LATHAM & WATKINS LLP

Comments on the Basel III Endgame Proposal

Opposition and significant concerns dominate the record

February 2, 2024

Contents

I. Executive Summary

On July 27, 2023, the Board of Governors of the Federal Reserve System (Federal Reserve), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC, and together with the Federal Reserve and the OCC, the Banking Agencies) issued a comprehensive proposal (the Proposal) to overhaul the methods by which large banking organizations must calculate risk-based capital requirements. In part, the Proposal's stated purpose is to effectuate the so-called Basel III Endgame international capital standard endorsed by the Basel Committee on Banking Supervision (BCBS).[1]

The Proposal's preamble indicates that if finalized as proposed, the Proposal would materially increase the current capital requirements for banking organizations with US$100 billion or more in total consolidated assets. It would do so principally by (1) reducing the ability of the largest banking organizations to rely on internal risk models — and eliminating them entirely for credit risk; (2) introducing new, and in many cases, more stringent risk-weightings for many banking assets; (3) imposing new and more significant capital charges on derivatives, securities financing transactions (SFTs), and assets held in the trading book ("market risk" assets); and (4) imposing a new and significant capital charge intended to address operational risks such as cyberattacks, regulatory penalties, and significant litigation costs.

Public comments on the Proposal were originally due by November 30, 2023, but the deadline was extended to January 16, 2024. This report provides an analysis of 356 comment letters that the Banking Agencies received and made available to the public through January 24, 2024, focusing on institutional commenters; comments by national, community, and organizational leaders; and substantive comments by individuals.[2]

Of the 356 comment letters reviewed, 347 of them — more than 97% of the total — opposed the Proposal in full or raised substantial concerns with parts of it, while nine letters (representing roughly 2% of letters reviewed) supported the rule as proposed. As discussed below, the criticisms of the Proposal are significant and varied, and come from a wide range of commenters from all types of industries — raising concerns with both the Proposal's specifics and its overall push toward higher capital requirements for large banking organizations. In particular, many commenters focused on reduced access to credit (especially for small businesses, homebuyers, and minority communities), harm to renewable energy projects, and harm to the capital markets.

Other commenters alleged that the rulemaking violates procedural requirements set forth in the Administrative Procedure Act (APA), emphasizing the Banking Agencies' reliance on select academic work and nonpublic data and failure to disclose key assumptions underlying the Proposal. In addition to bank commenters, comment letters from diverse large sectors of the economy — including the National Association of Manufacturers, the Business Roundtable, the Coalition for Derivatives End-Users, the Investment Company Institute, and the American Benefits Council — explicitly called for the rule to be re-proposed or withdrawn entirely.

Key observations from reviewing the comments include the following:

- **Most commenters reacted negatively to the Proposal**, with more than 97% of comment letters either outright opposing it and calling for a complete re-proposal, or expressing substantial concerns with the Proposal or its critical aspects. Approximately 86% of negative comment letters were from outside the banking sector.

- **Opposition comes from a diverse array of domestic and international interests**, including the financial services industry, public and private pension funds, retirement accounts, mutual funds, asset managers, manufacturers, the energy sector, agricultural interests, small businesses, medium and large corporations, real estate companies and mortgage stakeholders, market infrastructure providers, exchanges and insurers, and academics. A substantial number of individuals, including members of civil rights organizations, also voiced their opposition.
- **A significant majority of elected officials, both Democratic and Republican**, including 225 of 237 members of Congress and all 66 state and local government representatives who commented, joined comment letters expressing opposition to or serious concerns with the Proposal.[3]

The Proposal was criticized on a wide range of economic and policy grounds. In general, the most widespread and recurring concerns centered on requiring increased capital from a sector that is already well capitalized as well as likely adverse effects on the overall economy, homeownership, small businesses, minority and underrepresented communities and renewable energy, in addition to harm to the US capital markets.

- **The Banking Sector Is Well Capitalized.** Many commenters questioned why the Banking Agencies were seeking to increase bank capital when many senior US policymakers have consistently stated over the years that bank capital is strong. Many commenters from the banking industry noted their respective strength during recent stresses (COVID-19, inflation, wars, regional bank stresses) as well as their performance during the Federal Reserve's stress tests.
- **Harm to the Overall Economy.** Commenters argued that the substantial increase in capital requirements would harm the overall economy by reducing credit availability and increasing the cost of credit.
- **Harm to Homeownership.** Commenters criticized the Proposal's revised requirements for mortgage risk weighting, which they say would likely harm homebuyers. These requirements would treat mortgages as riskier (and therefore require bank lenders to hold more capital) if they have higher "loan to value," or LTV, ratios. Commenters also took issue with the Proposal's increased capital charges for securitizations.
- **Harm to Small- and Medium-Sized Businesses.** Commenters explained that the Proposal would harm small- and medium-sized businesses, which would be unlikely to have publicly traded securities and therefore could not qualify for lower risk weights on their loans if they were investment-grade. Commenters also emphasized that such businesses are less likely to be able to bear the increased borrowing costs that the Proposal would likely entail.
- **Harm to Minority and Underrepresented Communities.** Commenters from minority and underrepresented communities — including NAACP chapters and members in South Carolina, Georgia, Pennsylvania, Ohio, and the Hispanic Leadership Fund — expressed grave concerns that they would disproportionately bear the brunt of the Proposal's adverse effects on homeownership, small businesses, and consumer credit, given that in general these communities already have reduced access to credit and other financial services.
- **Harm to Renewable Energy Projects.** Commenters from banks and the renewable energy industry emphasized that by quadrupling the risk weight for tax equity investments, the Proposal would severely and adversely disadvantage new clean energy projects.

- **Harm to Capital Markets.** Many commenters from banks and outside the banking industry emphasized the dramatic effects that the Proposal would have on capital markets and derivatives activities, and expressed concerns that these effects would adversely harm their businesses. These criticisms included a focus on:
  - **New Market Risk Rule.** Commenters noted that the Proposal's market risk requirements would significantly increase the amount of capital that banks are required to hold against their market risks, which in turn would have adverse consequences for businesses that rely on banks to help them manage financial risks and engage in capital markets transactions.
  - **New Credit Value Adjustment (CVA) Charge.** Commenters feared that by increasing the amount of capital that US banking organizations would be required to hold for derivatives activities, the Proposal would severely affect the pricing of derivatives and the ability of end users to hedge their business risks.
  - **New Minimum Haircut Floors for Certain Securities Financing Transactions (SFTs).** Commenters noted that no other Basel jurisdiction has chosen to impose the SFT requirements, which impose minimum amounts of collateral banks must receive for stock borrowing and lending and similar transactions. Commenters further emphasized that these floors would result in significantly higher costs for many bank counterparties, including pension funds and asset managers, which would have more limited access to bank products.
- **Operational Risk Capital Charge.** Commenters argued that the Proposal's methodology for calculating the operational risk capital charge was materially flawed and would require capital to be held against potential losses that were significantly greater than any experienced by the banking sector since 2003, including in the aftermath of the 2008 global financial crisis. They also contended that the new charge would unduly burden businesses that rely on fee income, such as investment management services and credit cards.
- **Overlap With Federal Reserve Stress Tests.** Commenters contended that the Federal Reserve's annual stress tests already capture many of the same risks reflected in the proposed new charges for operational risk, market risk, and CVA risk — and therefore the Proposal would result in unnecessary double counting of those risks.
- **Elimination of Tailoring for Regional Banks.** Commenters argued that the Proposal all but eliminates differing capital treatment for large regional banks, so-called Category III and Category IV banking organizations, contrary to the intent of a law Congress passed in 2018 called the Economic Growth, Regulatory Relief and Consumer Protection Act, which requires that such banking organizations not be subject to as stringent enhanced prudential standards (which include capital requirements) as G-SIBs.

Commenters also asserted substantial legal and policy flaws that affected the process by which the Banking Agencies had issued the Proposal, including:

- **Failure to Provide Meaningful Economic Support.** The Proposal assigns risk weights to bank exposures based on minimal economic data or analysis, including without a basis in available historic risk data.
- **Failure to Provide an Objective Standard of Risk.** The Proposal does not justify the new capital charges based on any objective standard of risk.

- **Failure to Disclose Relevant Data and Analyses.** The Banking Agencies did not disclose the data and analyses used to design and calibrate the new capital requirements, depriving the public of an adequate opportunity for comment.
- **Failure to Provide Justification for Picking and Choosing Among Basel III Recommendations.** The Banking Agencies provided no support for choosing to follow the Basel Committee's recommendations on certain aspects of the Proposal, and ignoring it on others.
- **Failure to Conduct a Holistic Analysis of Capital Requirements.** The Proposal fails to account for the interaction between existing capital requirements, such as the Federal Reserve's stress tests, and its new requirements.
- **Constitutional Nondelegation Problems.** Given the lack of substantive standards guiding the Banking Agencies when issuing the Proposal, some commenters observed that the Proposal may be vulnerable to a legal challenge based on excessive delegation of Congress's policymaking authority, or on the Banking Agencies' interpretation of their statutory authority that would imply such an excessive delegation.

A total of nine comment letters — roughly 2% of the total — supported the Proposal. These included two letters from academics (one of which featured 30 signatures, and one of which was from an academic who also signed the first letter), one from Senate Banking Committee Chairman Sherrod Brown joined by 11 Senate colleagues, one from Better Markets, one from Americans for Financial Reform joined by other groups, one from the CFA Institute Systemic Risk Council,[4] and one from the Center for American Progress. The AFL-CIO was a signatory to another letter, written by 20/20 Vision. These letters made the following principal arguments:

- **Increased Capital Would Reduce Systemic Risk.** The aftermath of the 2008 Financial Crisis showed the economic challenges of relying on emergency government measures after a large bank failure.
- **Increased Capital Would Result in Increased Lending.** With more capital to shield against losses, banks' lending would increase in all economic cycles and would be less likely to slow during economic downturns.
- **Current Rules Underestimate Regional Bank Risk.** The failure of Silicon Valley Bank (SVB) showed that the insolvency of a regional bank that had between US$100 billion and US$250 billion in assets could have material effects on the broader economy.
- **Regulators Should Not Rely on Banks' Internal Models.** Large banks' internal models underestimated risk, and therefore the Proposal's expanded risk-based approach and revised approach to market risk are improvements over current rules.

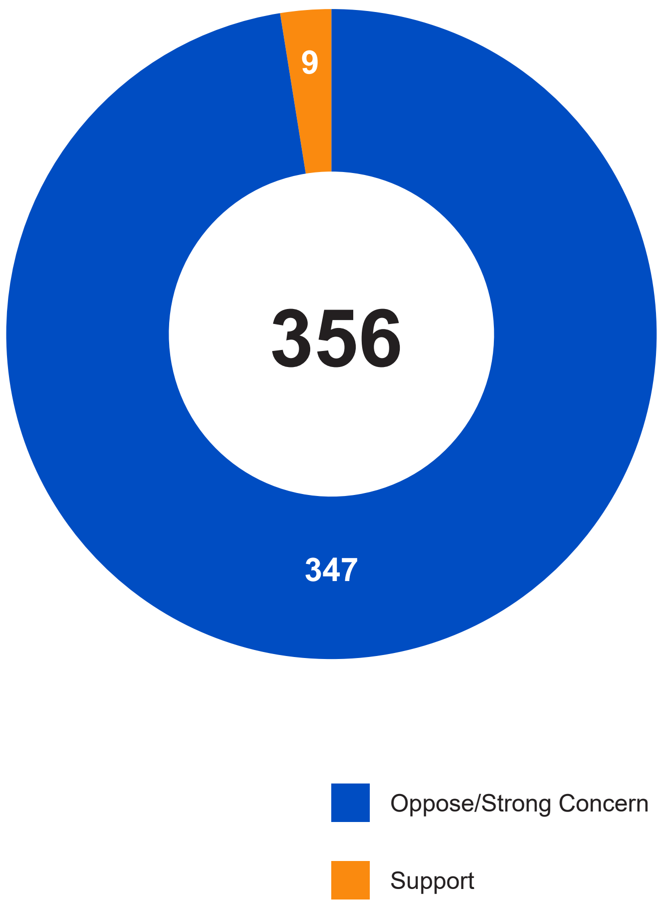
In sum, the Proposal has drawn a large number of detailed and significant comments — almost all of which express reservations about at least some aspects of the Proposal. Under the APA, the Banking Agencies are now required to consider and respond to these comments as they decide whether and how to finalize the proposed rulemaking. In doing so, the Banking Agencies will need to "explain the assumptions and methodology" underlying the Proposal; "and, if the methodology is challenged ... provide a complete analytic defense."[5] If the Banking Agencies fail to "respond to relevant and significant public comments," any final rule can be set aside by a reviewing court as arbitrary and capricious.[6]

Given the unusually large volume of critical comments received from such a diverse a group of stakeholders, and the significant substantive, policy, and legal problems those commenters have identified in the Proposal, the Banking Agencies face certain challenges. If they decide to press forward to finalize the proposed rule, they will need to provide considered responses to the many serious policy concerns raised by the commenters. Even if the Banking Agencies make significant changes from the Proposal, any final rule could still be vulnerable to challenge under the APA for the reasons identified by commenters. As an alternative, the Banking Agencies may consider withdrawing the Proposal or re-proposing the rule to address the many concerns commenters have raised.[7]

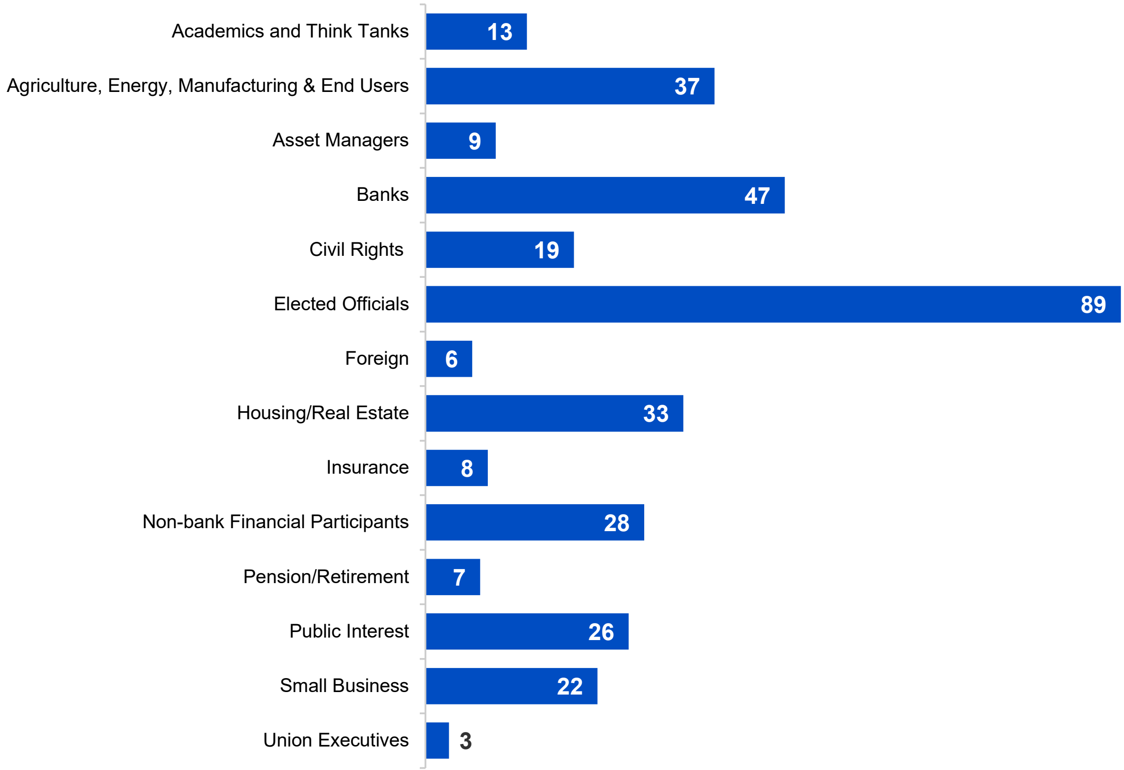
For highlights of the comment record, please see this summary.

II. Type of Commenter

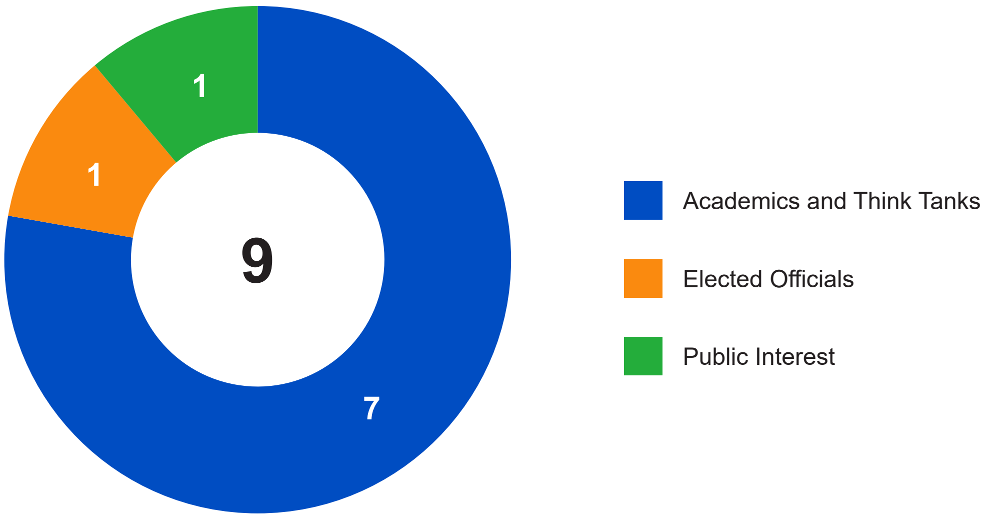
As illustrated below, letters opposing or expressing strong concerns with the Proposal or at least one of its important aspects dominated the record.



These 347 letters came from a diverse array of commenters:[8]



The nine letters supporting the Proposal were distributed as follows:



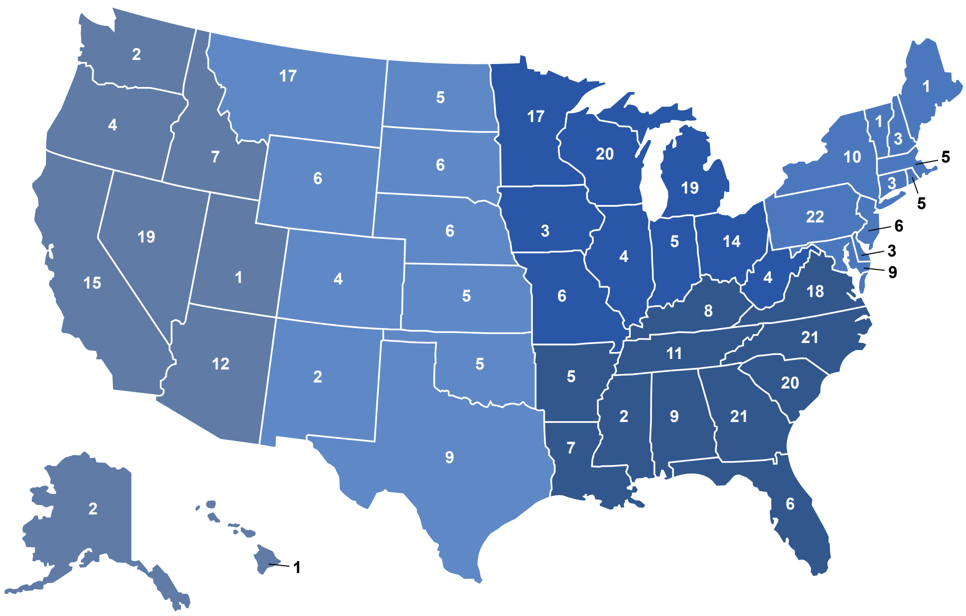
III. Analysis of Comments

A. Opposition to the Proposal

Most Comments Oppose the Proposal. As detailed in Sections IV and V, an overwhelming majority of comment letters — 347, representing over 97% of all comments we reviewed — called for withdrawal of the Proposal or a re-proposal, or otherwise expressed significant concerns with the Proposal or at least one of its important aspects.

Geographic Diversity of Opposition. Opposition to, or doubts about, the Proposal came from all across the United States, as shown by the distribution of comment letters from individuals, the highest concentrations of which were in the Southeast and upper Midwest:

Geographic Distribution of Comment Letters From Individuals



Substantial Foreign/International Concerns. In addition, substantial comments came from non-US organizations or emphasized international adverse effects. The Association of British Insurers noted that the UK insurance industry was a significant counterparty for US investment banks, and urged the Banking Agencies to consider the potential unintended extraterritorial consequences of the Proposal — such as US gold-plated capital requirements forcing a migration of business and attendant risk to European banks.[9] The Investment Association, the trade association for UK investment managers, echoed that concern.[10] A letter from the Dutch Federation of Pension Funds expressed concerns about the Proposal's effects on the clearing of derivatives and resulting increased transaction costs and systemic risk.[11]

In the US, the National Association of Manufacturers commented that "lower capital requirements for foreign banks would give foreign manufacturers access to more cost effective bank financing and hedging services, thus impairing the ability of US manufacturers to compete on price."[12] US Senators Cynthia Lummis and Kirsten Gillibrand noted that the Supervisory Chair of the European Central Bank (ECB) had recently stated that current US bank capital requirements were "significantly higher" than those required for equivalent European G-SIBs and argued that the Proposal would only exacerbate this disparity.[13]

B. Support for the Proposal

Nine comment letters, or roughly 2% of all comments we analyzed, supported the Proposal. Two of these were from academics (one with 30 signatures, and one from an academic who also signed the first letter), one was from Senate Banking Committee Chairman Sherrod Brown and 11 Senate colleagues, one was from a public interest organization, and five were from think tanks. Supporters of the Proposal made the following principal arguments:

Increased Capital Would Reduce Systemic Risk. First, supporters contended that the resulting increase in bank capital would make the US banking system safer and reduce reliance on emergency government measures in the event of a large bank insolvency. As one commenter stated, "[C]apital requirements are among regulators' most powerful tools in ensuring banks can weather periods of stress."[14] Another contended that "[w]e have seen unprecedented public support and assistance provided in the aftermath of the Global Financial Crisis (GFC) and the COVID pandemic [and] most recently, the use of the systemic risk exception was viewed by regulators as necessary in the case of the failures of Silicon Valley Bank and Signature Bank. ... We believe that the proposal is a meaningful step forward in ensuring that banking organizations maintain a level of regulatory capital that sufficiently reduces the probability that systemwide mechanisms will be invoked, particularly for large, operationally complex institutions with significant market exposures."[15]

Increased Capital Would Result in Increased Lending. Second, supporters asserted that the better capitalized a bank was, the more likely it was to continue lending in all economic cycles.[16] One commenter contended that "[c]ompelling recent data proves this: regulators have required that banks increase their capital materially since the crash of 2008 and the enactment of the Dodd-Frank Act in 2010 and yet, at the same time, those very same banks have increased their lending to the nonfinancial sector of the economy."[17] Another stated that "[i]t is important to remember that regulatory capital requirements are only one of a plethora of factors that weigh into the availability and cost of credit. ... For some banking organizations, higher capital levels can support higher risk appetites, which in turn can support higher levels of retail lending."[18]

Current Rules Underestimate Regional Bank Risk. Supporting comment letters applauded the Banking Agencies for seeking to extend the rules to firms with between US$100 billion and US$250 billion in total consolidated assets, particularly in light of the issues stemming from the 2023 SVB collapse. One commenter saw these regional banks as "complex institutions with multiple business lines and ... size and complexity;" by requiring every such firm "to have enough capital to protect itself against its individual risk, the Agencies are more effectively protecting the entire banking system and the American public."[19] Another letter underscored this point by emphasizing that "the use of the systemic risk exception was viewed by regulators as necessary in the case of the failures of Silicon Valley Bank and Signature Bank with the Federal Reserve providing systemwide support through the Bank Term Funding Program."[20]

Regulators Should Not Rely on Banks' Internal Models. A group of academics commended the Banking Agencies for seeking to reduce the ability of large banking organizations to use internal models, both generally and with respect to market risk in particular, contending that "since each bank selects its own modeling assumptions, capital ratios are not necessarily comparable across firms ... although supervisors attempt to back-test banks' internal models to ensure that they do not inappropriately underestimate risk exposure, empirical validation using historical data is often limited by the fact that severe credit risk and operational risk losses occur sporadically."[21] Another letter agreed, stating that "[r]esearch has shown that there has been material variability in credit risk measures that result from banks' use of internal models. ... For something as large and consequential as credit risk, the Agencies should unquestionably require the best-known available measure."[22]

IV. Summary of Principal Arguments by Topic

A. Adverse Effects on Capital Markets and Derivatives

A total of 82 comment letters (approximately 23% of those reviewed) expressed concerns about the Proposal's effects on capital market activities. Their principal areas of focus were the market risk capital requirements applicable to trading activities under the Fundamental Review of the Trading Book (FRTB), the CVA capital requirement for derivatives counterparty credit risk, the proposed minimum haircut floors that would increase required capital for SFTs, and the interaction between the Proposal and the Federal Reserve's stress tests, which set a banking organization's Stress Capital Buffer.

1. Harm to Financial Markets

As a general matter, commenters repeatedly stressed that the substantial capital increases required by the foregoing provisions would harm financial markets. These comments were advanced by the financial services industry, pension funds, asset managers, insurance companies, manufacturers, agricultural concerns, energy companies, end users of derivatives, and related trade associations, as well as members of Congress.

> "[M]arket liquidity and market-making are fundamental to the efficient operation of financial markets. We are very concerned that this Proposal, in its rush to impose Basel III on US banks, has failed to explore in-depth — let alone pay more than even lip-service to — the potentially detrimental consequences to market liquidity and market-making of imposing higher or ill-conceived capital standards on banks, which in turn could harm funds and their millions of shareholders."
>
> Investment Company Institute at page 2 (on behalf of the buy-side industry / registered investment funds)

> "Equity markets are the public face of finance and are often seen as a barometer of the overall health of the economy. In that sense, a thriving IPO market is perhaps the most direct and tangible evidence of an economy where new businesses have confidence in their future prospects. Making U.S. capital markets less appealing for businesses looking to issue an IPO, as the proposal could do, may reduce the United States' ability to foster innovation and entrepreneurship, and attract global capital."
>
> Congressman Brad Sherman (D-CA), joined by 14 other Democratic and Republican House members at page 2

> “In the current economic and geopolitical environment, the Coalition has serious concerns that increased transaction costs associated with prudent risk-management hedging practices by derivatives end-users will result in two materially adverse impacts: (i) even further increased costs will flow through to consumers for goods, services and everyday necessities; and (ii) reduced capacity for derivatives end-users to hedge their commercial risks because the costs to hedge those risks could become prohibitively expensive, which would lead to greater price volatility. These results would be bad for consumers and bad for economic stability and neither result decreases risk to the broader U.S. economy—a flawed and detrimental result of the Proposals.”
>
> Coalition for Derivatives End-Users at page 3 (on behalf of companies that use derivatives to manage commercial risk)

> “The impact of this proposal is understated and will impede the ability of America’s banks to provide a range of critical financial services to Business Roundtable member companies, reducing both innovation and economic growth. ... The proposed increase in capital requirements will negatively impact the U.S. capital markets.”
>
> Business Roundtable at pages 2-3 (on behalf of chief executive officers of large American companies)

2. FRTB / Market Risk Adverse Effects

A total of 47 comment letters (approximately 13% of those reviewed) opposed the revised FRTB / market risk capital requirements, making the following principal arguments:

- The new standardized approach to market risk does not recognize the benefits of diversification, and the new models-based approach incorporates overly conservative stress testing.
- The Banking Agencies have provided no empirical support for the Proposal’s conditions for using the models-based approach for calculating the market risk capital requirements as opposed to its standardized approach.
- Banks could be forced to switch between applying the two approaches for calculating market risk capital, given the arbitrary nature of the eligibility requirements for using the models-based approach, and this would lead to irrational results.
- The Banking Agencies have estimated that the Proposal would increase market risk risk-weighted assets 77% for the largest bank holding companies, with substantial new costs imposed on trading and related activities, even though there is no evidence that large banking organizations undercapitalize their trading and other market-risk activities.

> “The Proposed Rule’s substantial increase in capital requirements for banks’ trading books through the Fundamental Review of the Trading Book will significantly increase the costs of critical risk management tools for U.S. manufacturers. When a bank provides a derivative to a customer, it is often required to record the transaction in the bank’s trading book as a dealing/market-making exposure. Banks will then mitigate the market risk from customer-driven derivatives through offsetting or hedging activities in order to ensure the bank is risk neutral. The Proposed Rule does not recognize the most efficient hedging activities, thereby forcing banks to utilize less efficient and more costly hedges.”
>
> National Association of Manufacturers at page 3 (representing 14,000 manufacturers)

> “The Fundamental Review of the Trading Book will significantly raise capital standards for all market making activity. Derivative transactions are among the most penalized, including interest rate derivatives and equity derivatives. Many retirement plans use equity derivatives as an efficient means to gain market exposure.”
>
> American Benefits Council at page 4 (on behalf of sponsors of retirement benefit plans)

3. CVA Capital Charge Adverse Effects

The new CVA capital requirement drew criticism from 51 comment letters (approximately 14% of those reviewed) for the following principal reasons:

- It improperly applies to client-facing legs of derivatives trades cleared through a central counterparty where the bank is acting as the clearing member.
- It departs from current capital treatment under which CVA hedges that do not qualify as eligible CVA hedges are not automatically included in market risk capital requirements.
- The European Union’s implementation of Basel III diverged from the Basel agreement on CVA risk and thus provided better capital treatment than the Proposal, which would put US banks and US companies at a disadvantage.
- It is over-calibrated to the actual CVA risk posed and therefore would impose significant burdens on banks in offering derivatives products to their financial and commercial end user clients for hedging purposes.

> The Basel III Endgame Proposal requires that CVA capital be calculated for all parties involved in CVA-covered positions — with no exceptions. This adds to the current capital requirements and undermines existing regulatory relief and policy objectives. Thus, the CVA adjustment is problematic in two ways. First, it is likely to result in large banks reducing the hedging transactions they offer because of increased capital requirements. Second, it does not give commercial end-users a customized approach to derivative transactions. This undermines the relief provided to commercial end-users under the final SA-CCR rule and margin clearing exemptions."
>
> Kaiser Aluminum Corporation at page 3

> Specifically, SWIB utilizes a wide variety of derivatives to manage the risk and exposures of the assets we manage. ... By increasing the amount of capital that U.S. banking organizations must hold for these types of derivatives transactions, the Proposal would limit our liquidity options. ... [S]everal banks have indicated that their capital charges will increase by up to five times, and if even a small portion of that increase is shifted to public pension funds, there will be a material impact on our derivative transaction costs, leading to lower returns for our members."
>
> State of Wisconsin Investment Board and the Ohio Public Employees Retirement System at page 7

4. Securities Financing Transactions Adverse Effects

The Proposal's approach to SFTs was criticized by 30 comment letters (approximately 8% of those reviewed) for the following principal reasons:

- No other major jurisdiction has chosen to implement the minimum haircut floors, and indeed the European Banking Authority has stated that such floors could lead to more risk than the current approach to SFTs.
- The Proposal's SFT minimum haircut floors would impede the functioning of critical activities within the capital markets, such as reverse repurchase agreements, securities borrowing transactions, and margin loan transactions, and are inconsistent with banks' core counterparty credit risk management practices.
- Banks determine economic haircuts for these transactions based on a number of factors, including counterparty type, purpose of the transaction, and collateral provided or received. By contrast, the Proposal's SFT minimum haircut floors, are a blunt, risk-insensitive approach to counterparty credit risk.
- The changes would have negative effects on investors, including imposing substantial new costs on SFTs due to the increased capital requirements for such transactions, discriminating against certain types of investment funds that are similarly situated to other investment funds exempted from the minimum haircut requirement, and assigning collateral haircuts that do not appropriately recognize or account for the risk and volatility attributes of underlying assets.

> The net results of these externalities, we believe, are increased costs and more limited access to the banking organization services and products that investors rely on to effectively manage risk and meet their investment objectives. The proposed amendment may also reduce investors' ability to use SFTs, thereby denying them valuable lending revenue from their long-term securities holdings and impair the price discovery and risk hedging opportunities related to short selling."
>
> BlackRock, Inc. at page 8

> The minimum haircut floor for securities financing transactions (SFTs) should not be adopted. No other jurisdiction plans to implement the minimum haircut floor. Moving forward with the minimum haircut floor will therefore hurt U.S. retirement plans' ability to manage liquidity and enhance returns for beneficiaries."
>
> American Benefits Council at page 5

5. Operational Risk Charge Adverse Effects

A total of 53 comment letters (approximately 15% of those reviewed) expressed concerns with the Proposal's new capital charges for operational risk, making the following principal arguments:

- According to the Banking Agencies, if the Proposal were adopted without change, large US banks would end up holding over US$300 billion in capital for operational risk, and this charge would account for nearly 90% of the increase in large banks' capital requirements under the Proposal. Yet the Banking Agencies provided no economic basis for this new requirement.
- The Proposal's approach requires pooling risk-weighted assets arising from credit risk, market risk, operational risk, and CVA risk — in effect, assuming that extreme losses relating to credit, market, operational, and CVA risk will all occur at the same time, with a correlation of 1.0. Such a result is without historical precedent, and the Banking Agencies provided no explanation for assuming it would occur.
- The Proposal ignores relevant data in calibrating the operational risk capital requirement, and results in capital charges that are multiples of the largest losses experienced by banks in any year over a recent 20-year period, even including litigation losses associated with the 2008 global financial crisis.
- There is also a material over-capitalization for the risk arising from fee-related income because, unlike the calculation of the interest and financial components of the business indicator for operational risk, the services component does not offset revenues with expenses. There is also no upward limit on the size of the services component.
- The Proposal reflects a belief that unfavorable loss experience is relevant and should raise a bank's capital requirement, but it simultaneously indicates that favorable loss experience is irrelevant and cannot lower the requirement.

> A substantial portion of the increase in capital is targeted at 'operational risk,' or the risk of losses associated with lawsuits, fines, cyber-attacks, etc. The analysis provided in the proposal overstates the actual risk, as demonstrated by historical loss data; banks' operational risk losses rarely exceed even 30% of the proposed increase, according to industry reports. Given the significant capital increases for this risk category, we recommend a recalibration of the operational risk charge."
>
> Reps. Joyce Beatty and 58 Democratic colleagues at page 3

B. Overlap with Stress Testing

A total of 30 comment letters (approximately 8% of those reviewed) asserted that the Proposal would result in double counting with the Federal Reserve's CCAR stress tests, principally because under the Proposal's expanded risk-based approach, risk-weighted assets would reflect operational risk, CVA risk and market risk, all of which the stress tests are designed to capture. Banks would be required to pass on these magnified costs to their clients, thus increasing their clients' costs.

> The new market risk component ... known as FRTB, has been calibrated to require large banking organizations to capitalize for market risk assuming a period of market stress. The global market shock component of CCAR also requires large banking organizations to calibrate for market risk assuming a period of market stress. FRTB was calibrated and finalized by the Basel Committee without regard for the U.S. CCAR stress tests. ... Therefore, FRTB is completely additive with the [Global Market Shock] component of CCAR."
>
> Coalition for Derivatives End-Users at page 10

C. Concerns With Publicly Traded Requirement for Investment-Grade Risk Weighting

A total of 63 letters (approximately 18% of those reviewed) criticized the Banking Agencies for including a requirement that an entity or its parent have publicly traded securities in order to benefit from a lower risk weighting for being investment-grade. They did so principally on the ground that the publicly traded requirement was highly arbitrary and would exclude many investment grade businesses that posed low risk, some of them in regulated industries, including pension funds, investment funds, insurance companies, small- and medium-sized businesses, and agricultural concerns. Not being able to benefit from a lower risk weighting would mean higher costs of credit for such companies.

> "Simply put, we are very concerned that the Proposal will — unnecessarily — harm our clients. ... We start with the rather puzzling provision in the Proposal that requires bank counterparties — in order to avoid punitive risk ratings — to be both investment grade and have publicly-traded securities. ... Yet, it is well known that with the exception of exchange-traded funds, the vast majority of investment funds do not have publicly traded securities because there is no need for them. ... [T]he publicly-traded security requirement should be deleted. If it isn't, those key clients of ours would be harmed — for no justifiable policy reason — by higher costs for banking products and services, lesser liquidity in key markets, diminished access to essential banking products and services and fewer available counterparties to provide them."
>
> Franklin Resources, Inc. and Invesco Ltd. at pages 2-3

> "Although we appreciate the proposal's desire for a simple, objective criterion, the proposal's discrimination against non-publicly traded life insurers is wholly without merit and is inconsistent with the implementation of Basel III Endgame in other jurisdictions such as the United Kingdom and European Union."
>
> Guardian Life Insurance Company of America et al. at page 2

D. Adverse Effects on Particular Industries and Communities

Many commenters contended that the Proposal's increased capital requirements would have adverse effects on particular industries and communities by increasing the cost of banking services or by incentivizing banks not to offer certain services at all. These points were emphasized in:

- 147 letters raising concerns over effects on the mortgage industry and homeownership (about 41% of those reviewed)
- 135 letters raising concerns about effects on small businesses (about 38% of those reviewed)
- 114 letters raising concerns over effects on members of minority groups and other underrepresented communities (about 32% of those reviewed)
- 44 letters raising concerns about effects on renewable energy firms (about 12% of those reviewed)

> "Our comments focus on the impacts of the revised risk weights for the renewable energy tax equity market and the urgency of addressing this issue. However, there are other issues with the proposal that could substantially impact investment in and support for renewable energy initiatives more broadly. In particular, the new framework for market risk proposals and the additive requirements for derivative transactions could significantly raise the costs for U.S. companies to hedge their business and operating risks. In addition, the narrow scope of the lower investment-grade risk weight may increase borrowing costs for private creditworthy businesses, placing small and growing companies at a competitive disadvantage. These elements of the proposed rule could therefore also compromise the success of U.S. implementation of Basel III without other structural changes being made."
>
> American Council on Renewable Energy, at page 2 (on behalf of renewable energy developers, buyers, and institutional investors)

> "I know that an increase in capital requirements could exacerbate the existing economic disparities faced by African-Americans. Historically, Black individuals and communities have faced discrimination in banking and lending practices. Higher capital requirements may lead banks to be more risk-averse, making it even harder for Black Americans to access credit, obtain mortgages, or secure loans for businesses and education. Additionally, Black-owned businesses often rely on loans and lines of credit to keep their doors open and plan for expansion. Increased capital requirements could restrict the availability of these critical resources, hindering the growth and success of Black entrepreneurs."
>
> Tonza Thomas, State Secretary, Columbus Branch, Georgia NAACP at page1

E. Concerns With Treatment of Securitizations

Commenters on the Proposal's treatment of securitization transactions expressed concerns that the Proposal would significantly and adversely affect the US securitization markets. They noted that in the US, a large portion of consumer and small business loans are funded by securitizations, and US banks are an "integral part" of the securitization markets.[23] As a result, many large banking organizations have significant amounts of securitization exposures on their balance sheet, and by materially increasing the amount of capital that these banks would be required to hold against those exposures, the Proposal would make bank participation in the securitization markets much more costly. This would result in less credit availability for consumers and small businesses.[24]

> "Under the Proposed Rule, loans made by banks to [bankruptcy-remote special purpose entities] will become more expensive and less available; banks will require higher interest rates on [asset-backed securities (ABS)] before investing in them; liquidity in ABS will be reduced as market-making becomes more expensive and less available; and banks will be hindered in their ability to manage the credit risks arising from their loan portfolios. As a result, credit will become more expensive and less available for consumers and businesses, thus threatening their economic well-being."
>
> Structured Finance Association at page 3

F. US Banks Already Better Capitalized Than Global Peers

A total of 85 comment letters (approximately 24% of those reviewed) criticized the Banking Agencies for issuing the Proposal at a time when the US banking industry was already well capitalized, both as an objective matter and in comparison to global banks of the same size and complexity. Many of these letters cited statements by Federal Reserve Chair Jerome Powell and Treasury Secretary Janet Yellen after the collapse of SVB that the US banking system was strongly capitalized when arguing against the Proposal's increased capital requirements.

> "Layering on additional standards begs the question of analytical justification for such a large increase. Banks have consistently been deemed to be well capitalized and well positioned to deal with stress. ... Given these noted improvements ... we urge you to maintain the agreed upon Basel III international standards rather than adopting additional stricter policies that would cause undue harm to the United States mortgage industry."
>
> National Housing Conference at page 2

G. Removal of Certain Tailoring for Regional Banks

A total of 23 comment letters (approximately 6% of those reviewed) contended that the Proposal all but eliminates differing capital treatment for large regional banks, so-called Category III and Category IV banking organizations, even though in 2018, Congress passed a statute that requires that such banking organizations not be subject to as stringent enhanced prudential standards (which include capital requirements) as G-SIBs. As one letter stated, "[i]nstead of being aligned with S. 2155's framework, the Proposal flatly ignores the statutory $250 billion threshold and sets a new threshold of $100 billion without justifying it or considering how a lower threshold would impact the U.S. financial system. We believe that the Agencies' blanket application of requirements to all banking organizations is misguided."[25]

H. Legal / Process Concerns

A total of 54 comment letters (approximately 15% of those reviewed) expressed concern with legal and process issues related to the Proposal, some of which included a violation of the APA or other legal rules governing agency rulemakings. The principal contentions in these letters were:

- The Proposal assigns risk weights to bank assets and exposures generally based on no data or analysis; ignores voluminous data that could have informed an accurate calibration; and fails to consider alternative, more accurate measures of risk, including some negotiated by Banking Agency staff at the Basel Committee.
- Risk weights assigned to key categories of risk, including credit risk, were not connected to any objective standard of risk and were not supported by empirical evidence or analysis.
- The operational risk charge was similarly not grounded in any objective standard of risk and was based on unfounded assumptions about the risks of certain business activities and the nature of operational risk.
- The Banking Agencies relied on internal data and analyses to calibrate the capital requirements for operational, market, and CVA risks without making such data and analyses available for public comment.
- The Banking Agencies' disparate treatment of the international Basel III reforms was irrational — in some aspects, the Banking Agencies copied the international Basel III agreement without any independent analysis, and in others they deviated from it without explanation.
- The Proposal fails to account for the interaction of different elements of the capital regime and the impact of the broader regulatory and market landscape, such as capital requirements that duplicate those in the Federal Reserve's stress tests.
- The Proposal rests on insufficient economic analysis that is inconsistent with available evidence, and would significantly increase large banks' capital requirements despite evidence that their current requirements are more than adequate.

> “Given the consequences of the proposal's sweeping changes, one would reasonably expect the agencies to have undertaken a policymaking process that was deliberate, transparent, and based on all available data, and to have carefully considered all relevant aspects of the problems the proposal purports to address and potential alternative approaches to those problems. Unfortunately, the agencies failed to do so.”
>
> Bank Policy Institute, Securities Industry and Financial Markets Association, Financial Services Forum, and the US Chamber of Commerce's Center for Capital Markets Competitiveness at page 2

> “In light of the Proposed Rule's significant negative impact on manufacturers, the NAM is concerned about the NPRM's lack of data or quantitative analysis in support of the banking regulators' policy choices. In fact, two months after the NPRM was released, the Federal Reserve announced a request for data from banks affected by the Proposed Rule. ... However, waiting until after the release of the NPRM to collect and analyze relevant data calls into question whether the banking regulators considered relevant data in formulating the Proposed Rule as required by the APA.”
>
> National Association of Manufacturers at page 7

> We are very concerned that the proposal does not include any robust economic analysis evaluating its potential effects on retirement plans. By failing to provide such data and analysis, the banking agencies make it difficult for us, and the public more broadly, to understand and provide responsive comments on the proposal. Further, it is not clear to us how the agencies can design an appropriately calibrated final rule without sufficient analysis of the proposal's impact on end-users, including retirement plans. The lack of analysis is particularly concerning to us as the proposal is inexplicably different and harsher than the standards being implemented in other jurisdictions, both generally and in particular with respect to retirement plans."
>
> American Benefits Council at pages 3-4

> The Proposal contains hundreds of pages detailing new proposed requirements. ... With such myriad of proposed changes, one would expect that the Agencies would present a detailed and comprehensive economic cost-benefit analysis to demonstrate that the economic benefits of the Proposal exceed the costs of implementing the proposed revisions. This, however, is not the case."
>
> Professor Anthony Saunders, New York University Stern School of Business at page 4

Two commenters also addressed the constitutionality of Congress's delegation of authority to set capital requirements to the Banking Agencies in the first place. One commenter filed a letter arguing that this delegation may violate the constitutional nondelegation doctrine, as that doctrine is understood by a current majority of the Supreme Court.[26] An academic comment, meanwhile, emphasized the breadth of this delegation in its support of the Proposal, contending that "Congress intended for the banking agencies to have wide latitude in establishing capital requirements."[27]

> The nondelegation problem here is especially acute in part because of the distinctive 'multi-layer' delegations Congress has provided. The relevant agencies are not only empowered to set whatever capital levels they deem to be 'adequate,' but Congress has also expressly authorized them to consider any factors they deem relevant when doing so."
>
> Texas Public Policy Foundation at page 6

V. Summary of Principal Comments by Industry / Commenter

The Proposal drew extensive negative comments from individual banks and bank trade associations, with many calling for withdrawal and re-proposal for the reasons summarized above. Perhaps more surprising was the wide array of non-bank commenters who expressed significant concerns with the Proposal.

A. Banking Industry and Regulators

Substantial comments criticizing the Proposal, at both a general and highly technical level, were submitted by individual banks (30 letters) and US bank trade associations (15 letters). One comment letter expressing concerns came from the Conference of State Bank Supervisors, and another from a former regulator.

The banking industry made the following substantive contentions, in addition to strongly criticizing as a legal matter the Banking Agencies' rulemaking process under the APA:

- When agreement on the final aspects of Basel III was reached in 2017, it was based on a conclusion, formed over a decade of experience, that no further increases in bank capital were required. Further, there is no evidence that US banks currently hold insufficient capital against the four risks covered in the Proposal.
- The risk weights applicable to each category of risk — credit risk, market risk, CVA risk, and operational risk — were substantially and unjustifiably overstated based on all historical experience.
- With respect to operational, CVA, and market risk, the Proposal fails to acknowledge the existence of the Stress Capital Buffer set by the Federal Reserve, which, in part, was designed to cover the same risks and results in higher capital charges with respect to operational, CVA, and market risk. By not considering all components of the framework that determines bank capital requirements, the Proposal effectively treats the calculation of risk-weighted assets as entirely distinct from the aspects of the framework establishing numerical ratio requirements, but they are not.
- Looking at and revising only one aspect of the bank capital framework, while effectively ignoring the interrelationship with the other, as the Proposal would do, is a flawed and fragmented approach to the design and calibration of the bank capital framework.
- Because of its flaws, if finalized as proposed, the Proposal could result in a significant reduction in GDP and employment. US capital markets would become less liquid and therefore more dependent on non-bank intermediation in normal times and on governmental support when those non-banks step away from financial markets. Although the precise potential impact on capital market liquidity is extremely complex to assess, the effect wouldlikely be significant for several segments of the market, with resulting harm to US businesses, consumers, and Americans saving for retirement.
- The Proposal's requirements are more stringent than the Basel framework's standards as well as the requirements of foreign jurisdictions like the European Union and the United Kingdom, and as a result, the ability of US banking organizations to compete with their foreign peers would be diminished, which would ultimately harm US competitiveness.

In addition to these general concerns, the banking industry submitted a host of technical comments on the principal aspects of the Proposal. Given their breadth, it is possible only to describe the key themes of these comments:

- The lower 65% risk weight for investment-grade corporate exposures should not be limited to companies that have (or with a parent company that has) publicly traded securities outstanding. The Banking Agencies should permit alternative options to accomplish the goals sought to be advanced by the public trading requirement.
- The Proposal should have retained the current 100% risk weight for effective hedge pairs.
- The Proposal should have retained the 100% risk weight "bucket" for non-significant equity exposures and expand the 100% risk weight category to include investments made pursuant to a nationally legislated program, such as renewable tax credit equity financing.
- The Banking Agencies should reduce the "p-factor" under Securitization Standardized Approach from 1.0 to 0.5, and set the p-factor for certain securitization transactions at 0.25.
- The Proposal's provisions on the minimum haircut floor framework for SFTs should be removed because of the significant conceptual and operational issues they create.
- Risk weights for residential mortgage and other retail exposures should be based on a risk-based, empirical analysis such as the advanced approaches; at a minimum, however, risk weights should be aligned to the Basel III agreement and not be gold-plated.
- The Proposal should not have increased the credit conversion factor for unconditionally cancelable undrawn credit card lines.
- The Proposal was incorrect not to have set forth a 20% risk weight for exposures to more-than-well-capitalized banks, short-term bank exposures, and regulated financial institutions.
- The Proposal's approach to operational risk, among other issues, is subject to a bank-specific "internal loss multiplier" (ILM) floored at one, designed to assess whether that bank's individual operational risk loss history differs from the norm. There are two major problems with this approach. First, the Proposal reflects a belief that unfavorable loss experience is relevant and should raise a bank's capital charge but simultaneously indicates that favorable loss experience is irrelevant and cannot lower that very same charge. Second, past operational loss events are not, in fact, a reliable predictor of future operational risk losses.
- The Proposal does not account for the fact that CVA is included only in the Advanced Approaches and the current capital regime does not apply the Stress Capital Buffer to Advanced Approaches capital ratios, and so the risk-weighted assets resulting from the Advanced Approaches generally are not the binding capital requirements for banks with significant trading activities. By including CVA in the Expanded Risk-Based Approach RWAs, to which the Stress Capital Buffer would apply, the Banking Agencies were far over-calibrating for CVA risk.

B. Pension Funds and Other Retirement Groups

Pension fund commenters, which unanimously opposed the Proposal overall, raised a number of concerns. For example, the American Benefits Council, took issue with the Proposal's provisions relating to the market risk and CVA capital charges and its approach to SFTs.[28] CalPERS and the ERISA Industry Committee criticized the Proposal's requirement that a company be publicly traded in order to benefit from a lower risk weight for being investment-grade. They argued that pension funds, being highly regulated, were no more risky than companies with public securities outstanding and that the Proposal would raise the costs of financing and engaging in derivatives transactions with no justification.[29]

> "As currently written, the Proposal would interfere with our ability to access critical services, manage our assets in ways that create value for our members, and allow us to prudently manage our risk. The cumulative effect of these impacts is that U.S. public pension funds will experience increased costs, as well as additional volatility and risk, despite the fact that our Systems are highly creditworthy, transparent, accountable entities that provide retirement security for millions of Americans."
>
> State of Wisconsin Investment Board and Ohio Public Employees Retirement System at page 4

C. Asset Managers

Asset managers such as BlackRock, Franklin Templeton, and Invesco as well as trade associations that represent asset managers were also unanimous in opposing the Proposal. Their criticisms cited the Proposal's:

- Capital treatment of exposures to investment funds and other non-publicly traded companies
- Minimum haircut floors for SFTs
- Provisions relating to CVA risk
- Provisions relating to operational risk
- Provisions relating to market risk
- Treatment of certain equity exposures
- Treatment of ETFs and client cleared derivatives transactions under the GSIB Surcharge Proposal[30]

> "Under the Proposal, banking organizations would apply a less onerous 65% risk weight for investment grade corporate exposures provided that the company (or its parent) has publicly traded securities outstanding. ... Under this approach, listed closed-end funds (CEFs) and exchange-traded funds (ETFs) would qualify for the preferential risk weights but mutual funds would not."
>
> Allspring Global Investments at page 2

> [The effect of the Proposal] would be disproportionate to the potential risk being addressed, erode the capacity for individual investors to achieve desired outcomes, and seriously compromise the buy-side's ability to hedge investment, market and counterparty risks — and thereby create the unintended consequence of a much more systemically risky environment within the U.S. capital markets."
>
> Securities Industry and Financial Markets Association Asset Management Group at page 2

> [I]t seems entirely inconsistent for the [Banking] Agencies to insist that this Proposal is time-critical and at the same time argue, as they have repeatedly since the March 2023 collapse of Silicon Valley Bank, that banks are well-capitalized."
>
> Investment Company Institute at pages 4-5

D. Manufacturers

The National Association of Manufacturers, which represents 14,000 manufacturers, highlighted as particular areas of concern the Proposal's market risk and CVA provisions, which would raise manufacturers' costs of hedging; its increased capital charges for securitization exposures, which would adversely affect receivables financings; its more punitive risk weighting for privately held company exposures, even when those companies were the equivalent of investment-grade; its increased capital charge on undrawn commitments, which would raise the costs of working capital lines; and its basing of the operational risk charge in part on fee income, which would raise the costs of important bank products like letters of credit.[31]

> [The Proposal would] have significant adverse consequences for manufacturers of all sizes throughout the U.S. In particular, it would harm smaller manufacturers who lack access to the capital markets and must rely on bank funding, manufacturers who do not have publicly traded securities, and manufacturers who rely on banks to help them manage financial risks. Inexplicably, the [Proposal] does not consider these significant costs in its economic analysis. ... [M]anufacturers are already bearing a disproportionately large share of the $465 billion increase in regulatory compliance costs since 2012."
>
> National Association of Manufacturers at page 2

E. End Users of Derivatives

A coalition of end users of derivatives took issue with several aspects of the Proposal. This coalition includes 103 individual entities representing US agriculture, consumer goods, energy, hospitality, industrial goods, media, real estate, steel and aluminum production, technology, telecommunications, and transportation, with operations across the United States, and in some cases globally. A full list of the coalition's members is reproduced in the Appendix to this report, at pages 39-41.

The coalition first took issue with the Proposal's market risk and CVA risk provisions, and with the publicly traded security requirement. Taken together, the coalition argued, these provisions would lead to significant disruptions in the derivatives markets, reduce market liquidity and efficiency, and increase transaction costs for their important hedging transactions.[32] Stating that the Proposal was "likely to increase hedging costs, disincentivize prudent risk-management by corporations, and ultimately increase costs and risk and reduce investment in our economy," the coalition asked the Banking Agencies to conduct an appropriate cost-benefit analysis.[33]

> "Coalition members' ability to hedge and mitigate [their] commercial risks is crucial to their business operations and the broader U.S. economy. ... Therefore, we urge the Federal Banking Agencies to undertake a thoughtful approach to design an adjusted and balanced framework that, on the one hand, promotes safety and soundness and resolvability, bolsters financial stability and provides clarity to the markets and, on the other hand, does not diminish large banks' critical role as financial intermediaries.
>
> We are particularly concerned that specific aspects of the trading book components of the Basel III Endgame reforms could lead to reduced bank participation in certain financial markets — which would increase risk to financial stability and the broader U.S. economy by concentrating these products in less transparent markets and would increase costs for end-users."
>
> Coalition of Derivatives End-Users at pages 2, 18

Nine individual letters came from members of the coalition, including the Kaiser Aluminum Corporation and the American Public Gas Association, and emphasized these concerns.

F. Agriculture and Energy

Agricultural commenters — including the National Council of Farmer Cooperatives, the National Grain and Feed Association and the Commodity Markets Council — also unanimously opposed the Proposal. They expressed concerns with the Proposal's likely adverse effects due to its CVA risk and other provisions, on their ability to hedge risk (in their case, commodity price risk) through derivatives transactions. Given that many agricultural end users are located far outside major financial centers, "especially smaller entities such as grain elevators and family farms," these commenters feared that a reduction in derivatives clearing activities would disproportionately affect the agricultural sector.[34] These fears found support in an analysis by a Futures Industry Association study that estimated that the Proposal and G-SIB Surcharge Proposal would increase the six US G-SIBs' capital requirements for client clearing activities by more than 80%.[35]

> "The impact of increased capital costs for derivative contracts as a result of the Proposals may create a disincentive for banking organizations to continue to offer DCM clearing services through their FCMs, or act as market-makers in OTC commodity derivative contracts, which would result in less liquidity in commodity derivative markets, and fewer options for end-users."
>
> National Council of Farmer Cooperatives at page 3

Energy companies and their trade associations focused on several aspects of the Proposal. First, like agricultural commenters, they asserted that the Proposal would have a significant adverse effect on their ability to hedge commodity price risk because its provisions on CVA risk would increase the costs of derivatives transactions. They also stated that the Proposal would, as a general matter, deter large banking organizations from participating in the central clearing of derivatives. Second, firms from the renewables sector criticized the Proposal for increasing the risk weight for bank tax equity investments from 100% to 400%, arguing that the continued growth of the sector was highly dependent on such investments.

> [T]he number of firms that provide clearing for exchange-traded futures and options has fallen by 50% during the past twenty years. ... The situation is even more dire in the clearing of over-the-counter derivatives. In 2014, there were twenty-two firms that cleared OTC derivatives for clients. Today, there are only twelve, and the top six in terms of market share are US banks that will be directly affected" by the Proposal.
>
> Energy Trading Institute, Electric Power Supply Association, American Gas Association, American Public Gas Association, and Commodity Markets Council at page 2

> Tax equity, largely provided by domestic banks, has been a critical financing source for clean energy projects. The Inflation Reduction Act (IRA) extended and expanded the use of federal tax incentives to various renewable and carbon emission reduction technologies as well as the domestic manufacturing of advanced energy equipment. To meet the goals of the IRA, many forecasters estimate that tax equity will need to increase from a roughly $20 billion annual market today to over $50 billion."
>
> American Council on Renewable Energy at page 7 (on behalf of renewable energy developers, buyers, and institutional investors)

G. Insurance

Insurance companies' substantive comments unanimously expressed objections to the Proposal. They took issue with its publicly traded securities requirement for investment-grade preferential risk weighting, which some commenters noted would harm mutual insurance companies that were highly regulated and very creditworthy.[36] In addition, like manufacturing, energy, and agricultural commenters, insurers believed that the combination of the Proposal's market risk, operational risk, and CVA risk charge would adversely affect their ability to hedge risk through derivatives transactions. Moreover, both US and non-US insurers urged the Banking Agencies to consider credit insurance policies from financially strong and well-regulated insurance companies to be "eligible guarantees" that could reduce the risk weighting for corporate loans and other exposures, a treatment recognized by other national governments that have implemented Basel III.[37]

> The [proposed] changes to this regulatory landscape will contribute to less innovative, affordable, or beneficial offerings for consumers who rely on life insurance products for future financial stability. The back-end expense and changes in trading due to the incentives the proposal creates would not be beneficial for consumers, regulators, or solvency. Additionally, many of these proposed changes exceed the Basel standards and the rules as enacted in Europe, resulting in "gold-plated" rules that may make US firms less competitive than their global peers."
>
> American Council of Life Insurers at page 9

H. Non-Bank Financial Market Participants, Exchanges and Clearing Organizations

Non-bank participants in the financial markets — including the London Stock Exchange Group, Cboe Global Markets, and the Options Clearing Corporation — all echoed concerns raised by the comment letters of manufacturers, end users, and agricultural and energy firms about the Proposal's effects on the derivatives markets and the ability of counterparties to hedge their risks due to the negative effects of increased capital charges generally on central clearing and in particular the adverse effect of the CVA risk charge. Another commenter, Tradeweb, asserted that the Banking Agencies should reconsider the minimum haircut floors for SFTs due to the importance of SFTs for critical financial markets.

> We echo the concerns raised by many others in the industry about the magnitude of these changes and the significant additional capital necessary to satisfy the requirements. Given the increasingly smaller universe of clearing members coupled with higher demand for clearing, the Agencies must ensure the methodologies used to calculate bank capital requirements not only appropriately measure risk exposures but strike a balance that allows for recognition of capital efficiencies to be maximized and, as a result, foster robust clearing capacity in the economy."
>
> Cboe Global Markets, Inc. at page 4

> Funding markets—including securities borrowing and lending markets, as well as U.S. Treasury securities repo markets—are essential in supporting the efficient flow of credit to firms seeking financing to fund their operations and enhancing the liquidity and functioning of financial markets. The cash securities markets are a foundational aspect of the U.S. capital markets, permitting companies to fund their growth and workers to save for retirement. ... [I]f not appropriately calibrated, the minimum haircut floors could affect the ability of banks to engage in funding transactions and provide liquidity in [these] markets."
>
> Tradeweb Markets Inc. at page 7

I. Housing / Real Estate

Housing and commercial real estate commenters unanimously expressed deep concern with the Proposal, focusing on its approach to risk weighting of mortgages and its treatment of securitizations. With respect to mortgages, the housing industry echoed complaints from the civil rights community that the proposed risk weightings would disproportionately burden minority homeowners and interfere with the Banking Agencies' Community Reinvestment Act (CRA) goals as set forth in their recent CRA regulations. Commenters further criticized the Banking Agencies for not considering the effects of private mortgage insurance on the proposed risk weightings. With respect to securitizations, commenters noted that the Proposal would significantly increase risk weightings for securitization interests without any meaningful justification, which would provide further disincentives to mortgage lending.[38] As for commercial real estate, a commenter noted concerns over potential risks from this sector in the aftermath of the pandemic and asserted that those risks would be exacerbated if loans to the sector became more expensive because of increased capital requirements.[39]

> "As we evaluate changes to the financial, housing, and mortgage markets, we must take into account the current climate and landscape of the potential American homeowner. Regulators and Congress must evaluate all solutions to lower the costs of housing and remove barriers to home ownership. However, the current Endgame proposal from the Agencies will add another massive hurdle for consumers look[ing] for mortgage loan products. The specific changes to the risk-weighting for mortgages and servicing rights and the overall increase in capital across the board for the large banking institutions will inevitably mean that the cost of mortgages will increase, especially for lower-income consumers, those already struggling the most to obtain housing."
>
> National Association of Realtors at page 4

J. Small Businesses

Small business owners, none of whom submitted substantive comments supporting the Proposal, expressed substantial concerns that the Proposal would sharply reduce their access to credit. This concern was particularly felt by minority-owned small businesses, which emphasized their difficulty in accessing financing even under good economic conditions.[40]

> "We are already struggling to access capital — according to an October 2023 survey of our community, 78% of us [we]re concerned about our ability to access capital, a sharp increase from April 2022 when 77% of small business owners were confident about credit. ... The timing of this proposal couldn't be worse. In fact, the Federal Reserve acknowledged recently that the share of households reporting that it is harder to obtain credit today than one year ago hit a new high in August [2023]."
>
> Goldman Sachs — 10,000 Small Businesses (signed by 3,092 small business owners) at page 1

K. Members of Congress

A total of 237 members of Congress wrote or signed letters commenting on the Proposal. Of these, 225 members (just under 95% of those commenting and over 40% of all sitting Senators and House members) signed letters opposing aspects of the Proposal. The opposition was broadly bipartisan, with 100% of Republicans who commented on the Proposal expressing concerns, and 93% of Democrats — including the Chairs of the Congressional Black Caucus and the Congressional Hispanic Caucus — similarly criticizing aspects of the Proposal. One congressional comment letter, signed by 12 Senators (11 Senate Democrats in total, and one Independent Senator who caucuses with the Democrats), supported the Proposal. By contrast, the 225 members of Congress who wrote or signed letters opposing aspects of the Proposal included: 16 Senate Democrats, one Independent who caucuses with the Democrats, 39 Senate Republicans, 129 House Democrats, and 40 House Republicans. Of the 23 letters submitted by members of Congress expressing concerns, including a bipartisan House letter focused solely on capital markets issues, 11 were led (or co-led) by Democrats, and 12 were led by Republicans. Of these comments:

- A letter signed by 107 House Democrats called for the Banking Agencies to reconsider the proposed 400% risk-weighting for tax equity investments due to its likely effects on clean energy production.[41]
- A letter signed by 59 House Democrats requested that the Banking Agencies reconsider the changes to mortgage risk weightings, on the ground that many mortgages for members of minority groups would carry a higher risk weighting.[42] That same letter also criticized the requirement that a company be publicly traded in order to benefit from a lower risk weight for investment-grade borrowers as likely to harm small businesses and contended that the Proposal's analysis "overstates [the] actual risk" of operational risk events and that the operational risk charge should therefore be recalibrated.[43]
- A letter from Senator Tim Scott and signed by 38 other Senate Republicans urged the Banking Agencies to withdraw the Proposal, asserting, among other things, that it "lack[ed] any quantitative analysis to suggest that the rule is even necessary."[44]
- A bipartisan House letter expressed concerns with the Proposal's estimated increase of "risk-weighted assets associated with banks' trading and capital markets activities [of] $880 billion," stating that if the Proposal were finalized as proposed, "there may be a significant impact to the ability or willingness of banks to play various critical roles in our capital markets."[45]

One letter, submitted by Senate Banking Committee Chairman Sherrod Brown and signed by 10 other Democrats and one Independent Senator, supported the Proposal. This letter argued that the Proposal will only "impact[] fewer than 50 banks that operate in the U.S.," that "[c]apital supports access to credit," and that the Proposal would close important loopholes for banks in the US$100 billion to US$250 billion total consolidated asset range.[46]

L. State and Local Representatives

Locally elected representatives — including state representatives and senators, mayors, and council members representing 12 states — submitted a total of 66 letters, all of which expressed concerns about the Proposal. Most discussed the disparate impact that the Proposal's increased capital requirements could have on the ability of small businesses and members of minority communities to access credit and meet mortgage requirements due to the higher cost of borrowing.[47] Several of the comment letters also noted that increased capital requirements could have a detrimental effect on clean energy and other infrastructure projects.[48] In addition, a number of commenters questioned the necessity of the Proposal on the basis that economic leaders such as Treasury Secretary Janet Yellen had told the American public that "the American banking system is really safe and well-capitalized [and] ... resilient."[49]`

M. Civil Rights Advocates

Members of the civil rights community, including NAACP chapters and members in South Carolina, Georgia, Pennsylvania, and Ohio and the Hispanic Leadership Fund, expressed grave concerns about the Proposal's likely effects on minority home ownership and small businesses. Commenters were particularly focused on the effects of the Proposal's keying mortgage risk weighting off LTV ratios, noting that the 20% down payment requirement for lower risk weighting would exclude many minority homebuyers. With respect to effects on small business, commenters emphasized that Black-owned small businesses had long "faced disproportionate challenges when seeking access to capital and resources, making it even more critical to take their unique circumstances into account when making policy decisions that affect their operations."[50]

N. Union Executives

The two union executives who commented substantively on the Proposal expressed concerns that its higher capital requirements would result in less lending to infrastructure and other development projects, such as a new computer chip facility in Ohio, and thereby have adverse knock-on effects on employment in the construction industry.[51] On the other hand, a think tank letter supporting the Proposal that argued that increased capital requirements would advance the safety and soundness of the banking sector and reduce systemic risk was joined without individual comment by the AFL-CIO.[52]

O. Academics

Academic comment letters on the Proposal expressed a variety of views. Those that took issue with the Proposal emphasized its divergence from the Basel III Endgame agreement, which would mean US divergence from other jurisdictions' implementation,[53] as well as an asserted lack of economic evidence, cost-benefit analysis, or consideration of overlapping capital charges addressing similar risks.[54] Academic letters supporting the Proposal, as noted above, argued that increased capital would reduce systemic risk, permit increased bank lending in all economic cycles, and appropriately reduce reliance on bank internal models.[55]

VI. Conclusion

The record of comments on the Proposal includes a substantial amount of detailed and significant comments — almost all of which express reservations about at least some of the Proposal's aspects. Under the APA, the Banking Agencies are now required to consider and respond to these comments as they decide whether and how to finalize the proposed rulemaking. In doing so, the Banking Agencies will need to "explain the assumptions and methodology" underlying the Proposal; "and, if the methodology is challenged ... provide a complete analytic defense."[56] If the Banking Agencies fail to "respond to relevant and significant public comments," any final rule can be set aside by a reviewing court as arbitrary and capricious.[57]

Given the unusually large volume of critical comments received from such a diverse group of stakeholders, and the significant substantive and policy and legal problems those commenters have identified in the Proposal, the Banking Agencies face certain challenges. If they decide to press forward to finalize the proposed rule, they will need to provide considered responses to the many serious policy concerns raised by the commenters. Even if the Banking Agencies make significant changes from the Proposal, any final rule could still be vulnerable to challenge under the APA for the reasons identified by commenters. As an alternative, the Banking Agencies may consider withdrawing the Proposal or re-proposing the rule to address the many concerns commenters have raised.

Endnotes

1 At the same time that the Banking Agencies issued the Proposal, they issued a proposal (the G-SIB Surcharge Proposal) under which the method for calculating the capital surcharge for global systemically important banks (G-SIBs) would be revised.

2 We excluded from our analysis 44 individual and two entity comments that in our view did not meaningfully address the details of the Proposal. In addition, we counted each comment letter as a single unit, even though some represent the views of multiple individuals or entities. Entity comments and substantive individual comments are linked in the Appendix.

3 Several agency principals have similarly expressed opposition or serious concerns with the Proposal in written statements and speeches; however, as they did not submit formal comment letters, they are not counted among those reviewed here.

4 This letter indicated that not all of the Council's members agreed with all aspects of the comment letter.

5 *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 535 (D.C. Cir. 1983).

6 *Cape Cod Hosp. v. Sebelius*, 630 F.3d 203, 211-12 (D.C. Cir. 2011); *see* 5 U.S.C. § 706.

7 On January 16, 2024, Federal Reserve Governor Christopher Waller opined that the Banking Agencies should consider withdrawing the Proposal and starting over, given how much work would be involved in producing an acceptable final rule. *See* https://www.americanbanker.com/news/feds-waller-says-capital-plan-should-be-withdrawn#:~:text=Waller%27s%20remarks%20occurred%20on%20the,least%20%24100%20billion%20of%20assets.

8 Trade groups are included within the industry they represent; comment letters from banking regulators are included in Banks.

9 Association of British Insurers.

10 The Investment Association.

11 Dutch Federation of Pension Funds.

12 National Association of Manufacturers.

13 Sens. Gillibrand and Lummis Letter.

14 Center for American Progress. Although supportive of the Proposal, this letter indicated that the Proposal did not go far enough in increasing capital requirements.

15 CFA Institute Systemic Risk Council. This letter indicated that not all of the Council's members agreed with all aspects of the comment letter.

16 Better Markets.

17 *Id.*

18 CFA Institute Systemic Risk Council.

19 Better Markets.

20 CFA Institute Systemic Risk Council.

21 Profs. Anat R. Admati, Hilary J. Allen, and 28 other banking and finance scholars.

22 Better Markets.

23 Structured Finance Association.

24 *Id.*

25 Ally Financial Inc., Citizens Financial Group, Inc., Comerica Incorporated, Discover Financial Services, Fifth Third Bancorp, First Citizens Bancshares, Inc., Huntington Bancshares Inc., KeyCorp, New York Community Bancorp, Inc., and Regions Financial Corporation.

26 Texas Public Policy Foundation.

27 Profs. Admati, Allen, et al.

28 American Benefits Council.

29 CalPERS; The ERISA Industry Committee.

30 Securities Industry and Financial Markets Association Asset Management Group.

31 National Association of Manufacturers.

32 Coalition of Derivatives End-Users.

33 *Id.*

34 National Council of Farmer Cooperatives, Commodity Markets Council, and seven other agricultural associations.

35 Futures Industry Association.

36 Guardian Life Insurance Company of America et al.

37 International Underwriting Association (IUA), Lloyd's Market Association (LMA), and International Credit Insurance and Surety Association (ICISA).

38 Angel Oak Companies LP.

39 CRE Finance Council.

40 Jamiel Robinson, Founder/CEO, Grand Rapids Area Black Businesses (GRABB).

41 Reps. Casten, et al., U.S. House of Representatives (House Democrats Climate Letter, 107 signatures).

42 Reps. Beatty, et al., U.S. House of Representatives (59 Democratic signatures).

43 *Id.*

44 Sens. Scott, et al., U.S. Senate (39 Signatures).

45 Reps. Sherman, et al., U.S. House of Representatives (15 signatures).

46 Sens. Brown et al., U.S. Senate (12 Signatures).

47 Katie Rosenberg, Mayor of Wausau, Wisconsin.

[48] Rachel Hood, Michigan State Representative, 81st District; Jim Haadsma, Michigan State Representative, 44th District.

[49] Matt Hughes, Mayor Pro-Tempore, Hillsborough, North Carolina.

[50] Jamiel Robinson, Founder/CEO, Grand Rapids Area Black Businesses (GRABB).

[51] Dorsey Hager, Columbus/Central Ohio Building & Construction Trades Council.

[52] 20/20 Vision and nine other organizations.

[53] Prof. David Zaring, The Wharton School, University of Pennsylvania.

[54] Prof. Anthony Saunders, New York University Stern School of Business.

[55] Profs. Anat R. Admati, et al.

[56] *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 535 (D.C. Cir. 1983).

[57] *Cape Cod Hosp. v. Sebelius*, 630 F.3d 203, 211-12 (D.C. Cir. 2011); *see* 5 U.S.C. § 706.

Appendix: Basel III Endgame Comment Letters

Academics and Think Tanks

Academics

- Prof. Anat R. Admati, Stanford University Graduate School of Business
- Profs. Anat R. Admati, et al. (30 signatures)
- E.J. Antoni, PhD
- Stephen Matteo Miller, Senior Research Fellow, Financial Markets Working Group, George Mason University
- Prof. Anthony Saunders, New York University Stern School of Business
- Prof. David Zaring, The Wharton School, University of Pennsylvania

Think Tanks

- 20/20 Vision, AFL-CIO, American Economic Liberties Project, Americans for Financial Reform Education Fund, Consumer Federation of America, Institute for Agriculture and Trade Policy, Massachusetts Action for Justice, Public Citizen, Rise Economy (formerly California Reinvestment Coalition), and The One Less Foundation
- Advancing American Freedom
- American Consumer Institute, Taxpayers Protection Alliance, Competitive Enterprise Institute, 60 Plus Association, Frontiers for Freedom, FreedomWorks, International Center for Law & Economics, Americans for Tax Reform, R Street Institute, American Action Forum, Hispanic Leadership Fund, National Taxpayers Union, and Consumer Action for a Strong Economy
- Americans for Financial Reform Education Fund
- Americans for Financial Reform, Carrizo/Comecrudo Tribal Nation of Texas, Centre for Citizens Conserving Environment & Management, Climate Action Rhode Island-350, Earth Ethics, Inc., E3G, Friends of the Earth U.S., Indigenous Environmental Network, 1000 Grandmothers for Future Generations, Public Citizen, Revolving Door Project, Sierra Club, The Phoenix Group, The Sunrise Project, 350 Chicago, 350 Eastside, 350 Silicon Valley, 350 Wisconsin, and 350 Yakima Climate Action
- Americans for Tax Reform
- Center for American Progress
- Center for Responsible Lending
- CFA Institute Systemic Risk Council
- Committee on Capital Markets Regulation
- Committee on Capital Markets Regulation (John L. Thornton, Hal S. Scott, and R. Glenn Hubbard)
- The Real Estate Roundtable
- Texas Public Policy Foundation
- Woodstock Institute

Agriculture and Energy

Agriculture

- National Council of Farmer Cooperatives
- National Council of Farmer Cooperatives, Commodity Markets Council, National Cattlemen’s Beef Association, National Grain and Feed Association, American Farm Bureau Federation, National Milk Producers Federation, National Pork Producers Council, American Cotton Shippers Association, and Farm Credit Council

- National Grain and Feed Association
- Jeremy Seidlitz
- Chris Sumpter
- Jerry Swanson

Energy

- American Clean Power Association
- American Council on Renewable Energy
- American Council on Renewable Energy, American Clean Power, Clean Energy Buyers Association, Solar Energy Industries Association, Arevon, Avangrid, BlueWave, Clearway Energy, Copenhagen Infrastructure Partners, Cordelio Power, Cypress Creek Renewables, DNV Energy USA Inc., Ecoplexus Inc., EDF Renewables, EIP Storage, LLC, Enel North America, ENGIE North America, Eolian, L.P., Form Energy, HASI, Hy Stor Energy, Intersect Power, Invenergy, kWh Analytics, Leeward Renewable Energy, LLC, Longroad Energy, MasTec, Inc., Mississippi Clean Hydrogen Hub, Monarch Private Capital, LLC, NextEra Energy, Nordex USA, Onward Energy, Ørsted, Pattern Energy, PineGate Renewables, LLC, Primergy Solar, LLC, RWE, SB Energy, Siemens Energy, Inc., Terra-Gen, LLC, TPI Composites, Inc., Vesper Energy Development, LLC., and Vestas - American Wind Technology, Inc.
- American Public Gas Association
- American Public Power Association and National Rural Electric Cooperative Association
- Arena Energy, LLC
- Marcurius Byrd
- Clean Energy States Alliance
- Emily Cleveland
- Coalition for Community Solar Access
- Energy Trading Institute, Electric Power Supply Association, American Gas Association, American Public Gas Association, Commodity Markets Council
- International Energy Credit Association
- Cari Olson
- Renewable Energy Tax Advisors, LLC
- San Diego Community Power, Clean Power Alliance, Silicon Valley Clean Energy, San Jose Clean Energy, Sonoma Clean Power Authority, Central Coast Community Energy, MCE, Pioneer Community Energy, Redwood Coast Energy Authority, Peninsula Clean Energy, and Orange County Power Authority
- Solar Energy Industries Association
- TurbineHub

Asset Management

- AllianceBernstein
- Allspring Global Investments
- BlackRock, Inc.
- Franklin Resources, Inc. and Invesco Ltd.
- Danny Nelson, PFM Asset Management
- Investment Company Institute (Eric Pan and Sean Collins)
- Investment Company Institute
- Nuveen Fund Advisors, LLC
- Securities Industry and Financial Markets Association Asset Management Group

Banks

Foreign Banks

- Asian Infrastructure Investment Bank (AIIB)
- Barclays
- HSBC North America Holdings, Inc.

- Santander Holdings USA, Inc.
- UBS

Trade Associations

- American Bankers Association, Alabama Bankers Association, Alaska Bankers Association, Arizona Bankers Association, Arkansas Bankers Association, California Bankers Association, Colorado Bankers Association, Connecticut Bankers Association, DC Bankers Association, Delaware Bankers Association, Florida Bankers Association, Georgia Bankers Association, Hawaii Bankers Association, Idaho Bankers Association, Illinois Bankers Association, Indiana Bankers Association, Iowa Bankers Association, Kansas Bankers Association, Kentucky Bankers Association, Maine Bankers Association, Maryland Bankers Association, Massachusetts Bankers Association, Michigan Bankers Association, Minnesota Bankers Association, Mississippi Bankers Association, Missouri Bankers Association, Montana Bankers Association, Nebraska Bankers Association, Nevada Bankers Association, New Hampshire Bankers Association, New Jersey Bankers Association, New Mexico Bankers Association, New York Bankers Association, North Carolina Bankers Association, North Dakota Bankers Association, Ohio Bankers Association, Oklahoma Bankers Association, Oregon Bankers Association, Pennsylvania Bankers Association, Puerto Rico Bankers Association, Rhode Island Bankers Association, South Carolina Bankers Association, Tennessee Bankers Association, Texas Bankers Association, Utah Bankers Association, Vermont Bankers Association, Virginia Bankers Association, Washington Bankers Association, West Virginia Bankers Association, Wisconsin Bankers Association, Wyoming Bankers Association
- Bank Policy Institute and American Bankers Association
- Bank Policy Institute, Securities Industry and Financial Markets Association, Financial Services Forum, and the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness
- Bank Policy Institute, Financial Services Forum, Securities Industry and Financial Markets Association, American Bankers Association, Institute of International Bankers, and the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness(September 12, 2023)
- Bank Policy Institute, Financial Services Forum, Securities Industry and Financial Markets Association, American Bankers Association, Institute of International Bankers, and the U.S. Chamber of Commerce's Center for Capital Markets Competitiveness(October 13, 2023)
- Bankers Association for Finance and Trade
- Bankers Association for Finance and Trade and International Trade and Forfaiting Association
- Consumer Bankers Association
- Financial Services Forum
- Financial Services Forum, American Bankers Association, Bank Policy Institute, and Securities Industry and Financial Markets Association
- Independent Community Bankers of America
- International Association of Credit Portfolio Managers
- National Bankers Association
- Secured Finance Network
- Wisconsin Bankers Association

US Banks

- Ally Financial Inc.
- Ally Financial Inc., The Charles Schwab Corporation, Discover Financial Services, and Synchrony Financial
- Ally Financial Inc., Citizens Financial Group, Inc., Comerica Incorporated, Discover Financial Services, Fifth Third Bancorp, First Citizens Bancshares, Inc., Huntington Bancshares Inc., KeyCorp, New York Community Bancorp, Inc., and Regions Financial Corporation
- AgriBank
- American Express
- Axos Bank
- The Bank of New York Mellon Corporation
- Capital One Financial Corporation, The PNC Financial Services Group, Inc., Truist Financial Corporation, and U.S. Bancorp
- Citigroup
- CoBank, ACB
- Discover Financial Services
- Florida Capital Bank, N.A.
- Goldman Sachs Asset Management
- The Goldman Sachs Group, Inc.
- JPMorgan Chase & Co.
- KeyCorp
- Morgan Stanley
- The Northern Trust Corporation
- Regions Financial Corporation
- State Street Corporation
- Synchrony Financial
- Synchrony Financial, Discover Financial Services, and Capital One Financial
- United Services Automobile Association (USAA)
- U.S. Bancorp
- Wells Fargo

US Regulators

- Conference of State Bank Supervisors
- Edward J. DeMarco, President, Housing Policy Council; former Acting Director of the Federal Housing Finance Agency (FHFA); former member of the FSOC

Civil Rights Advocates

- Stella J. Adams, Housing Chair, Durham Committee on the Affairs of Black People
- Jaladah Aslam, President, Youngstown Warren Black Caucus
- Ray Brown
- Adrian Chester, Board Member, Greater Columbus Urban League
- Daylon A. Davis, President, Pittsburgh NAACP
- Shawn Danforth, Helena, MT
- Lester Dewaine Frye
- Wane A. Hailes, President / Publisher, The Courier Eco Latino Newspaper; Former President, Columbus, GA Chapter of the NAACP
- Gary Horton, President, Erie NAACP Unit 2262
- Angela Lang, Executive Director, Black Leaders Organizing for Communities
- Chance Lebron, Young Committee Chair of the West Spartanburg NAACP
- Demetrius McBride, Advocacy Chairperson, Urban League of the River Valley Young Professionals

- Reverend Dr. W. Perryman Jr., NAACP Toledo Unit 3204
- M.T. Pyatt
- Jamiel Robinson, Founder/CEO, Grand Rapids Area Black Businesses (GRABB)
- Renitta Sweet, Communications Chair, Urban League of Greater Atlanta Young Professionals; Former President, Urban League of the River Valley
- Bishop Talmadge J. Thomas
- Tonza Thomas, State Secretary, Columbus Branch, Georgia NAACP
- Elke Weil-Millan

Foreign Commenters

- Association of British Insurers
- Institute of International Bankers
- International Association of Credit Portfolio Managers and International Trade and Forfaiting Association
- International Underwriting Association, Lloyd's Market Association, and International Credit Insurance and Surety Association
- The Investment Association
- World Federation of Exchanges (Charlie Ryder, Richard Metcalfe and Nandini Sukumar)

General Business and Manufacturing

- AEGIS Hedging Solutions
- Business Roundtable
- Clarke-Mobile Counties (Alabama) Gas District, The Black Belt Energy Gas District (Alabama) and The Lower Alabama Gas District
- Coalition for Derivatives End-Users
- Coalition for Derivatives EndUsers
  - AB InBev
  - Aisera Inc.
  - Alabama Municipal Electric Authority
  - American Farm Bureau Federation
  - American Honda Finance Corp.
  - American Public Gas Association
  - Apexon
  - Arena Energy
  - Ascent Resources
  - AT&T
  - Aukum Group LLC
  - Aviation Facilities Company Management
  - B&B Hotels
  - BASA Resources, Inc.
  - Basin Electric Power Cooperative
  - BayWa r.e.
  - Black Belt Energy
  - BPL Medical
  - Callon Petroleum Company
  - Carroll Electric Membership Cooperative
  - Chatham Financial Corp.
  - Chesapeake Energy Corporation
  - Clarke-Mobile Counties Gas District
  - Commodity Markets Council
  - Comstock Resources
  - Conexa Saude
  - Constructel Visabeira S.A.

- Cprime, Inc.
- Cummins Inc.
- Cyfirma
- Cypress Creek Renewables
- data.world
- Digibee
- Dow Inc.
- Electric Power Supply Association
- Energy Trading Institute
- EQT Corporation
- FirstMeridian Business Services Limited
- Fortress Information Security
- Fuelcomm Inc. d/b/a Stackline
- GC Infrastructure Investors LLC
- GridPoint, Inc.
- Hertz
- HES International B.V.
- Hilton Worldwide Holdings Inc.
- Honeywell International Inc.
- Hydrostor Inc.
- ILS Inc.
- International Business Machines Corporation
- IOG Resources
- Kaiser Aluminum
- Kinder Morgan Inc.
- Liberty Global
- Liberty Latin America Ltd.
- Lower Alabama Gas
- Madhive
- Marriott International, Inc.
- Metiri Group
- MoEngage Inc.
- Moody’s
- National Association of Manufacturers
- National Cattlemen’s Beef Association
- National Rural Electric Cooperative Association
- NNESP LLC
- NNN REIT, Inc.
- Norgine BV
- Northeast Natural Energy LLC
- Oglethorpe Power Corporation
- Omega Healthcare
- Ovintiv Inc.
- PayPal Holdings, Inc.
- PBF Energy Inc.
- People Corporation
- Public Energy Authority of Kentucky
- Recover Fiber
- Rhythm Energy
- RWE Supply & Trading Americas LLC
- Sabinal Energy
- Seneca Resources Company
- Siemens USA
- Slickdeals LLC
- Snyder Brothers, Inc.
- Southwest Airlines Co.
- Striim

- Sunin
- Terra Energy Partners
- The Association of Corporate Treasurers
- Tienda Inglesa
- Transcendia
- Unico
- U.S. Chamber of Commerce
- U.S. Steel
- Vistra Corp.
- Visual Comfort & Co.
- Vodafone
- Volvo Group North America
- Warner Bros. Discovery, Inc.
- Western Farmers Electric Cooperative
- Whirlpool Corporation
- WildFire Energy
- Xylem
- Yum Brands
- Zaxby's

- Huntsville Utilities
- Kaiser Aluminum Corporation
- Liberty Latin America Ltd.
- Memphis Light, Gas and Water
- Municipal Gas Authority of Georgia
- National Association of Manufacturers
- National Public Gas Agency
- Siwek Construction, Flint, MI
- U.S. Chamber of Commerce

Housing / Real Estate

- Affordable Housing Tax Credit Coalition, Council for Rural and Affordable Housing, Enterprise Community Partners, Housing Assistance Council, LIHTC Working Group, Local Initiatives Support Corporation/ National Equity Fund, Low Income Investment Fund, National Affordable Housing Management Association, National Apartment Association, National Association of Affordable Housing Lenders, National Association of Home Builders of the United States, National Association of State and Local Equity Funds, National Council of State Housing Agencies, National Housing and Rehabilitation Association, National Housing Conference, National Leased Housing Association, National Multifamily Housing Council, National Rural Housing Coalition, and Stewards of Affordable Housing for the Future
- Virgie Ammerman
- Angel Oak Companies
- Arch Capital Group Ltd.
- Building Owners and Managers Association International
- California Association of Realtors
- CRE Finance Council
- CRE Finance Council, ICSC, NAIOP, Commercial Real Estate Development Association, Nareit, Real Estate Bar of New York, American Land Title Association, Mortgage Bankers Association, National Association of Home Builders of the United States, National Multifamily Housing Council, and The Real Estate Roundtable
- Jalen Elrod
- Enact Holdings, Inc.
- Fannie Mae
- Freddie Mac

- Samuel Grant
- Joel Griffith
- Historic Tax Credit Coalition
- Housing Policy Council
- Chris Miller
- Mortgage Bankers Association
- Mortgage Bankers Association; National Association of Realtors, National Association of Home Builders, Community Home Lenders of America, United States Mortgage Insurers, and the Manufactured Housing Institute
- Mortgage Guaranty Insurance Corporation
- National Association of Affordable Housing Lenders
- National Association of Affordable Housing Lenders, NMTC Coalition, and NMTC Working Group
- National Association of Realtors
- National Council of State Housing Agencies
- National Housing Conference, AmeriHome Mortgage, Bank Policy Institute, Eden Housing, Enact Holdings, Inc., Faith and Community Empowerment, Guild Mortgage, Habitat for Humanity International, Homeownership Council of America, Local Initiatives Support Corporation, Low Income Investment Fund, Manufactured Housing Institute, Mortgage Bankers Association, NAACP, National Affordable Housing Management Association, National Association of Home Builders of the United States, National Association of Realtors, National Community Stabilization Trust, National Multifamily Housing Council, National Council of State Housing Agencies, National Urban League, New American Funding, Pulte Financial Services, ROC USA, UnidosUS, U.S. Mortgage Insurers, and Western Alliance Bank
- National Multifamily Housing Council and National Apartment Association
- Novogradac Low Income Housing Tax Credit Working Group
- Novogradac New Markets Tax Credit Working Group
- PMI Rate Pro
- Redwood Trust, Inc.
- Hasani (Marlon) Simmons
- U.S. Mortgage Insurers
- Lawrence Wright

Insurance

- American Council of Life Insurers
- Guardian Life Insurance Company of America, Nationwide, Northwestern Mutual Life Insurance Company, TruStage Financial Group, Massachusetts Mutual Life Insurance Company, New York Life Insurance Company, Securian Financial Group, Inc., and Western & Southern Financial Group
- Lloyd’s America, Inc.
- Marsh McLennan
- National Association of Mutual Insurance Companies
- Newport Group
- New York Life Insurance Company
- Reinsurance Association of America
- Reinsurance Association of America, The Council of Insurance Agents & Brokers, Wholesale & Specialty Insurance Association, Independent Insurance Agents & Brokers of America, National Association of Mutual Insurance Companies, U.S. Mortgage Insurers, American Property Casualty Insurance Association, and The Surety & Fidelity Association of America

Local Elected Officials

Arizona

- Consuelo Hernandez, Arizona State Representative
- Robert Meza, Former Arizona State Senator

Georgia

- Wendy Davis, Former Rome City Commissioner
- Joyce Denson, Mayor of Toomsboro, Georgia
- Dar'shun Kendrick, Georgia House of Representatives
- Teddy Reese, Georgia State Representative
- Kim Schofield, Georgia State Representative

Minnesota

- LaTrisha Vetaw, City of Minneapolis Council Member
- Hollies J. Winston, Mayor of Brooklyn Park, Minnesota

Michigan

- Fred Durhal III, Councilmember - District 7, Detroit City Council
- Tim Greimel, Mayor of Pontiac, Michigan
- Jim Haadsma, Michigan State Representative
- Rachel Hood, Michigan State Representative
- Nora Jackson, Mayor Pro-Tem Jackson, Representative for City of Albion Precinct #3
- Donavan McKinney, Michigan State Representative
- Monica Sparks, Kent County Commissioner

Montana

- John Fleming, former Montana State Representative
- Jim Smith, former Mayor of Helena, Montana

Nevada

- Francisco Aguilar, Nevada Secretary of State
- Natha Anderson, Nevada State Assemblywoman
- Max Carter III, Nevada State Assemblyman
- Venicia Considine, Nevada State Assemblywoman
- Elaine Marzola, Nevada State Assemblywoman
- Julie Pazina, Nevada State Senator
- Shondra Summers-Armstrong, Nevada State Assemblywoman
- Selena Torres, Nevada State Assemblywoman
- Howard Watts III, Nevada State Assemblymember

North Carolina

- Julie von Haefen, North Carolina State Representative
- Matt Hughes, Mayor Pro-Tempore of Hillsborough, North Carolina
- Michael Wray, North Carolina State Assemblyman

Ohio

- Toyia Tucker, Columbus City Councilmember

- Ashley White (on behalf of Terrence Upchurch, Ohio State Representative)

Pennsylvania

- Tina M. Davis, Pennsylvania State Representative
- Jonathan Kinloch, Wayne County Commissioner
- Greg Scott, Pennsylvania State Representative
- Ismail Smith-Wade-El, Pennsylvania State Representative
- Dr. Monica Taylor, Delaware County Council Chair
- Dwan B. Walker, Mayor of Aliquippa, Pennsylvania

South Carolina

- James Blassingame, Sumter City Council Member
- Jermaine L. Johnson, South Carolina State Representative
- Kevin L. Johnson, South Carolina State Senator
- John Richard C. King, South Carolina State Representative
- Annie E. McDaniel, South Carolina State Representative
- Russell L. Ott, South Carolina State Representative
- Seth Rose, South Carolina State Representative
- Shedron Williams, Former South Carolina State Representative

Virginia

- Lamont Bagby, Virginia State Senator
- L. Louise Lucas, Virginia State Senator
- Fernando Martinez, Former Vice-Mayor of Leesburg, Virginia
- Andria P. McClellan, Norfolk City Councilmember
- Delores McQuinn, Virginia State Delegate
- Tyrone E. Nelson, Commonwealth of Virginia County of Henrico
- Cynthia I. Newbille, Richmond City Council Member
- Levar M. Stoney, Mayor of Richmond, Virginia
- Scott A. Surovell, Virginia State Senator
- Mary Sue Terry, Former Attorney General of Virginia

Wisconsin

- Melissa Agard, Wisconsin State Senate
- Mandela Barnes, 45th Lt. Governor of Wisconsin
- David Crowley, Milwaukee County Executive
- Jodi Emerson, Wisconsin State Representative
- Francesca Hong, Wisconsin State Representative
- Cavalier Johnson, Mayor of the City of Milwaukee, Wisconsin
- Greta Neubauer, Wisconsin Assembly Democratic Leader
- Marcelia N. Nicholson, Milwaukee County Board of Supervisors
- Joe Parisi, Dane County Executive
- Katie Rosenberg, Mayor of Wausau, Wisconsin

Non-Bank Financial Market Participants, Exchanges and Clearing Organizations

- American Securities Association
- Bloomberg L.P.
- CBOE Global Markets
- CME Group
- Depository Trust & Clearing Corporation
- Eversheds Sutherland LLP, on behalf of Farm Credit System
- Eversheds Sutherland LLP, on behalf of Federal Home Loan Banks and the Federal Home Loan Banks Office of Finance
- Federal Agricultural Mortgage Corporation
- Futures Industry Association
- Government Finance Officers Association, National Association of Health and Educational Facilities Finance Authority, National Association of State Treasurers, American Public Power Association, Large Public Power Association, Large Public Power Counsel, Securities Industry and Financial Markets Association, and Bond Dealers of America
- ICE Data Services
- Intercontinental Exchange Inc.
- International Swaps and Derivatives Association, Inc., and Securities Industry and Financial Markets
- London Stock Exchange Group
- MarketAxess Holdings Inc.
- Nodal Clear, LLC
- Octaura Holdings
- Options Clearing Corporation
- Gordon Peery
- PentAlpha Surveillance
- Risk Management Association (Advanced Operational Risk Group)
- Risk Management Association (Bank Crisis Response Working Group)
- Risk Management Association (Securities Lending Council)
- Securities Industry and Financial Markets Association and Futures Industry Association
- Structured Finance Association
- Tradeweb Markets Inc.
- Trumid
- Upstart Network, Inc.
- Whalen Global Advisors

Pension Funds / Retirement

- American Benefits Council
- CalPERS
- Dutch Federation of Pension Funds
- ERISA Industry Committee
- Finseca
- PGGM
- State of Wisconsin Investment Board and the Ohio Public Employees Retirement System (SWIB-OPERS)

Public Interest

- Affordable Housing Tax Credit Coalition
- Avenue Community Development Corporation, Fifth Ward Community Redevelopment Corporation, Houston Habitat for Humanity, and LISC Houston
- Better Markets
- Brett Buckner, Managing Director, OneMn.org
- Ceres and the Ceres Accelerator

- Ted Dick, Former Executive Director, Montana Democratic Party
- The Elective Group
- Richard Estrada, Former National Vice President for the Far West, League of United Latin American Citizens
- Lela Graham, Executive Director and Co-Founder, Independence Rock Coalition
- Ron Harris, Chairman of the Midwestern Caucus of the DNC; Regional Lead, Resilient Cities Network; Former Chief Resilience Officer, City of Minneapolis, MN
- Jeff Hart, Policy Advisor, Governor Roy Cooper
- Hispanic Leadership Fund
- Ericka Jones
- Kaylyn Kardavani, Executive Director, New Day Nevada
- Gary Mariegard, President of the Board of Directors for the Montana Society of Public Accountants
- Rabbi Bonnie Margulis, Executive Director, Wisconsin Faith Voices for Justice
- Casey L. Matthiesen, President, Minnesota American Indian Bar Association
- William McGee, President, Southern Christian Leadership Conference
- Georgina Monsalvo, Arizona Organizing Director, Stand for Children
- National Community Reinvestment Coalition
- National Fair Housing Alliance
- National Taxpayers Union
- Donald Perryman, President, United Pastors for Social Empowerment; Pastor, Center of Hope CBC
- Isaac Russell, Director of Public Policy, Center for Economic Inclusion
- Paul Selberg, Former Executive Director, Nevada Conservation League
- Urban Chamber of Commerce
- Ana Valenzuela Estrada, President/CEO, Latina Chamber of Commerce in Arizona

Small Business

- Luis Acosta Herrera
- The American Free Enterprise Chamber of Commerce
- Cara Frank
- Adrienne Gaskins
- Mayra Jaime
- Gloria Larkin
- Gaylene Kanoyton
- Goldman Sachs 10,000 Small Businesses Voices
- John Malia
- Jodi Medlar
- Niya Murphy, New Networks Consulting
- National Cooperative Business Association CLUSA International
- Lisa Nutt
- Maria Pico
- Lorenzo Sierra
- Small Business Investor Alliance
- Lamar Smith
- Mike Snitz
- South Carolina Small Business Chamber of Commerce
- Breanna Spaulding

- Valerie
- Steve Veverka

Union Executives

- Ryan Bennett, Business Manager, Financial Secretary/Treasurer, West Michigan Plumbers Fitters and Service Trades U.A. Local #174
- Dorsey Hager, Columbus/Central Ohio Building & Construction Trades Council
- Wisconsin Building Trades Council

US Members of Congress

- Rep. Barr, United States House of Representatives
- Reps. Beatty, et al., United States House of Representatives (59 Democratic signatures)
- Reps. Casten, et al., United States House of Representatives (House Democrats Climate Letter, 107 signatures)
- Reps. De La Cruz, et al., United States House of Representatives (13 signatures)
- Reps. Foster, et al., United States House of Representatives (23 signatures)
- Reps. Fitzgerald, et al., United States House of Representatives (17 signatures)[1]
- Reps. Huizenga, et al., United States House of Representatives (3 signatures)
- Reps. McHenry, et al., United States House of Representatives (House Republicans – Committee on Financial Services, 29 signatures)
- Reps. McHenry and Barr, United States House of Representatives
- Reps. Meuser, et al., United States House of Representatives (House Bipartisan Small Business Letter, 4 signatures)
- Rep. Sherman, United States House of Representatives
- Rep. Sherman, United States House of Representatives (Transcript)
- Reps. Sherman, et al., United States House of Representatives (House Bipartisan Basel Letter, 15 signatures)
- Sens. Brown, et al., United States Senate (12 signatures)
- Sens. Gillibrand and Lummis, United States Senate
- Sens. Hagerty, et al., United States Senate (7 signatures)
- Sen. Manchin, United States Senate
- Sen. Nunn, et. al., United States Senate and House of Representatives (33 signatures)
- Sens. Peters, et. al., United States Senate (5 signatures)
- Sens. Scott, et al., United States Senate (Senate Banking Committee Republicans, 11 signatures)
- Sens. Scott, et al., United States Senate (39 signatures)[2]
- Sens. Sinema and Crapo, United States Senate
- Sens. Tillis, et al., United States Senate (9 signatures)
- Sens. Van Hollen, et al., United States Senate (Senate Democrats Letter, 13 signatures)
- Sens. and Reps. from Wisconsin, United States Senate and House of Representatives (10 signatures)

[1] Two of the signatories' names are redacted.
[2] One of the signatories' names is redacted.

Contacts

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