United States Senate
WASHINGTON, DC 20510

January 12, 2024

The Honorable Jerome Powell
Chair
Board of Governors of the Federal Reserve System
2051 Constitution Avenue NW
Washington, D.C. 20418

The Honorable Martin Gruenberg
Chair
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

The Honorable Michael Hsu
Acting Comptroller
Office of the Comptroller of the Currency
400 7th St SW
Washington, D.C. 20219

Dear Chair Powell, Chair Gruenberg, and Acting Comptroller Hsu:

We write to express our concerns that the proposed rule issued jointly by the Federal Reserve, Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) to implement the Basel III Endgame (the "U.S. proposal") would significantly diverge from the international standards agreed upon by the Basel Committee in 2017 and the ongoing implementation of those standards in key non-U.S. jurisdictions. The U.S. proposal could lower credit availability for U.S. businesses and households, reduce market liquidity, and drive retail lending out of the banking system. Moreover, per the Federal Reserve's own findings, U.S. global systemically important banks (G-SIBs) are already sufficiently capitalized.[1] We fear the U.S. proposal could make U.S. banks less competitive and increased costs will be passed onto the consumer, without offsetting increases in consumer protection.

The U.S. proposal is the most complex and broadly impactful bank regulatory proposal we have seen in the last decade, affecting all bank products and services, and ultimately touching every household and business across the country. At a time when the Federal Reserve has indicated credit is tightening,[2] and economic and global conditions are volatile, we are concerned that the differing global implementation of Basel III will disincentivize and diminish lending in the United States by U.S. banks and reduce America's economic prosperity, while also promoting investment in foreign banks and in nonbank lenders where regulatory requirements are less stringent.

Unequal Capital Treatment of U.S. Banks

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[1] *See* Federal Reserve, Financial Stability Report (May 2023), *available at* https://www.federalreserve.gov/publications/files/financial-stability-report-20230508.pdf
[2] *See* Federal Reserve, Senior Loan Officer Opinion Survey on Bank Lending Practices (July 31, 2023), *available at* https://www.federalreserve.gov/data/sloos/sloos-202307.htm.

The excessive requirements of the U.S. proposal could exacerbate the existing stringency of the U.S. bank capital framework relative to non-U.S. jurisdictions. As noted by Andrea Enria, Supervisory Chair of the European Central Bank (ECB), the current U.S. bank capital framework requirements are "significantly higher" than those required for equivalent European G-SIBs.[3] The U.S. proposal would further widen this gap between U.S. G-SIBs and non-U.S. G-SIBs. Enria explained:

> *The regulatory treatment [of G-SIBs] is, however, more demanding in the U.S., due to a host of gold plating choices . . . than is specified in the Basel standards. All this makes the overall capital requirements for G-SIBs higher, on average, in the U.S. than in the E.U.*[4]

U.S. implementation of the Basel III capital standards are already more stringent than those of the European Union, including higher capital standards and mandatory stress testing on capital payouts. As a result, U.S. banks already hold more capital currently than the European banks will likely hold after they have completed Basel III Endgame implementation. This unaligned capital treatment would only increase after the full implementation of the U.S. proposal, with U.S. banks required to hold significantly more capital than their European counterparts.

Loans Become More Expensive; Riskier Institutions May Benefit

In addition to the fact that the U.S. proposal will drive investment overseas, it could, concerningly, make it more expensive for American consumers and small businesses to obtain a loan from a bank. The U.S. proposal requires banks to hold more capital than what would be required by what was agreed to by the Basel Committee in 2017 for some mortgages. Banks will pass on the additional costs and expenses to borrowers, making it more affordable for some borrowers to obtain mortgages from lenders that are not banks.[5] The same is true for other products that Americans rely on to make large purchases, manage unexpected expenses, and grow their family farms and businesses. "Since the late 1990s, nearly 60 percent of total credit" has been extended by lenders outside the banking system that are not subject to the same regulation as banks.[6] While some non-bank lending institutions are regulated as closely as banks, others are not and consumers should not need to understand the differences in capital standards

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[3] *See* European Central Bank, "Banking supervision beyond capital," Speech by Andrea Enria, Chair of the Supervisory Board of the ECB, at the EUROFI 2023 Financial Forum organised in association with the Spanish Presidency of the Council of the EU, (Sept. 14, 2023), *available at* https://www.bankingsupervision.europa.eu/press/speeches/date/2023/html/ssm.sp230914~c6c0be0cc6.en.html.

[4] *See* European Central Bank, "The integration of the EU banking sector and the challenges of global competition," Contribution by Andrea Enria, Chair of the Supervisory Board of the ECB, for VIEWS, The EUROFI Magazine (Sept. 2023), *available at* https://www.bankingsupervision.europa.eu/press/interviews/date/2023/html/ssm.in230913~d990592ae3.en.html.

[5] *See* The Urban Institute, "Bank Capital Notice of Proposed Rulemaking: A Look at the Provisions Affecting Mortgage Loans in Bank Portfolios" by Laurie Goodman and Jun Zhu *available at* https://www.urban.org/sites/default/files/2023-09/Bank%20Capital%20Notice%20of%20Proposed%20Rulemaking.pdf

[6] *See* Federal Reserve, "Understanding Bank and Nonbank Credit Cycles: A Structural Exploration," report by C. Bora Durdu and Molin Zhong, (March 2019), *available at* https://www.federalreserve.gov/econres/feds/files/2019031pap.pdf.

and regulatory regimes to evaluate loan offers. Should the U.S. proposal be finalized as written, we fear credit will further migrate away from banks and consumers may end up relying more on less regulated or less transparent sources of financing.

Negative Impacts for Under-Represented Communities

Moreover, a flight to nonbank lending would only raise the barrier to entry for communities without generational wealth, particularly minority and immigrant communities, that want to open a small business or purchase their first homes. A March 2023 study by the National Association of Realtors showed that the rate of Black American homeownership was 29 percentage points less than White Americans, "the largest Black-White homeownership gap in a decade."[7]

In a letter to the Federal Reserve, FDIC, and OCC, the NAACP, National Association of Realtors, and other housing and civil rights groups relayed their concerns regarding the U.S. proposal's requirement to increase capital standards on certain mortgages with down payments of less than 20 percent. In their opinion, should the U.S. proposal be finalized, "they will have a devastating impact on our efforts to increase Black homeownership and disadvantage all first-time, and, in particular, first-generation homebuyers who do not have the benefit of multi-generational wealth or higher than average incomes."[8]

Conclusion

Due to the risk of significant negative effects on consumer lending in the United States, as well as the unequal capital treatment of U.S. banks that may push investment overseas, we urge you to consider these unintended consequences of proposed implementation of the Basel III Endgame. We look forward to engaging with you further on this issue in the future.

Sincerely,

Kirsten Gillibrand
United States Senator

Cynthia Lummis
United States Senator

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[7] *See* National Association of Realtors, "More Americans Own Their Homes, but Black-White Homeownership Rate Gap is Biggest in a Decade, NAR Report Finds," (March 2, 2023), *available at* https://www.nar.realtor/newsroom/more-americans-own-their-homes-but-black-white-homeownership-rate-gap-is-biggest-in-a-decade-nar.

[8] *See* National Housing Conference, "Housing Groups Letter re Bank Capital 7.25.23," (July 2023) *available at* https://nhc.org/wp-content/uploads/2023/07/Housing-Groups-Letter-re-Bank-Capital-7.25.23.pdf.