

nancial 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 interconnect- edness 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) 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 $\frac{3}{5}$ 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;