

MONEY MARKET FUNDS IN 2013

FSOC Does Not Have the Authority to Make Recommendations Under Dodd-Frank Section 120 for Money Market Funds

Section 120 of the Dodd Frank Act requires the Financial Stability Oversight Council (FSOC) to follow numerous statutory requirements in making a recommendation to a financial regulatory agency on enhanced regulation. Congress established these requirements to ensure that these powers are not used arbitrarily. Legal analysis shows that FSOC has failed to meet the legal requirements necessary to make a Section 120 recommendation on money market funds.

In its [January 24 comment letter to the FSOC](#), ICI requests that FSOC withdraw the proposed recommendations until the appropriate process has been followed. (See page 12 of comment letter for full discussion of this issue.)

- **The current FSOC action on money market funds represents the Council’s first and only use of its authority under Section 120 of the Dodd Frank Act.** Its action therefore requires careful evaluation to ensure it meets the standards and requirements set by Congress.
- **FSOC’s authority to make recommendations regarding enhanced standards under Section 120 is expressly limited.** It can only make recommendations with regard to “nonbank financial companies” or bank holding companies.
- **FSOC is failing to follow the congressionally mandated process.** Congress did not authorize FSOC to determine the requirements for a company to be deemed to be a “nonbank financial company.” Instead, Congress defined “nonbank financial company” to mean a company that is “predominantly engaged in financial activities.” Congress then expressly entrusted to the Federal Reserve Board the responsibility to establish criteria necessary for applying this definition to specific companies.
 - The Federal Reserve published for public comment a proposed rule and later issued additional language to clarify its proposal. To date, however, it has not adopted a final rule that would establish the necessary criteria for applying the “nonbank financial company” definition to specific companies. The protracted process and critical comments on the proposal indicate that it is far from clear which entities will meet the final definition.
 - FSOC therefore cannot make a legally valid determination that money market funds are nonbank financial companies requiring further regulation.
- **In failing to follow the statutory process, FSOC is acting outside its legal authority.** FSOC simply states that it “believes that [money market funds] are predominantly engaged in financial activities ... and thus are ‘nonbank financial companies’” without providing any explanation of how it arrived at its belief. FSOC has acted both outside of its legal authority (by usurping

rulemaking authority expressly assigned by Congress to the Federal Reserve) and without explaining its basis for doing so.

- **FSOC’s actions deprive the public of fair opportunity to comment on FSOC’s “belief” that money market funds meet requirements for enhanced regulation.** A clear explanation of an agency’s authority and rationale is fundamental to a fair process that can elicit meaningful comment.
- **ICI is requesting that FSOC withdraw its proposed recommendations until the appropriate process has been completed and determinations have been made.**

For more information on money market funds, their role in the economy, ICI’s efforts to make these funds more resilient in the face of adverse market conditions, and the significant risk of undermining money market funds’ value to investors and the economy, please see www.ici.org/mmfs or www.PreserveMoneyMarketFunds.org.