CENTER FOR CAPITAL MARKETS COMPETITIVENESS

TOM QUAADMAN
EXECUTIVE VICE PRESIDENT

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

January 22, 2019

Legislative and Regulatory Affairs Division
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies – Docket No. R-1627 and RIN 7100-AF20

Proposed changes to applicability thresholds for regulatory capital and liquidity requirements – Docket ID OCC-2018-0037 and RIN 1557-AE56 (OCC); Docket No. R-1628 and RIN 7100-AF21 (Federal Reserve); RIN 3064-AE96 (FDIC)

To whom it may concern:

CCMC appreciates the opportunity to comment on the Board of Governors of the Federal Reserve System ("Federal Reserve") proposal on "Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies" (the "Proposal") and the joint proposal from the Federal Reserve Board of Governors

("Federal Reserve"), the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively the "Agencies") entitled, "Proposed changes to applicability thresholds for regulatory capital and liquidity requirements" (the "Joint Proposal"). The Chamber is submitting one comment letter to address both notices (jointly "the Proposals") given the interconnectedness of the regulatory framework and the identical methodology for the applicability of tailoring across institutions.

The Chamber believes the Proposals will alleviate many of the financing concerns that have been raised by Main Street businesses with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act and other regulatory initiatives in the wake of the 2008 financial crisis. The Chamber believes that the following recommendations will help improve the proposals:

1) **Reduced emphasis on asset-thresholds as a risk-metric;**

2) **Maximizing tailoring of regulations for all U.S. financial institutions;**

3) **Commensurate regulatory relief for foreign banks operating in the U.S.; and,**

4) **Reconsideration of the application of new requirements to Savings and Loan Holding Companies (SLHCs)**

Impact on Financial Markets and Main Street Financing

In 2016, the Chamber surveyed ("Survey") more than 300 corporate finance professionals about their core financial services needs and the indirect regulatory impact of all the newly adopted financial regulations.[1] We asked them about the products they use and the types of financial services they rely on. We also asked them if and how they are seeing the impact from financial regulation on businesses and their customers.

More than three-quarters of American companies of all sizes report that the cumulative effect of the Dodd-Frank Act and other financial regulatory rules adopted

[1] Financing Growth: The Impact of Financial Regulation. June 16, 2016. Available at https://www.uschamber.com/sites/default/files/documents/files/financing_growth_report_16_june_16.pdf

over the past six years, including standards delineated by the Basel Committee on Banking Supervision (BCBS), is making it harder for them to access the financial services they need. This is true among small, midsized, and even large companies and is felt most acutely in a lack of access to services helping them manage day-to-day liquidity.

Notably, companies rely on financial institutions of all sizes to meet their financing needs. The Survey found that businesses use a combination of financial institutions for critical financing activities, and the mix of financial services and products used is closely tied to the availability and diversity of financing sources:

- 20% of all small and midsize companies said that they use four or more financial institutions to issue commercial paper, raise corporate debt, or access trade financing;

- Large businesses use four or more financial institutions in a variety of contexts, particularly when obtaining long-term loans, purchasing derivatives, and issuing corporate debt; and

- 68% of businesses (up from 50% in 2013) indicated that it is important for their financial services provider to have a global footprint.

What we heard was a particularly strong and growing concern for the ability of businesses to access credit and to manage cash flow and liquidity due to existing and pending regulations. Moreover, the Survey also demonstrated that many businesses are taking unanticipated steps to address increased costs or a lack of access to financial services at the expense of customers or expansion:

- 43% of the companies surveyed said that maintaining cash flow and liquidity are their chief concern;

- 50% said that increased bank capital charges have increased their costs and challenges;

- 79% have seen their business affected by changes in the financial services markets;

- 29% have increased prices for customers and consumers as a result of changes to the financial services market (double the level seen in 2013); and,

- 76% believe that the regulations on the financial services sector will not help their company's outlook over the next two to three years.

Companies often fail or face turmoil because of cash management problems. For example, supplier invoices can come due before revenues or growth in sales needs to be supported by added investment. Managing cash and liquidity are top concerns of Main Street businesses and, in the five years leading up to the 2016 survey, regulations and economic changes forced one in three companies to take new or unexpected steps to manage their cash. This challenge is especially acute for America's smallest businesses:

- 43% of the companies surveyed said that maintaining cash flow and liquidity are their chief concerns;

- Companies are most concerned about accessing credit, managing day-to-day currency risk, and raising short term capital. All are necessary functions to manage cash flow and liquidity;

- Regulations and economic changes have forced one in every three companies to take new or unexpected steps to manage their cash; and

- 50% said that increased bank capital charges have increased their costs and challenges.

Notably, corporate finance professionals singled out Basel III and U.S. SIFI regulations as having the most severe negative impact on their companies.

The Survey also illustrated the impact of financial regulations on main street companies:

- 79% of the businesses are affected by changes in the financial services market. This is an increase from 2013 wherein 61% of businesses reported being affected.; and

- 29% have increased prices for customers and consumers as a result of changes to the financial services market (double the level seen in 2013).

Many of these inefficiencies have continued or been exacerbated. The Chamber is undertaking a new corporate treasurer survey that will be released this spring. We will provide the results to the regulators as you consider the Proposals.

Background on Post-Crisis Recommendations

The Proposals would establish a revised framework for applying prudential standards to large U.S. banking organizations, with four categories of standards that attempt to reflect the different risks of firms in each group. The Federal Reserve's proposal would tailor prudential standards relating to capital stress testing; risk management; liquidity risk management, liquidity stress testing, and liquidity buffer requirements; and single-counterparty credit limits. It would also apply enhanced prudential standards to certain savings and loan holding companies. The Joint Proposal would tailor requirements under the Agencies' capital rules, the Liquidity Coverage Ratio ("LCR"), and the proposed Net Stable Funding Ratio ("NSFR"). The Proposals are intended to match the regulations for covered banking organizations with their risk profiles consistent with changes from the Economic Growth, Regulatory Reform, and Consumer Protection Act ("EGRRCPA").

Section 165 of the Dodd-Frank Wall Street Form and Consumer Protection Act of 2010 ("Dodd-Frank Act") required the Federal Reserve to establish enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion or more and nonbank financial companies that have been designated by the Financial Stability Oversight Council (FSOC) for supervision by the Federal Reserve.[2] The threshold of $50 billion in consolidated assets established by the Dodd-Frank Act is both arbitrary and inappropriate.

The Federal Reserve, with the support of the OCC and the FDIC, moved forward with strict requirements implementing the Dodd-Frank Act and the Basel Accords. Strict capital requirements, liquidity requirements, reinforced by intrusive enhanced prudential standards have now been applied. These requirements went too far and were inappropriately tailored, especially for regional banks. They have also

[2] The Dodd-Frank Act was amended by EGCPRA, increasing this threshold from $50 billion to $250 billion or more in total consolidated assets

had severe economic consequences for our financial markets and Main Street businesses.

The Chamber has supported legislation to reform regulatory requirements imposed on financial institutions. When the EGRRCPA was under consideration by Congress, the Chamber stated, "Main Street businesses depend on community and regional banks for the capital necessary to get started, sustain operations, manage cash, make payroll, and create well-paying jobs. The post-financial crisis 'one-size-fits-all' regulatory regime has severely constrained these banks' ability to serve households and small businesses in their communities."

Recommendations for Reforms to Post-Crisis Regulations

The Chamber recently released a report that finds small business lending by banks has declined due to the strict capital and liquidity requirements put in place in response to the 2008 financial crisis. **Policymakers should be concerned that small business lending by financial institutions dropped by nearly 50 percent** – loans less than $1 million dropped from 2.5 percent of gross domestic product in 2001 to 1.7 percent in 2017, and such loans make up a smaller portion of total bank assets, dropping from 4.0 percent in 2001 to 2.1 percent in 2016.[3] This concerning trend must be studied as you reconsider our regulatory framework. The report outlined suggestions to improve the current system of capital standards:

1. Establishing better countercyclical capital standards;
2. Lower risk weights for small and medium enterprises;
3. Re-examination of the CCAR and DFAST models;
4. Rationalizing the passing grades on stress tests;
5. Serious consideration of dropping the Liquidity Coverage Ratio;

[3] Angel, J. (fall 2018). Impact of Bank Regulation on Business Lending. U.S. Chamber of Commerce Center for Capital Markets Competitiveness. Retrieved from https://www.centerforcapitalmarkets.com/wpcontent/uploads/2018/09/CCMC_RestoringSmallbizLendingReport_9.10.18-1.pdf

6. Further research and action into reducing regulatory barriers to capital formation for small and medium enterprises; and

7. Working towards fundamental reform of the U.S. financial regulatory structure.

The Chamber believes the Proposals will alleviate many of the financing concerns that have been raised by Main Street businesses. We are grateful that the Proposals take steps to tailor regulations; however, there is ample opportunity for further reforms that will engender economic growth without undermining safety and soundness of banking organizations or the financial system.

We believe that the following recommendations will improve the Proposals.

1. **Reduced emphasis on asset-thresholds as a risk-metric**

The Chamber supported the passage of EGRRCPA which, we wrote, "would better tailor regulations for community and regional banks . . .The post-financial crisis 'one-size-fits-all' regulatory regime has severely constrained these banks' ability to serve households and small businesses in their communities. . . While provisions such as raising the asset threshold for enhanced prudential standards are an important step, the Chamber continues to strongly support tailored regulations—sophisticated rules that are properly calibrated to the risk profile of an activity or institution."[4]

In general, the Agencies should avoid relying on arbitrary asset thresholds where possible and should index such thresholds to avoid creating regulatory cliffs that stymie organic growth. The Agencies should index the dollar thresholds of the risk-based indicators to growth in domestic banking assets. Alternatively, the Chamber has proposed indexing asset thresholds to inflation, for example.[5] Indexing would more closely align the risk-based indicators to organic growth of individual firms and the overall economy.

[4] Letter available at https://www.uschamber.com/sites/default/files/180521_kv_s2155_economicgrowthregulatoryreliefandconsumerprotection_house.pdf
[5] Letter available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/11/181108_Comments_BankCapitalRules_OCCFedFDIC-002-Final.pdf?#

The Chamber has supported alternatives for asset thresholds as an indicator for systemic risk. For example, the Chamber has endorsed legislation to replace the arbitrary threshold in Section 165 of the Dodd-Frank Act with a multifactor assessment that considers size, interconnectedness, substitutability, complexity, and cross-jurisdictional activity.[6] The use of an arbitrary threshold subjected many midsize and regional banks to systemic risk regulation, despite the fact that they do not generate systemic risk. Main Street businesses depend on mid-size and regional banks for credit and other financial products to get started, sustain operations, manage cash, make payroll, and create well-paying jobs. While the Proposals are a substantial improvement over the current system, they still rely on significantly on asset thresholds and thus pose the same risks, especially if these thresholds are not indexed.

EGRRCPA includes an asset threshold for enhanced prudential standards under Sec. 165 but directed the Federal Reserve to tailor these regulations to the risk profile and activities of individual institutions. Section 401 of EGRRCPA amends the Financial Stability Act of 2010, with respect to nonbank financial companies supervised by the Federal Reserve and certain bank holding companies, to:

- Increase the asset threshold at which certain enhanced prudential standards shall apply, from $50 billion to $250 billion, while allowing the Federal Reserve discretion to determine whether a financial institution with assets equal or greater than $100 billion must be subject to such standards.

- Increase the asset threshold at which company-run stress tests are required, from $10 billion to $250 billion; and

- Increase the asset threshold for mandatory risk committees, from $10 billion to $50 billion.[7]

2. **Maximizing tailoring of regulations for all U.S. financial institutions**

[6] Letter available at https://www.uschamber.com/sites/default/files/171219_kv_hr_3312_systemic_risk_designation_improvement_act_house.pdf

[7] 12 U.S.C. 5365

The Chamber strongly supports the intention of the Agencies to tailor the approach for enhanced supervision and the applicability of capital and liquidity requirements for banking organizations. The Proposals appropriately reduces some requirements that had been imposed on regional banks. However, the Chamber is concerned that the Proposals are inconsistent with Congressional intent in some instances. Also, the Federal Reserve may find it appropriate to use asset thresholds for a guideline or indicator for risk, but it should maximize tailoring of regulations as permitted under law and encouraged by Congressional intent.

The Proposals would establish a revised framework for applying prudential standards to large U.S. banking organizations. The Agencies propose to create four categories with the intent of reflecting the different risks of firms in each group. The categories are based on size, cross-jurisdictional activity, reliance on short-term wholesale funding, nonbank assets, and off-balance sheet exposure.

a. Category IV

The Chamber supports the reduced requirements for banking organizations that would be included in Category IV of the Proposals. In general, banking organizations will be included in Category IV if they have $100 to $250 billion in total assets. However, the Federal Reserve has not sufficiently justified the application of enhanced prudential standards for Category IV. The EGRRCPA includes a presumption for the removal of these requirements for banking organizations with less than $250 billion in assets.[8]

<u>Stress Test Requirements</u>

In general, the Chamber believes stress test requirements for Category IV banking organizations are not appropriately justified. The Proposal requires banking organizations to continue to be subject to the Comprehensive Capital Analysis Review (CCAR) quantitative assessment, supervisory stress testing, and the submission of an annual capital plan. These requirements impose significant costs on individual firms, their customers, and the overall economy.

---

[8] "It is the understanding of my colleagues and me that S. 2155 shifted the assumption that financial companies with less than $250 billion are not systemically risky…" (August 17, 2018) Letter to Federal Reserve Governor Randal Quarles, signed by Senators David A. Perdue, Thom Tillis, M. Michael Rounds, Jerry Moran, James M. Inhofe, James Lankford, and Bill Cassidy.

The CCAR stress tests have a disproportionate impact on lending to small and medium-sized enterprises (SMEs). The effective risk weights implied by the CCAR results were generally much higher than the banks' own implied risk weights from their Dodd-Frank Act Stress Test (DFAST) submissions. In particular, the value for commercial and industrial loans was 20% higher, and the value for small business loans was 140% higher.[9] F or most categories of loans (except commercial real estate), the CCAR process resulted in much higher required capital than the banks' own DFAST estimates or what would be required under Basel III.[10] The CCAR banks are at a 2% relative disadvantage in funding loans to small businesses. This has undoubtedly contributed to their reluctance to make loans to small businesses.[11]

The Proposal requires Category IV banking organizations to continue conducting the CCAR quantitative assessment. Moving to a two-year cycle may be perceived as an improvement from the annual requirement, but requires banking organizations to maintain the infrastructure and resources year over year.

Finally, it is challenging to provide informed comments with respect to the changes to stress test requirements given the Federal Reserve has indicated it plans to make broad reforms.[12] In concept, the Chamber supports these changes. Additionally, the Chamber supports the Federal Reserve's proposal for enhanced disclosure of the models for supervisory stress testing.[13]

Additional ambiguities arise from the lack of clarity that CCAR will be linked to banking organizations' obligations under the Stress Capital Buffer (SCB). On April 10, 2018, the Federal Reserve Board requested comment on a proposal to introduce a "stress capital buffer." In general, the proposal would create capital requirements for covered banking organizations that are firm-specific and risk-sensitive by integrating stress test results. According to the notice, the proposal would be effective on December 31, 2018, and a firm's stress buffer requirements would generally be

---

[9] Angel, J. (fall 2018). Impact of Bank Regulation on Business Lending. U.S. Chamber of Commerce Center for Capital Markets Competitiveness. Retrieved from https://www.centerforcapitalmarkets.com/wpcontent/uploads/2018/09/CCMC_RestoringSmallbizLendingReport_9.10.18-1.pdf
[10] Ibid
[11] Ibid
[12] Quarles, R. K. (2018, November 9). A New Chapter in Stress Testing. Speech presented in At the Brookings Institution, Washington, DC.
[13] Letter available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/01/180122_Comments_StressTestTransparencyProposals_Fed.pdf?#

effective on October 1, 2019. However, the Federal Reserve has not issued a final rule nor provided sufficient clarity for an updated timeframe for implementation.[14]

It is also difficult to comment in light of indications that CCAR will be linked to banking organizations' obligations under the Stress Capital Buffer (SCB).[15] The Federal Reserve should provide Category IV banking organizations the option to request a mid-cycle supervisory stress test to recalibrate a firm's stress capital buffer during an off-cycle year so that the SCB more appropriately aligns to current firm and market risks. Under the two-year cycle that is proposed, conditions may change that cause a Category IV firm to have an artificially high SCB for a prolonged period of time without the opportunity for an interim review. The Federal Reserve should also ensure that forthcoming changes to the CCAR framework permit increased flexibility for firms to adjust capital distribution amounts between capital plan submissions so long as the firm's capital ratios stay above regulatory minimums, inclusive of the SCB. Finally, with respect to internal "forward-looking assessments" used by Category IV firms for capital planning purposes, the Federal Reserve should issue clear yet principles-based standards that allow firm's the ability to tailor their approaches to individual circumstances.

Liquidity Coverage Ratio

The Chamber supports the removal of the Liquidity Coverage Ratio for Category IV banking organizations. The Liquidity Coverage Ratio (LCR) requires a bank to hold enough high-quality, liquid assets to cover projected net cash outflows over a 30-day stress period. In general, these assets may include central bank reserves, government debt, and corporate debt that can be easily and quickly converted into cash.

The Liquidity Coverage Ratio has the effect of quarantining assets that could and should be used for loans to consumers and businesses. The LCR requires banks to hold more liquid assets than they would otherwise choose, preventing them from making loans to consumers and businesses.

b. Category III

---

[14] See proposal, available at
https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180410a.htm
[15] See above.

The Chamber supports the proposed changes to tailor regulations for banking organizations that would be included in Category III. In general, banking organizations will be included in Category III of the Proposals if they have total assets of $250 billion or more, or if they have total assets of $100 billion or more and also have $75 billion or more of a risk-based indicator (weighted short-term wholesale funding, nonbank assets, or off-balance sheet exposure). These proposed reforms demonstrate the flexibility available to the Agencies to tailor beyond asset thresholds delineated in statute.

The Chamber supports the Agencies' efforts to rationalize the Liquidity Coverage Ratio (LCR) and Net Stable Funding Ratio (NSFR) for Category III banking organizations. However, the Chamber maintains some concerns with respect to application of the LCR to Category III banking organizations.

Liquidity Coverage Ratio

We recognize the importance of ensuring banks have sufficient liquidity to navigate financial crises. Nevertheless, because of the very real costs of the LCR (and the numerous other liquidity requirements), Category III firms, and their subsidiaries, should be subject to, at most, the "modified LCR" currently applicable to most banks with less than $250 billion in assets. Application of a modified LCR will move closer to striking a balance between ensuring banking organizations maintain sufficient liquidity and are able to meet the financing needs of consumers and businesses.

Net Stable Funding Ratio

The Net Stable Funding Ratio is a long-term funding requirement that requires covered banking organizations to maintain a minimum level of stable funding relative to the liquidity of their assets, derivatives, and commitments, over a one-year period. The NSFR is intended to complement the LCR requirements.

Similar to the LCR, the NSFR inhibits small business lending. The risk-weights for small business loans require banking organizations to maintain a high level of "stable funding." This funding is relatively costly thus discouraging lending by banking organizations to small businesses.

The Chamber supports the concept of a reduced requirement under the Net Stable Funding Ratio (NSFR) for Category III banking organizations; however, it is difficult to comment on the outcome of the Proposal given the NSFR has not been

finalized or implemented by the Agencies.[16] Nevertheless, we believe the modified NSFR currently proposed for banks subject to the modified LCR would be a good starting point for Category III bank organizations.

Furthermore, there also is no obligation for the United States to adopt the NSFR. The standard, developed by the BCBS, is unnecessary and arguably redundant to other post-crisis regulatory requirements, many of which were not adopted in other countries.

c. Category II

In general, Category II firms are those with more than $700 billion in total assets or cross-jurisdictional activities of $75 billion or more. Category II firms would be subject to the same regulatory requirements as Category I firms except for exclusions from the GSIB surcharge and the enhanced Supplementary Leverage Ratio.

The Agencies should be acutely aware of the potential regulatory cliff created by Category II, especially if the Agencies fail to index the relevant asset thresholds. Organic growth by Category III institutions, even when not accompanied by changes to their business models, could mean they would be subject to requirements largely similar to those imposed on U.S. GSIBs.

d. Category I

In general, banking organizations would be deemed Category I if they are global systemically important bank holding companies ("GSIBs") that are domiciled in the United States. These banking organizations would remain subject to the most stringent requirements.

The Proposals would reduce the frequency of required company-run stress testing from semi-annual to annual. The Chamber supports this change. The company-run stress testing requirement is redundant to other prudential standards. Reducing the frequency of the company-run stress test requirement is the minimum

---

[16] The Federal Reserve, FDIC, and the OCC issued the proposal in May 2016, with an effective date of January 1, 2018, but the rule has not yet been finalized.[16] It is unclear what changes the Agencies plan to make to the NSFR, if any, or when it may be implemented, see https://www.federalreserve.gov/newsevents/pressreleases/bcreg20160503a.htm

reduction in regulatory burden that should be provided to Category I banking organizations.

The Chamber also recommends reconsideration of overall capital requirements for large U.S. financial institutions, including potential future changes to regulatory capital and stress testing requirements. For example, the Chamber recently stated that review of the so-called GSIB surcharge should be a top priority of the Agencies.[17] As the Chamber warned in a letter to the Federal Reserve in 2015, the implementation of the so-called "GSIB surcharge" by federal banking regulators puts U.S. financial institutions at a competitive disadvantage and inhibits capital formation.[18] The Agencies should carefully consider the overall coherence and calibration of the post-crisis capital framework and strongly weigh the costs to our economy imposed by existing and potential future capital requirements.

3. <u>Commensurate regulatory relief for foreign banks operating in the U.S.</u>

The Chamber is disappointed that the Proposals do not include tailoring of regulation for foreign banks operating in the U.S. These banking organizations provide significant contributions to the U.S. economy through direct investment, job creation, and their unique ability to provide financial services to global businesses. The Chamber recently wrote in a letter to the Agencies that "Foreign banks should receive commensurate regulatory treatment to U.S. bank holding companies."[19]

Certain foreign banks operating in the United States are required to establish Intermediate Holding Companies (IHCs) over their U.S. subsidiaries. Generally, foreign banking organizations with U.S. non-branch assets of $50 billion or more are required to establish IHCs that are subject to enhanced prudential standards similar to those required of U.S. BHCs.

The Chamber raised concerns with the Federal Reserve in 2013 when it proposed Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies. The

[17] Letter available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/11/181108_Comments_BankCapitalRules_OCCFedFDIC-002-Final.pdf?#
[18] Letter available at https://centerforcap.wpengine.com/wp-content/uploads/2015/04/2015-4.1-GSIB-SurchargeComment-Letter.pdf
[19] Letter available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/11/181108_Comments_BankCapitalRules_OCCFedFDIC-002-Final.pdf?#

Chamber opined that the Fed 1) Must consider impacts on Main Street business and the economy; 2) Should not apply discriminatory treatment to IHCs, and, 3) U.S.-owned subsidiaries operating abroad could be subject to retaliatory disparate treatment.[20]

Congress clearly intended commensurate relief for IHCs when it passed EGRRCPA. Subsequent letters have affirmed this view. Senator Perdue sent a letter to the Federal Reserve arguing, "The regulatory requirements imposed on this diverse array of institutions should be proportional to their U.S. asset size and risk profiles . . . Consistent with the longstanding principles of national treatment and competitive equality, the IHCs should receive comparable regulatory treatment to U.S. BHCs. . ."[21] Additionally, Congressman Luetkemeyer wrote, "consistent with your current practice, it is appropriate that the regulations governing enhanced prudential standards for IHCs be amended to mirror any changes made for bank holding companies with similar domestic risk profiles."[22]

Foreign banks operating in the United States provide significant contributions to the U.S. economy. These firms directly employ tens of thousands of people in the U.S. Additionally, they provide a significant contribution to U.S. capital markets providing the financing necessary for business growth. The Chamber's 2016 survey of corporate finance professionals found that 68 percent of respondents (up from 50% in 2013) indicated that it is important for their financial services provider to have a global footprint.[23] Furthermore, it is notable that since IHC regulations were implemented, the U.S. broker-dealer assets of the twelve IHCs are down 51% which contributes to a reduction in capital for businesses of all sizes.

Discriminatory treatment puts subsidiaries of U.S. companies operating abroad at increased risk of adverse regulatory treatment. It may be unclear how such adverse treatment could materialize; however, U.S. policymakers should be cognizant of the

---

[20] See letter on Enhanced Prudential Standards and Early Remediation Requirements for Foreign Banking Organizations and Foreign Nonbank Financial Companies; FR Doc 1438 and RIN-7100-AD-86, U.S. Chamber of Commerce, April 30, 2013, available at https://centerforcap.wpengine.com/wp-content/uploads/2013/08/2013-4.30-CCMC_FBO_Comment-Letter.pdf

[21] Sen. Perdue letter to Vice Chairman Quarles (August 17, 2018)

[22] Rep. Luetkemeyer letter to Vice Chairman Quarles (July 31, 2018)

[23] Financing Growth: The Impact of Financial Regulation. June 16, 2016. Available at https://www.uschamber.com/sites/default/files/documents/files/financing_growth_report_16_june_16.pdf

possibility in an increasingly global economy. U.S. policymakers should encourage a regulatory posture that reducers barriers for entry and encourages economic growth domestically and abroad. The Chamber has consistently encouraged cross-border harmonization of financial regulations, where appropriate.[24]

4. Savings and Loan Holding Companies

The Proposal would also apply new enhanced prudential standards to Savings and Loan Holding Companies (SLHCs). Any company that directly or indirectly controls a savings association is an SLHC. The Dodd-Frank Act transferred the supervisory functions of the Office of Thrift Supervision (OTS) related to SLHCs and their non-depository subsidiaries to the Federal Reserve. The Proposal would apply new requirements to SLHCs under Section 10 of the Home Owners' Loan Act (HOLA), which establishes the Federal Reserve's *safety and soundness* authority over SLHCs. The Chamber recommends reconsideration of the application of new requirements to SLHCs under the Proposal.

Section 165 of the Dodd-Frank Act, as originally adopted, required the Federal Reserve to establish enhanced prudential standards for bank holding companies and foreign banking organizations with total consolidated assets of $50 billion[25] or more and nonbank financial companies that have been designated by the Financial Stability Oversight Council (FSOC) as being systemically important under Section 113 of the Dodd-Frank Act for supervision by the Federal Reserve. SLHCs are a type of nonbank financial company. However, there are currently no SLHCs that have been designated by the FSOC. The Proposal cites Section 10(g) of HOLA, which establishes the Federal Reserve's safety and soundness authority over SLHCs, for application of enhanced prudential standards without an FSOC designation. This would appear to contradict existing law given that more general statutory provisions, such as HOLA § 10(g), do not confer the same authority to an agency where Congress separately provides the authority "explicitly and set[s] forth the relevant procedures in considerable detail."[26]

[24] Center for Capital Markets Competitiveness: Policy Reforms with Global Impacts. Fall 2018. Available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2018/10/CCMC_EU-Global-Impact_v3_Digital-1-1.pdf

[25] Amended by EGRRCPA to increase the threshold to $250 billion while enabling the Federal Reserve to impose enhanced prudential standards on bank holding companies with between $100 billion and $250 billion in total assets.

[26] Coit Independence Joint Venture v. Federal Sav. & Loan Ins. Corp., 489 U.S. 561, 573-74 (1989)

Not only does the proposed applicability of enhanced prudential standards to SLHCs violate a fundamental principle of statutory construction, it would also circumvent the limitations placed on the Federal Reserve's authority under Section 165. If HOLA authorizes the Federal Reserve to impose enhanced prudential standards on SLHCs as described in the proposal, then it would do so without limitation to the size of the institution. If the Board adopts the same interpretation of its safety and soundness authority under the Bank Holding Company Act, then the Board could also impose enhanced prudential standards on BHCs with less than $100 billion in total consolidated assets. In short, the broad interpretation and application of an otherwise general provision would allow the Federal Reserve to supplant the FSOC designation requirement for nonbank financial companies and asset size limitations on its authority with respect to the imposition of enhanced prudential standards.[27]

Finally, the application of the Proposal to SLHCs is contrary to the intent of Congress. In general, the purpose of EGRRCPA, which was reported by Congress in May 2018, is to *decrease* regulatory burden. This proposal would have the opposite effect as far as SLHCs are concerned. Congress established different treatment of SLHCs and BHCs under Section 165 of the Dodd-Frank Act, different restrictions on activities, and different regulatory regimes. Furthermore, Congress intentionally chose not to make SLHCs subject to Section 165 and did not expand the applicability of Section 165 to SLHCs when it adopted EGRRCPA. Thus, although the Proposal may be attempting to provide a level-playing field for what it deems to be similar financial institutions, "the Board has no power to correct flaws that it perceives in the statute it is empowered to administer."[28]

Conclusion

We appreciate the Agencies focus on tailoring requirements for U.S. banking organizations. The Chamber believes the Proposals come a long way in recognizing the actual risk of these banking organizations by more appropriately tailoring regulations to their business model and operations. Our recommendations seek to improve the Proposals and strike the balance between oversight and fostering the

---

[27] "Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one." Morton v. Mancari, 417 U.S. 535, 550-51 (1974).

[28] Board of Governors of the Federal Reserve System v. Dimension Financial Corp., 474 U.S. 361 (1986) (holding that the Board may not interpret "commercial loans" under the BHC Act to include commercial paper despite the functional similarity between the two).

seeds of growth that will strengthen stability. These reforms will help reduce regulatory compliance, increase the availability of capital, and help restore small business lending by financial institutions.

We are ready to work with you in this effort.

Sincerely,

Tom Quaadman