



# AMERICANS for TAX REFORM

April 29, 2019

The Honorable Thom Tillis  
United States Senate  
185 Dirksen Senate Office  
Washington DC 20510

Dear Senator Tillis:

I write in support of your letter to the Government Accountability Office Comptroller Dodaro questioning whether the Federal Reserve's Large Institution Supervision Coordinating Committee process constitutes a rule subject to the Congressional Review Act. I share your concern that the Federal Reserve has established a regulatory framework through compliance and enforcement, without allowing for public input through the appropriate rule making process.

In 2010, the Federal Reserve created a new supervisory program to oversee large financial institutions operating domestically and abroad with multiple business operations. The Large Institution Supervision Coordinating Committee currently supervises a total of 12 banks – eight US-charted banks and four-foreign banks with significant US operations – and is overseen by four Federal Reserve Banks in which the 12 banks are geographically located.<sup>1</sup>

Through a series of Supervision and Regulation Letters (SR 12-17, 14-08 & 15-07) referenced in your [letter](#) to Comptroller Dodaro, LISCC appears to have been established following a report<sup>2</sup> and its recommendations conducted by former Columbia University professor David O. Beim. According to a 2017 Government Accountability Office report, the four Reserve Banks are responsible for “designating firms for supervision under the LISCC program, the Federal Reserve takes into account a number of factors, such as the size of the financial institutions, their interconnectedness, a lack of readily available substitutes for the services they provide, their complexity, and their global activities.”<sup>3</sup>

The designation process is concerning for two reasons. First, it appears that financial institutions subject to SR Letters 12-17 and 14-8<sup>4</sup> are automatically captured by LISCC and subject to Federal Reserve enforcement. Additionally, this could capture non-bank financial institutions that have been designated as Systemically Important

<sup>1</sup> Large Institution Supervision Coordinating Committee,

<https://www.federalreserve.gov/supervisionreg/large-institution-supervision.htm>

<sup>2</sup> Beim, David, Sept. 10, 2009, (Draft) *Report on Systemic Risk and Bank Supervision*,

<https://info.publicintelligence.net/FRBNY-BankSupervisionReport.pdf>

<sup>3</sup> Lawrence Evans, Jr., November 2017, US GAO Report to Congressional Requesters, *Large Bank Supervision; Improved Implementation of Federal Reserve Policies Could Help Mitigate Threats to Independence*, page 5, <https://www.gao.gov/assets/690/688140.pdf>

<sup>4</sup> Eisenbach, Thomas, et. al., *Supervising Large, Complex Financial Institutions: What Do Supervisors Do?*, page 68,

[https://www.newyorkfed.org/medialibrary/media/research/epr/2017/epr\\_2017\\_what-do-supervisors-do\\_eisenbach.pdf?la=en](https://www.newyorkfed.org/medialibrary/media/research/epr/2017/epr_2017_what-do-supervisors-do_eisenbach.pdf?la=en)

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Financial Institutions by the Financial Stability Oversight Council.<sup>5</sup> In effect, non-bank SIFI's could be subject to all compliance costs and examinations administered by LISCC's Operating Committee and may include the Comprehensive Capital Analysis Review<sup>6</sup>.

For non-bank institutions to no longer be subject to any Federal Reserve oversight, including LISCC requirements, FSOC must first act to de-designate the institutions as SIFIs. For financial institutions held as large and "noncomplex," the Federal Reserve will work on a case-by-case basis to determine if their risk profile continues to warrant LISCC designation.<sup>7</sup> For the largest and complex financial institutions there is no formal and clearly understood process de-designation.<sup>8</sup>

Should GAO conclude that the LISCC Guidance constitutes a rule, and the Federal Reserve Board moves to codify existing regulatory framework, the Board should consider reforms that provide transparency through the rulemaking process, allowing for public notice and public comments, as well as a cost-benefit analysis for future rulemaking and SR Letters. Transparency includes providing financial institutions with a clearly defined criteria for LISCC designation and pathway for de-designation. The rulemaking process should provide institutions designated for LISCC oversight the ability to appeal the designation.

Senator Tillis, your concern is valid in that the Federal Reserve Board has created LISCC under its own initiative and discretion, unfairly designating institutions for stringent compliance requirements and burdens. The process for designation lacks transparency and as you correctly assert in your letter to Comptroller Dodaro, the framework for establishing LISCC appears to constitute rulemaking authority, though its creation stems from guidance carrying the full weight of enforcement and without a defined criteria available for public comment from industry stakeholders and the public found in rulemaking. I applaud your initiative and am looking forward to working with you on this issue.

Sincerely,



Grover G. Norquist  
President, Americans for Tax Reform

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<sup>5</sup> Ibid., US GAO *Large Bank Supervision*, footnotes 2, 8, 12, 34, and 101

<sup>6</sup> Postal, Arthur D., Property Casualty 360, *AIG Bulking up Capital to Prepare for Federal Oversight*, May 6, 2014, <https://www.propertycasualty360.com/2014/05/06/aig-bulking-up-capital-to-prepare-for-federal-over/?slreturn=20190324144711>

<sup>7</sup> Collard, Kathryn E., et al., Feb. 14, 2017, *Sullivan & Cromwell Discuss Banking Organization Capital Plans and Stress Tests*, <http://clsbluesky.law.columbia.edu/2017/02/14/sullivan-cromwell-discusses-banking-organization-capital-plans-and-stress-tests/>

<sup>8</sup> Institute of International Bankers, April 28, 2017, *Executive Order 13772, US Supervision and Regulation of International Banks: Recommendations for the Report of the Treasury Secretary*, page 38 – 40, [https://c.ymcdn.com/sites/iib.site-ym.com/resource/resmgr/iib\\_comment\\_letters/IIB\\_Recommendations\\_to\\_Treas.pdf](https://c.ymcdn.com/sites/iib.site-ym.com/resource/resmgr/iib_comment_letters/IIB_Recommendations_to_Treas.pdf)