

FEDERAL RESERVE REFORM

SECURING REGULATORY TRANSPARENCY AND ACCOUNTABILITY



CENTER FOR CAPITAL MARKETS
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FEDERAL RESERVE REGULATORY REFORM

The Board of Governors of the Federal Reserve System (Federal Reserve) has four important functions:

1. it is the central bank of the United States, charged with setting monetary policy;
2. it is the supervisory regulator for bank holding companies and banks that are members of the Federal Reserve;
3. it is the supervisory and prudential regulator of systemically important banks and non-bank financial institutions;
4. and it is one of the primary interlocutors for international financial regulatory bodies, including the Financial Stability Board (FSB) and the Bank of International Settlements (BIS).

The U.S. Chamber of Commerce has and will continue to strongly support the Federal Reserve's independence in setting monetary policy. Current debates to dictate monetary policy from Capitol Hill are not only dangerous and unnecessary, but also fail to recognize how political pressure in the 1970s led to stagflation. Over the past several years, the Federal Reserve has taken steps to give the public more insight into its monetary policy decisions after-the-fact, but some lawmakers are proposing to go much further by imposing front-end conditions, formulas or limitations on the Federal Reserve's ability to manage the money supply. While it is appropriate that Congress has set the broad objectives of U.S. monetary policy—full employment and stable prices—managing these goals requires deep analytics and expertise, a long view, and flexibility, all of which argue for the Federal Reserve maintaining its unique independence in this area.

However, the Federal Reserve in its role as a supervisor of the banking system, and as the systemic risk regulator over banks and non-bank financial institutions, should have to abide by the same basic principles as other regulators—transparency, accountability, and due process in writing rules. The Chamber strongly believes that all regulators must be fully transparent in their deliberations and decision making, and invite and address public input as part of the policymaking process. And the Federal Reserve should be no exception. The Federal Reserve's role as a regulator in the financial sector, both domestically and internationally, makes transparency and process important as its rules not only impacts the financial institutions it regulates, but it also directly impacts Main Street businesses. Those Main Street businesses have seen a reduction in access to capital and liquidity. The Federal Reserve needs to take into account factors such as competition and growth as well as financial stability when writing rules. We therefore support both structural and process changes that will make the Federal Reserve a more transparent and accountable regulator.

These reforms will ensure the Federal Reserve can continue to monitor and address systemic risk, but in a more targeted, coordinated way that carefully considers the individual and collective impacts on Main Street companies and the economy as a whole. Some of these recommendations will require Presidential or Congressional action, but many can be implemented immediately by the Federal Reserve.

These principles for reform are centered on the Federal Reserve because of the broad new powers granted under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and its central role in the increasingly important FSB. We believe that many of the concerns expressed here, regarding a lack of transparency and due process in rule-writing, are also applicable to the Office of the Comptroller of Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC). We would encourage the OCC and FDIC to adopt these reforms as well.

RECOMMENDATIONS TO INCREASE REGULATORY TRANSPARENCY AND ACCOUNTABILITY

1. Create a transparent strategic regulatory plan.

- a. Require the Federal Reserve to prepare a strategic plan for its domestic and international regulatory programs. The plan should be open to notice and comment as is statutorily required under the Administrative Procedures Act with other agencies such as the SEC.
- b. Require the Federal Reserve to submit an annual regulatory report to Congress, including its plan for the upcoming year and its success in implementing its program for the past year.

2. Subject regulation to transparent, robust cost-benefit analysis.

When writing regulations, the Federal Reserve should publish an economic analysis that is subject to public notice and comment. This includes the publication of alternative regulatory approaches that were considered and why they were dismissed, and an opportunity for public participation and periodic review of their rules. As CCMC has noted in a number of comment letters, under the Riegle Community Development and Regulatory Act of 1994 (Riegle Act), the banking regulators, including the Federal Reserve, are required to consider the costs and benefits of their regulatory proposals. Courts have held that this requires the publication of an economic analysis that is subject to public notice and comment.

As part of its cost-benefit analysis, the Federal Reserve should assess the following:

- a. What the marginal benefit of the proposed regulation to the financial stability of the U.S. economy after taking into account the effect of existing rules is;
- b. What the marginal benefit of the proposed regulation to the safety and soundness and resolvability of bank holding companies after taking into account the effect of existing rules is;
- c. Whether the proposed regulation would conflict with the objectives of any existing regulations and, if so, for what reasons should the proposed regulation move forward despite such conflict;
- d. How the proposed regulation would affect market liquidity;
- e. How the proposed regulation would affect the competitiveness of U.S. financial institutions; and
- f. The extent to which the proposed regulation would add increased costs for businesses, adversely impact capital formation for businesses, or harm investors.

3. Tailor rules for non-bank systemically important financial institutions (SIFIs).

When regulating non-bank financial institutions, as authorized under law, the Federal Reserve should tailor regulations to fit the business model of the institution. The use of bank-centric tools on non-bank financial institutions can be harmful to the business and the economy as a whole. For instance,



in 2014, Congress passed and the President signed a bill that clarified the Federal Reserve's flexibility to tailor capital standards to fit the business model of SIFI designated insurance companies. The Chamber strongly supported this legislation, and the Federal Reserve should use this type of flexibility in both setting prudential regulations and in designing its supervisory frameworks for non-bank SIFIS.

4. Hold public meetings to consider regulations and international regulatory agreements.

When considering regulations and international regulatory agreements, the Federal Reserve should hold public meetings to provide additional transparency to the process. Such meetings should be subject to the Sunshine Act that requires notice of the meeting schedule and agenda to be published in advance. Other independent regulatory agencies including the SEC, the CFTC, and the FDIC generally approve proposed and final rules in open meetings. These meetings should also give the agency's voting members the ability to provide public statements of support or opposition that become part of the regulatory record.

RECOMMENDATIONS TO IMPROVE TRANSPARENCY AND ACCOUNTABILITY WITH GLOBAL REGULATORY BODIES

5. Shine more light on interactions with the FSB, the BIS, the International Association of Insurance Supervisors (IAIS), and the Basel Committee on Banking Supervision (BCBS).

The Federal Reserve works through international regulatory bodies to set policies that bind member countries and require domestic implementation. Normally, a regulatory mandate comes from the U.S. Congress, but in effect, through these organizations, the Federal Reserve creates its own legal mandate for some of the rules it writes. Therefore, the Federal Reserve should be required to:

- a. Notify Congress and the public prior to entering international negotiations;
- b. Report to Congress regarding formulation of American positions on matters before the FSB;
- c. Publish the text of any completed FSB, BCBS, or IAIS agreement and provide a notice and public comment period no less than 60 days before signing it;
- d. Brief Members of Congress on the status of negotiations; and
- e. Post summaries regarding all meetings with other FSB, BCBS, and IAIS members and their staff on their website. Other regulators now do it regarding meetings on proposed rules.

RECOMMENDATIONS TO IMPROVE COORDINATION BETWEEN THE FEDERAL RESERVE AND OTHER AGENCIES

6. Consolidate examinations and data-collection with other regulators.

Increasingly, companies are supervised by multiple agencies, including the Federal Reserve, the FDIC, the OCC, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), and the Consumer Financial Protection Bureau (CFPB), and each agency performs its examination on its own timetable. Often the substance of the exams overlap, but the schedules do not. Similarly, businesses will also receive multiple requests for data and records from multiple agencies—often the same data but in different formats. Consolidating exams and data collection will reduce duplication and potential conflict, and reduce the resource drain on companies so they can get back to generating return, growth and job creation. In particular, the Federal Reserve should work with the Office of Financial Research, which was specifically created by the Dodd-Frank Act to streamline and coordinate data collection among financial regulators.

7. Fill the position of Vice Chair of Supervision.

The Dodd-Frank Act established a new position at the Federal Reserve—Vice Chairman for Supervision—to create more regulatory accountability in the senior leadership of the Federal Reserve. Unfortunately, more than five years later the President has not nominated someone for the Senate’s consideration.

8. Enter into memorandums of understanding (MOUs) with functional regulators.

Just as banks and non-bank financial institutions find themselves subject to examinations from multiple agencies, they are also subject to an increasingly complicated web of regulation across the government. Often regulatory agencies with different goals send conflicting signals to companies, making good-faith compliance a challenge. Systematic, front-end regulatory coordination would ensure a consistent regulatory approach, help avoid conflicting regulatory mandates, and avoid unnecessary and unintended market disruption.

CONCLUSION

None of these recommendations would prevent or impede the Federal Reserve in executing its mission. We believe that the Chamber’s suggested reforms will make the Federal Reserve and other banking regulators more efficient in executing their mission by using smart regulatory tools. By adopting these recommendations, the Chamber believes that the Federal Reserve will benefit by ensuring that it can continue to regulate financial institutions under its jurisdiction and monitor and address systemic risk in a targeted and coordinated way while considering the impact on Main Street companies and the economy. We also believe that these recommendations will provide clarity to market participants through increased regulatory transparency and accountability, which benefits the Federal Reserve, the financial markets and the overall U.S. economy.



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