CENTER FOR CAPITAL MARKETS COMPETITIVENESS

TOM QUAADMAN
SENIOR VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5540
tquaadman@uschamber.com

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The Honorable Janet L. Yellen
Chair
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Chair Yellen,

The U.S. Chamber of Commerce ("Chamber"), the world's largest federation of businesses and associations, representing the interests of more than three million U.S. businesses and professional organizations of every size and in every economic sector, is troubled by recent correspondence stating that certain comments submitted by five financial industry groups ("Joint Letter") intend to undermine the efficacy of the Federal Reserve's Total Loss Absorbing Capacity ("TLAC") proposal.

While the Chamber was not a signatory to the Joint Letter, we share many of the same concerns.[1] The Chamber believes the current TLAC proposal will raise the cost of capital for businesses and divert working capital out of the markets, depriving businesses of the resources to grow and create jobs. To ignore these legitimate concerns, the Federal Reserve could run afoul of the legal requirements to draft regulations as required under the Administrative Procedures Act ("APA") and the Riegle Community Development and Regulatory Improvement Act ("Riegle Act").

The Chamber believes that the notice-and-comment process is integral to a well-functioning and responsive regulatory system that incorporates the viewpoints of all interested stakeholders and strongly disagrees with suggestions that comments in the Joint Letter undermine the efficacy of the rule. Accepting or rejecting comments on the basis of the identity of the sender—rather than the content of the comment—would render this process meaningless, as the APA requires an agency to "afford interested persons a reasonable and meaningful opportunity to participate in the

[1] The Chamber's submission on the total loss-absorbing capacity proposal to the Federal Reserve Board is available here.

rulemaking process."[2] The APA also requires an agency to consider "the relevant matter presented" and incorporate into the final rule a "concise general statement" of the "basis and purpose" of the final rule.[3] That legal requirement would not be fulfilled if certain comments were automatically discounted by the Federal Reserve.

Finally, we wish to highlight that the concerns raised in the Joint Letter in question are extremely important for the Federal Reserve. In fact, the Federal Reserve is required to address these issues under applicable law, including the "Riegle Act. The Riegle Act mandates that

> "[i]n determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency shall consider, consistent with the principles of safety and soundness and the public interest: (1) any administrative burdens that such regulations would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of such regulations."[4]

In addition, the Federal Reserve has also avowed that it will seek to abide by Executive Order 13563. The Federal Reserve recently stated that it "continues to believe that [its] regulatory efforts should be designed to minimize regulatory burden consistent with the effective implementation of [its] statutory responsibilities."[5] As recently as October 24, 2011, the Federal Reserve wrote a letter to the Government Accountability Office acknowledging the need to engage in a cost-benefit analysis and asserting that the Federal Reserve's use of such an analysis, since 1979,[6] has mirrored the provisions of regulatory reform as articulated in Executive Order 13563.[7] Consequently, the Riegle Act and Executive Order 13563 both require the Federal

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[2] 5 U.S.C. § 553.
[3] *Id.*
[4] 12 U.S.C. § 4802(a).
[5] November 8, 2011, letter from Chairman Ben Bernanke to OIRA Administrator Cass Sunstein.
[6] Board of Governors of the Federal Reserve System, Statement of Policy Regarding Expanded Rulemaking procedures, 44 Fed. Reg. 3957 (1979)
[7] *See* letter from Scott Alvarez, General Counsel of the Federal Reserve, to Nicole Clowers, Director of Financial Markets and Community Investment of the General Accountability Office.

Reserve to consider all the comments the agency has received as evidence that must be analyzed and used in its cost-benefit analysis.

We also underscore the importance of carefully reviewing all comments and weighing the costs and benefits of all alternatives before finalizing the TLAC proposal. The Chamber has repeatedly urged the Federal Reserve and the Financial Stability Board[8] to achieve a better understanding of the impacts of the proposed rule on capital formation and the collateral effects on financial stability, meaning that the proposed rule should go through a more enhanced cost-benefit analysis.

The Chamber reiterates its commitment to preserving a fair, open, and transparent rulemaking process that fully evaluates all the evidence presented to a regulator. Consequently, we believe that the Federal Reserve needs to consider all comments received on the TLAC proposal to both honor the spirit of the notice-and-comment rulemaking process and the strictures of the APA and cost-benefit analysis legal requirements.

Sincerely,

Tom Quaadman

[8] The Chamber's submission on the total loss-absorbing capacity proposal to the Financial Stability Board is available here.