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# United States Senate

WASHINGTON, DC 20510

February 22, 2019

## COMMITTEES

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AGING

The Honorable Gene Dodaro  
Comptroller General  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Comptroller Dodaro:

The Large Institution Supervision Coordinating Committee (LISCC) is the Board of Governors of the Federal Reserve System's (Federal Reserve's) enhanced regulatory and supervisory framework for large and complex financial institutions.<sup>1</sup> The Federal Reserve has issued several guidance letters that impose a framework for consolidated supervision of large financial institutions, particularly those in LISCC. The standards for this framework are set forth in letters entitled "Consolidated Supervision Framework for Large Financial Institutions" (December 17, 2012),<sup>2</sup> "Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies" (September 25, 2014),<sup>3</sup> and "Governance Structure of the Large Institution Supervision Coordinating Committee (LISCC) Supervisory Program" (April 17, 2015).<sup>4</sup> This framework imposes substantive requirements relating to capital, liquidity, corporate governance, and recovery and resolution planning. We write to seek your determination of whether the aforementioned guidance (LISCC Guidance) constitutes a "rule" for the purposes of the Congressional Review Act (the CRA).

With limited exceptions, the CRA defines a "rule" as follows:

*'[R]ule' means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or*

<sup>1</sup> Large Institution Supervision Coordinating Committee, <https://www.federalreserve.gov/supervisionreg/large-institution-supervision.htm>.

<sup>2</sup> Consolidated Supervision Framework for Large Financial Institutions, available at <https://www.federalreserve.gov/supervisionreg/srletters/sr1217.htm>.

<sup>3</sup> Consolidated Recovery Planning for Certain Large Domestic Bank Holding Companies, available at <https://www.federalreserve.gov/supervisionreg/srletters/sr1408.htm>.

<sup>4</sup> Governance Structure of the Large Institution Supervision Coordinating Committee (LISCC) Supervisory Program, available at <https://www.federalreserve.gov/supervisionreg/srletters/sr1507.htm>. Also see, "Federal Reserve Supervisory Assessment of Capital Planning and Positions for LISCC Firms and Large and Complex Firms."

(December 18, 2015) available at <https://www.federalreserve.gov/supervisionreg/srletters/sr1518.htm>

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*allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing[.]*<sup>5</sup>

Based upon this broad definition, the Government Accountability Office (GAO) has rightly pointed out that “agency pronouncements may be rules within the definition of 5 U.S.C § 551, and the CRA, even if they are not subject to notice and comment rulemaking requirements under section 553.”<sup>6</sup> Similarly, the GAO has noted that nonbinding general statements of policy can be rules under the CRA as well.<sup>7</sup>

Though the Federal Reserve did not pursue notice and comment, the LISCC Guidance appears to be generally applicable within its intended range, prospective in nature, and designed to implement, interpret, or prescribe law or policy. The LISCC Guidance not only describes the Federal Reserve’s approach to examining large institutions, but also imposes significant substantive requirements on the banking institutions subject to the guidance.

For example, the LISCC Guidance establishes the “Comprehensive Liquidity Analysis and Review” and the “Supervisory Assessment of Recovery and Resolution Preparedness.” These are annual horizontal exercises that are forward-looking and that establish supervisory expectations and mandates that have become binding in practice. Furthermore, being designated a LISCC firm appears also to have become a short-hand way for the Federal Reserve to name the cohort of banking institutions that are made subject to new enhanced standards.

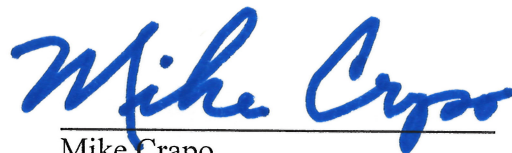
Determining whether the LISCC Guidance is a “rule” under the CRA is particularly important because the Federal Reserve has never revealed the criteria by which certain supervised institutions become subject to (or may avoid becoming subject to) the LISCC designation and associated requirements.<sup>8</sup>

For these reasons, we respectfully request that you evaluate whether or not the guidance is a “rule” under the CRA. Because the Federal Reserve is currently applying the LISCC Guidance, with significant consequences for banking institutions that the Federal Reserve has subjected to these pronouncements, please respond as promptly as possible, regardless of whether the opinion’s issuance would occur during a congressional recess.

Sincerely,



Thom Tillis  
United States Senator



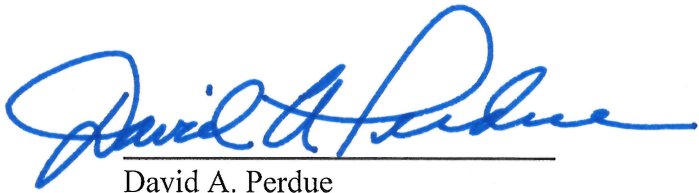
Mike Crapo  
United States Senator

<sup>5</sup> 5 U.S.C § 804(3); 5 U.S.C. § 551(4).

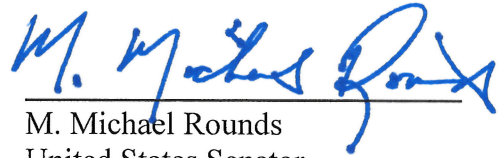
<sup>6</sup> B-323772, Sept. 4, 2012.

<sup>7</sup> See B-329129, Dec. 5, 2017.

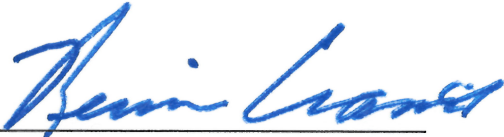
<sup>8</sup> Despite the significant consequences for designated firms, the Federal Reserve never issued a rule to establish LISCC. It initially referenced the creation of LISCC in its 2010 annual report, available at <https://www.federalreserve.gov/publications/annual-report/2010-banking-supervision-regulation.htm>.



David A. Perdue  
United States Senator



M. Michael Rounds  
United States Senator



Kevin Cramer  
United States Senator