Statement of the US Chamber of Commerce

ON: "Enabling Success: Examining the Competitive Landscape for Small Businesses"

TO: Subcommittee on Economic Growth, Tax, and Capital Access

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Introduction

The U.S. Chamber of Commerce ("the Chamber") is dedicated to promoting, protecting, and defending America's free enterprise system. More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses but also those facing the broader business community.

The Chamber's Center for Capital Markets Competitiveness ("CCMC") seeks to advance America's global leadership in capital formation by supporting diverse capital markets that are the most fair, transparent, efficient, and innovative globally. CCMC advocates for American businesses to ensure that legislation and regulation strengthen our capital markets so that businesses—from the local flower shop to a multinational manufacturer—can mitigate risks, manage liquidity, access credit, and raise capital. Among other things, CCMC advocates for appropriate and balanced banking regulations that maintain financial stability while also allowing businesses of all sizes to obtain capital and credit to expand and succeed. Banks are vital intermediaries for all businesses seeking capital and credit.

CCMC regularly surveys corporate treasurers and other financial decision-makers at U.S. businesses to understand their economic outlook and their views on regulation. The survey provides an inside view of how financial regulation impacts small to large businesses and their ability to access capital and expand. Working with Teneo Research, CCMC surveyed 300 corporate finance executives including Treasurers, Deputy Treasurers, Controllers, Chief Financial Officers, and Chief Executive Officers (small businesses only). The survey data was collected between June 28, 2023, through July 27, 2023. While CCMC intends to make the results public soon, some initial findings are included in this statement, namely that the Basel III Endgame regulations, which would require covered banks to hold more capital, may come with considerable costs to their business customers on Main Street and could have a material impact on the U.S. economy.

Small Businesses & Economic Growth

The heart of America's economic strength is ignited by small businesses, which power innovation, create jobs, and build communities. While modest in size, these small businesses contribute substantially to our nation's economic might. Small business success is essential to our economy and to the livelihood of millions of Americans.

As of April 10, 2023, there are 33.2 million small businesses in America.[1] This accounts for 99.9% of all U.S. businesses.[2] These small businesses are the backbone

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1https://www.uschamber.com/small-business/state-of-small-business-now of our economy, commanding a significant role in shaping our nation's gross domestic product. In 2019, small business output contributed to 44% of our nation's economic activity.[3] Since 2017, the number of small businesses has grown by 12.2%.[4] Collectively, these small businesses have a major role in shaping our nation's economic landscape.

Small businesses provide vital employment opportunities in every community across America. Small businesses are credited with creating almost two-thirds (63%) of the new jobs created from 1995 to 2021.[5] These small businesses also employ almost half (46%) of America's private sector workforce.[6] American small businesses create jobs that breathe life into local communities and help bolster America's workforce and economy.

America's small businesses are pivotal to driving innovation that catalyzes economic growth and help us build a competitive edge that allows us to compete globally. Today's small businesses produce more than 14 times as many patents as large businesses and universities and employ nearly 40% of America's scientists and engineers.[7] These enterprises help drive forward our economy by introducing new ideas, products, and services. The collective effort of small innovative businesses plays a crucial role in strengthening our economy and helping solidify America's position as a global innovation leader.

U.S. Chamber Survey of Corporate Treasurers Views on Financial Regulation

The Chamber has periodically conducted surveys of corporate treasurers to gauge the outlook and concerns of Main Street businesses in the United States and to assess the ways in which businesses—large and small and from every geographic region in the country—use the financial system to meet their needs. These surveys also examine how regulatory policy is impacting the ability of businesses to raise capital, manage their cash, and invest in long-term projects. The Chamber conducted previous surveys in 2013, 2016, and 2019. The Chamber will soon release the results

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[4] https://www.oberlo.com/statistics/number-of-small-business-in-the-us#:~:text=The%20increase%20in%20the%20number,percent%20from%202017%20to%202022.

[5] https://advocacy.sba.gov/2023/03/07/frequently-asked-questions-about-small-business-2023/#:~:text=From%201995%20to%202021%2C%20small,percent%20of%20private%20sector%20payroll.

[6] https://advocacy.sba.gov/2023/03/07/frequently-asked-questions-about-small-business-2023/#:~:text=Small%20businesses%20employ%2061.7%20million,percent%20of%20private%20sector%20payroll.

[7] https://www.sbc.senate.gov/public/index.cfm/innovationresearch

of its 2023 survey.[8] High-level findings have been adapted from the survey for inclusion in this statement.

This year's results again demonstrate that changes to financial regulations can inhibit the ability of companies to soundly manage their finances. Many businesses have been forced to take undesirable actions in response to costs imposed by certain regulations. And businesses expressed concern about pending regulations including the Basel III Endgame.

Businesses did not report they were overly concerned about the stability of individual banking organizations or the banking system, ranking this issue as number 8 out of 10 potential concerns.[9] This is notable given that the survey was conducted shortly after Silicon Valley Bank and Signature Bank were put into receivership in March 2023, which caused some volatility in the banking system. In fact, businesses ranked cyber risks and uncertainty resulting from new financial regulations as higher risks to the economy than the stability of the banking system.

A key principle regarding financial regulation is that many of the costs imposed on financial institutions by new rules are ultimately borne by the customers of those institutions, including Main Street businesses and other end users within the economy. This has been especially visible over the last decade, as rules stemming from the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act have taken effect, and as federal financial regulators have recently embarked on an increasingly aggressive regulatory agenda.

- A striking **87%** of businesses have been negatively impacted by cost increases resulting from financial regulation. This includes **46%** of companies that have delayed or cancelled planned investments or capital expenditures due to regulations, **40%** that have decreased the types of services offered to customers, and **49%** that have substituted or reduced the number of banks or financial institutions that provide services to them.
- **Over one-third** of businesses report that they have raised costs due to financial regulation, which indicates that certain financial regulations may actually be a driver of inflation throughout the economy, one of the top economic risks identified by businesses.
- While businesses across industries report they are negatively impacted by regulations, actions taken in response to certain rules vary by industry. For example, businesses in the retail sector are more likely to absorb higher costs

[8] The survey data was collected between June 28 and July 27. We anticipate publishing the final report by October 1, 2023. Teneo Research conducted a national survey of 300 corporate finance executives (Treasurers, Deputy Treasurers, Controllers, CFOs, small business owners) that was fielded online and via mobile telephone. The credibility internal for this study is +/-5.7% at the 95% level of confidence.
[9] Survey Question: Over the next 12 months, what do you see as the most significant risks to your company? (Rank Answers): Taxes, Inflation, Interest Rates, Trade/tariffs, Cyber risks, geopolitical risks causing market fragmentation, dealing with uncertainty over new financial regulation, stability of individual banks or the overall banking system, restrictions on credit offers from banks and other lenders, transition from LIBOR and other IBORs to risk-free rates)

and feel exposed to greater financial risk because of regulation. Energy and mineral companies are more likely to reduce product or service offerings due to financial regulation, while manufacturers are more likely to be forced to pass on higher prices to customers. Only **13%** of retailers, **16%** of energy/mineral companies, and **17%** of manufacturers report that costs have not increased as a result of financial regulations.

Businesses express major concerns over pending changes to the Basel III capital and regulatory framework.

- **68%** of businesses say a net increase in capital requirements on banks could be damaging to their business.
- **77%** of businesses are concerned that investment grade private companies will be treated less favorably than investment grade public companies under the new Basel III framework.
- **53%** of businesses believe that the costs under Basel III related to interest rate swaps could make it more difficult to manage currency risk.
- The overwhelming majority of businesses also support treating banks equally when it comes to cross-border financial regulation, with **90%** saying that foreign banks operating in the U.S. should be treated the same as domestic banks, and that U.S. banks operating overseas should be treated the same as local banks operating in those markets.

These concerns regarding Basel III Endgame are even more heightened for small and medium-sized enterprises ("SMEs"): over **80%** are concerned about unfavorable treatment for investment grade private businesses, while **nearly three-fourths** of SMEs are concerned about the impact of higher capital requirements on their business.

Basel Committee on Banking Supervision

The Basel Committee on Banking Supervision ("BCBS"), established in 1974 by the central bank governors of the G10, serves an important role as an interlocutor among banking regulators around the globe. The BCBS helps to shape global banking standards and collaborates to establish guidelines for banking supervision, capital adequacy, and risk management. These guidelines developed by the BCBS can be informative for developing regulation in the U.S. and other countries' jurisdictions to help avoid regulatory fragmentation and a potential "race to the bottom." The standards agreed to by the BCBS are not part of a treaty, and while U.S. banking regulators – the Board of Governors of the Federal Reserve System ("Board"), Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC") – participate in the standard setting process, they have no legal obligation to issue regulations that implement the standards.

The Federal Reserve Board's Holistic Capital Review & the Basel III Endgame Proposal

In Michael Barr's first public speech after he was confirmed as Vice Chair of Supervision of the Board, he announced that the Board would conduct a "holistic review" of bank capital standards that would inform potential changes to capital requirements, including the final implementation of the Basel III Endgame.[10] The Chamber sent a letter to the Vice Chair on May 3, 2023, advocating for transparency in the Board's holistic capital review and urging the Board to provide an opportunity for the public to examine its findings given our concern about what any material regulatory changes for banks could mean for the Main Street businesses that they serve. Importantly, the letter requested that the Board make available the data and methodology used to reach its findings before proposing a rule to implement any new capital standards. On July 27, 2023, U.S. banking regulators jointly issued the Basel III Endgame proposal in a regulation that would significantly increase capital requirements for U.S. banks without first making the results of the holistic capital review available to the public.[11]

U.S. banking regulators have not justified why the substantial capital increase contemplated in the proposed rule is necessary. In fact, Board members have expressed in recent years that a material increase in capital is not necessary to support the stability of the U.S. banking system or to faithfully implement the Basel III Endgame standards.

- Jerome Powell, Chair, stated during a recent hearing of the House Financial Service Committee hearing, *"I think the overall level of capital, particularly at the largest firms, is about right."*[12]
- Randy Quarles, former Vice Chair for Supervision, noted in a speech with his departing thoughts, *"What policymakers will need to do as they implement the Basel III reforms is determine whether adjustments to other parts of the capital framework are necessary to ensure that we do not unduly increase the level of required capital in the system."*[13]

This difference of opinion among Board members regarding whether current bank capital levels are sufficient or need to be increased warrants further examination of the data the Board is relying on in its issuance of the Basel III Endgame proposal. Had the information from Vice Chair Barr's holistic capital review been made publicly available, then third parties could independently analyze it and make those perspectives available to policymakers. Regrettably, neither the Board nor Vice Chair Barr have made that information publicly available, keeping it instead shrouded under a cloak of unnecessary secrecy.

The Basel III Endgame Proposed Rule

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[10] https://www.federalreserve.gov/newsevents/speech/barr20220907a.htm.
[11] E.g., https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230727a.htm.
[12] https://www.americanbanker.com/news/capital-levels-are-just-right-powell-tells-house-members
[13] https://www.federalreserve.gov/newsevents/speech/quarles20211202a.htm

U.S. banking regulators jointly issued the Basel III Endgame proposal on July 27, 2023. The rule, which is intended to implement the final Basel III capital framework developed by the BCBS, would revise the risk-based capital framework applicable to banking organizations with at least $100 billion in total assets and their depository institution subsidiaries and to banking organizations with significant trading activities. The proposed rule would increase capital requirements for most covered banking organizations and eliminate the ability to use internal models to calculate capital requirements for credit and operational risk. Instead, internal models would be replaced with standardized approaches. Additionally, the proposal includes an expanded risk-based approach with a new set of standardized requirements for calculating credit, operational, and market risk. Covered banking organizations must also include unrealized gains and losses on available-for-sale securities. If implemented, this proposal would require a material increase in capital for the 8 U.S. global systemically important banks, 22 larger and midsized U.S. bank holding companies, 10-12 U.S. intermediate holding companies of foreign banking organizations, and 7-10 other U.S. banking organizations.

Real-World Impacts on Main Street Companies of Increasing Bank Capital Requirements

The Basel III Endgame proposal will indirectly impose costs on Main Street companies in numerous ways given their dependence on a robust and vibrant banking system. Banks provide countless services to businesses ranging from payments and lending, cash management and investment advice, raising debt and equity from investors in the capital markets, accessing products to hedge market risks, and advising on the financial strategies to help businesses of all sizes grow and meet their full potential. If costs are imposed on banks through an increase in the capital they are required to hold, there is a high likelihood that they will have to cease providing certain services or pass at least some of the new costs on to their customers.

The following hypothetical scenarios illustrate how the Basel III Endgame proposal could impose new costs on businesses that depend on access to the banking system and capital markets.[14]

Credit Risk.

The Basel III Endgame proposal would replace internal-models-based capital requirements for credit and operational risk currently with new, risk-sensitive standardized requirements that would apply to all banking organizations with $100 billion or more in total assets. These “standardized” requirements mean banking

[14] These are only hypothetical examples and do not take into consideration how the Basel III Endgame proposal may impact individual banking organizations differently, how the banks may change their operations to comply with the regulation, or how different bank customers may be impacted given their relationship with an affected bank.

organizations are generally not permitted any discretion when determining credit risk and the capital they have to hold for an individual loan, including a loan to a business, regardless of their business model, risk profile or individual footprint. Instead, these loans will be subject to standardized risk-weights that may not accurately reflect the discrete credit risk of a borrower. This is above and beyond international Basel III Endgame standards which limit but still allow internal models.

- ***Commercial Loan.*** The Proposed Rule would require that, for a corporation to be eligible for a reduced credit-risk-capital requirement as "investment grade," the company or its parent must have securities outstanding on a public securities exchange. For example, this would mean that a company that is all-else-equal in terms of credit risk (demonstrated history of repayment, predictable cashflow, strong assets and manageable liabilities, etc.) a bank would have to subject any credit exposure to a higher capital surcharge. This higher capital surcharge to the bank would likely mean it has to reduce its credit exposure or offer less favorable terms to the private company than it would to an otherwise identical public company.

Operational Risk.

The Basel III Endgame proposal would replace the models-based advanced approaches for operational risks with a new set of standardized approaches. The operational risk capital requirements under the expanded risk-based approach would be based on a banking organization's business volume and historical losses. Sources of operational risk are those attributable to running the bank (e.g., management decisions, external events like litigation, failure of a critical system like a computer network).

The capital requirements are especially punitive to banks that offer products that rely on fee income (as opposed to interest income) that cannot be offset by a reduction in expenses. Therefore, the capital requirements somewhat perversely disincentive banks from diversifying their income streams to include products other than lending. A bank is subject to less operational risk exposure if it offers fewer products/services. Banks therefore may be incentivized to limit the availability of or increase the cost of products that use fee income.

- ***Initial Public Offerings*.** Businesses work with investment banks to help them access the public markets in order to expand the number of investors that are legally permitted to purchase their stock. Businesses can benefit from going public given it expands their investor base by selling shares to the general public. Expanding the potential demand for a stock can mean lowering the businesses' cost of capital. Investment banks charge fees to support businesses accessing the public markets to value the shares, market the shares, and cover the risk of carrying the shares on their balance sheet until sold to investors. The Basel III Endgame proposal may increase banks' fees, diminishing the benefit of the capital raise and potentially discouraging the startup from going public. The Basel III Endgame proposal may increase the cost of going public and therefore deprive investors of the ability to invest early in growing companies.

Market Risk Capital Requirements

The proposal also would replace the current market risk framework with a new standardized methodology for calculating risk-weighted assets for market risk and a new model-based methodology. The increase in capital requirements is most severe under this aspect of the proposal. Governor Waller pointed out in his dissent, *"It is not clear to me why our large banks should face a further roughly **70 percent** hike in market risk capital requirements, on top of the existing post-crisis requirements to address risks in the trading book, including market risk capital requirements plus the stress test."*[15] (emphasis added)

- ***Corporate Debt Issuance***. Businesses depend on banks to provide liquidity in the market for corporate debt. A reduction in liquidity for corporate debt would mean borrowing costs for corporations would increase. If there are fewer banks willing to buy and sell corporate debt, the market will price in a "liquidity premium," which translates to an increased cost a bank will charge to hold the asset because there may be fewer buyers willing to purchase it at a future date. This is validated by research recently published by PwC ("Basel III Endgame: The Next Generation of Capital Requirements") finding, *"[t]o meet higher capital requirements, banks may reduce their trading inventories, thereby lowering market liquidity."* [16] In other words, if there are fewer market makers, the secondary market will become less liquid and will create concern with investors about their ability to buy or sell the bonds quickly and at a fair price.
- ***Interest Rate Risk.*** Businesses may be subject to financial risk due to changes in interest rates, especially if the changes are unexpected. One way to manage interest rate risk is through interest rate swaps, an agreement between two parties to exchange one stream of interest payments for another over a defined period. For example, life insurance companies are major investors in long-dated bonds with fixed interest rates because these assets are seen as low-risk and match the maturity of their long-dated liabilities.[17] If interest rates were to unexpectedly increase, the price of these bonds would decrease. To manage this risk, life insurance companies oftentimes pay a premium by purchasing a fixed-to-floating interest rate swap. With the proposed Basel III Endgame rules in place, that swap may be more costly to the business due to fewer banks offering the product or banks passing on additional cost of such activity to the business.
- ***Commodity Price Risk*.** Businesses may be subject to financial risk due to commodity price instability. For example, the margins of a regional airline or trucking company are dependent on the price of fuel. These types of companies purchase futures contracts to hedge the price of fuel (e.g., they pay today to have a guarantee they can purchase the fuel at the same price in the future). These types of contracts will become more expensive for banks to offer.

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[15] https://www.federalreserve.gov/newsevents/pressreleases/waller-statement-20230727.htm#:~:text=It%20is%20not%20clear%20to,requirements%20plus%20the%20stress%20test.
[16] https://www.pwc.com/us/en/industries/financial-services/library/basel-iii-and-banking.html
[17] https://www.centerforcapitalmarkets.com/wp-content/uploads/2019/03/CCMC_InsurancePaper_v2.pdf

Inadequate Cost-Benefit Analysis

The "Impact and economic analysis" section of the Basel III Endgame proposal inadequately addresses the potential costs and benefits of the rulemaking. A cost-benefit analysis should not be an informal ledger of pros and cons, but rather a detailed and quantitative undertaking that measures how the regulatory proposal impacts covered entities and the markets in which they operate. Regrettably, the cost-benefit for the proposed rule fails to meet the bare minimum required for major rulemakings and especially for a rulemaking with such a significant impact on an individual sector and the overall economy.

Specifically, the agencies fail to adhere to numerous cost-benefit analysis requirements, including:

- **Executive Order 13563**. In reaffirming certain principles in President Clinton's Executive Order 12866 of 1993, Executive Order 12563 includes a provision that requires agencies promulgating rules to "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs."[18] 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." Consistent with this approach, and despite its status as an independent regulatory agency, the 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."[19]
- **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 to include the OCC, FDIC, and 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****; and (2) the benefits of such regulations."*[20] (emphasis added)

[18] 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-improvingregulation-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-benefitanalysis-that-would-unleash-more-regulatory-overreach
[19] 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.
[20] 12 U.S.C. § 4802(a) (emphasis added).

The cost-benefit analysis in the proposal suffers from a strawman argument that is far from subtle: increasing capital requirements will make individual banks and the banking system more stable. No one disputes that capital is necessary to address any number of unexpected shocks an individual bank may occur and that banks may not be able to properly address those shocks with insufficient capital. But the regulatory agencies have failed to demonstrate through empirical analysis or otherwise why the current capital levels are inadequate, as discussed above.

Moreover, identifying a benefit is only an initial step of a proper cost-benefit analysis. The relevant question, rather, is what level of capital is *optimal* so that the marginal benefits (i.e., limiting the risk of bank failure or systemic risk) exceed the marginal costs (e.g., limiting, or increasing the cost, of the financial products/services a bank can make available to its customers). The Basel III Endgame proposal only provides a cursory and conclusory analysis of the costs of the proposal.

For example, the "Impact and economic analysis" section includes only sparse discussion of the attendant costs of the regulation. It mentions that the credit risk and operational risk frameworks could cause a *"slight reduction in bank lending"* (page 498) and *"small changes in loan portfolio allocations"* (page 498). And, the proposed market risk framework *"could also increase banking organizations' costs of engaging in market making activities"* (pg. 489). The economic impact assessment, similarly, only measures the estimated increase in capital required and does not attempt to measure that impact on lending and market making, despite issuing statements suggesting this would be minimal.

The "Impact and economic analysis" section also jumps to the conclusion that, *"While quantification of the economic costs and benefits of changes in bank capital is difficult and highly contingent on the assumptions made, current capital requirements in the United States are toward the low end of the range of optimal capital levels described in the existing literature. On balance, this literature concludes that there is room to increase capital requirements from their current levels while still yielding positive net benefits."* (Pages 496-497). The conclusion is based on academic literature that generally speaks to the optimal level of bank capital and is not specific to the proposed regulations. This academic literature is informative but cannot serve as the basis for the agencies' conclusion or as a substitute for the agencies' own quantitative analysis. The Board alone employs just over 400 Ph.D. economists[21], the OCC employs over 50 Ph.D. economists[22], and the FDIC employs approximately 25 Ph.D. economists[23]. But instead of relying on some portion of close to 500 Ph.D. economists fully capable of undertaking a comprehensive quantitative analysis in a significant rulemaking with a potentially major impact on the U.S. economy, it appears the agencies are simply citing academic research that fits their preconceived conclusion that the marginal benefits exceed the costs.

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[21] The Fed - Economists (federalreserve.gov)
[22] Meet Our Research Economists | OCC (treas.gov)
[23] FDIC: Center for Financial Research - Externally Published Research

Undermines Regulatory Tailoring under The Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018

The Basel III Endgame proposal undermines bipartisan legislation enacted by Congress in 2018 that directs regulators to embrace a risk-sensitive approach applying to capital requirements and prudential standards. The Economic Growth, Regulatory Relief, and Consumer Protection Act ("Economic Growth Act") requires, among other things, that many regulatory requirements be tailored based on *"capital structure, riskiness, complexity, financial activities (including financial activities of subsidiaries), size, and any other risk-related factors that the Board of Governors deems appropriate."* Senator Mike Crapo, the lead sponsor of the legislation, stated in a hearing after the legislation's enactment that, *"This law's primary purpose is to make targeted charges to simplify and improve the regulatory regime for community banks, credit unions, midsize banks and regional banks to promote economic growth."*[24]

The Chamber supported this legislation and the regulatory proposals that tailored the regulatory frameworks to which banking organizations in the U.S. are subject. In one statement, we noted, *"[t]his legislation will bring a long-awaited respite to Main Street businesses across America whose growth has been stifled in the post-crisis regulatory era. It's a commonsense solution brokered through collaboration and compromise that ensures businesses have access to the loans and other financial services they need to get off the ground, create jobs, and expand."*[25] We supported regulations finalized in 2019 that had the intended effect of tailoring regulations based on risk, and reduce unnecessary costs for businesses accessing the banking system, stating that, "*[t]he Chamber believes the Proposals will alleviate many of the financing concerns that have been raised by Main Street businesses with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act and other regulatory initiatives in the wake of the 2008 financial crisis."*[26]

In 2019, the Board, OCC, and FDIC jointly issued tailoring rules embracing the regulatory tailoring as directed by the Economic Growth Act.[27] The rules establish a framework that sorts banking organizations with $100 billion or more in total assets into four different categories based on several factors, including asset size, cross-jurisdictional activity, reliance on short-term wholesale funding, nonbank assets, and off-balance sheet exposure.

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[24] https://www.banking.senate.gov/newsroom/majority/crapo-statement-at-hearing-on-implementation-of-the-economic-growth-regulatory-relief-and-consumer-protection-act-s-2155

[25] https://www.uschamber.com/regulations/us-chamber-president-praises-senate-passage-bank-relief-legislation

[26] http://www.centerforcapitalmarkets.com/wp-content/uploads/2019/01/1.22.19-Comments_ApplicabilityThresholds_OCC.Fed_.FDIC_.pdf?#

[27] https://www.federalreserve.gov/newsevents/pressreleases/bcreg20191010a.htm#:~:text=The%20Federal%20Reserve%20Board%20on,largest%20and%20most%20complex%20banks

Banking organizations in a category with higher risks (e.g., larger asset size, more cross-jurisdictional activity) are subject to more prescriptive prudential regulation. The Basel III Endgame proposal, with little to no justification, moves to unwind work completed by the banking regulators just four years ago. Travis Hill, Vice Chairman of the FDIC, noted in his dissent that, *"[t]he Proposal undoes almost all of the tailoring of the capital framework for large banks, is a repudiation of the intent and spirit of [the Economic Growth Act]."*[28]

Undermining the regulatory tailoring required by the Economic Growth Act could reduce market competition and lead to further consolidation in the banking sector. The total number of banking organizations in the U.S. has steadily decreased, and regulatory thresholds have likely contributed to consolidation as banking organizations seek to achieve economies of scale. In her dissent, Board Governor Michelle Bowman stated, "*I am also concerned that today's proposal moves one step closer to eliminating the tailoring required by [the Economic Growth Act] from the prudential capital framework. The consequences of increasing capital requirements for all firms above $100 billion in assets may be to force smaller firms to merge or consolidate, to achieve the necessary economies of scale to comply with higher capital requirements. Ultimately, this may harm competition and reduce banking options in some geographic or product markets."*

Conclusion

The Basel III Endgame proposal is not a *fait accompli* that must simply be adopted by regulatory agencies that participate in the Basel Committee on Banking Supervisions. U.S. banking regulators proposing to implement the standards must take into consideration the legal frameworks in which they operate, their congressional mandates, and the unique aspects of the banking system they regulate.

There is no dispute that capital is important to maintaining a healthy banking system, but policymakers must not only tailor capital requirements to the risks posed by varying types of banks but also consider the tradeoffs of additional capital requirements for such banks as well as their customers and the U.S. economy. These tradeoffs to higher capital can come in multiple forms, including making it more expensive for businesses to access the banking system and capital markets. Increasing costs on banks may cause them to limit what products and services they offer to businesses or cause them to increase the prices.

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[28] https://www.fdic.gov/news/speeches/2023/spjul2723b.html