) Resolution plan

The Board of Governors shall require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, and the Corporation the plan of such company for rapid and orderly resolution in the event of material financial distress or failure, which shall include—

(A) information regarding the manner and extent to which any insured depository institution affiliated with the company is adequately protected from risks arising from the activities of any nonbank subsidiaries of the company;

(B) full descriptions of the ownership structure, assets, liabilities, and contractual obligations of the company;

(C) identification of the cross-guarantees tied to different securities, identification of major counterparties, and a process for determining to whom the collateral of the company is pledged; and

(D) any other information that the Board of Governors and the Corporation jointly require by rule or order.

(2) Credit exposure report

The Board of Governors may require each nonbank financial company supervised by the Board of Governors and bank holding companies described in subsection (a) to report periodically to the Board of Governors, the Council, 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 significant nonbank financial companies and significant bank holding companies have credit exposure to that company.

(3) Review

The Board of Governors and the Corporation shall review the information provided in accordance with this subsection by each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a).

(4) Notice of deficiencies

If the Board of Governors and the Corporation jointly determine, based on their review under paragraph (3), that the resolution plan of a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) is not credible or would not facilitate an orderly resolution of the company under title 11—

(A) the Board of Governors and the Corporation shall notify the company of the deficiencies in the resolution plan; and

(B) the company shall resubmit the resolution plan within a timeframe determined by the Board of Governors and the Corporation, with revisions demonstrating that the plan is credible and would result in an orderly resolution under title 11, including any proposed changes in business operations and corporate structure to facilitate implementation of the plan.

(5) Failure to resubmit credible plan

(A) In general

If a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) fails to timely resubmit the resolution plan as required under paragraph (4), with such revisions as are required under subparagraph (B), the Board of Governors and the Corporation may jointly impose more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the company, or any subsidiary thereof, until such time as the company resubmits a plan that remedies the deficiencies.

(B) Divestiture

The Board of Governors and the Corporation, in consultation with the Council, may jointly direct a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), by order, to divest certain assets or operations identified by the Board of Governors and the Corporation, to facilitate an orderly resolution of such company under title 11, in the event of the failure of such company, in any case in which—

(i) the Board of Governors and the Corporation have jointly imposed more stringent requirements on the company pursuant to subparagraph (A); and

(ii) the company has failed, within the 2-year period beginning on the date of the imposition of such requirements under subparagraph (A), to resubmit the resolu-

tion plan with such revisions as were required under paragraph (4)(B).

(6) No limiting effect

A resolution plan submitted in accordance with this subsection shall not be binding on a bankruptcy court, a receiver appointed under subchapter II, or any other authority that is authorized or required to resolve the nonbank financial company supervised by the Board, any bank holding company, or any subsidiary or affiliate of the foregoing.

(7) No private right of action

No private right of action may be based on any resolution plan submitted in accordance with this subsection.

(8) Rules

Not later than 18 months after July 21, 2010, the Board of Governors and the Corporation shall jointly issue final rules implementing this subsection.

(e) Concentration limits

(1) Standards

In order to limit the risks that the failure of any individual company could pose to a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), the Board of Governors, by regulation, shall prescribe standards that limit such risks.

(2) Limitation on credit exposure

The regulations prescribed by the Board of Governors under paragraph (1) shall prohibit each nonbank financial company supervised by the Board of Governors and bank holding company described in subsection (a) from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus (or such lower amount as the Board of Governors may determine by regulation to be necessary to mitigate risks to the financial stability of the United States) of the company.

(3) Credit exposure

For purposes of paragraph (2), ''credit exposure'' to a company means—

(A) all extensions of credit to the company, including loans, deposits, and lines of credit;

(B) all repurchase agreements and reverse repurchase agreements with the company, and all securities borrowing and lending transactions with the company, to the extent that such transactions create credit exposure for the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a);

(C) all guarantees, acceptances, or letters of credit (including endorsement or standby letters of credit) issued on behalf of the company;

(D) all purchases of or investment in securities issued by the company;

(E) counterparty credit exposure to the company in connection with a derivative transaction between the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) and the company; and

(F) any other similar transactions that the Board of Governors, by regulation, determines to be a credit exposure for purposes of this section.

(4) Attribution rule

For purposes of this subsection, any transaction by a nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a) with any person is a transaction with a company, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that company.

(5) Rulemaking

The Board of Governors may issue such regulations and orders, including definitions consistent with this section, as may be necessary to administer and carry out this subsection.

(6) Exemptions

This subsection shall not apply to any Federal home loan bank. The Board of Governors may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term ''credit exposure'' for purposes of this subsection, if the Board of Governors finds that the exemption is in the public interest and is consistent with the purpose of this subsection.

(7) Transition period

(A) In general

This subsection and any regulations and orders of the Board of Governors under this subsection shall not be effective until 3 years after July 21, 2010.

(B) Extension authorized

The Board of Governors may extend the period specified in subparagraph (A) for not longer than an additional 2 years.

(f) Enhanced public disclosures

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

(g) Short-term debt limits

(1) In general

In order to mitigate the risks that an over-accumulation of short-term debt could pose to financial companies and to the stability of the United States financial system, the Board of Governors may, by regulation, prescribe a limit on the amount of short-term debt, including off-balance sheet exposures, that may be accumulated by any bank holding company described in subsection (a) and any nonbank financial company supervised by the Board of Governors.

(2) Basis of limit

Any limit prescribed under paragraph (1) shall be based on the short-term debt of the

company described in paragraph (1) as a percentage of capital stock and surplus of the company or on such other measure as the Board of Governors considers appropriate.

(3) Short-term debt defined

For purposes of this subsection, the term ''short-term debt'' means such liabilities with short-dated maturity that the Board of Governors identifies, by regulation, except that such term does not include insured deposits.

(4) Rulemaking authority

In addition to prescribing regulations under paragraphs (1) and (3), the Board of Governors may prescribe such regulations, including definitions consistent with this subsection, and issue such orders, as may be necessary to carry out this subsection.

(5) Authority to issue exemptions and adjustments

Notwithstanding the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), the Board of Governors may, if it determines such action is necessary to ensure appropriate heightened prudential supervision, with respect to a company described in paragraph (1) that does not control an insured depository institution, issue to such company an exemption from or adjustment to the limit prescribed under paragraph (1).

(h) Risk committee

(1) Nonbank financial companies supervised by the Board of Governors

The Board of Governors shall require each nonbank financial company supervised by the Board of Governors that is a publicly traded company to establish a risk committee, as set forth in paragraph (3), not later than 1 year after the date of receipt of a notice of final determination under section 5323(e)(3) of this title with respect to such nonbank financial company supervised by the Board of Governors.

(2) Certain bank holding companies

(A) Mandatory regulations

The Board of Governors shall issue regulations requiring each bank holding company that is a publicly traded company and that has total consolidated assets of not less than $50,000,000,000 to establish a risk committee, as set forth in paragraph (3).

(B) Permissive regulations

The Board of Governors may require each bank holding company that is a publicly traded company and that has total consolidated assets of less than $50,000,000,000 to establish a risk committee, as set forth in paragraph (3), as determined necessary or appropriate by the Board of Governors to promote sound risk management practices.

(3) Risk committee

A risk committee required by this subsection shall—

(A) be responsible for the oversight of the enterprise-wide risk management practices of the nonbank financial company supervised by the Board of Governors or bank holding company described in subsection (a), as applicable;

(B) include such number of independent directors as the Board of Governors may determine appropriate, based on the nature of operations, size of assets, and other appropriate criteria related to the nonbank financial company supervised by the Board of Governors or a bank holding company described in subsection (a), as applicable; and

(C) include at least 1 risk management expert having experience in identifying, assessing, and managing risk exposures of large, complex firms.

(4) Rulemaking

The Board of Governors shall issue final rules to carry out this subsection, not later than 1 year after the transfer date, to take effect not later than 15 months after the transfer date.

(i) Stress tests

(1) By the Board of Governors

(A) Annual tests required

The Board of Governors, in coordination with the appropriate primary financial regulatory agencies and the Federal Insurance Office, shall conduct annual analyses in which nonbank financial companies supervised by the Board of Governors and bank holding companies described in subsection (a) are subject to evaluation of whether such companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.

(B) Test parameters and consequences

The Board of Governors—

(i) shall provide for at least 2 different sets of conditions under which the evaluation required by this subsection shall be conducted, including baseline and severely adverse;

(ii) may require the tests described in subparagraph (A) at bank holding companies and nonbank financial companies, in addition to those for which annual tests are required under subparagraph (A);

(iii) may develop and apply such other analytic techniques as are necessary to identify, measure, and monitor risks to the financial stability of the United States;

(iv) shall require the companies described in subparagraph (A) to update their resolution plans required under subsection (d)(1), as the Board of Governors determines appropriate, based on the results of the analyses; and

(v) shall publish a summary of the results of the tests required under subparagraph (A) or clause (ii) of this subparagraph.

(2) By the company

(A) Requirement

A nonbank financial company supervised by the Board of Governors and a bank holding company described in subsection (a) shall conduct periodic stress tests. All other

financial companies that have total consolidated assets of more than $250,000,000,000 and are regulated by a primary Federal financial regulatory agency shall conduct periodic stress tests. The tests required under this subparagraph shall be conducted in accordance with the regulations prescribed under subparagraph (C).

(B) Report

A company required to conduct stress tests under subparagraph (A) shall submit a report to the Board of Governors and to its primary financial regulatory agency at such time, in such form, and containing such information as the primary financial regulatory agency shall require.

(C) Regulations

Each Federal primary financial regulatory agency, in coordination with the Board of Governors and the Federal Insurance Office, shall issue consistent and comparable regulations to implement this paragraph that shall—

(i) define the term ''stress test'' for purposes of this paragraph;

(ii) establish methodologies for the conduct of stress tests required by this paragraph that shall provide for at least 2 different sets of conditions, including baseline and severely adverse;

(iii) establish the form and content of the report required by subparagraph (B); and

(iv) require companies subject to this paragraph to publish a summary of the results of the required stress tests.

(j) Leverage limitation

(1) Requirement

The Board of Governors shall require a bank holding company with total consolidated assets equal to or greater than $250,000,000,000 or a nonbank financial company supervised by the Board of Governors to maintain a debt to equity ratio of no more than 15 to 1, upon a determination by the Council that such company poses a grave threat to the financial stability of the United States and that the imposition of such requirement is necessary to mitigate the risk that such company poses to the financial stability of the United States. Nothing in this paragraph shall apply to a Federal home loan bank.

(2) Considerations

In making a determination under this subsection, the Council shall consider the factors described in subsections (a) and (b) of section 5323 of this title and any other risk-related factors that the Council deems appropriate.

(3) Regulations

The Board of Governors shall promulgate regulations to establish procedures and timelines for complying with the requirements of this subsection.

(k) Inclusion of off-balance-sheet activities in computing capital requirements

(1) In general

In the case of any bank holding company described in subsection (a) or nonbank financial company supervised by the Board of Governors, the computation of capital for purposes of meeting capital requirements shall take into account any off-balance-sheet activities of the company.

(2) Exemptions

If the Board of Governors determines that an exemption from the requirement under paragraph (1) is appropriate, the Board of Governors may exempt a company, or any transaction or transactions engaged in by such company, from the requirements of paragraph (1).

(3) Off-balance-sheet activities defined

For purposes of this subsection, the term ''off-balance-sheet activities'' means an existing liability of a company that is not currently a balance sheet liability, but may become one upon the happening of some future event, including the following transactions, to the extent that they may create a liability:

(A) Direct credit substitutes in which a bank substitutes its own credit for a third party, including standby letters of credit.

(B) Irrevocable letters of credit that guarantee repayment of commercial paper or tax-exempt securities.

(C) Risk participations in bankers' acceptances.

(D) Sale and repurchase agreements.

(E) Asset sales with recourse against the seller.

(F) Interest rate swaps.

(G) Credit swaps.

(H) Commodities contracts.

(I) Forward contracts.

(J) Securities contracts.

(K) Such other activities or transactions as the Board of Governors may, by rule, define.

(Pub. L. 111–203, title I, §165, July 21, 2010, 124 Stat. 1423; Pub. L. 115–174, title IV, §401(a), May 24, 2018, 132 Stat. 1356.)

Editorial Notes

REFERENCES IN TEXT

Subchapter II, referred to in subsec. (d)(6), was in the original ''title II'', meaning title II of Pub. L. 111–203, July 21, 2010, 124 Stat. 1442, which is classified principally to subchapter II (§5381 et seq.) of this chapter. For complete classification of title II to the Code, see Tables.

The Bank Holding Company Act of 1956, referred to in subsec. (g)(5), is act May 9, 1956, ch. 240, 70 Stat. 133, which is classified principally to chapter 17 (§1841 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of this title and Tables.

AMENDMENTS

2018—Subsec. (a)(1). Pub. L. 115–174, §401(a)(1)(A), substituted ''$250,000,000,000'' for ''$50,000,000,000'' in introductory provisions.

Subsec. (a)(2)(A). Pub. L. 115–174, §401(a)(1)(B)(i), substituted ''the Board of Governors shall'' for ''the Board of Governors may''.

Subsec. (a)(2)(B). Pub. L. 115–174, §401(a)(1)(B)(ii), substituted ''the applicable threshold'' for ''$50,000,000,000''.

Subsec. (a)(2)(C). Pub. L. 115–174, §401(a)(1)(B)(iii), added subpar. (C).

Subsec. (b)(1)(A)(iv). Pub. L. 115–174, §401(a)(2)(A), struck out ''and credit exposure report'' after ''resolution plan''.

Subsec. (b)(1)(B)(ii). Pub. L. 115–174, § 401(a)(2)(B), inserted '', including credit exposure reports'' before semicolon at end.

Subsec. (d)(2). Pub. L. 115–174, § 401(a)(3), substituted ''The Board of Governors may'' for ''The Board of Governors shall'' in introductory provisions.

Subsec. (h)(2). Pub. L. 115–174, § 401(a)(4), substituted ''$50,000,000,000'' for ''$10,000,000,000'' in two places.

Subsec. (i)(1)(B)(i). Pub. L. 115–174, § 401(a)(5)(A), substituted ''2 different sets'' for ''3 different sets'' and struck out '', adverse,'' after ''baseline''.

Subsec. (i)(2)(A). Pub. L. 115–174, § 401(a)(5)(B)(i), in first sentence, substituted ''periodic'' for ''semiannual'' and, in second sentence, substituted ''$250,000,000,000'' for ''$10,000,000,000'' and ''periodic'' for ''annual''.

Subsec. (i)(2)(C)(ii). Pub. L. 115–174, § 401(a)(5)(B)(ii), substituted ''2 different sets'' for ''3 different sets'' and struck out '', adverse,'' after ''baseline''.

Subsec. (j)(1). Pub. L. 115–174, § 401(a)(6), substituted ''$250,000,000,000'' for ''$50,000,000,000''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–174, title IV, § 401(d), May 24, 2018, 132 Stat. 1358, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 248, 5325, 5326, 5331, 5345, 5363, and 5364 of this title] shall take effect on the date that is 18 months after the date of enactment of this Act [May 24, 2018].

''(2) EXCEPTION.—Notwithstanding paragraph (1), the amendments made by this section shall take effect on the date of enactment of this Act with respect to any bank holding company with total consolidated assets of less than $100,000,000,000.

''(3) ADDITIONAL AUTHORITY.—Before the effective date described in paragraph (1), the Board of Governors of the Federal Reserve System may by order exempt any bank holding company with total consolidated assets of less than $250,000,000,000 from any prudential standard under section 165 of the Financial Stability Act of 2010 (12 U.S.C. 5365).

''(4) RULE OF CONSTRUCTION.—Nothing in this section [amending this section and sections 248, 5325, 5326, 5331, 5345, 5363, and 5364 of this title and enacting provisions set out as notes under this section] shall be construed to prohibit the Board of Governors of the Federal Reserve System from issuing an order or rule making under section 165(a)(2)(C) of the Financial Stability Act of 2010 (12 U.S.C. 5365(a)(2)(C)), as added by this section, before the effective date described in paragraph (1).''

[For definition of ''bank holding company'' as used in section 401(d) of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a Definitions note below.]

CONSTRUCTION OF 2018 AMENDMENT

Pub. L. 115–174, title IV, § 401(b), May 24, 2018, 132 Stat. 1357, provided that: ''Nothing in subsection (a) [amending this section] shall be construed to limit—

''(1) the authority of the Board of Governors of the Federal Reserve System, in prescribing prudential standards under section 165 of the Financial Stability Act of 2010 (12 U.S.C. 5365) or any other law, to tailor or differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including financial activities of their subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate; or

''(2) the supervisory, regulatory, or enforcement authority of an appropriate Federal banking agency to further the safe and sound operation of an institution under the supervision of the appropriate Federal banking agency.''

[For definitions of ''appropriate Federal banking agency'' and ''companies'' as used in section 401(b) of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a Definitions note below.]

Pub. L. 115–174, title IV, § 401(g), May 24, 2018, 132 Stat. 1359, provided that: ''Nothing in this section [amending this section and sections 248, 5325, 5326, 5331, 5345, 5363, and 5364 of this title and enacting provisions set out as notes under this section] shall be construed to—

''(1) affect the legal effect of the final rule of the Board of Governors of the Federal Reserve System entitled 'Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations' (79 Fed. Reg. 17240 (March 27, 2014)) as applied to foreign banking organizations with total consolidated assets equal to or greater than $100,000,000,000; or

''(2) limit the authority of the Board of Governors of the Federal Reserve System to require the establishment of an intermediate holding company under, implement enhanced prudential standards with respect to, or tailor the regulation of a foreign banking organization with total consolidated assets equal to or greater than $100,000,000,000.''

SUPERVISORY STRESS TEST

Pub. L. 115–174, title IV, § 401(e), May 24, 2018, 132 Stat. 1359, provided that: ''Beginning on the effective date described in subsection (d)(1) [of section 401 of Pub. L. 115–174, set out above], the Board of Governors of the Federal Reserve System shall, on a periodic basis, conduct supervisory stress tests of bank holding companies with total consolidated assets equal to or greater than $100,000,000,000 and total consolidated assets of less than $250,000,000,000 to evaluate whether such bank holding companies have the capital, on a total consolidated basis, necessary to absorb losses as a result of adverse economic conditions.''

[For definition of ''bank holding companies'' as used in section 401(e) of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a Definitions note below.]

GLOBAL SYSTEMICALLY IMPORTANT BANK HOLDING COMPANIES

Pub. L. 115–174, title IV, § 401(f), May 24, 2018, 132 Stat. 1359, provided that: ''Any bank holding company, regardless of asset size, that has been identified as a global systemically important BHC under section 217.402 of title 12, Code of Federal Regulations, shall be considered a bank holding company with total consolidated assets equal to or greater than $250,000,000,000 with respect to the application of standards or requirements under—

''(1) this section [amending this section and sections 248, 5325, 5326, 5331, 5345, 5363, and 5364 of this title and enacting provisions set out as notes under this section];

''(2) sections 116(a), 121(a), 155(d), 163(b), 164, and 165 of the Financial Stability Act of 2010 (12 U.S.C. 5326(a), 5331(a), 5345(d), 5363(b), 5364, 5365); and

''(3) paragraph (2)(A) of the second subsection (s) (relating to assessments) of section 11 of the Federal Reserve Act (12 U.S.C. 248(s)(2)[(A)]).''

[For definition of ''bank holding company'' as used in section 401(f) of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a Definitions note below.]

DEFINITIONS

Pub. L. 115–174, § 2, May 24, 2018, 132 Stat. 1297, provided that: ''In this Act [see Short Title of 2018 Amendment note set out under section 1601 of Title 15, Commerce and Trade]:

''(1) APPROPRIATE FEDERAL BANKING AGENCY; COMPANY; DEPOSITORY INSTITUTION; DEPOSITORY INSTITUTION HOLDING COMPANY.—The terms 'appropriate Federal banking agency', 'company', 'depository institution', and 'depository institution holding company' have the meanings given those terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

''(2) BANK HOLDING COMPANY.—The term 'bank holding company' has the meaning given the term in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).''

§ 5366. Early remediation requirements

(a) In general

The Board of Governors, in consultation with the Council and the Corporation, shall prescribe regulations establishing requirements to provide for the early remediation of financial distress of a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 5365(a) of this title, except that nothing in this subsection authorizes the provision of financial assistance from the Federal Government.

(b) Purpose of the early remediation requirements

The purpose of the early remediation requirements under subsection (a) shall be to establish a series of specific remedial actions to be taken by a nonbank financial company supervised by the Board of Governors or a bank holding company described in section 5365(a) of this title that is experiencing increasing financial distress, in order to minimize the probability that the company will become insolvent and the potential harm of such insolvency to the financial stability of the United States.

(c) Remediation requirements

The regulations prescribed by the Board of Governors under subsection (a) shall—

(1) define measures of the financial condition of the company, including regulatory capital, liquidity measures, and other forward-looking indicators; and

(2) establish requirements that increase in stringency as the financial condition of the company declines, including—

(A) requirements in the initial stages of financial decline, including limits on capital distributions, acquisitions, and asset growth; and

(B) requirements at later stages of financial decline, including a capital restoration plan and capital-raising requirements, limits on transactions with affiliates, management changes, and asset sales.

(Pub. L. 111–203, title I, §166, July 21, 2010, 124 Stat. 1432.)

§ 5367. Affiliations

(a) Affiliations

Nothing in this part shall be construed to require a nonbank financial company supervised by the Board of Governors, or a company that controls a nonbank financial company supervised by the Board of Governors, to conform the activities thereof to the requirements of section 1843 of this title.

(b) Requirement

(1) In general

(A) Board authority

If a nonbank financial company supervised by the Board of Governors conducts activities other than those that are determined to be financial in nature or incidental thereto under section 1843(k) of this title, the Board of Governors may require such company to establish and conduct all or a portion of such activities that are determined to be financial in nature or incidental thereto in or through an intermediate holding company established pursuant to regulation of the Board of Governors, not later than 90 days (or such longer period as the Board of Governors may deem appropriate) after the date on which the nonbank financial company supervised by the Board of Governors is notified of the determination of the Board of Governors under this section.

(B) Necessary actions

Notwithstanding subparagraph (A), the Board of Governors shall require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company if the Board of Governors makes a determination that the establishment of such intermediate holding company is necessary to—

(i) appropriately supervise activities that are determined to be financial in nature or incidental thereto; or

(ii) to[1] ensure that supervision by the Board of Governors does not extend to the commercial activities of such nonbank financial company.

(2) Internal financial activities

For purposes of this subsection, activities that are determined to be financial in nature or incidental thereto under section 1843(k) of this title, as described in paragraph (1), shall not include internal financial activities, including internal treasury, investment, and employee benefit functions. With respect to any internal financial activity engaged in for the company or an affiliate and a non-affiliate of such company during the year prior to July 21, 2010, such company (or an affiliate that is not an intermediate holding company or subsidiary of an intermediate holding company) may continue to engage in such activity, as long as not less than 2/3 of the assets or 2/3 of the revenues generated from the activity are from or attributable to such company or an affiliate, subject to review by the Board of Governors, to determine whether engaging in such activity presents undue risk to such company or to the financial stability of the United States.

(3) Source of strength

A company that directly or indirectly controls an intermediate holding company established under this section shall serve as a source of strength to its subsidiary intermediate holding company.

(4) Parent company reports

The Board of Governors may, from time to time, require reports under oath from a company that controls an intermediate holding company, and from the appropriate officers or directors of such company, solely for purposes

[1] So in original. The word ''to'' probably should not appear.

of ensuring compliance with the provisions of this section, including assessing the ability of the company to serve as a source of strength to its subsidiary intermediate holding company pursuant to paragraph (3) and enforcing such compliance.

(5) Limited parent company enforcement

(A) In general

In addition to any other authority of the Board of Governors, the Board of Governors may enforce compliance with the provisions of this subsection that are applicable to any company described in paragraph (1) that controls an intermediate holding company under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], and such company shall be subject to such section (solely for such purposes) in the same manner and to the same extent as if such company were a bank holding company.

(B) Application of other Act

Any violation of this subsection by any company that controls an intermediate holding company may also be treated as a violation of the Federal Deposit Insurance Act [12 U.S.C. 1811 et seq.] for purposes of subparagraph (A).

(C) No effect on other authority

No provision of this paragraph shall be construed as limiting any authority of the Board of Governors or any other Federal agency under any other provision of law.

(c) Regulations

The Board of Governors—

(1) shall promulgate regulations to establish the criteria for determining whether to require a nonbank financial company supervised by the Board of Governors to establish an intermediate holding company under subsection (b); and

(2) may promulgate regulations to establish any restrictions or limitations on transactions between an intermediate holding company or a nonbank financial company supervised by the Board of Governors and its affiliates, as necessary to prevent unsafe and unsound practices in connection with transactions between such company, or any subsidiary thereof, and its parent company or affiliates that are not subsidiaries of such company, except that such regulations shall not restrict or limit any transaction in connection with the bona fide acquisition or lease by an unaffiliated person of assets, goods, or services.

(Pub. L. 111–203, title I, § 167, July 21, 2010, 124 Stat. 1432.)

Editorial Notes

REFERENCES IN TEXT

This part, referred to in subsec. (a), was in the original ''this subtitle'', meaning subtitle C (§§ 161–176) of title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

The Federal Deposit Insurance Act, referred to in subsec. (b)(5)(B), is act Sept. 21, 1950, ch. 967, § 2, 64 Stat. 873, which is classified generally to chapter 16 (§ 1811 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1811 of this title and Tables.

§ 5368. Regulations

The Board of Governors shall have authority to issue regulations to implement parts A and C and the amendments made thereunder. Except as otherwise specified in part A or C, not later than 18 months after the effective date of this Act, the Board of Governors shall issue final regulations to implement parts A and C, and the amendments made thereunder.

(Pub. L. 111–203, title I, § 168, July 21, 2010, 124 Stat. 1434.)

Editorial Notes

REFERENCES IN TEXT

Part C, referred to in text, was in the original ''subtitle C'', meaning subtitle C (§§ 161–176) of title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

The effective date of this Act, referred to in text, is 1 day after July 21, 2010, except as otherwise specifically provided in Pub. L. 111–203, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of this title.

§ 5369. Avoiding duplication

The Board of Governors shall take any action that the Board of Governors deems appropriate to avoid imposing requirements under this part that are duplicative of requirements applicable to bank holding companies and nonbank financial companies under other provisions of law.

(Pub. L. 111–203, title I, § 169, July 21, 2010, 124 Stat. 1434.)

Editorial Notes

REFERENCES IN TEXT

This part, referred to in text, was in the original ''this subtitle'', meaning subtitle C (§§ 161–176) of title I of Pub. L. 111–203, July 21, 2010, 124 Stat. 1420, which is classified principally to this part. For complete classification of subtitle C to the Code, see Tables.

§ 5370. Safe harbor

(a) Regulations

The Board of Governors shall promulgate regulations on behalf of, and in consultation with, the Council setting forth the criteria for exempting certain types or classes of U.S. nonbank financial companies or foreign nonbank financial companies from supervision by the Board of Governors.

(b) Considerations

In developing the criteria under subsection (a), the Board of Governors shall take into account the factors for consideration described in subsections (a) and (b) of section 5323 of this title in determining whether a U.S. nonbank financial company or foreign nonbank financial company shall be supervised by the Board of Governors.

(c) Rule of construction

Nothing in this section shall be construed to require supervision by the Board of Governors of

a U.S. nonbank financial company or foreign nonbank financial company, if such company does not meet the criteria for exemption established under subsection (a).

(d) Revisions

(1) In general

The Board of Governors shall, in consultation with the Council, review the regulations promulgated under subsection (a), not less frequently than every 5 years, and based upon the review, the Board of Governors may revise such regulations on behalf of, and in consultation with, the Council to update as necessary the criteria set forth in such regulations.

(2) Transition period

No revisions under paragraph (1) shall take effect before the end of the 2-year period after the date of publication of such revisions in final form.

(e) Report

The Chairman of the Board of Governors and the Chairperson of the Council shall submit a joint report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives not later than 30 days after the date of the issuance in final form of regulations under subsection (a), or any subsequent revision to such regulations under subsection (d), as applicable. Such report shall include, at a minimum, the rationale for exemption and empirical evidence to support the criteria for exemption.

(Pub. L. 111–203, title I, §170, July 21, 2010, 124 Stat. 1435.)

§5371. Leverage and risk-based capital requirements

(a) Definitions

For purposes of this section, the following definitions shall apply:

(1) Generally applicable leverage capital requirements

The term ''generally applicable leverage capital requirements'' means—

(A) the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 1831*o* of this title, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of that capital requirement, average total assets in the denominator of that capital requirement, and the required ratio of the numerator to the denominator.

(2) Generally applicable risk-based capital requirements

The term ''generally applicable risk-based capital requirements'' means—

(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 1831*o* of this title, regardless of total consolidated asset size or foreign financial exposure; and

(B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.

(3) Definition of depository institution holding company

The term ''depository institution holding company'' means a bank holding company or a savings and loan holding company (as those terms are defined in section 1813 of this title) that is organized in the United States, including any bank or savings and loan holding company that is owned or controlled by a foreign organization, but does not include the foreign organization.

(4) Business of insurance

The term ''business of insurance'' has the same meaning as in section 5481(3) of this title.

(5) Person regulated by a State insurance regulator

The term ''person regulated by a State insurance regulator'' has the same meaning as in section 5481(22) of this title.

(6) Regulated foreign subsidiary and regulated foreign affiliate

The terms ''regulated foreign subsidiary'' and ''regulated foreign affiliate'' mean a person engaged in the business of insurance in a foreign country that is regulated by a foreign insurance regulatory authority that is a member of the International Association of Insurance Supervisors or other comparable foreign insurance regulatory authority as determined by the Board of Governors following consultation with the State insurance regulators, including the lead State insurance commissioner (or similar State official) of the insurance holding company system as determined by the procedures within the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners, where the person, or its principal United States insurance affiliate, has its principal place of business or is domiciled, but only to the extent that—

(A) such person acts in its capacity as a regulated insurance entity; and

(B) the Board of Governors does not determine that the capital requirements in a specific foreign jurisdiction are inadequate.

(7) Capacity as a regulated insurance entity

The term ''capacity as a regulated insurance entity''—

(A) includes any action or activity undertaken by a person regulated by a State insurance regulator or a regulated foreign subsidiary or regulated foreign affiliate of such person, as those actions relate to the provision of insurance, or other activities necessary to engage in the business of insurance; and

(B) does not include any action or activity, including any financial activity, that is not regulated by a State insurance regulator or a foreign agency or authority and subject to State insurance capital requirements or, in the case of a regulated foreign subsidiary or regulated foreign affiliate, capital requirements imposed by a foreign insurance regulatory authority.

(b) Minimum capital requirements

(1) Minimum leverage capital requirements

The appropriate Federal banking agencies shall establish minimum leverage capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum leverage capital requirements established under this paragraph shall not be less than the generally applicable leverage capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable leverage capital requirements that were in effect for insured depository institutions as of July 21, 2010.

(2) Minimum risk-based capital requirements

The appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum risk-based capital requirements established under this paragraph shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of July 21, 2010.

(3) Investments in financial subsidiaries

For purposes of this section, investments in financial subsidiaries that insured depository institutions are required to deduct from regulatory capital under section 24a of this title or section 1831w(a)(2) of this title need not be deducted from regulatory capital by depository institution holding companies or nonbank financial companies supervised by the Board of Governors, unless such capital deduction is required by the Board of Governors or the primary financial regulatory agency in the case of nonbank financial companies supervised by the Board of Governors.

(4) Effective dates and phase-in periods

(A) Debt or equity instruments on or after May 19, 2010

For debt or equity instruments issued on or after May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, this section shall be deemed to have become effective as of May 19, 2010.

(B) Debt or equity instruments issued before May 19, 2010

For debt or equity instruments issued before May 19, 2010, by depository institution holding companies or by nonbank financial companies supervised by the Board of Governors, any regulatory capital deductions required under this section shall be phased in incrementally over a period of 3 years, with the phase-in period to begin on January 1, 2013, except as set forth in subparagraph (C).

(C) Debt or equity instruments of smaller institutions

For debt or equity instruments issued before May 19, 2010, by depository institution holding companies with total consolidated assets of less than $15,000,000,000 as of December 31, 2009, or March 31, 2010, and by organizations that were mutual holding companies on May 19, 2010, the capital deductions that would be required for other institutions under this section are not required as a result of this section.

(D) Depository institution holding companies not previously supervised by the Board of Governors

For any depository institution holding company that was not supervised by the Board of Governors as of May 19, 2010, the requirements of this section, except as set forth in subparagraphs (A) and (B), shall be effective 5 years after July 21, 2010[1]

(E) Certain bank holding company subsidiaries of foreign banking organizations

For bank holding company subsidiaries of foreign banking organizations that have relied on Supervision and Regulation Letter SR-01-1 issued by the Board of Governors (as in effect on May 19, 2010), the requirements of this section, except as set forth in subparagraph (A), shall be effective 5 years after July 21, 2010.

(5) Exceptions

This section shall not apply to—

(A) debt or equity instruments issued to the United States or any agency or instrumentality thereof pursuant to the Emergency Economic Stabilization Act of 2008 [12 U.S.C. 5201 et seq.], and prior to October 4, 2010;

(B) any Federal home loan bank; or

(C) any bank holding company or savings and loan holding company that is subject to the application of appendix C to part 225 of title 12, Code of Federal Regulations (commonly known as the ''Small Bank Holding Company and Savings and Loan Holding Company Policy Statement'').

(6) Study and report on small institution access to capital

(A) Study required

The Comptroller General of the United States, after consultation with the Federal banking agencies, shall conduct a study of access to capital by smaller insured depository institutions.

[1] So in original. Probably should be followed by a period.

(B) Scope

For purposes of this study required by subparagraph (A), the term ''smaller insured depository institution'' means an insured depository institution with total consolidated assets of $5,000,000,000 or less.

(C) Report to Congress

Not later than 18 months after July 21, 2010, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report summarizing the results of the study conducted under subparagraph (A), together with any recommendations for legislative or regulatory action that would enhance the access to capital of smaller insured depository institutions, in a manner that is consistent with safe and sound banking operations.

(7) Capital requirements to address activities that pose risks to the financial system

(A) In general

Subject to the recommendations of the Council, in accordance with section 5330 of this title, the Federal banking agencies shall develop capital requirements applicable to insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors that address the risks that the activities of such institutions pose, not only to the institution engaging in the activity, but to other public and private stakeholders in the event of adverse performance, disruption, or failure of the institution or the activity.

(B) Content

Such rules shall address, at a minimum, the risks arising from—

(i) significant volumes of activity in derivatives, securitized products purchased and sold, financial guarantees purchased and sold, securities borrowing and lending, and repurchase agreements and reverse repurchase agreements;

(ii) concentrations in assets for which the values presented in financial reports are based on models rather than historical cost or prices deriving from deep and liquid 2-way markets; and

(iii) concentrations in market share for any activity that would substantially disrupt financial markets if the institution is forced to unexpectedly cease the activity.

(c) Clarification

(1) In general

In establishing the minimum leverage capital requirements and minimum risk-based capital requirements on a consolidated basis for a depository institution holding company or a nonbank financial company supervised by the Board of Governors as required under paragraphs (1) and (2) of subsection (b), the appropriate Federal banking agencies shall not be required to include, for any purpose of this section (including in any determination of consolidation), a person regulated by a State insurance regulator or a regulated foreign subsidiary or a regulated foreign affiliate of such person engaged in the business of insurance, to the extent that such person acts in its capacity as a regulated insurance entity.

(2) Rule of construction on Board's authority

This subsection shall not be construed to prohibit, modify, limit, or otherwise supersede any other provision of Federal law that provides the Board of Governors authority to issue regulations and orders relating to capital requirements for depository institution holding companies or nonbank financial companies supervised by the Board of Governors.

(3) Rule of construction on accounting principles

(A) In general

A depository institution holding company or nonbank financial company supervised by the Board of Governors of the Federal Reserve that is also a person regulated by a State insurance regulator that is engaged in the business of insurance that files financial statements with a State insurance regulator or the National Association of Insurance Commissioners utilizing only Statutory Accounting Principles in accordance with State law, shall not be required by the Board under the authority of this section or the authority of the Home Owners' Loan Act [12 U.S.C. 1461 et seq.] to prepare such financial statements in accordance with Generally Accepted Accounting Principles.

(B) Preservation of authority

Nothing in subparagraph (A) shall limit the authority of the Board under any other applicable provision of law to conduct any regulatory or supervisory activity of a depository institution holding company or non-bank financial company supervised by the Board of Governors, including the collection or reporting of any information on an entity or group-wide basis. Nothing in this paragraph shall excuse the Board from its obligations to comply with section 5361(a) of this title and section 10(b)(2) of the Home Owners' Loan Act (12 U.S.C. 1467a(b)(2)), as appropriate.

(Pub. L. 111–203, title I, §171, July 21, 2010, 124 Stat. 1435; Pub. L. 113–250, §2(a), Dec. 18, 2014, 128 Stat. 2886; Pub. L. 113–279, §2, Dec. 18, 2014, 128 Stat. 3017; Pub. L. 114–94, div. G, title LXXXVII, §87001, Dec. 4, 2015, 129 Stat. 1798; Pub. L. 115–174, title II, §207(d), May 24, 2018, 132 Stat. 1312.)

Editorial Notes

REFERENCES IN TEXT

The Emergency Economic Stabilization Act of 2008, referred to in subsec. (b)(5)(A), is div. A of Pub. L. 110–343, Oct. 3, 2008, 122 Stat. 3765, which is classified principally to chapter 52 (§5201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5201 of this title and Tables.

The Home Owners' Loan Act, referred to in subsec. (c)(3)(A), is act June 13, 1933, ch. 64, 48 Stat. 128, which

is classified generally to chapter 12 (§ 1461 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

2018—Subsec. (b)(5)(C). Pub. L. 115–174 added subpar. (C) and struck out former subpar. (C) which read as follows: ''any bank holding company or savings and loan holding company having less than $1,000,000,000 in total consolidated assets that complies with the requirements of the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors of the Board of Governors (12 CFR part 225 appendix C), as the requirements of such Policy Statement are amended pursuant to section 1 of an Act entitled 'To enhance the ability of community financial institutions to foster economic growth and serve their communities, boost small businesses, increase individual savings, and for other purposes'.''

2015—Subsec. (b)(4)(C). Pub. L. 114–94 inserted ''or March 31, 2010,'' after ''December 31, 2009,''.

2014—Subsec. (a)(4) to (7). Pub. L. 113–279, § 2(1), added pars. (4) to (7).

Subsec. (b)(5)(C). Pub. L. 113–250 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''any small bank holding company that is subject to the Small Bank Holding Company Policy Statement of the Board of Governors, as in effect on May 19, 2010.''

Subsec. (c). Pub. L. 113–279, § 2(2), added subsec. (c).

Statutory Notes and Related Subsidiaries

CAPITAL SIMPLIFICATION FOR QUALIFYING COMMUNITY BANKS

Pub. L. 115–174, title II, § 201, May 24, 2018, 132 Stat. 1306, provided that:

''(a) DEFINITIONS.—In this section:

''(1) COMMUNITY BANK LEVERAGE RATIO.—The term 'Community Bank Leverage Ratio' means the ratio of the tangible equity capital of a qualifying community bank, as reported on the qualifying community bank's applicable regulatory filing with the qualifying community bank's appropriate Federal banking agency, to the average total consolidated assets of the qualifying community bank, as reported on the qualifying community bank's applicable regulatory filing with the qualifying community bank's appropriate Federal banking agency.

''(2) GENERALLY APPLICABLE LEVERAGE CAPITAL REQUIREMENTS; GENERALLY APPLICABLE RISK-BASED CAPITAL REQUIREMENTS.—The terms 'generally applicable leverage capital requirements' and 'generally applicable risk-based capital requirements' have the meanings given those terms in section 171(a) of the Financial Stability Act of 2010 (12 U.S.C. 5371(a)).

''(3) QUALIFYING COMMUNITY BANK.—

''(A) ASSET THRESHOLD.—The term 'qualifying community bank' means a depository institution or depository institution holding company with total consolidated assets of less than $10,000,000,000.

''(B) RISK PROFILE.—The appropriate Federal banking agencies may determine that a depository institution or depository institution holding company (or a class of depository institutions or depository institution holding companies) described in subparagraph (A) is not a qualifying community bank based on the depository institution's or depository institution holding company's risk profile, which shall be based on consideration of—

''(i) off-balance sheet exposures;

''(ii) trading assets and liabilities;

''(iii) total notional derivatives exposures; and

''(iv) such other factors as the appropriate Federal banking agencies determine appropriate.

''(b) COMMUNITY BANK LEVERAGE RATIO.—The appropriate Federal banking agencies shall, through notice and comment rule making under section 553 of title 5, United States Code—

''(1) develop a Community Bank Leverage Ratio of not less than 8 percent and not more than 10 percent for qualifying community banks; and

''(2) establish procedures for treatment of a qualifying community bank that has a Community Bank Leverage Ratio that falls below the percentage developed under paragraph (1) after exceeding the percentage developed under paragraph (1).

''(c) CAPITAL COMPLIANCE.—

''(1) IN GENERAL.—Any qualifying community bank that exceeds the Community Bank Leverage Ratio developed under subsection (b)(1) shall be considered to have met—

''(A) the generally applicable leverage capital requirements and the generally applicable risk-based capital requirements;

''(B) in the case of a qualifying community bank that is a depository institution, the capital ratio requirements that are required in order to be considered well capitalized under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831*o*) and any regulation implementing that section; and

''(C) any other capital or leverage requirements to which the qualifying community bank is subject.

''(2) EXISTING AUTHORITIES.—Nothing in paragraph (1) shall limit the authority of the appropriate Federal banking agencies as in effect on the date of enactment of this Act [May 24, 2018].

''(d) CONSULTATION.—The appropriate Federal banking agencies shall—

''(1) consult with the applicable State bank supervisors in carrying out this section; and

''(2) notify the applicable State bank supervisor of any qualifying community bank that it supervises that exceeds, or does not exceed after previously exceeding, the Community Bank Leverage ratio developed under subsection (b)(1).''

[For definitions of ''appropriate Federal banking agency'', ''depository institution'', and ''depository institution holding company'', as used in section 201 of Pub. L. 115–174, set out above, see section 2 of Pub. L. 115–174, set out as a note under section 5365 of this title.]

SMALL BANK HOLDING COMPANY POLICY STATEMENT

Pub. L. 115–174, title II, § 207(a)–(c), May 24, 2018, 132 Stat. 1312, provided that:

''(a) DEFINITIONS.—In this section [enacting this note and amending this section]:

''(1) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(2) SAVINGS AND LOAN HOLDING COMPANY.—The term 'savings and loan holding company' has the meaning given the term in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).

''(b) CHANGES REQUIRED TO SMALL BANK HOLDING COMPANY POLICY STATEMENT ON ASSESSMENT OF FINANCIAL AND MANAGERIAL FACTORS.—Not later than 180 days after the date of enactment of this Act [May 24, 2018], the Board shall revise appendix C to part 225 of title 12, Code of Federal Regulations (commonly known as the 'Small Bank Holding Company and Savings and Loan Holding Company Policy Statement'), to raise the consolidated asset threshold under that appendix from $1,000,000,000 to $3,000,000,000 for any bank holding company or savings and loan holding company that—

''(1) is not engaged in significant nonbanking activities either directly or through a nonbank subsidiary;

''(2) does not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; and

''(3) does not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission.

''(c) EXCLUSIONS.—The Board may exclude any bank holding company or savings and loan holding company, regardless of asset size, from the revision under subsection (b) if the Board determines that such action is warranted for supervisory purposes.''

[For definition of ''bank holding company'' as used in section 207(a)–(c) of Pub. L. 115–174, set out above, see

section 2 of Pub. L. 115–174, set out as a note under section 5365 of this title.]

CHANGES REQUIRED TO SMALL BANK HOLDING COMPANY POLICY STATEMENT ON ASSESSMENT OF FINANCIAL AND MANAGERIAL FACTORS

Pub. L. 113–250, Dec. 18, 2014, 128 Stat. 2886, provided that:

''SECTION 1. CHANGES REQUIRED TO SMALL BANK HOLDING COMPANY POLICY STATEMENT ON ASSESSMENT OF FINANCIAL AND MANAGERIAL FACTORS.

''(a) IN GENERAL.—Before the end of the 6-month period beginning on the date of the enactment of this Act [Dec. 18, 2014], the Board of Governors of the Federal Reserve System (hereafter in this Act referred to as the 'Board') shall publish in the Federal Register proposed revisions to the Small Bank Holding Company Policy Statement on Assessment of Financial and Managerial Factors (12 CFR part 225 appendix C) that provide that the policy shall apply to bank holding companies and savings and loan holding companies which have pro forma consolidated assets of less than $1,000,000,000 and that—

''(1) are not engaged in significant nonbanking activities either directly or through a nonbank subsidiary;

''(2) do not conduct significant off-balance sheet activities (including securitization and asset management or administration) either directly or through a nonbank subsidiary; and

''(3) do not have a material amount of debt or equity securities outstanding (other than trust preferred securities) that are registered with the Securities and Exchange Commission.

''(b) EXCLUSIONS.—The Board may exclude any bank holding company or savings and loan holding company, regardless of asset size, from the policy statement under subsection (a) if the Board determines that such action is warranted for supervisory purposes.

''SEC. 2. CONFORMING AMENDMENT.

''(a) IN GENERAL.—[Amended this section.]

''(b) TRANSITION PERIOD.—Any small bank holding company that was excepted from the provisions of section 171 of the Dodd-Frank Wall Street Reform and Consumer Protection Act [12 U.S.C. 5371] pursuant to subparagraph (C) of section 171(b)(5) (as such subparagraph was in effect on the day before the date of enactment of this Act [Dec. 18, 2014]), and any small savings and loan holding company that would have been excepted from the provisions of section 171 pursuant to subparagraph (C) [of section 171(b)(5)] (as such subparagraph was in effect on the day before the date of enactment of this Act) if it had been a small bank holding company, shall be excepted from the provisions of section 171 until the effective date of the Small Bank Holding Company Policy Statement issued by the Board as required by section 1 of this Act.

''SEC. 3. DEFINITIONS.

''For the purposes of this Act:

''(a) BANK HOLDING COMPANY.—The term 'bank holding company' has the same meaning as in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

''(b) SAVINGS AND LOAN HOLDING COMPANY.—The term 'savings and loan holding company' has the same meaning as in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).''

§ 5372. Rule of construction

Nothing in this Act shall be construed to limit or curtail the Corporation's current authority to examine or bring enforcement actions with respect to any insured depository institution or institution-affiliated party.

(Pub. L. 111–203, title I, § 172(c), July 21, 2010, 124 Stat. 1439.)

Editorial Notes

REFERENCES IN TEXT

This Act, referred to in text, 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.

§ 5373. International policy coordination

(a) By the President

The President, or a designee of the President, may coordinate through all available international policy channels, similar policies as those found in United States law relating to limiting the scope, nature, size, scale, concentration, and interconnectedness of financial companies, in order to protect financial stability and the global economy.

(b) By the Council

The Chairperson of the Council, in consultation with the other members of the Council, shall regularly consult with the financial regulatory entities and other appropriate organizations of foreign governments or international organizations on matters relating to systemic risk to the international financial system.

(c) By the Board of Governors and the Secretary

The Board of Governors and the Secretary shall consult with their foreign counterparts and through appropriate multilateral organizations to encourage comprehensive and robust prudential supervision and regulation for all highly leveraged and interconnected financial companies.

(Pub. L. 111–203, title I, § 175, July 21, 2010, 124 Stat. 1442.)

§ 5374. Rule of construction

No regulation or standard imposed under this subchapter may be construed in a manner that would lessen the stringency of the requirements of any applicable primary financial regulatory agency or any other Federal or State agency that are otherwise applicable. This subchapter, and the rules and regulations or orders prescribed pursuant to this subchapter, do not divest any such agency of any authority derived from any other applicable law.

(Pub. L. 111–203, title I, § 176, July 21, 2010, 124 Stat. 1442.)

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.

SUBCHAPTER II—ORDERLY LIQUIDATION AUTHORITY

§ 5381. Definitions

(a) In general

In this subchapter, the following definitions shall apply:

(1) Administrative expenses of the receiver

The term ''administrative expenses of the receiver'' includes—

(A) the actual, necessary costs and expenses incurred by the Corporation as receiver for a covered financial company in liquidating a covered financial company; and

(B) any obligations that the Corporation as receiver for a covered financial company determines are necessary and appropriate to facilitate the smooth and orderly liquidation of the covered financial company.

(2) Bankruptcy Code

The term ''Bankruptcy Code'' means title 11.

(3) Bridge financial company

The term ''bridge financial company'' means a new financial company organized by the Corporation in accordance with section 5390(h) of this title for the purpose of resolving a covered financial company.

(4) Claim

The term ''claim'' means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(5) Company

The term ''company'' has the same meaning as in section 1841(b) of this title, except that such term includes any company described in paragraph (11), the majority of the securities of which are owned by the United States or any State.

(6) Court

The term ''Court'' means the United States District Court for the District of Columbia, unless the context otherwise requires.

(7) Covered broker or dealer

The term ''covered broker or dealer'' means a covered financial company that is a broker or dealer that—

(A) is registered with the Commission under section 78*o*(b) of title 15; and

(B) is a member of SIPC.

(8) Covered financial company

The term ''covered financial company''—

(A) means a financial company for which a determination has been made under section 5383(b) of this title; and

(B) does not include an insured depository institution.

(9) Covered subsidiary

The term ''covered subsidiary'' means a subsidiary of a covered financial company, other than—

(A) an insured depository institution;

(B) an insurance company; or

(C) a covered broker or dealer.

(10) Definitions relating to covered brokers and dealers

The terms ''customer'', ''customer name securities'', ''customer property'', and ''net equity'' in the context of a covered broker or dealer, have the same meanings as in section 78*lll* of title 15.

(11) Financial company

The term ''financial company'' means any company that—

(A) is incorporated or organized under any provision of Federal law or the laws of any State;

(B) is—

(i) a bank holding company, as defined in section 1841(a) of this title;

(ii) a nonbank financial company supervised by the Board of Governors;

(iii) any company that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 1843(k) of this title other than a company described in clause (i) or (ii); or

(iv) any subsidiary of any company described in any of clauses (i) through (iii) that is predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 1843(k) of this title (other than a subsidiary that is an insured depository institution or an insurance company); and

(C) is not a Farm Credit System institution chartered under and subject to the provisions of the Farm Credit Act of 1971, as amended (12 U.S.C. 2001 et seq.), a governmental entity, or a regulated entity, as defined under section 4502(20) of this title.

(12) Fund

The term ''Fund'' means the Orderly Liquidation Fund established under section 5390(n) of this title.

(13) Insurance company

The term ''insurance company'' means any entity that is—

(A) engaged in the business of insurance;

(B) subject to regulation by a State insurance regulator; and

(C) covered by a State law that is designed to specifically deal with the rehabilitation, liquidation, or insolvency of an insurance company.

(14) Nonbank financial company

The term ''nonbank financial company'' has the same meaning as in section 5311(a)(4)(C) of this title.

(15) Nonbank financial company supervised by the Board of Governors

The term ''nonbank financial company supervised by the Board of Governors'' has the same meaning as in section 5311(a)(4)(D) of this title.

(16) SIPC

The term ''SIPC'' means the Securities Investor Protection Corporation.