U.S. Chamber of Commerce

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May 3, 2023

The Honorable Michael S. Barr
Vice Chair for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Dear Vice Chair Barr:

The U.S. Chamber of Commerce ("Chamber") writes to address the Federal Reserve Board's ("Board") review of the supervision and regulation of Silicon Valley Bank ("SVB"), its ongoing Holistic Capital Review, and any actions that the Board may pursue as a result of its findings. The Board's report analyzing the causes of failure at SVB is critical to informing the public and understanding whether any regulations should be updated. We commend the Board for conducting the review of SVB, but were surprised by statements suggesting, without evidence, that increased capital and liquidity requirements may be in order given the report also in part faults the failure of SVB bank management and supervision. Given the important role of banks in financing main street economic growth, capital markets activities, business lending, and cash management, we ask that the Board similarly embrace transparency as it finalizes its Holistic Capital Review and as it takes steps to implement the Basel III endgame.

Main street businesses rely on banks to support their growth. Research has shown that more stringent bank regulations make bank credit more expensive for borrowers and that for every percentage point increase in capital requirements, there is an associated increase of up to 13 basis points in loan spreads.[1] When capital requirements for banks are increased, they are forced to choose between raising more capital or offering less financing, and they need to charge customers more to earn the same return on a given product. Banks can accomplish this by lending less or reducing their capital markets activities. These actions would discourage borrowing and business investment[2] and could "dampen credit expansion and slow the pace of economic recovery."[3]

We urge the Board to provide an opportunity for the public to examine its Holistic Capital Review—including the data and methodology used to reach its findings—before proposing a rule to implement any new capital standards. In your first public speech after being confirmed by the Senate in 2022, you announced that the Board would be conducting a "holistic review" of bank capital standards that would inform potential changes to capital

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[1] Basel Committee on Banking Supervision. *Working Paper 37: The costs and benefits of bank capital-a review of the literature*. (June 2019). Found at: https://www.bis.org/bcbs/publ/wp37.pdf.
[2] D'Erasmo, Pablo. "*Are Higher Capital Requirements Worth It?*" Federal Reserve Bank of Philadelphia Economic Insights (Second Quarter 2018). Found at: https://www.philadelphiafed.org/the-economy/banking-and-financialmarkets/are-higher-capital-requirements-worth-it
[3] Congressional Research Service. *Overview of the Prudential Regulatory Framework for U.S. Banks: Basel III and the Dodd-Frank Act*. (July 27, 2016). Found at: https://crsreports.congress.gov/product/pdf/R/R44573/3

requirements, including final implementation of the Basel III Endgame.[4] However, in the months since this review began, there has not been an opportunity for public consultation on the review, including its data and methodology, and how it will weigh the impact on our capital markets and financing opportunities for main street businesses. The Holistic Capital Review is focused on U.S. banks, but it would be a mistake for any such review to not consider US banks' ability to compete at a global level, including with foreign banks that may be subject to comparatively less stringent capital requirements. Increases to capital requirement for U.S. banks that are already subject to higher requirements than their global peers could make business financing options for U.S. businesses less competitive.

The Chamber also urges the Board and other financial regulators to provide a transparent and thorough process when promulgating rules to implement the Basel III Endgame. These rules could have knock-on effects that potentially have adverse impacts on the broader business community. The standards contemplate a sharp increase in market risk capital requirements which could increase corporate hedging costs, given banks would need more capital for the same transactions. Robust feedback from the public—including banks, their customers, and other stakeholders—will be paramount to the agencies developing rules that appropriately balance safety and soundness with credit availability and liquid capital markets. To this end, section 2(b) of President Obama's Executive Order 13653 (which the Federal Reserve Board has professed to abide by in its rulemaking activities[5]) directs agencies "to the extent feasible and permitted by law" to afford the public a meaningful opportunity to comment . . . with a comment period that should generally be at least 60 days." We note, for example, that the agencies have provided stakeholders with at least 60 days to respond to proposed rules that they jointly published in 2021 and 2022 regarding "Tax Allocation Agreements" and the "Community Reinvestment Act," respectively.[6] We believe a comment period of at least 60 days is necessary given the anticipated depth and complexity of the forthcoming proposal but would encourage the agencies to provide at least 90 days because formulating a response to the proposal will require significant data analysis and will impact the calculation of risk-weighted assets (RWA) across all asset classes.

In addition to providing an adequate opportunity for interested parties to cultivate, develop, and submit comments that will provide value to the agencies, the agencies must also undertake a thorough cost-benefit analysis in connection with a potential rulemaking to implement the Basel III endgame. Executive Order 13563, in reaffirming certain principles in President Clinton's Executive Order 12866 of 1993, includes a provision that requires agencies promulgating rules to "propose or adopt a regulation only upon a reasoned determination that

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[4] Remarks at Brookings Institution, September 7, 2022.

[5] Letter from Scott G. Alvarez, Gen. Counsel, Bd. of Governors of the Fed. Reserve Sys., to A. Nicole Clowers, Dir., Fin. Mkts. and Cmty. Inv., Gov't Accountability Office (Oct. 24, 2011), *reprinted in* GAO-12-151, Dodd-Frank Act Regulations: Implementation Could Benefit from Additional Analyses and Coordination 39 (Nov. 2011).

[6] Federal Reserve, FDIC, and OCC proposed rule regarding "Tax Allocation Agreements," 86 Fed. Reg. 24755 (May 10, 2021) *and* Federal Reserve, FDIC, and OCC proposed rule regarding the "Community Reinvestment Act," 87 Fed. Reg. 33884 (June 3, 2022).

its benefits justify its costs."[7][8] The order goes on to provide that "each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible."[9] Consistent with this approach, and despite its status as an independent regulatory agency, the Federal Reserve Board, for example, has 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."[10]

We would also highlight the distinct responsibilities of the Federal Reserve Board, Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) to consider costs and benefits of their regulatory activity pursuant to the Riegle Community Development and Regulatory Improvement Act ("Riegle Act"). This law applies to all Federal banking agencies defined by cross-reference in Section 4801 of the Riegle Act[11] to include the OCC, FDIC, and Federal Reserve Board. 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* [emphasis added]; and (2) the benefits of such regulations."[12]

Finally, we urge the Board to consider if its regulations actions would have procyclical implications. Increasing capital requirements at this moment could put downward pressure on the economy, or make a widely anticipated recession worse if it were to occur. Small businesses don't need the added challenge of constrained availability of affordable financing, especially at a moment when interest rates are high as the Federal Open Market Committee focuses on taming inflation. If heightened capital requirements were finalized now, even if phased in over a number of years, the market will almost certainly react today, thus constricting business financing.

The Board should consider the banking system's overall health and recognize that any reflexive regulatory changes—particularly increases to regulatory capital—could have serious consequences for business financing. As the Board continues to understand recent market developments, and to complete its Holistic Capital Review, we encourage transparency and collaboration with all stakeholders. We stand ready to engage constructively with you on

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[7] Executive Order 13563—Improving Regulation and Regulatory Review (January 18, 2011). Found at: https://obamawhitehouse.archives.gov/the-press-office/2011/01/18/executive-order-13563-improving-regulation-and-regulatory-review

[8] The White House proposed changes to Circular A-4 on April 26, 2023. The US Chamber of Commerce issued a statement expressing our objections (April 7, 2023), available at https://www.uschamber.com/regulations/u-s-chamber-opposes-changes-to-regulatory-cost-benefit-analysis-that-would-unleash-more-regulatory-overreach

[9] Ibid.

[10] Letter from Ben Bernanke, Chairman, Bd. of Governors of the Fed. Reserve Sys., to Cass Sunstein, Administrator, Office of Info. And Regulatory Affairs, Office of Mgmt. and Budget (Nov. 8, 2011), *available at* https://www.federalreserve.gov/foia/files/regulatory-burden-reduction-111115.pdf.

[11] 12 U.S.C. § 1813.

[12] 12 U.S.C. § 4802(a).

behalf of main street businesses that rely on bank financing and the important role these institutions play in our capital markets.

Sincerely,

Tom Quaadman
Executive Vice President
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

cc: The Honorable Jerome H. Powell, Chairman
The Honorable Michelle W. Bowman
The Honorable Lisa D. Cook
The Honorable Philip N. Jefferson
The Honorable Christopher J. Waller