U.S. House Committee on Financial Services
Subcommittee on Financial Institutions and Monetary Policy

"The Tangled Web of Global Governance: How the Biden Administration is Ceding Authority Over American Financial Regulation"

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Chairman Barr (R-Ky.), Ranking Member Foster (D-Ill.), and members of the subcommittee, thank you for the invitation to testify today. My name is Bryan Bashur, and I am the Director of Financial Policy at Americans for Tax Reform (ATR). ATR is a nonprofit, 501(c)(4) taxpayer advocacy organization that opposes all tax increases and supports limited government, free market policies. In support of these goals, ATR opposes heavy regulation and taxation of financial services. ATR was founded in 1985 at the request of President Ronald Reagan.

I am here today to talk about the federal government's excessive regulation of the U.S. financial sector. In particular, I am here to discuss how international organizations such as the Basel Committee on Banking Supervision (Basel Committee), the Financial Stability Board (FSB), and the Network of Central Banks and Supervisors for Greening the Financial System (NGFS) have and are currently influencing America's federal financial regulators—many of which are members of these international organizations.

What is most worrisome is that the U.S. regulators, such as the Federal Reserve (Fed), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), and Securities and Exchange Commission (SEC) are circumventing Congress and using these international consortiums as a baseline for determining how to regulate American companies.

The Basel Committee includes the People's Bank of China, the China Banking Regulatory Commission, and the Central Bank of the Russian Federation as members.[1] The FSB includes China's Ministry of Finance, the People's Bank of China, the China Banking and Insurance Regulatory Commission, the Central Bank of the Russian Federation, and the Russian Ministry of Finance as members.[2] The People's Bank of China and the Bank of Russia are members of the NGFS.[3] The opacity of the decisions made by these organizations raises questions for how certain policies are developed and what if any influence state-sponsored entities may have in these meetings.

Overall, my concern is that the American public does not have a clear understanding of how decisions are made at these organizations and how our regulators use this information to regulate and supervise America's financial sector.

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[1] https://www.bis.org/bcbs/membership.htm.
[2] https://www.fsb.org/wp-content/uploads/FSB-Articles-of-Association.pdf.
[3] https://www.ngfs.net/en/about-us/membership.

History

Over the course of our nation's history capital requirements have become increasingly more complex and burdensome. Regulations on top of more regulations has become the mainstay. But have regulators adequately accounted for the costs of the new regulations? Do the marginal benefits of increasing capital requirements outweigh the marginal costs? In my opinion the answer is no. But the bigger question is who gets to make these decisions? For decades, central bankers from around the world have convened in Basel, Switzerland to construct frameworks for regulating banks. The Basel Committee is a subgroup of the Bank for International Settlements (BIS). BIS was established in 1930 and "is owned by 63 central banks, representing countries from around the world that together account for about 95% of world GDP."[4]

You might ask, where in federal statute does it say that U.S. regulators should convene with their international counterparts to determine rules for American financial institutions? The answer is that federal statute does not authorize regulators to convene with international organizations and *then* pursue the formal regulatory process under the *Administrative Procedure Act* (APA).[5]

Ultimately, it is up to Congress to hold regulators accountable. We need transparency to understand how regulators are making decisions and to comport with the Constitutional separation of powers.[6]

The Basel Committee and Capital Requirements Today

The capital standards adopted by the Basel Committee have wrongly taken precedence over the authority invested in Congress to legislate and determine the appropriate capital requirements for American banks. The Basel Committee, a regulatory consortium composed of global financial regulators, has influenced U.S. bank capital requirements even though it possesses no supranational authority or legal force. The Basel Committee's charter even admits that it "does not possess any formal supranational authority. Its decisions do not have legal force."[7]

The Basel frameworks have never been officially ratified as treaties or as executive agreements in the U.S.[8]

Congress should be the sole entity authorized to direct how American banking regulators promulgate rules that minimize leverage, enhance capital loss absorption, and ensure a vibrant allocation of capital to individuals and businesses.[9]

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[4] https://www.bis.org/about/index.htm?m=1001.
[5] https://www.justice.gov/sites/default/files/jmd/legacy/2014/05/01/act-pl79-404.pdf.
[6] https://www.law.cornell.edu/wex/separation_of_powers_0#:~:text=The%20Checks%20and%20Balances%20system%20provides%20each%20branch%20of%20government,branch%20from%20becoming%20too%20powerful.
[7] https://www.bis.org/bcbs/charter.htm.
[8] https://fam.state.gov/fam/11fam/11fam0720.html.
[9] https://www.americanbanker.com/opinion/basel-committee-has-outsize-influence-over-american-banks.

The Basel Committee issued its first bank capital regulatory framework in 1988.[10] Since then, capital requirements have become increasingly more complex and stringent. The basis for the regulators' new proposal stems from the most recent iteration of bank capital regulations, Basel III Endgame.[11]

In the Basel Committee's charter, members are committed to seven responsibilities. Three of them are notable:

- *implement and apply [Basel] standards in their domestic jurisdictions within the pre-defined timeframe established by the Committee;*
- *undergo and participate in [Basel] reviews to assess the consistency and effectiveness of domestic rules and supervisory practices in relation to BCBS standards; and*
- *promote the interests of global financial stability and not solely national interests, while participating in [Basel] work and decision-making.*[12]

Based on these points, the Fed, FDIC, and OCC are supposed to implement Basel Committee priorities in the U.S., consider American interests as ancillary, and risk receiving poor marks if the previous actions are not implemented. The Basel Committee is telling U.S. regulators to downplay the needs of Americans to support the overall goal of international regulatory parity. That is not how the U.S. federal government is supposed to operate. Moreover, the International Monetary Fund (IMF) assesses different regulators based on 12 areas under its list of standards, codes, and principles.[13] One of the assessment areas includes banking supervision, which is graded based on compliance with the Basel Committee's core principles.[14] The IMF is putting pressure on U.S. regulators to comply with the Basel Committee's policies and procedures.

Silicon Valley Bank

The Fed, FDIC, and OCC are proposing to heighten regulation on large and regional-sized banks (e.g., banks with more than $100 billion in total consolidated assets). Regulators are using the collapse of Silicon Valley Bank (SVB) to justify these new rules—rules based off the Basel Committee's framework. However, the proposed rules would not have prevented SVB's collapse because of the bank's foibles such as deficient risk management, failing to account for higher interest rates, and concentrating their deposits with technology firms.

Since 2011, the Government Accountability Office (GAO) has been sounding the alarm over the federal financial regulators' reluctance to elevate supervisory actions when it is necessary to stymie irresponsible bank behavior. This is relatively concrete evidence that the recent bank failures were not, as the self-evaluation from the Fed asserted, a result of bipartisan legislation

[10] https://www.clevelandfed.org/en/publications/economic-commentary/2020/ec-202005-evolution-bank-capital-requirements.
[11] https://www.bis.org/bcbs/publ/d424.htm.
[12] https://www.bis.org/bcbs/charter.htm.
[13] https://www.imf.org/external/standards/scnew.htm.
[14] Id.

enacted in 2018 that tailored bank regulation.[15] Rather, the bank failures are a result of the regulators' continued failure to enforce regulations that are already on the books.

In the past, Congress has passed legislation that has further subjected the banking sector to a dizzying array of federal regulations. Fortunately, in 2018, Congress passed the bipartisan *Economic Growth, Regulatory Relief, and Consumer Protection Act* (EGRRCPA) to support regional and midsize banks so that they were not subjected to the same stringent rules as the largest banks in the U.S.[16]

In the wake of the FDIC takeover of SVB and Signature Bank (Signature), the EGRRCPA and the prior Administration's alleged disempowerment of supervisors were immediately blamed for the failures. However, SVB was already well-regulated. For example:

- SVB was already subject[17] to various enhanced prudential standards under the Fed's Regulation YY, including a requirement to perform internal liquidity stress tests and maintain a contingency funding plan to address potential runs by its depositors.[18] The fact is that SVB failed its internal liquidity stress test for a 30-day stress period and Fed examiners failed to follow up adequately.
- SVB was already required to have a risk committee and a chief risk officer to report and resolve any "risk-management deficiencies in a timely manner."[19] Last year SVB neglected to fill the chief risk officer position for eight months, and by the Fed's own admission, Fed staff could have issued a violation citing Regulation YY, but they chose not to.[20] Clearly, regulations were not the problem; rather, it was the failure to enforce the rules already on the books that led to SVB's receivership.
- SVB was not subjected to the liquidity coverage ratio (LCR), but it was required to undergo quarterly internal liquidity stress tests. The Fed was aware of these tests and had access to the results but failed to act appropriately. Even if SVB was subject to the LCR, it would have resulted in SVB holding even more high-quality liquid assets (HQLA), such as Treasury bonds. However, it is difficult to see how holding more HQLA would have saved SVB when it faced a substantial liquidity crisis caused by the losses associated with its inventory of devalued Treasury bonds and agency mortgage-backed securities.
- It is worth noting the market value of SVB's bond portfolio declined because of the Fed's rapid interest rate hikes. This exposed SVB to substantial interest rate risk (IRR), which ultimately put SVB in a position where it could not liquidate enough assets to fulfill its customers' deposit withdrawals. As outlined in SVB's annual SEC filing, the bank was required to submit annual comprehensive capital analysis and review plans to the Fed and

[15] https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf.
[16] https://www.congress.gov/bill/115th-congress/senate-bill/2155.
[17] https://financialservices.house.gov/uploadedfiles/2023-03-23_fsc_majority_-_letter_to_frbsf_and_frboard_final_v2.pdf.
[18] https://www.ecfr.gov/current/title-12/chapter-II/subchapter-A/part-252.
[19] https://www.law.cornell.edu/cfr/text/12/252.22.
[20] https://www.wsj.com/articles/svb-silicon-valley-bank-collapse-chief-risk-officer-f6e1fcfd.

undergo stress testing every other year.[21] FDIC regulations also required SVB to submit a resolution plan. SVB submitted a plan in December 2022.

The real source of SVB's demise was the Fed's failure to promptly supervise and enforce rules on SVB. According to the GAO's preliminary report on SVB and Signature, the GAO warned the FDIC and the Fed about issues with properly escalating "supervisory concerns" as early as 2011.[22] The prompt corrective action framework, "which was designed in 1991 to improve regulators' ability to identify and promptly address deficiencies at depository institutions and minimize losses to the Deposit Insurance Fund—did not result in consistent actions to elevate concerns."

In 2011, the Federal Reserve's Office of the Inspector General (OIG) also released a report highlighting the Fed's inadequate escalation of supervisory actions.[23] The report examined the failures of state member banks from 2009 to 2011. The OIG determined that "examiners identified key safety and soundness risks, but did not take sufficient supervisory action in a timely manner to compel the Boards of Directors and management to mitigate those risks. In many instances, examiners eventually concluded that a supervisory action was necessary, but that conclusion came too late to reverse the bank's deteriorating condition." The OIG also pointed out how the Federal Reserve Bank of Chicago was too slow in escalating its supervisory actions against Irwin Union Bank and Trust (IUBT).

In a 2015 report, GAO critiqued regulators again.[24] The 2015 report found that "regulators could have provided earlier and more forceful supervisory attention to troubled institutions" in the 1980s savings and loan crisis and the 2008 financial crisis.

The Fed was making the same mistakes several years prior to the passage of EGRRCPA. Supervisory failures contributed to SVB's collapse, not tailoring bank regulation. Even the most recent OIG report pointed out that the EGRRCPA's impact was significantly more limited.[25]

Lastly, the Fed did not prioritize supervision of the actual financial risks embedded in SVB's IRR. The Fed's report on SVB admits that the Fed deferred an IRR exam "to the third quarter of 2023 in order to prioritize governance and liquidity exams." The report goes on to say that the Fed "should have conducted comprehensive IRR and investment portfolio reviews, with adequate resources, and communicated findings through [matters requiring immediate attention]."

The Fed dropped the ball—more regulation would not have solved the SVB problem. Moreover, the Biden Administration's latest proposals to require regional banks to issue long-term debt, or total loss-absorbing capacity, will further leverage banks to where they are more unstable. This is

[21] https://ir.svb.com/financials/sec-filings/default.aspx.
[22] https://www.gao.gov/assets/gao-23-106736.pdf.
[23] https://oig.federalreserve.gov/reports/Cross_Cutting_Final_Report_9-30-11.pdf.
[24] https://www.gao.gov/products/gao-15-365.
[25] https://www.davispolk.com/insights/client-update/silicon-valley-bank-failure-different-view-federal-reserve-oig-report?utm_source=vuture&utm_medium=email&utm_campaign=2023-10-18%20silicon%20valley%20bank%20failure%20%e2%80%93%20a%20different%20view%20of%20the%20federal%20reserve%20oig%20report.

similar to additional tier 1 (AT1) bonds, which were wiped out by Swiss regulators when UBS acquired Credit Suisse. As a result, the market for AT1 bonds is weaker and there is less investor interest for fear of being wiped out during a bank failure. Additionally, it has the potential to open up the door for litigation.[26]

Congress should resist the urge to exploit this crisis by rolling back the provisions of the EGRRCPA or implementing new regulations on regional or midsized banks. These measures would not have prevented the failure of SVB. Instead, Congress should focus on overseeing the Fed and the FDIC. These regulators must be held accountable for ignoring critiques from the GAO and OIG for over a decade.

Three alternative legislative solutions are ripe to pursue:

- **Ensure mark-to-market accounting for all bank securities.**
    - Accounting tweaks, such as marking-to-market a bank's hold-to-maturity (HTM) securities portfolio, can offer transparency to bank shareholders, bondholders, and depositors. Charles Calomiris and Phil Gramm have proposed this idea.[27]
    - SVB's idiosyncrasies, such as a high-level of venture capital and tech startup depositors and borrowers, should not distort how accumulated other comprehensive income (AOCI) is interpreted. In general, unrealized losses are not a problem if the bank does not have to sell the assets at fair market value. SVB's depositor base combined with the Fed's aggressive monetary tightening put it in a unique position. Disclosure of mark-to-market accounting enhances transparency for shareholders and bondholders without the need to change capital calculations for all banks with more than $100 billion in assets.[28]
- **Pass legislation such as the *American Financial Institution Regulatory Sovereignty and Transparency Act*[29]**
    - This bill requires federal financial regulators to be more transparent about international negotiations and meetings with groups such as the Basel Committee, FSB, and NGFS.
- **Further deregulating reciprocal deposits**
    - EGRRCPA largely removed reciprocal deposits from the definition of a "brokered deposit" to unleash more bank products that allow more deposits to be insured under the current deposit insurance limit. Currently, reciprocal deposits are considered "non-brokered" if they amount to no more than $5 billion or 20 percent of a bank's total liabilities, whichever is less. These private sector alternatives protect depositors and avoid exacerbating moral hazard to the same degree as increasing the deposit insurance cap.[30] Allowing banks more

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[26] https://www.ft.com/content/2facda29-a68c-459e-b3a2-e797da37e9a9.
[27] https://www.wsj.com/articles/in-todays-banking-crisis-echoes-of-the-80s-thrift-delayed-recognition-risk-taking-deposit-insurance-svb-signature-cfdd2b37.
[28] https://www.federalreserve.gov/newsevents/speech/barr20230710a.htm.
[29] https://www.congress.gov/bill/118th-congress/house-bill/4823/text?s=2&r=2&q=%7B%22search%22%3A%22American+Financial+Institution+Regulatory+Sovereignty+and+Transparency+Act%22%7D.
[30] https://www.wsj.com/articles/the-fdic-should-act-like-a-real-insurer-reciprocal-deposit-arrangement-spreading-risk-svb-moral-hazard-dac7e312.

leeway to pursue these products could benefit both household and business depositors.

- Businesses and individuals can take advantage of these private sector alternatives. For example, some community banks[31] and regional banks[32] offer insured cash sweep programs that allow depositors to distribute their cash around to different accounts "to money market deposit accounts at other FDIC-insured financial institutions" to earn higher interest and stay under the insurance limit. A heightened government backstop is not needed because the private sector is already innovating new products to benefit individuals and businesses.

Capital Requirements

The regulations jointly issued by the Fed, FDIC, and OCC are based off Basel III Endgame. The proposed regulatory capital rule explicitly states that the provisions "under the proposal would generally be consistent with international capital standards issued by the Basel Committee, commonly known as the Basel III reforms."[33] Where the rule differs from Basel, it implements more stringent capital requirements. For example, the rule requires that standardized government models must be used to assess mortgage risk. U.S. banks will not be allowed to use their own models to assess their own mortgage risk. This could negatively impact access to credit for certain demographics. According to one article, the proposed rule "would disproportionately disadvantage low- and moderate-income (LMI) borrowers and communities, as well as Black and Hispanic borrowers."[34]

It is also important to note that banks with less than $100 billion in assets are affected by the proposed rule to the extent that a bank's trading assets plus trading liabilities are at least $5 billion or at least 10 percent of total assets.[35] As the rule applies to consumer products such as credit cards, the negative implications can trickle down to smaller community banks. Smaller banks issue credit cards "through an agent relationship with an issuing bank."[36]

The U.S. government is implementing regulations for U.S. banks that are based on a framework designed by a coalition of unelected bureaucrats from countries around the world. It is concerning that U.S. regulators are taking international guidelines and imposing them on banks and ultimately the American public. Consumers will have to pay higher costs that are passed down through more expensive borrowing or banking services more generally. The executive branch hijacked the rulemaking process by circumventing Congress. The executive branch enforces the law, it does not create it.

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[31] https://www.bankofutah.com/business/treasury-management/sweep-accounts.
[32] https://www.usbank.com/financialiq/improve-your-operations/investments-and-controls/protecting-cash-balances.html.
[33] 88 FR 64030
[34] https://www.urban.org/sites/default/files/2023-09/Bank%20Capital%20Notice%20of%20Proposed%20Rulemaking.pdf.
[35] 88 FR 64030
[36] https://thefinancialbrand.com/news/banking-trends-strategies/durbin-2-0-threat-banks-credit-unions-brace-for-significant-impact-154844/.

The Basel Committee's influence on the proposed rule is pervasive. The proposed rule uses a definition of "small or medium-sized entity" that "is generally consistent with the definition of an SME under the Basel III reforms."[37] The regulators also determined components of operational risk by using an "analysis undertaken by the Basel Committee."[38] The proposed rule also modifies the "market risk capital requirements in a manner generally consistent with the revised framework of the Basel Committee."[39] Additionally, the "agencies are applying a similar methodology for calibration of credit spread risk weight for sovereigns as the Basel Committee used for calibrating risk weights for other asset classes."[40]

The regulators try to justify the heightened capital requirements in the proposed rule. The rule concludes "that there is room to increase capital requirements from their current levels while still yielding positive net benefits." But other than citing certain academic papers, no substantive economic analysis is conducted to prove their point.

Even the regulators admit the academic literature is mixed:

> *The changes in required capital drive the cost of funding for each asset class, which may in turn influence banking organizations' portfolio allocation decisions. Based on the estimated sensitivity of lending volumes to capital requirements found in the existing literature, the agencies estimate that changes in asset class specific risk weights would change banking organizations' portfolio allocations only by a few percentage points.*[41]

The regulators admit that banks would have to adjust their balance sheets to accommodate the new capital requirements, but without any supporting evidence, surmises that the adjustments would be mild.[42] The federal government is directly influencing how banks must build their balance sheets.

There are two issues with the way capital requirements are drafted in this country: (1) policy and (2) procedure. The regulators have neglected the costs of the proposed rules and instead decided to focus on the benefits. For example, one study shows that "for every 1% increase in capital minimums, lending rates will rise by 5 to 15 basis points and economic output will fall 0.15% to 0.6%."[43] In the long run, higher capital requirements may also "reduce competition by acting as an entry barrier for new banks."[44]

The procedure for developing the new capital requirements has circumvented Congress entirely. In light of *West Virginia v. EPA*, regulators must tread lightly or wind up in a situation where they are facing costly litigation.[45] For rules as economically significant as the recent capital

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[37] 88 FR 64051, n.92
[38] 88 FR 64086
[39] 88 FR 64092
[40] 88 FR 64120, n.335
[41] 88 FR 64170
[42] 88 FR 64170
[43] https://www.philadelphiafed.org/-/media/frbp/assets/economy/articles/economic-insights/2018/q2/eiq218-capital_requirements.pdf.
[44] Id.
[45] *West Virginia v. EPA*, No. 20-1530 (U.S. Jun. 30, 2022).

requirement regulations, there needs to be "clear congressional authorization." So far, Congress has not provided that clear authority.

One FDIC commissioner raised concerns about ceding authority to the Basel Committee. In their view, the proposed rule "amounts to a big leap of faith in the Basel Committee" especially when it "offered little to no explanation for some of its decisions."[46] The opaque process at the Basel Committee has U.S. regulators defending a provision of the operational risk portion of the rule "that its own Basel authors have said does not work for high-fee-revenue banks."[47] The Basel committee also made changes to certain formulas for operational risk, but with no record and "no explanation" the changes are hard to justify.

The new proposed rules are highly technical, but at a high level, they require banks with more than $100 billion in assets to hold more equity capital against their assets. This is a classic example of the government intervening in the operations of private companies by mandating how they must organize their balance sheets. If finalized, the rules have the potential to reduce the availability, or increase the cost of credit for auto loans, credit cards, and mortgages.

According to the Fed's own analysis the new requirements are significantly higher:

> *Further breakdown by category shows that the proposal would increase binding common equity tier 1 capital requirements by an estimated 19 percent for holding companies subject to Category I or II capital standards, by an estimated 6 percent for Category III and IV domestic holding companies, and by an estimated 14 percent for Category III and IV intermediate holding companies of foreign banking organizations. The impact assessment focuses on common equity tier 1 capital because it is the highest quality of regulatory capital and its minimum regulatory requirements are risk-based.*[48]

The regulators are also proposing a rule to make changes to the global systemically important bank holding company (G-SIB) surcharge.[49] This requirement to hold extra equity capital only applies to the Category I banks. The regulators also issued a third proposed rulemaking to force banks to issue long-term debt to be used in the event of a bank failure.[50] This would leverage banks and increase instability.

The proposed rule based off the Basel Committee framework has not been condoned by Congress and could be found to be arbitrary and capricious under the APA.[51] Under the APA, a court is required to "hold unlawful and set aside agency action, findings, and conclusions" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[52] The proposed rule may also be found to be unlawful if it is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" and it is both "without observance of procedure required by law." In the case of the regulatory bank capital rule, federal regulators

[46] https://www.fdic.gov/news/speeches/2023/spoct0423a.html.
[47] Id.
[48] 88 FR 64169, n.464
[49] https://www.federalreserve.gov/aboutthefed/boardmeetings/frn-gsib-20230727.pdf.
[50] https://www.occ.treas.gov/news-issuances/federal-register/2023/88fr64524.pdf.
[51] https://www.justice.gov/sites/default/files/jmd/legacy/2014/05/01/act-pl79-404.pdf.
[52] Id.

have ignored the proper procedures by taking actions into their own hands, when in fact Congress makes the laws.

Private Credit

Private credit funds are a market solution to a government-imposed headache. Private funds filling the financing void is just an example of the free market working to solve the problem the government created in the first place.[53] Government regulation in the form of Basel frameworks and the *Dodd-Frank Wall Street Reform and Consumer Protection Act* started to force banks to offload assets from their balance sheets to comply with government rules.[54] We are seeing this happen again now that the regulators have proposed even stricter capital requirements. For example, it was reported that JPMorgan Chase is securitizing its loan portfolio to comply with the new rules.[55] Government regulation is distorting the market by shifting assets to different corners of the financial markets. While ATR does not favor any one industry over another, it is worth considering the counterfactual—what would have happened to those loans if the government had not decided to move forward with stricter capital requirements? Would banks have kept those loans on their books? Would they have provided additional loans? What would the effect have been if the government had never intervened at all? These are hard questions to answer, but the regulators do not even attempt to consider these types of questions. The full spectrum of costs, benefits, and circumstances should be considered before finalizing a rule of this magnitude.

Climate Risk

Federal Reserve

In December 2020, the Fed formally joined the Network of Central Banks and Supervisors for Greening the Financial System. According to the Network's website, the purpose of the organization is to strengthen "the global response required to meet the goals of the Paris agreement and to enhance the role of the financial system to manage risks and to mobilize capital for green and low-carbon investments in the broader context of environmentally sustainable development." Like the BIS, the Network is a group of central bankers from around the world to coordinate on global environmental policy. It is not clear how joining this organization enables the Fed to better comport with its statutory mandate. For example, the Network has designed six workstreams and task forces to achieve its goals. One of the workstreams on monetary policy—which is chaired by an official at the Bank of England—explains that the objective is "to deepen the collective understanding of how climate change, and the actions designed to mitigate it, should be considered in relation to the conduct of monetary policy."[56]

Another workstream on supervision—chaired by an official at the Office of the Superintendent of Financial Institutions of Canada—is tasked with "foster[ing] progress among NGFS members towards incorporating climate-related and environmental risks within their supervisory

[53] https://www.wsj.com/finance/fed-rate-hikes-lending-banks-hedge-funds-896cb20b.
[54] https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf.
[55] https://www.ft.com/content/5612cba3-1580-4003-a0ac-6623cbe28ee6.
[56] https://www.ngfs.net/sites/default/files/workstream_monetary_policy_mandate.pdf.

frameworks and practices." Number one, these statements of policy have no legal bearing in the U.S. Number two, these statements do not conform with the Fed's dual mandate. The Fed's statutory purpose is "to promote effectively the goals of maximum employment, stable prices, and moderate long-term interest rates."[57] Congress has never authorized the Fed to instantly infuse climate policy to better carry out its mandate. Moreover, the NGFS's supervision policy is a distraction that could keep regulators from focusing on real risk management concerns, such as interest rate risk and deposit concentration.

According to the NGFS's charter, the Fed, as a member of the organization, must commit to:

i. *Actively contributing to the work of the NGFS and dedicating the appropriate resources in their organisation to support their participation;*
ii. *Appointing relevant expert(s) to participate in at least one NGFS Workstream;*
iii. *Raising awareness to the work of the NGFS in their jurisdiction, their geographic area and within the international or regional standard setting, regulatory, supervisory and central bank bodies they are involved in;*
iv. *Participating when appropriate in the outreach exercises conducted by the NGFS vis à vis external Stakeholders.*[58]

Not only is the Fed participating in the workstreams and contributing financial resources to the organization, but it is also required to promote the NGFS's work in the U.S. via regulatory and supervisory actions. Although not legally binding in the U.S. it presumes that the Fed is making an effort to "raise awareness" through its official actions. The Fed is doing all of this without any authorization from Congress.

These concerns must also be raised with the other U.S. regulators that are members of the NGFS—the FDIC, Federal Insurance Office (FIO), and Federal Housing Finance Agency (FHFA).

Additionally, the Fed's October 2023 Financial Stability Report admits that the regulator's approach for assessing climate-related risks is influenced by international organizations.[59] The Fed is "engaging" with the FSB, Basel Committee, NGFS, and IMF to incorporate climate-related risks into its supervisory activities.[60] This is evidenced by the interagency guidance recently finalized by the Fed, FDIC, and OCC to establish principles for climate-related financial risk management.[61] Although the guidance does not possess the force and effect of law, the financial institutions supervised by the Fed, FDIC, and OCC, could face heightened scrutiny if they do not implement safeguards against climate-related risk. The international influence filtering down to American financial institutions is apparent. Meanwhile, Congress has not authorized this indirect process for regulating and supervising American companies.

[57] https://www.federalreserve.gov/aboutthefed/section2a.htm.
[58] https://www.ngfs.net/sites/default/files/media/2023/04/27/ngfs_charter_-_27_april_2023.pdf.
[59] https://www.federalreserve.gov/publications/files/financial-stability-report-20231020.pdf.
[60] Id.
[61] https://www.fdic.gov/news/board-matters/2023/2023-10-24-notice-dis-b-fr.pdf.

Although climate policy is outside the purview of this committee, this segues into the topic of how to define what counts as material information for investors. Accordingly, I applaud Rep. Bill Huizenga (R-Mich.) for introducing legislation to codify a specific definition of "materiality."[62]

Securities and Exchange Commission

The SEC is notorious for adopting policies proposed by regulators abroad. When the SEC drafted their proposed rulemaking on climate-related disclosures, they made the claim that climate risks could pose systemic risk for the financial system.[63] To bolster its argument the SEC cites the Financial Stability Oversight Council (FSOC), but it also cites internationally-based organizations, such as the FSB and the Basel Committee. The SEC also cites international climate organizations such as Global Reporting Initiative (GRI), CDP, Climate Disclosure Standards Board (CDSB), Value Reporting Foundation, and the Task Force on Climate-Related Financial Disclosures (TCFD).[64] The rule also justifies its new mandates by citing admonitions from more international organizations such as the UN Principles for Responsible Investment, Net Zero Asset Managers Initiative, Climate Action 100+, Glasgow Financial Alliance for Net Zero, and the Global Investor Statement to Governments on Climate Change.[65] Additionally, the SEC inquired commenters on whether they should adopt similar reporting requirements to those required by the International Sustainability Standards Board.[66]

The SEC Chair Gary Gensler is also a member of the FSB. The FSB has been publicly skeptical of digital assets and highlighted their potential to deteriorate global financial stability. The SEC has echoed these concerns with their unbridled assault on the industry via enforcement actions.[67]

The FSB member jurisdictions are committed to:

> *(a) pursue the maintenance of financial stability;*
> *(b) maintain the openness and transparency of the financial sector;*
> *(c) implement international financial standards; and*
> *(d) undergo periodic peer reviews, using among other evidence IMF/World Bank public Financial Sector Assessment Program reports*
> *(e) take part in implementation monitoring of agreed commitments, standards and policy recommendations.*[68]

Based on this list, the SEC—and other U.S. members such as the Fed and Treasury Department—are evaluated by the IMF and must implement the policies adopted by the FSB in their respective jurisdictions. U.S. regulators appear to be pressured by foreign organizations to implement certain policies that U.S. citizens and their elected officials may not condone. This significantly conflicts with the balance of power between the executive and legislative branches.

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[62] https://www.congress.gov/bill/118th-congress/house-bill/4790/text?s=1&r=1.
[63] https://www.federalregister.gov/documents/2022/04/11/2022-06342/the-enhancement-and-standardization-of-climate-related-disclosures-for-investors#citation-12-p21336.
[64] 87 FR 21341
[65] 87 FR 21340, 21341
[66] 87 FR 21410
[67] https://www.sec.gov/spotlight/cybersecurity-enforcement-actions.
[68] https://www.fsb.org/wp-content/uploads/FSB-Charter-with-revised-Annex-FINAL.pdf.

It is abundantly clear that the SEC is basing its rulemaking on foreign policies and proposals, with no consideration for the U.S. elected officials who make the laws. Regulators should be compelled to follow Congressional intent, which by extent is the intent of American citizens.

It is also notable that Rep. Huizenga's aforementioned legislation also aims to study how the SEC has been influenced by Corporate Sustainability Due Diligence Directive and the Corporate Sustainability Reporting Directive of the European Commission.[69] Transparency is the key.

Conclusion

What is clear is that the executive branch has assumed so much power over the years that in certain cases, such as with climate risk and capital requirements, it has decided to assume the powers of the legislative branch and determine how to best regulate private American enterprises.

The Fed is concerned about a race to the bottom—I am here to say that we should be concerned about a race to the top. Foreign central banks should not be the arbiters of the U.S. banking sector. This committee has worked diligently to propose legislation that is a big step in the right direction. Bills such as Vice Chairman Barry Loudermilk's (R-Ga.) *American Financial Institution Regulatory Sovereignty and Transparency Act of 2023*[70] would hold regulators more accountable, and prevent them from unilaterally implementing rules originally envisaged by foreign entities with no supranational authority in the U.S. I am happy to see that this bill successfully passed the committee hurdle and strongly urge its swift passage through the full House of Representatives.

Thank you again for inviting me to this hearing. I look forward to answering your questions.

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[69] https://www.congress.gov/bill/118th-congress/house-bill/4790/text?s=1&r=1.
[70] https://docs.house.gov/meetings/BA/BA00/20230727/116295/BILLS-118-HR4823-L000583-Amdt-6.pdf.