Statement for the Record

Subcommittee on Oversight & Investigation
House Committee on Financial Services
U.S. House of Representatives

Hearing titled "The Arbitrary and Inconsistent Non-Bank SIFI Designation Process"

March 28, 2017

Chairman Wagner, Ranking Member Green, the American Council of Life Insurers (ACLI) is pleased to submit this statement for the hearing record expressing the views of member life insurance companies regarding the non-bank Systemically Important Financial Institution (SIFI) designation process. We agree with the Committee's majority staff report that the non-bank SIFI designation process has been arbitrary, inconsistent, and highly problematic. The insurer designations have led to duplicative supervision and regulation of insurers, produced excessive and unnecessary regulatory costs and burdens, and harmed competition in the insurance market without actually reducing systemic risk. We strongly support provisions in Chairman Jeb Hensarling's Financial CHOICE Act from the previous Congress (H.R. 5983) that would reform the authorities of the Financial Stability Oversight Council (FSOC) to repeal its ability to designate life insurance companies as SIFIs.

The American Council of Life Insurers is a Washington, D.C.-based trade association with approximately 290 member companies operating in the United States and abroad. ACLI advocates in state, federal, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing 94 percent of industry assets, 93 percent of life insurance premiums, and 97 percent of annuity considerations in the United States. Learn more at [www.acli.com.](http://www.acli.com)

The FSOC Designation Process is Fatally Flawed

As clearly identified in the Committee's majority staff report, the FSOC process for systemic designations of non-banks has been materially unfair and uneven. The experience of life insurance companies that have been designated by FSOC confirms the findings of the staff

American Council of Life Insurers
101 Constitution Avenue, NW, Washington, DC 20001-2133
www.acli.com

report. In the view of ACLI, the FSOC process has not met basic standards of accountability, transparency, and good governance.

A significant issue with the FSOC process has been the extremely inconsistent use of its broad authorities as applied to different sectors of the financial services industry. This problem is best illustrated by the very different approaches taken towards the insurance industry, which has been subject to designation of individual firms, as compared to the asset management industry. In the case of asset managers, FSOC has focused on recommendations for new or heightened standards for specific practices that may pose significant risk rather than singling out firms for designation.

Even in the insurance sector itself, there is no evidence of a uniform, consistent or transparent methodology being applied to each individual company under review. Life insurance companies that have gone through the designation process have not received adequate information or explanation of FSOC analysis and decisions. Documents provided by FSOC to insurance companies provide little insight into the basis for designation decisions. These documents typically offer only conclusory statements, predictions, and speculations that are unsupported by factual and economic analysis. FSOC has not provided companies with enough information that would allow them to take positive steps to avoid designation, or be de-designated through appropriate action.

One of the most significant problems with the FSOC process for non-bank systemic designations of insurers has been its failure to appropriately consider the role of existing primary financial regulators leading to a lack of understanding and recognition of the strong insurance regulatory framework in place through the state-based system. The state-based insurance regime has a long and successful track record of insurance regulation.

One of the explicit statutory requirements the FSOC must consider is the “degree to which the company is already regulated by one or more primary financial regulatory agencies.” Contrary to this statutory requirement, the FSOC has not appropriately considered in its designation of insurers the authority and tools available under the state-based insurance regime, including numerous and substantial reforms policymakers have implemented since the financial crisis.

FSOC Lacks State Insurance Regulator Voting Representation

The lack of consideration given to primary financial regulators of insurance has been exacerbated by the lack of insurance expertise and representation on the panel. Of the 10 FSOC voting members, at least seven are primarily banking industry regulators. When either the FSOC Independent Member with Insurance Expertise or the nonvoting state insurance regulator offered dissenting views, they were disregarded and overruled. FSOC also dismissed concerns registered by the then primary insurance regulator in New York state, Benjamin Lawsky, Superintendent of the New York Department of Financial Services, in a letter to Treasury Secretary Jacob Lew in July of 2014.

Clearly, the designations of insurers were largely dependent on banking expertise, not insurance expertise. FSOC's decisions with regard to insurers were bank-centric and not grounded in an accurate understanding of the business of insurance. Life insurers are fundamentally different from banks. FSOC's reliance on an inappropriate and unrealistic bank-like "run" scenario on insurance products as the trigger of an insurer's financial distress or cause of systemic risk illustrates its bank-centric mindset for considering insurance firm designations.

The structure of FSOC should be changed to add state insurance regulators as voting members. Right now, no state insurance commissioner is a voting FSOC member. The history of FSOC, now dominated by bank regulators, shows that it discounts the opinions of the single insurance expert voting member, resulting in erroneous and harmful decisions for insurance markets. Structural change must also ensure that any FSOC recommendations that would affect insurers must be developed with direct input from state insurance regulators, and that any implementation of such recommendations is solely within the province and authority of those regulators.

FSOC Has Misused Its Existing Authority

FSOC's narrow focus on a few individual entities in certain sectors has diverted attention and resources away from its more important role as a broad-sighted macro-prudential overseer of the economy that can identify potential systemic risk in a timely fashion. The enormous resources and time devoted by FSOC to duplicative oversight of a few individual insurance companies has significantly depleted the attention that could be focused on insufficiently regulated or unregulated sectors of the financial economy, where the next crisis is much more likely to arise. For any such entity that by virtue of its activities poses a threat to the financial stability of the United States, FSOC should act as an early warning system and ensure that adequate regulation can be put in place.

FSOC's primary responsibility should be assessing macro-prudential risks to U.S. financial stability. It should be made clear that its principal role is making advisory recommendations to primary financial regulatory agencies, which for insurance are the state commissioners, on applying new or heightened safeguards for financial activities that could increase risks to the U.S. financial markets.

There is no evidence that the current structure and approach of FSOC has facilitated the reduction of systemic risk, nor has it effectively demonstrated that life insurance activities present a systemic risk. The resulting erroneous FSOC systemic designations of insurance companies have imposed unnecessary costs on insurers and distorted the competitive landscape in the insurance industry.

Life Insurers Do Not Represent a Systemic Risk

There is no compelling evidence that any life insurer represents a systemic risk to the financial services system. The exact opposite is true. Life insurers have historically been a source of stability in the U.S. financial system, providing families with financial protection and providing businesses with long-term capital for economic growth and job creation. Life insurance companies hold assets for the long-term to match up with product guarantees that are made for the long-term. The average maturity of the bonds purchased by life insurance companies is more than 18.5 years on a dollar weighted basis.

Life insurers are not subject to a “run on the bank” as depository institutions are. The long-term nature of our products and promises discourage such behavior. Policyholders cannot accelerate benefits or periodic payments. Indeed, during the greatest stress-test in more than 70 years - the financial crisis of 2008 - extraordinary redemptions from life insurance or annuity policies did not occur. Given the improbability of this occurrence, insurers would not be forced into a mass liquidation of assets.

Insurance companies have experienced prudential regulators that have greatly increased the tools available to oversee and effectively regulate the industry. In the last decade, state insurance holding company laws and group supervision practices have been strengthened and expanded to enable state regulators to be vigilant in identifying and aggressive in addressing issues of concern that might jeopardize the corporation as a whole. For example, insurance companies or groups are now required to submit their own risk and solvency assessments to state insurance regulators, who routinely review them with the group’s management in cooperation with other regulators. Prudential oversight of insurance companies through the state-based system continues to be demonstrably strong and effective as it evolves to meet ongoing challenges.

ACLI Supports Provisions in the Financial CHOICE Act to Eliminate Non-Bank Designation Authority

ACLI would like to reiterate its strong support for provisions in the Financial CHOICE Act that address the clear failures of the existing FSOC non-bank designation authority. Elimination of the non-bank designation authority for life insurance companies is an essential reform that will refocus systemic oversight on insufficiently or unregulated sectors or those that actually present systemic risk, while maintaining its authority for identifying and assessing macro-prudential risks to U.S. financial stability. By rebalancing the FSOC approach, and removing the impact of arbitrary and misdirected FSOC designations, insurance regulators, insurance markets, and insurance consumers can expect better outcomes.

Conclusion

The American Council of Life Insurers (ACLI) thanks the Committee for convening this important hearing and for its comprehensive oversight over the non-bank systemic designation process. We strongly support the Committee's efforts to examine the failures of FSOC to conduct a fair, transparent, and accountable process. We look forward to working with the Committee to eliminate FSOC designation authority of life insurance companies.