

**Statement for the Record**

*On Behalf of the*

**American Bankers Association**

*Before the*

**Subcommittee on Financial Institutions and Monetary Policy**

Of the

**House Financial Services Committee**

**November 7, 2023**



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The American Bankers Association (ABA)<sup>1</sup> appreciates the opportunity to provide a Statement for the Record for this hearing entitled: The Tangled Web of Global Governance: How the Biden Administration is Ceding Authority Over American Financial Regulation.

## **Overview**

The ABA strongly supports the Committee’s interest in investigating the chaotic state of global financial standards. In particular, and as noted in the October 20, 2023, letter Chairmen McHenry and Barr sent to GAO, the opaque nature of the Basel Committee on Banking Supervision’s (Basel Committee) process often results in the adoption of financial rules in the United States without meaningful input from Congress or the public. ABA has long believed, that while there is an opportunity for some degree of comment, this opportunity often comes “late in the process, after the basic framework has been substantially developed.”

In response to the proposal and adoption of the original the Basel III standards in the United States, many smaller banking organizations were surprised and frustrated by the manner of the United States’ participation in the Basel Committee’s deliberations. These reactions stemmed from the problem that even though the public was told that the Basel standards were intended for large, internationally active banks, leading to little public attention by other financial firms, the banking agencies (Federal Reserve Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency) applied the resulting global plan far beyond that scope. As a consequence, when the Basel III regulations were proposed, they touched off a high level of public and congressional controversy, something that we believe could have been avoided and

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<sup>1</sup> The American Bankers Association is the voice of the nation’s \$23.5 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2.1 million people, safeguard \$18.6 trillion in deposits and extend \$12.3 trillion in loans.

that should be avoided in connection with any future development of international financial services standards.

ABA has encouraged the banking agencies to adopt a public process that brings greater transparency and accountability to U.S. participation in the development of international regulatory standards, increasing the likelihood for better understanding and national consensus on standards. Timely public discussion of the concepts involved in the development of international standards would improve the possibility for national consensus and thus provide for better-informed regulatory representation in the development of standards. We believe that both accountability and transparency would be enhanced by reliance on an existing process within the structure of the Administrative Procedure Act (APA).

This can be done by requiring regulators to clearly present for public review, as well as oversight by Congress, the substance and potential scope of a nascent international standard using an advance notice of proposed rulemaking (ANPR) — an important transparency and accountability process that is already part of U.S. administrative procedure. This information gathering step would allow for broad public input and consensus building on clearly outlined goals in the ANPR, which should include:

- A clear statement of the problem or issue to be addressed;
- The scope of application being considered;
- The various options being considered for addressing the issue;
- The potential impact of the various approaches on the U.S. economy, on financial institutions and on their customers.

We recognize that some international bodies, such as the Basel Committee, do issue proposals for some degree of comment, but these efforts often come relatively late in the process after the substance of the proposal has taken shape. Moreover, because the discussions usually take place outside of the United States and are usually described as intended to affect institutions that compete at the global level, the vast majority of U.S. banks, and the American public in general, are insufficiently aware of the international proposals and do not typically participate in any international comment process. Neither does it appear that Congress is brought actively into the process before U.S. regulators take up implementation of the international agreement. In most instances, the cake is already baked.

### **Basel III “Endgame Recommendations”**

Despite repeated requests, U.S. regulators did not issue an ANPR for the most recent iteration of Basel III, referred to as “Basel III Endgame.” As a result, it appears that the banking agencies negotiated and agreed to the “Endgame” standard without having a clear vision of scope of application, how it would fit within the U.S. capital framework, and what the overall economic impact would be. The result is a complex proposal that is duplicative of existing U.S. standards and punitive towards bank customers (including small businesses, first time home buyers, and green energy providers, pension funds, and farmers).

Most alarming is that the Basel III “Endgame” proposal was issued before the agencies gathered and made public the necessary supporting data. Simply put, the agencies should know what they

are doing before they negotiate and agree to an international standard. Not only did regulators fail to do so during the international process, during the 5 years it took for them to issue a proposal, they did not bother to conduct any study or analysis of the impact they would have on banks, their customers, and the economy. Instead, they chose to begin their analysis during the comment period itself, giving very little time or direction for stakeholders to make meaningful comments.

In fact, in a joint October 13, 2023, letter<sup>2</sup> to the agencies the ABA and several other financial trade associations stated that it is critical to undertake a proposed “quantitative impact study” (QIS) to produce reliable and relevant data necessary to understand the impact and effects of the proposal. On October 20, the agencies announced they were commencing the QIS and extended the deadline for public comment. Inexplicably, the new comment deadline is the same day that QIS responses are due, so the public will still have to submit its comments with no opportunity to review and critique significant research on which the agencies intend to rely. This approach still violates the agencies’ duty to identify and make available for public review and comment on the technical studies and data on which any rule is based under the APA.<sup>3</sup>

## **Measuring Compliance with International Standards**

The recent Basel III Endgame proposal is an example of how the banking agencies’ efforts to be “Basel compliant” can lead to redundancy. The Basel Committee uses the “Regulatory Capital Assessment Program” (RCAP) to determine whether a jurisdiction is compliant with a particular Basel standard. The problem is that the RCAP misses the forest for the trees. Rather than focusing on overall capital levels, it focuses narrowly on technical adoption of specific requirements. Aspects of U.S. rules that are super equivalent (such as the G-SIB surcharge, robust stress testing, the enhanced “supplementary leverage ratio” (SLR), and the domestic standardized approach) are not considered.

We encourage U.S. regulators to reassess and reform the Basel Committee's Regulatory Capital Assessment Program (RCAP). Given the robustness of U.S. capital requirements, the RCAP assessments of the comparability of individual aspects of U.S. capital requirements - which take an extremely narrow view of "compliance" - should be revised in assessing whether the U.S. standard meets the international standard. The overall capital levels produced by the U.S. standards should be considered, and where that overall level is higher than what would result from the international standard, that result should surely be deemed to be compliant, or super-equivalent, with the international standard.

## **Conclusion**

As U.S. regulators prepare to discuss developing standards, they should be transparent about to whom and how the standard could apply domestically, and that understanding should be shared with affected banks, their customers, and the public. Use of the ANPR process would alert the

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<sup>2</sup> <https://www.aba.com/advocacy/policy-analysis/basel-joint-ltr-10132023>

<sup>3</sup> As part of the APA’s notice-and-comment requirements, all agencies have the “duty to identify and make available technical studies and data” that they have employed in reaching decisions to propose particular rules. *See*, September 12, 2023, joint trade association letter <https://www.aba.com/advocacy/policy-analysis/ltr-reg-capital-rule-base> to the banking agencies requesting the re-proposal of the Endgame Recommendations due to APA violations.

public that an international body is considering new standards, offering the public the critical opportunity to raise important issues publicly with both the U.S. regulators and the international standard setter before global negotiations narrow the options and coalesce around suboptimal approaches that are effectively forced upon the U.S. economy.

Considering the agencies did not issue an ANPR on the recent Basel Endgame proposal, it was issued without adequate understanding of the impact. The banking agencies should re-propose the rule after the QIS is completed and analyzed, and after the QIS results and the other requisite data are made public. At minimum, the agencies should be required to extend the comment period on their Basel III Endgame Recommendations to no sooner than 120 days after the date on which all information about the QIS results and other requisite data are disclosed.