



October 13, 2023

*Via Electronic Mail*

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

James P. Sheesley, Assistant Executive Secretary  
Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, D.C. 20429  
Attention: Comments/Legal OES (RIN 3064-AF29)

Office of the Comptroller of the Currency  
Chief Counsel's Office  
400 7th Street, SW, Suite 3E-218  
Washington, D.C. 20219  
Attention: Comment Processing

Re: Quantitative Impact Study of the Potential Effects of Proposed Regulatory Capital Rules (Federal Reserve Docket No. R-1813; FDIC RIN 3064-AF29; Docket ID OCC-2023-0008)

Ladies and Gentlemen:

The Bank Policy Institute, the American Bankers Association, the Financial Services Forum, the Institute of International Bankers, the Securities Industry and Financial Markets Association, and the U.S. Chamber of Commerce<sup>1</sup> are writing with respect to your agencies' jointly proposed rulemaking that would amend the capital requirements applicable to large banking organizations, and in particular to the agencies' promised "quantitative impact study" of the proposal's effects on bank capital requirements.

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<sup>1</sup> See Appendix for more information on the Associations.

As the agencies have clearly acknowledged,<sup>2</sup> this data collection and analysis is necessary to fully understand how much capital the proposed rule's revised risk weights and other changes would require covered banks to hold, and thus is an essential prerequisite to the agencies properly and accurately weighing the relative costs and benefits of each aspect of the proposed rule and the rule as a whole.<sup>3</sup>

Indeed, the agencies state in the preamble to the proposed rule that the preliminary impact estimates the agencies included with the proposal suffer from at least three severe limitations:

First, these estimates heavily rely on banking organizations' Basel III QIS submissions. The Basel III QIS was conducted before the introduction of a U.S. notice of proposed rulemaking, and therefore is based on banking organizations' assumptions on how the Basel III reforms would be implemented in the United States. For market risk, the impact of the proposal further depends on banking organizations' assumptions on the degree to which they will pursue the internal models versus the standardized approach and their success in obtaining approval for modeling.

Second, for banking organizations that do not participate in Basel III monitoring exercises, the agencies' estimates are primarily based on banking organizations' regulatory filings, which do not include sufficient granularity for precise estimates. In cases where the proposed capital requirements are difficult to calculate because there is no formula to apply (in particular, the proposed market risk rule revisions), impact estimates are based on projections of the other banking organizations that submitted QIS reports.

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<sup>2</sup> For example, the staff [memorandum](#) provided to the Board of Governors requesting approving of the proposal stated, "To refine the estimates of the effect of the proposals on capital requirements, staff expects to undertake a data collection following issuance of the proposal. Information gathered through this data collection would inform finalization of the rule." At the [Board meeting](#) where the proposal was discussed and approved, multiple staff members described the need for the data collection, stating at various points: "Following issuance of the proposal, staff plans to undertake a data collection. Such data collection would allow us to refine our estimates of the impact of the proposal. This information will inform finalization of the rule"; "There's a very important trade-off between the benefit of increased resilience and the potential costs of having very strong capital requirements for all large firms. For that reason, we are going out and actively seeking comment on all aspects of the proposal . . . [and] we're also doing this additional data collection, which is not always something we do with every rulemaking. It is planned to be a fairly robust data collection, and that will really help us ensure that what we have proposed, whether or not that appropriately captures the risks of large firms' activities or if recalibration may be needed"; "And I would just emphasize and go back to the data collection that we are planning. So, the idea of trying to get estimates of the increases in capital for specific trading areas and sort of views from the industry and the public for particular areas where there might be a disproportionate impact would be certainly an emphasis that we would be looking to analyze subsequent to that data collection." The Board's Vice Chair for Supervision [stated](#) to the Board at the meeting: "We also intend to collect additional data to refine our estimates of the rule's effects."

<sup>3</sup> While necessary, the data collection described by the agencies is not sufficient in scope to remediate all procedural concerns with the rule.

Third, estimates are based on banking organizations' balance sheets as of year-end 2021, and do not account for potential changes in banking structure, banking organization behavior, or market conditions since that point.<sup>4</sup>

Such an admittedly incomplete and crude assessment of the impact and effects of a proposed rule falls well short of what is required by the Administrative Procedure Act for a rulemaking, particularly one as consequential as the capital proposal. Thus, it is critical to undertake the QIS in order to produce reliable and relevant data necessary to understand the impacts and effects of this proposal.

It is our understanding, however, that more than two months after the issuance of the proposal, the agencies have not yet commenced any data collection. Moreover, the agencies have provided no template and accompanying instructions to the affected banks that would allow them to begin the difficult task of producing such data.

Furthermore, in consultation with our members, we believe that any type of meaningful data collection will require significant resources of our members so that even if commenced now, the collection could not be completed by November 30. The proposed capital rules are lengthy and remarkably complex, and any data collection pertaining to the proposal's approaches to market risk and operational risk in particular will require detailed and time-intensive analysis for each bank to complete. In order for a complete and accurate QIS to occur, the agencies should allow 120 days from the release of the final template and instructions for banks to complete the work. This time period is reasonable given the complexity of the exercise and the vast economic stakes of the proposed rule. The agencies themselves took *more than five years* to propose rules to implement the 2017 reforms to the Basel capital framework, and even then proposed a rule that is admittedly incomplete, hence the need for the QIS. Participating banks should be afforded at least 120 days to complete what is almost certain to be a large, complex and burdensome data collection and analysis exercise.

Even then, as we noted in a previous letter dated September 12, 2023,<sup>5</sup> collecting such data during or after (rather than before) the comment period is legally improper.<sup>6</sup> Commenters have the legal right to know —*before* they prepare and file comments on the proposal— the results of the QIS; the agencies' explanation of how those results impact its analysis; and whether the agencies plan to make any corresponding changes to the requirements in the proposed rule. (As explained in our

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<sup>4</sup> *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity*, 88 Fed. Reg. 64028 (Sept. 18, 2023) (proposed rule) at 64168 (emphasis added).

<sup>5</sup> See [Letter](#) of Sept. 12, 2023 from the Bank Policy Institute et al. to the Board of Governors of the Federal Reserve System et al. [hereinafter the "Sept. 12 Letter"].

<sup>6</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] ha[ve] employed in reaching the decisions to propose particular rules." *Owner-Operator Independent Drivers Association v. FMCSA*, 494 F.3d 188, 199 (D.C. Cir. 2007) (Garland, J.) (quotation marks and citation omitted) (applying 5 U.S.C. 553(b)(3), (c)). Agencies "must explain the assumptions and methodology" underlying a proposed rule "and, if the methodology is challenged, must provide a complete analytic defense." *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 535 (D.C. Cir. 1983). And, where an agency omits some of the "critical factual material" and analyses from a proposed rule, it must disclose the material and then provide "further opportunity to comment." *Chamber of Commerce v. SEC*, 443 F.3d 890, 900–01 (D.C. Cir. 2006). Indeed, "[a]n agency commits serious procedural error when it fails to reveal portions of the technical basis for a proposed rule in time to allow for meaningful commentary." *Owner-Operator Independent Drivers Association*, 494 F.3d at 199 (quotation marks and citation omitted); see also Sept. 12 Letter at pp. 6-7.

September 12 letter, the missing information concerning the QIS is just one example of several categories of data and analyses that the agencies failed to make available to the public.)

Lastly, the proposed QIS would not remedy numerous other procedural and substantive flaws in the proposal. For example, although it would quantify an estimate of how much additional capital the agencies are requiring banks to hold, it would do nothing to explain the legal or policy basis underpinning those requirements — for example, what legal standard the agencies are applying (e.g., what probability of default they are trying to achieve) or what historical data or other analysis was used to calibrate the risk weights. We also note that an accurate QIS is necessary but not sufficient for conducting a cost-benefit analysis, which would require estimating — after the QIS is completed, and on the basis of the QIS's results — the behavior of banks as well as other economic actors in response to the proposal, and determining what impact that behavior would have on U.S. consumers and businesses and the economy as a whole. That analysis cannot begin until the QIS is completed, and once the analysis is prepared it must be made public to provide the notice and opportunity to comment required by the Administrative Procedure Act.

The most appropriate solution to those problems is a re-proposal after the QIS is completed and analyzed, and after the QIS results and the other requisite data are made public. If the agencies are unwilling to re-propose the rule, then, at minimum, the agencies should extend the comment period to no sooner than 120 days after the date on which all information about the QIS results and other requisite data are disclosed. As we noted in our prior letter, any other approach would violate the agencies' duty to identify and make available for public review and comment the technical studies and data on which any rule is based.

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Thank you for your prompt attention to this request. If you have any questions, please contact the undersigned by email at [john.court@bpi.com](mailto:john.court@bpi.com), [TPinder@aba.com](mailto:TPinder@aba.com), [scampbell@fsforum.com](mailto:scampbell@fsforum.com), [swebster@iib.org](mailto:swebster@iib.org), [cmcdowell@sifma.org](mailto:cmcdowell@sifma.org) and [bhulse@USChamber.com](mailto:bhulse@USChamber.com).

Sincerely,



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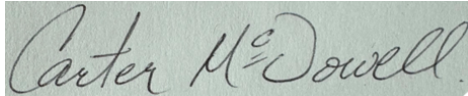
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