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United States House of Representatives
One Hundred Eighteenth Congress
Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

June 13, 2023

The Honorable Janet L. Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Yellen,

I am writing to express my strong concerns with actions taken by the Financial Stability Oversight Council (Council) this past April seeking to make it easier to subject nonbank financial companies to prudential supervision by the Federal Reserve. The actions are contrary to the due process protections afforded by the Constitution and mark a sea change in the long-standing principles the Council uses to review these entities. If left unaddressed, the actions will set a dangerous precedent that will have consequences for the broader financial system.

In 2019, the Council established principles to ensure that the Council evaluated whether the activities of a nonbank financial institution presented systemic risk, rather than merely a firm's size. This ensured designations focused on the "same entity, same risk, same regulation" principle. The Council's April decision was to evaluate risks based on an entity's size, not the activities a firm chose to undertake. This is a significant departure from how risk determinations are made in this country.

Assessments and cost benefit analyses that focus on an entity's activities and stress have long provided important protections to nonbank financial institutions. In fact, these assessments are grounded in the constitutional principles of due process – both substantive and procedural. They were also the two protections upheld by the District Court for the District of Columbia in *MetLife v. Fin. Stability Oversight Council*, which ultimately struck down MetLife's "systemically important financial institution" designation in 2016.[1]

The premise of the Council's April proposal is that our financial system would be better off with the Federal Reserve exercising more oversight and control. This includes expanding the Federal Reserve's jurisdiction over institutions other than banks. However, prudential regulation – such as capital requirements – is grounded in mitigating the specific risks that bank activity poses. These regulations are not necessarily appropriate for institutions that may engage in different activities and thus pose different risks.

[1] *Metlife, Inc. v. Fin. Stability Oversight Council*, 177 F. Supp. 3d 219, 223, 236-39 (D.D.C. 2016).

As we have learned from the experience of Silicon Valley Bank, oversight by the Federal Reserve is not a panacea for financial stability. Moreover, the systemic risk designation comes with significant consequences. Congress did not intend this designation to be politicized nor weaponized.

I urge the Council to revisit its published assessments, analysis and interpretive guidance impacting nonbank financial institutions.

Sincerely,

Patrick McHenry
Chairman