COMMITTEE ON CAPITAL MARKETS REGULATION

ENHANCING THE REGULATORY PROCESS FOR INTERNATIONAL STANDARD SETTERS



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Enhancing the Regulatory Process for International Standard Setters

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Executive Summary

International standard setters, specifically the Basel Committee on Banking Supervision (the "**Basel Committee**"), the Financial Stability Board (the "**FSB**"), the International Association of Insurance Supervisors (the "**IAIS**"), and the International Organization of Securities Commissions ("**IOSCO**"), play a critical role in the regulation of the global financial system. These bodies develop regulatory standards on issues ranging from capital requirements for banking institutions to the designation of global systemically important financial institutions.

U.S. regulators, including the Federal Reserve (the "**Fed**"), U.S. Treasury (the "**Treasury**"), Office of the Comptroller of the Currency (the "**OCC**"), Federal Deposit Insurance Corporation (the "**FDIC**"), U.S. Securities and Exchange Commission (the "**SEC**"), and U.S. Commodity Futures Trading Commission (the "**CFTC**"), are each members of at least one of these bodies and are expected to implement international standards through domestic regulation. The adequacy of the regulatory *process* used by the international standard setters is therefore of fundamental importance to domestic regulation, especially given the involvement of such bodies in critical aspects of financial-market regulation since the 2007-2008 global financial crisis.

In June 2019, the Committee on Capital Markets Regulation (the "**Committee**") released a report entitled *Enhancing the Regulatory Process for International Standard-Setting Bodies* (the "**2019 Report**").[1] The 2019 Report provided a comprehensive assessment of the regulatory processes at the four international financial standard setters. It also analyzed key attributes of the standard-setting process and evaluated how the international standard setters' processes diverge from the domestic regulatory processes in the United States and other jurisdictions. The 2019 Report found room for substantial improvement across the standard-setting process at the international standard setters and made specific recommendations for reform.

In this report, *Enhancing the Regulatory Process for International Standard Setters* (the "**Report**"), the Committee revisits the analysis of the international standard-setting process and domestic regulatory processes and renews our recommendations for reform. Specifically, this Report analyzes three key attributes of the standard-setting process: (1) ***transparency***; (2) ***public participation***; and (3) ***cost-benefit analysis***. These attributes have been espoused by the Organization for Economic Cooperation and Development (the "**OECD**"). We find that the United States, the United Kingdom, the European Union, and Japan generally have well-developed processes that can provide examples of how the international standard setters' processes can be improved or reformed. If international standard setters adopt standards in an opaque manner with less public input and cost-benefit analysis than at the domestic level, then the practical effect is that the benefits of domestic processes are limited when regulators adopt rules to implement those underlying standards.

The Report proceeds in three parts. Part I briefly describes each international standard setter. Part II analyzes the processes that each international standard setter uses to develop standards

[1] COMMITTEE ON CAPITAL MARKETS REGULATION, *Enhancing the Regulatory Process for International Standard-Setting Bodies* (Jun. 2019), https://capmktsreg.org/wp-content/uploads/2022/11/International-Standard-Setting_06_17_2019-1.pdf [hereinafter, "2019 Report"].

along each of the three key dimensions—transparency, public participation, and cost-benefit analysis—and briefly evaluates how the international standard setters' processes diverge from the domestic regulatory processes in the United States and other jurisdictions. Part III provides recommendations for enhancing the international standard setters' regulatory processes and summarizes the extent to which each international standard setter has adopted our recommendations to date.

A. The International Standard Setters

The international standard setters are empowered to adopt standards to achieve their mission and objectives and their member states are expected to implement those standards domestically. The international standard setters generally operate on a consensus basis when adopting standards. The day-to-day work of developing standards is carried out by working groups and committees that are composed of representatives from member states and full-time staff. While none of the standard setters has enforcement powers over its members, they exert other informal mechanisms to encourage compliance.

B. Procedural Requirements Pertaining to Transparency, Public Input, and Cost-Benefit Analyses

Part II of the report examines three critical characteristics of the standard-setting process: (1) transparency; (2) public participation; and (3) the use of cost-benefit analyses.

With respect to transparency, the report finds that the public is not fully informed about the proposals that are under consideration at the international standard setters or the existence of all working groups or committees that draft proposals, or which national authorities are participating in those groups. Second, the meetings of the decision-making bodies, including the committees, working groups, and task forces, are not required by the organizational or policy documents of the standard setters to be open to the public. And, in practice, they are not open to the general public, either in person or by webcast. Third, the international standard setters do not publish or disclose minutes, transcripts, or agendas of member meetings, including meetings of committees, working groups, or task forces.

As to public participation, international standard setters generally provide for "public consultations" about proposed standards and principles. However, their notice-and-comment procedures are limited in several respects. Standard setters retain significant discretion about when to seek public comment; when public input is sought it often occurs late in the standard adoption process; and the standard setters are not always required to consider or respond to the public comments that they receive.

Finally, the Basel Committee, FSB, and IAIS generally do not require a cost-benefit analysis prior to the adoption of standards. Moreover, in practice, the standard setters do not consistently publish cost-benefit analyses of their standards or guidelines. And where they have published such analyses (often referred to as "quantitative impact" studies or assessments), those assessments have generally been published after the proposal has closed for public comment.

Part II also describes the regulatory process in the United States, the United Kingdom, the European Union, and Japan. These processes provide examples of how the international standard setters' processes can be improved or reformed. In addition, if international standard setters adopt standards that member states are expected to implement with less transparency, public input, and cost-benefit analysis than at the domestic level, then the practical effect is that the general public is deprived of processes that they expect to be afforded. Even if regulators employ domestic processes to adopt rules implementing standards, the underlying standards may not have been subject to those processes.

In the United States, the public is provided extensive opportunity to comment on proposed regulations, because the Administrative Procedure Act of 1946 requires U.S. regulatory agencies to provide the public with a proposed rule before it is adopted, accept public comments, and take those public comments into consideration in adopting a final rule. In addition, transparency in the development of agency regulations is fostered by: (1) the Government in the Sunshine Act of 1976; (2) the Freedom of Information Act of 1966; and (3) the Federal Advisory Committee Act of 1972. These statutory provisions impose open meeting requirements, allow the public access to agency records, and disclose the existence and workings of certain advisory committees or working groups. The requirements stand in stark contrast to international standard setter processes whereby meetings are closed to the public, votes are not published, minutes and transcripts are not made publicly available, and the composition of committees and working groups is not disclosed. Moreover, U.S. regulatory agencies are required to assess the anticipated costs and benefits of economically significant regulatory actions, as well as the costs and benefits of reasonably feasible alternatives.

In the United Kingdom, the European Union, and Japan, the Committee finds that there is also generally a commitment to transparency, public participation, and the use of cost-benefit analysis in the adoption of regulatory requirements. For example, in the United Kingdom, proposed legislation and rules are made publicly available, and the public is consulted through hearings and has the opportunity to submit written comments. Cost-benefit analysis is also a critical aspect of regulatory development and is required in certain circumstances by the Financial Services Act of 2012. Moreover, the European Union is committed to generally transparent processes involving public input and cost-benefit analysis under its Better Regulation Guidelines and the authorizing legislation creating the European Banking Authority and the European Securities and Markets Authority. Transparency is similarly promoted in Japan through publication of proposed legislation and statutorily mandated advance publication and public consultation for major financial regulatory proposals.[2] Agencies must also publish impact assessments of their regulatory proposals that examine anticipated costs and benefits and ex post evaluations that review the realized effects of implemented regulations.

[2] Gyōsei Tetsuzuki Hō [Administrative Procedure Act], Act No. 88 of 1993, Art. 2 (viii), 39, 43, https://laws.e-gov.go.jp/law/405AC0000000088.

C. Policy Reforms at the International Standard Setters

Part III sets forth policy recommendations that the international standard setters should adopt to improve their processes with regard to transparency, public participation and cost-benefit analysis. The Committee also sets forth recommendations for how U.S. regulators can contribute to the enhancement of international standard-setting processes. More detailed discussions of each recommendation can be found in Part III.

Enhancing Transparency

- Each standard setter should fully disclose on its website all existing committees, working groups, task forces, and similar groups, the national regulatory bodies that serve on each group, and a point of contact for the committee or working group.
- Each standard setter should disclose the substantive projects that are being worked on within the body.
- Each standard setter should provide public notice and publish a list of topics to be covered at any meeting of the decision-making organization, and any committee, working group, or task force working on standards that would be expected to be implemented by members if finalized.
- Each standard setter should increase the transparency about the discussions held at meetings of the body's decision-making organization, and committees, working groups, task forces, or similar groups.

Enhancing Opportunities for Public Input

- Each standard setter should adopt policies requiring that it seek public comment on any proposed standards or other policy that is expected to be implemented by members if finalized.
- Each standard setter should include an explanation of how the body considered the comments received during the consultation period as part of the final release of any standard, principles, guidelines, or other policy expected to be implemented by its members.
- Each standard setter should seek public input prior to the publication of proposed standards or other policies expected to be implemented by members.

Enhancing the Use of Cost-Benefit Analysis

- Each standard setter should conduct a cost-benefit analysis of any standard or policy expected to be implemented by its members, and that analysis should be published with the proposed standard and subject to public notice and comment.
- The standard setters should conduct ex-post cost-benefit analyses of existing standards and work to identify and reduce conflicting or duplicative standards as part of those analyses.

How U.S. Regulators Can Enhance the Standard-Setting Process

- U.S. regulators that are members of a standard setter should publish the proposed international standards, as well as the agency's views on the proposal, for comment in the United States.
- U.S. regulators should advocate for enhanced transparency, enhanced opportunity for public comment and enhanced cost-benefit analysis within the standard setters themselves.
- U.S. regulators should provide periodic information to Congress on the standards under development at international standard setters where that information is not publicly available.

Appendix A briefly summarizes the extent to which each international standard setter has adopted our recommendations to date according to three categories – not addressed; partially addressed; or substantially addressed. Because no recommendation has been substantially addressed by every international standard setter, all our recommendations remain relevant. Overall, we find that the international standard setters have not addressed the recommendations approximately 22% of the time, partially addressed the recommendations approximately 58% of the time, and substantially addressed the recommendations approximately 19% of the time. While the implementation records of each of the FSB, IAIS, and IOSCO are roughly in line with these statistics, the Basel Committee has made somewhat less progress in implementing the recommendations.

I. The International Standard Setters

This Report concerns itself with four international standard setters most relevant to the global financial system and markets: the Basel Committee, FSB, IAIS, and IOSCO.[3] This part of the Report briefly describes the missions of these standard setters, the legal effect of their standards, their membership, and processes for adopting standards.

Each of the international standard setters has a distinct mission and adopts standards and principles to achieve its mission. Although none of the standard setters has a formal compliance mechanism to penalize members that do not comply with their standards, these bodies exert pressure through reviews and evaluations of members' compliance with these standards. Consequently, regulators that are members of these bodies are often viewed as "beholden" to their decisions,[4] as "regulatory consensus has been formed, trade-offs have been negotiated, commitments have been made, global understandings have been reached, with little room" for national regulators to deviate.[5] Importantly, each standard setter has adopted standards and principles central to the regulation of financial institutions and markets since the 2007-2008 financial crisis.

In general, the standard setters adopt standards through consensus achieved among the members through a plenary-type body. This provides a source of pressure on members to implement agreed-to standards. The standards themselves are generally first developed through smaller committees, specialized working groups, and task forces. The membership of each of the standard setters and their committees and working groups is supported by professional staff known as a "Secretariat." In many instances, the composition of the committees, task forces, and working groups is not publicly disclosed.

A. The Basel Committee

The Basel Committee was established in 1974 by the central bank governors from the then-G-10 countries and is hosted by the Bank for International Settlements ("**BIS**").[6] It now comprises 45 member organizations from 28 jurisdictions, each of which is a central bank or authority responsible for banking supervision.[7] The United States has four agencies represented on the Basel

[3] There are other international standard setters relevant to the financial system, such as the Committee on Payments and Market Infrastructures ["**CPMI**"], which "monitors and makes recommendations about the safety and efficiency of payment, clearing, settlement and related agreements." BANK FOR INTERNATIONAL SETTLEMENTS ["**BIS**"], *About the CPMI* , https://www.bis.org/cpmi/about/overview.htm (last visited Nov. 3, 2026). We do not focus on the CPMI in this Report, however, because the four standard setters described have a more direct impact on a greater proportion of the Committee's membership.

[4] Regis Bismuth, *The Independence of Domestic Financial Regulators: An Underestimated Structural Issue in International Financial Governance*, 2 GOETTINGEN JOURNAL OF INTERNATIONAL LAW 93 (2010).

[5] Alison Touhey, AMERICAN BANKERS ASSOCIATION, *Letter to the OCC, FDIC, and Fed Re: Net Stable Funding Ratio: Liquidity Risk measurement Standards and Disclosure Requirements* (Aug. 5, 2016), https://www.fdic.gov/system/files/2024-07/2016-net-stable-funding-ratio-3064-ae44-c-027.pdf.

[6] BIS, *History of the Basel Committee*, https://www.bis.org/bcbs/history.htm (last visited Nov. 4, 2026).

[7] BIS, *Basel Committee Organisation and Governance*, https://www.bis.org/bcbs/membership.htm (last visited Nov. 4, 2026).

Committee: the Fed, the Federal Reserve Bank of New York, the FDIC, and the OCC.[8] The Basel Committee's charter provides that it focuses on harmonizing global prudential banking regulation to enhance financial stability.[9] It is the primary standard setter for the prudential regulation of banks[10] and is best known for its capital and liquidity standards, the most recent of which form the Basel III framework.

To effect its mission, the Basel Committee publishes various types of substantive documents, including standards, guidelines, sound practices, and implementation reports.[11] Of these, "standards" establish regulatory requirements that members are expected to be implement through domestic regulation.[12] Although the Basel Committee has no legal authority to enforce compliance,[13] it uses informal forms of pressure to compel compliance, particularly through regular compliance reviews to assess the extent to which members have implemented agreed upon standards.[14]

All members are represented on the Basel Committee's ultimate decision-making body, known as the "Committee," which approves standards by consensus.[15] The Basel Committee conducts policy development through four standard-setting and research-focused subcommittees known as "groups."[16] The work that the groups focus on, known as the "work program," is approved by the "Group of Governors and Heads of Supervision," a board-like entity that oversees the Basel Committee and endorses its major decisions.[17] The groups have specialized working groups that work under their direction. The Basel Committee may also establish time-limited task forces to address specific technical issues.[18]

B. FSB

The FSB was established in 2009 by the G-20 countries at the Pittsburgh Summit during the global financial crisis as a successor to the Financial Stability Forum.[19] The FSB now has 71 members comprising 61 ministries of finance, central banks, and supervisory authorities from 25 jurisdictions, as well as 10 international organizations, including the OECD, the BIS, the

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[8] *Id.* In addition to the 45 members, the Basel Committee also includes eight "observer" representatives from other national bodies, international supervisory groups and international agencies, including: the BIS, the European Commission, the European Banking Authority, and the International Monetary Fund (IMF).
[9] BIS, *Basel Committee Charter*, https://www.bis.org/bcbs/charter.htm (last visited Nov. 4, 2026).
[10] *Id.*
[11] BIS, *Basel Committee*, https://www.bis.org/committees/bcbs/publications (last visited Nov. 4, 2026).
[12] BIS, *supra* note 9, § 5(e) ("BCBS members are committed to… implement and apply BCBS standards in their domestic jurisdictions…").
[13] *Id.* at § 3.
[14] BIS, *Basel Committee Implementation*, https://www.bis.org/bcbs/implementation.htm (last visited Nov. 4, 2026).
[15] BIS, *supra* note 9, § 8.4 (the charter does not define "consensus," but the common understanding is that the Committee typically operates by unanimity).
[16] BIS, *supra* note 7.
[17] BIS, *Basel Committee's Work Programme and Strategic Priorities for 2025/26*, https://www.bis.org/bcbs/bcbs_work.htm#workprogramme (last visited Nov. 4, 2026); BIS, *supra* note 9, at § 6.
[18] BIS, *supra* note 9, § 9.
[19] FINANCIAL STABILITY BOARD ["**FSB**"], *History of the FSB*, http://www.fsb.org/history-of-the-fsb/ (last updated Sept. 11, 2026). The Financial Stability Forum was not a standard setter but facilitated discussion about supervision and surveillance of financial institutions.

International Monetary Fund ("**IMF**"), the World Bank, the Basel Committee, IAIS, and IOSCO.[20] The United States is represented by three members: the Fed, SEC, and Treasury.

The FSB seeks to promote global financial stability by coordinating regulatory, supervisory, and other policies.[21] It conducts vulnerabilities assessments gauging weaknesses in the global financial system and publishes policy recommendations on discrete issues in international financial regulation, including regulating systemically important financial institutions and adopting effective bank resolution procedures.[22] Like the Basel Committee, the FSB lacks formal enforcement mechanisms to compel members to implement its policy recommendations, but it too uses non-legal mechanisms to exert pressure,[23] including asking members to publish reviews of their compliance with agreed-to standards.[24]

FSB decisions, including the adoption of standards, are made by the "Plenary," which consists of all members and makes decisions by consensus.[25] The Plenary also establishes the work program for the FSB.[26] The substantive work of developing standards and principles is largely carried out by various committees and working groups established by the Plenary.[27]

C. IAIS

The IAIS was established in 1994 and is a global standard setter primarily composed of insurance regulators and supervisors from more than 200 jurisdictions, constituting 97% of all insurance premiums.[28] The United States is represented at the IAIS by three members: the Fed, Treasury, and the National Association of Insurance Commissioners.[29]

The mission of the IAIS is to promote globally consistent supervision of the insurance industry to benefit and protect policyholders and promote global financial stability.[30] The IAIS publishes policies to govern the supervision of insurance firms, including risk-based capital

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[20] FSB, *About the FSB*, http://www.fsb.org/about/ (last updated May 22, 2025); FSB, *FSB Members*, http://www.fsb.org/about/fsb-members (last updated Nov. 3, 2026).
[21] FSB, *Work of the FSB*, www.fsb.org/work-of-the-fsb/ (last updated Dec. 5, 2024).
[22] *Id.*; FSB, *Vulnerabilities Assessment*, http://www.fsb.org/work-of-the-fsb/vulnerabilities-assessment/ (last updated Aug. 8, 2024).
[23] FSB, *supra* note 20.
[24] FSB, *Peer Reviews*, https://www.fsb.org/work-of-the-fsb/implementation-monitoring/peer_reviews/ (last updated Nov. 26, 2024).
[25] FSB, *Organisational Structure and Governance*, http://www.fsb.org/about/organisation-and-governance/ (last updated Nov. 20, 2025); FSB, *Articles of Association*, Art. 6(1) (Jun. 11, 2025), https://www.fsb.org/uploads/FSB-Articles-of-Association.pdf.
[26] *See*, *e.g.*, FSB, *FSB Plenary sets out 2026 Work Plan* (Nov. 19, 2025), https://www.fsb.org/2025/11/fsb-plenary-sets-out-2026-work-plan/.
[27] FSB, *Organisational Structure and Governance*, *supra* note 25; *see also* Narissa Lyngen and Clayton Simmons, *The Financial Stability Board: The New Face of International Financial Regulation*, 54 HARVARD INTERNATIONAL LAW JOURNAL ONLINE (Jun. 2013), https://journals.law.harvard.edu/ilj/wp-content/uploads/sites/84/2013/08/Lyngen-Simmons-to-publish1.pdf.
[28] INTERNATIONAL ASSOCIATION OF INSURANCE SUPERVISORS ["**IAIS**"], *What we do*, https://www.iais.org/about-the-iais/what-we-do/ (last visited Nov. 4, 2026).
[29] IAIS, *Members*, https://www.iais.org/about-the-iais/iais-members/ (last visited Nov. 4, 2026).
[30] IAIS, *supra* note 28.

standards.[31] Members of the IAIS commit to implement IAIS policies when joining the body.[32] The IAIS subjects its members to a regular formal review process that evaluates the extent to which members have implemented the organization's principles.[33]

The IAIS's governing documents permit principles and standards to be adopted by either one of two bodies. First, the "General Meeting," which is comprised of all members, can adopt principles or standards by a two-thirds vote.[34] Second, the Executive Committee, commonly referred to as "ExCo," which is composed of between 12 and 32 voting members elected by the General Meeting and operates as the principal decision-making body, sets the IAIS work agenda and approves standards or principles.[35] While the IAIS's bylaws allow ExCo to adopt standards by a two-thirds vote, ExCo has traditionally sought to do so through consensus.[36] The IAIS relies on substantive committees, working groups and task forces, operating within a committee system overseen by ExCo, to develop proposals and policies.[37]

D. IOSCO

IOSCO was established in 1983, and its membership regulates more than 99% of the world's securities and derivatives markets in more than 130 jurisdictions, with diversity across both geographic regions and stages of capital markets development.[38] The organization has 134 full members, which are either national securities commissions or governmental bodies with authority over securities or derivatives markets.[39] The United States is represented at IOSCO by two members: the CFTC and SEC.

IOSCO sets standards for the regulation of securities markets intended to foster cooperation in "developing, implementing and promoting adherence to internationally recognized and consistent standards of regulation, oversight and enforcement," to "enhance investor protection," and encourage the exchange of information.[40] IOSCO's bylaws specify that members are not legally bound to implement IOSCO principles.[41] However, members face reputational risk in not complying. IOSCO conducts reviews of members' compliance with the principles, and IOSCO's

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[31] IAIS, *Standard setting activities*, https://www.iais.org/activities-topics/standard-setting/ (last visited Nov. 4, 2026).
[32] IAIS, *By-Laws*, Arts. 6(6)(b)–(c) (Nov. 12, 2025), https://www.iais.org/uploads/2025/11/IAIS-By-Laws-2025.pdf.
[33] IAIS, *Implementation Assessment*, https://www.iais.org/activities-topics/implementation-assessment/ (last visited Nov. 4, 2026).
[34] IAIS, *supra* note 32, Art. 11(1).
[35] *Id.*, Arts. 11(2)(d), 13–14.
[36] *Id.*, Art. 13(8); Lieve Lowet, *The European Union's Role in International Economic Fora Paper 8: The IAIS* (Aug. 2015), https://www.europarl.europa.eu/RegData/etudes/STUD/2015/542197/IPOL_STU%282015%29542197_EN.pdf.
[37] IAIS, *supra* note 32, Arts. 14–16; IAIS, *IAIS Leadership*, https://www.iais.org/about-the-iais/iais-leadership/ (last visited Nov. 4, 2026).
[38] INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS ["**IOSCO**"], *About IOSCO*, https://www.iosco.org/about/?subsection=about_iosco (last visited Nov. 4, 2026).
[39] IOSCO, *Ordinary Members of IOSCO*, https://www.iosco.org/about/?subsection=membership (last visited Nov. 4, 2026).
[40] IOSCO, *By-Laws*, Preamble, https://www.iosco.org/library/by_laws/pdf/IOSCO-By-Laws-Section-1-English.pdf.
[41] *Id.*, Part 15.

principles are used in IMF and World Bank assessments of the quality of regulatory frameworks and the supervision of financial markets in individual countries.[42]

IOSCO's principles and standards are approved by the "Presidents Committee," which is composed of all voting members.[43] IOSCO operates by a consensus-based approach, though its bylaws permit majority votes.[44] The work stream of IOSCO is established by its Board, whose members are elected by the Presidents Committee.[45] Substantive policy work is carried out at a committee level or by working groups or task forces overseen by the Board.[46]

[42] IOSCO, *Assessment Committee*, https://www.iosco.org/about/?subsection=display_committee&cmtid=19 (last visited Nov. 4, 2026); IOSCO, *supra* note 38.
[43] IOSCO, *supra* note 40, Part 4, § 26.
[44] *Id*., Part 4, § 36.4; *see also* Antonio Marcacci, *Transnational Securities Regulation: How it Works, Who Shapes It*, SPRINGER (2023).
[45] IOSCO, *supra* note 40, Part 3, § 17; Part 4, § 26; Part 5, § 40.2.
[46] IOSCO, *IOSCO Board*, https://www.iosco.org/about/?cmtid=11&subsection=display_committee (last visited Nov. 4, 2026); IOSCO, *supra* note 38; IOSCO, *IOSCO Processes for Policy Development and Implementation Monitoring*, https://www.iosco.org/about/pdf/IOSCO-Policy-and-Implementation-Monitoring-Processes.pdf (last visited Nov. 4, 2026).

II. Procedural Requirements Pertaining to Transparency, Public Input, and Cost-Benefit Analysis

If members of international standard setters are expected to adopt and implement their standards, then the robustness, comprehensiveness, and legitimacy of the process used to adopt those standards are of fundamental importance, especially given the involvement of the standard setters in critical aspects of financial market regulation since the 2007-2008 global financial crisis. There are three key attributes of the standard-setting process that are worth analyzing. These are ***transparency***, ***public participation***, and ***cost-benefit analysis***. These characteristics have been espoused by the OECD. As incoming Chair of the Basel Committee Erik Thedéen noted in an October 2024 speech, his work would be guided by "the need for global and transparent engagement with a wide range of stakeholders" including the general public.[47]

The United States, the United Kingdom, the European Union, and Japan generally have well-developed processes that provide for transparency, public participation, and cost-benefit analyses when implementing laws and regulations domestically. Such processes can provide examples of how the international standard setters' processes can be improved or reformed. If international standard setters adopt standards in an opaque manner with less public input and cost-benefit analysis than at the domestic level, then the practical effect is that the general public is deprived of processes that they expect to be afforded. Even if regulators employ domestic processes to adopt rules implementing standards, the underlying standards themselves may not have been subject to these processes. And the member states are expected to implement these standards (and many often do, using the international standards as a shield) even if there are potential issues that arise within the member jurisdictions.

Therefore, this part of the Report will examine practices surrounding each of the three key procedural requirements at the international standard setters and then briefly describe approaches in the United States, the United Kingdom, the European Union, and Japan.

A. Transparency – Openness of Meetings

1. International Standard Setters

When referring to transparency, this Report focuses on the issues of whether the public knows who is involved in making judgments and decisions and whether the public is privy to the policy debate taking place within the international standard setter. Transparency in the standard-setting process includes open meetings, the release of meeting transcripts, and the disclosure of meeting minutes.

So how transparent is the standard-setting process? The short answer is not very. The following table summarizes the key characteristics of transparency in tabular form.

[47] Erik Thedéen, Chair of the Basel Committee, *Charting the Course: Prudential Regulation and Supervision for Smooth Sailing*, (Oct. 23, 2024), https://www.bis.org/speeches/sp241023a.htm.

Table 1: Key Transparency Characteristics

Characteristic	Basel Committee	FSB	IAIS	IOSCO
Composition of Committees / Working Groups / Task Forces	Partial	Yes	Partial	Yes
Meetings Open to Public or Webcast	No	No	No	No
Advance Agendas of Meetings Made Public	No	No	No	No
Minutes or Transcripts of Meetings Published	No	No	No	No
Disclosure of Votes	No	No	No	No
Annual Work Program Published	Yes	Yes	Yes	Yes

First, the Basel Committee and IAIS do not disclose a list of all of the members of their various committees, subcommittees, working groups, and task forces. While the Basel Committee discloses the co-chairs of each of its major subcommittees (known as "groups"), it does not publish full membership information.[48] Moreover, transparency surrounding the working groups and task forces that support each group has decreased—while at the time of the 2019 Report the Basel Committee's website listed the name and purpose of many of these supporting groups, that information is no longer published.[49] Similar to the Basel Committee, the IAIS discloses the chair and vice chair of each of its major committees on its website but not the full membership. The IAIS also publishes an organizational chart listing the existence and chairs of all of its subcommittees, working groups, and task forces.[50] However, once a year in its annual report the IAIS publishes a full list of the members of its principal decision-making body ExCo.[51] In contrast, and in a positive development since the 2019 Report, the FSB now publishes an organizational chart and the full membership of its committees and consultative groups on its website.[52] IOSCO continues to disclose the composition of each of its policy-setting committees (and its Board),

[48] BIS, *supra* note 7.
[49] *See id*. (merely stating, "[t]he groups are supported by a set of working groups," without specifying those groups).
[50] IAIS, *Organisational Structure*, https://www.iais.org/about-the-iais/organisational-structure/ (last visited Nov. 4, 2026).
[51] *See*, *e.g.*, IAIS, *Year in Review 2025* (Mar. 2026), https://www.iais.org/uploads/2026/03/IAIS-Year-in-Review-2025.pdf.
[52] FSB, *supra* note 25. FSB also publishes information on the membership of its task forces. *See*, *e.g.*, FSB, *Taskforce on Legal, Regulatory and Supervisory Matters*, https://www.fsb.org/uploads/Members-FSB-LRS.pdf (last updated Aug. 11, 2026).

including the jurisdiction, title, and name of each individual on the committee, as it did at the time of the 2019 Report.[53]

Second, the meetings of the decision-making bodies, the committees, working groups, and task forces are not required by the organizational or policy documents of the international standard setters to be open to the public.[54] And, in practice, they are not open to the general public, either in person or by webcast.[55]

Third, the international standard setters do not publish or disclose minutes, transcripts, or detailed agendas of the meetings of the members or the various committees, working groups, or task forces.[56] Instead, with regard to the *decision-making body* meetings, the organizations disseminate press releases announcing decisions and topics discussed.[57] The IAIS goes a bit further and also publishes monthly newsletters giving *high-level* overviews of topics discussed at past meetings at both the committee and subcommittee level.[58] The international standard setters also do not have policies mandating disclosure of how members vote if matters are brought to a vote.[59]

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[53] *See*, *e.g.*, IOSCO, *Committee on Issuer Accounting, Audit and Disclosure*, https://www.iosco.org/about/?subsection=display_committee&cmtid=12 (last visited Nov. 4, 2026).

[54] *See*, *e.g.*, BIS, *supra* note 9, §§ 8.3, 9; FSB, *Charter of the Financial Stability Board*, Arts. 10(3), 18(4) (Jun. 2012) (contemplating the possibility of inviting non-members to meetings on an ad hoc basis); IAIS, *supra* note 32, Arts. 10, 12, 13; IAIS, *Policy for Attendance at IAIS Committee and Subcommittee Meetings* (Jan. 17, 2015), https://www.iais.org/uploads/2022/01/150213-Policy-for-Attendance-at-IAIS-Meetings1.pdf (IAIS committee meetings cannot be opened to the public simply to keep stakeholders informed); IOSCO, *supra* note 40, Arts. 31, 47 (setting out conditions for non-members to attend meetings of the Presidents Committee and Board).

[55] *See*, *e.g.*, IAIS, *Meeting and Events Calendar*, https://www.iais.org/news-and-events/events (last visited Nov. 4, 2026) (showing dates of future committee and subcommittee meetings but noting they are "members only").

[56] David Murphy and Christina Parajon Skinner, *Sovereignty and Legitimacy in International Banking Law*, 65 VIRGINIA JOURNAL OF INTERNATIONAL LAW 493, 518 (2025) (Noting, with respect to the Basel Committee, "[t]here is no public agenda of precise topics under consideration," and "[m]inutes of meetings are not typically published."); Matthew Bisanz and Jeffrey P. Taft, *US Participation in the Basel Committee and the Issue of Transparency*, MAYER BROWN (Apr. 24, 2025), https://www.mayerbrown.com/en/insights/publications/2025/04/us-participation-in-the-basel-committee-and-the-issue-of-transparency ("[W]e are not aware of a mechanism for the public to review [working group and task force meetings]"); FSB, *Procedural Guidelines* at H.3(87) (Apr. 15, 2021), https://www.fsb.org/uploads/FSB-Procedural-Guidelines.pdf ("Meeting summaries and the associated list of action points should not be published."); IAIS, *supra* note 55 (disclosing the dates of future IAIS (sub)committee meetings but not the agendas).

[57] *See*, *e.g.*, BIS, *supra* note 9, § 8.5; FSB, *supra* note 56, at H.3(86). *See also* IAIS, *Insurance Supervisors Reach Globally Agreed Path Forward on Addressing Risks from Structural Shifts in the Life Insurance Sector* (Nov. 18, 2025), https://www.iais.org/uploads/2025/11/IAIS-Press-Release-Insurance-supervisors-reach-globally-agreed-path-forward-on-addressing-risks-from-structural-shifts-in-the-life-insurance-sector.pdf; IOSCO, *IOSCO Concludes 2026 Annual Meeting*, (May 19, 2026), https://www.iosco.org/news/pdf/IOSCONEWS794.pdf; IOSCO, *IOSCO Board Meets in Madrid; Issues Four New Publications* (Nov. 3, 2025), https://www.iosco.org/news/pdf/IOSCONEWS775.pdf.

[58] *See*, *e.g.*, IAIS, *Newsletter Issue 153* (Jun. 2026), https://www.iais.org/uploads/2026/07/IAIS-Newsletter-June-2026.pdf.

[59] *See, e.g.,* U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *Bank Capital Reforms: U.S. Agencies' Participation in the Development of the International Basel Committee Standards* (Mar. 26, 2025), https://files.gao.gov/reports/GAO-25-107995/index.html [hereinafter, "GAO Report"] ("Basel Committee discussions and related information are governed by confidentiality expectations, according to U.S. officials and the Basel Committee Secretariat."); Bisanz and Taft, *supra* note 56 (noting that the GAO Report "illustrates how many important regulatory reforms in the United States have been developed through opaque standard-setting processes."); FSB, *supra* note 56, at H.1(78) ("It is the duty of the Member representatives to protect the confidentiality of discussions and the views of individual members").

This opacity is problematic for myriad reasons. Critically, it denies the public the knowledge of what is occurring within international standard setters that are not accountable to voters or interested parties who can only exert influence through their domestic representatives. In addition, it hinders accountability. If voters and affected parties do not know what positions their own government officials are taking at international bodies, then it is more difficult to hold these officials and their elected governments accountable for their role in decisions at the international level.

We do note that beginning in 2019, each of the FSB, IAIS and IOSCO began publishing a work program of what it will work on in the coming year.[60] These actions are a commendable and important incremental step toward increasing transparency at these institutions. However, while the Basel Committee began publishing its work program earlier than the other standard setters, its disclosure in particular remains limited, providing only general descriptions of ongoing projects without specific timelines or details about standards under development.[61] The public learns that a body intends to work on a topic but receives little information about the substance of proposals until a draft standard is released for comment.

2. The United States and Other Jurisdictions

Transparency in the development of agency regulations in the United States is fostered by legal provisions which impose open meeting requirements, allow public access to agency records, and disclose the existence and workings of certain advisory committees or working groups.

First, under the Government in the Sunshine Act of 1976, when a federal agency holds meetings of its board of governors or commissioners, those are generally required to be open to the public, except in certain limited circumstances.[62] In addition, the agencies are typically required to make a public announcement of the time, place, and subject matter of a meeting of the agency heads in advance.[63] And, even when a meeting is lawfully closed, the agency is required to maintain a recording, transcript, or minutes of the meeting and can be required to disclose those materials by the public.[64] However, many U.S. financial regulators have recently made substantially less use of open meetings in rulemaking. Instead, many significant proposals have been approved through "seriatim voting" or "notation voting" not subject to the open meeting

[60] *See*, *e.g.*, FSB, *Work Programme for 2026* (Feb. 3, 2026), https://www.fsb.org/uploads/P030226.pdf; IAIS, *Roadmap 2026-2027* (Jan. 2026), https://www.iais.org/uploads/2026/01/IAIS-Roadmap-2026-2027.pdf; IOSCO, *2026 Work Program* (Feb. 2026), https://www.iosco.org/library/pubdocs/pdf/IOSCOPD813.pdf.
[61] *See*, *e.g.*, BIS, *Basel Committee's Work Programme and Strategic Priorities for 2025/26*, *supra* note 17.
[62] 5 U.S.C. § 552b(b)–(c).
[63] *Id.* § 552b(e).
[64] *Id.* § 552b(f)(1)–(2).

requirements, whereby materials are circulated to the board members or commissioners who then submit their votes in writing.[65] This practice reduces public visibility into agency deliberations.

Second, under the Freedom of Information Act of 1966, the public is able to request access to internal agency documents and information that can help inform the public about the agency's workings. Importantly, the law requires that any agency with a commission or board structure is required to maintain and make available to the public a record of the final votes of each member in every agency proceeding.[66]

Third, under the Federal Advisory Committee Act of 1972, any committee, panel, task force, or similar group created or used by the President or any agency to provide outside advice or recommendations is generally required to be disclosed.[67] Meetings of such committees are generally required to be open to the public and the committee's agenda, minutes, transcripts, and other documents prepared for or by the committee are subject to public inspection.[68]

While not a federal regulator, the National Association of Insurance Commissioners ("**NAIC**") provides a useful example of transparency practices at an entity that develops standards for its regulator members to adopt. NAIC is composed of state insurance regulators and develops model insurance laws and regulatory standards. The composition of NAIC working groups is publicly disclosed, identifying chairs, vice chairs, and other members as well as their state or territory affiliations, and the NAIC staff members who support each group.[69] The committees also make their meeting materials public, including advance agendas, proposed policymaking priorities, and proposed amendments to existing regulatory standards.[70] Under the NAIC's open-meeting policy, meetings of its committees, subcommittees, task forces, and working groups are

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[65] *See*, *e.g.,* 17 C.F.R. § 200.42; 17 C.F.R. § 140.12; FEDERAL RESERVE ("**Fed**"), *Government in the Sunshine Meeting Memorandum* (Aug. 8, 2025), https://www.federalreserve.gov/aboutthefed/board-meeting-sunshine.htm; *Past Meetings & Events*, SECURITIES AND EXCHANGE COMMISSION ("**SEC**"), *Past Meetings & Events*, https://www.sec.gov/newsroom/meetings-events/past-events?combine=&field_event_type_value_1=meeting&year=2026 (last visited Nov. 4, 2026) (showing only one open meeting devoted to rulemaking in 2026 through the end of September); COMMODITY FUTURES TRADING COMMISSION ("**CFTC**"), *News & Events*, https://www.cftc.gov/PressRoom/Events/CommissionMeetings/index.htm (last visited Nov. 4, 2026) (showing a number of cancelled open meetings); CFTC, *Release Number 9004-24* (Oct. 28, 2024), https://www.cftc.gov/PressRoom/PressReleases/9004-24 ("The [CFTC] Open Meeting... has been cancelled. The matters under consideration will be completed through the Commission's seriatim process."); FED, *2024 Board Meetings* (Jan. 16, 2024), https://www.federalreserve.gov/aboutthefed/boardmeetings/2024-boardmeeting.htm (showing no open meetings in 2024).

[66] 5 U.S.C. § 552(a)(5).

[67] 5 U.S.C. § 1008.

[68] 5 U.S.C. § 1009.

[69] NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS ("**NAIC**"), *2026 Committee and Task Force Structure*, https://content.naic.org/committee-reports (last visited Nov. 4, 2026).

[70] NAIC, *Committees, Task Forces & Working Groups*, https://content.naic.org/committees (last visited Nov. 4, 2026).

open to the public by default, subject to specified exceptions.[71] Minutes and decisions of meetings are generally publicly accessible.[72]

In the United Kingdom—the world's second-largest financial center[73]—the lawmaking and rulemaking processes are relatively transparent. For example, all legislation introduced in both Houses of Parliament ("**Parliament**")[74] and the financial regulatory measures are available online. With respect to legislation, there are scrutiny committees in Parliament, which review proposed legislation.[75] Details of the membership of those committees are available on the Parliament's website. Committees may hold hearings on certain issues that inform policy development, and call witnesses.[76] Such proceedings can generally be viewed live,[77] and a report setting out the evidence heard and the conclusions reached is made publicly available.[78] Industry regulators, such as the Financial Conduct Authority ("**FCA**")[79] and the Prudential Regulation Authority ("**PRA**"),[80] also disclose committee compositions[81] and publish consultation papers online.[82] The FCA also holds meetings with the public in different parts of the country to gather opinions on its regulation in general.[83]

The European Union process is useful to consider because it is somewhat analogous to an international standard setter in that member states are bound by or obligated to implement

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[71] NAIC, *Policy Statement on Open Meetings* (Apr. 1, 2014), https://content.naic.org/sites/default/files/meetings_naic_policy_mtg_801.pdf.

[72] *See*, *e.g.*, NAIC, *Property and Casualty Insurance (C) Committee*, https://content.naic.org/committees/c/property-casualty-insurance-cmte (last visited Nov. 4, 2026); NAIC, *2026 Spring National Meeting* (Mar. 22, 2026), https://content.naic.org/sites/default/files/publication-syn-zs-26-01.pdf.

[73] ASTANA INTERNATIONAL FINANCIAL CENTRE, *Global Financial Centres Index 39* (Mar. 2026), https://www.longfinance.net/media/documents/GFCI_39_Report_2026.03.26_v1.1.pdf.

[74] UK PARLIAMENT, *Bills & Legislation*, , https://www.parliament.uk/business/bills-and-legislation/ (last visited Nov. 4, 2026).

[75] UK PARLIAMENT, *Pre-legislative Scrutiny*, https://www.parliament.uk/site-information/glossary/pre-legislative-scrutiny/ (last visited Nov. 4, 2026); UK PARLIAMENT, *Select Committees*, https://www.parliament.uk/about/how/committees/select/ (last visited Nov. 4, 2026); *see also* UK PARLIAMENT, *Public Bill Committees*, https://www.parliament.uk/mps-lords-and-offices/offices/commons/scrutinyunit/public-bill-committees/ (last visited Nov. 4, 2026).

[76] UK PARLIAMENT, *Give Evidence to a Select Committee*, https://www.parliament.uk/get-involved/committees/give-evidence-to-a-select-committee/ (last visited Nov. 4, 2026).

[77] *See*, *e.g.*, UK PARLIAMENT, *Parliament Live*, https://www.parliamentlive.tv/Committees (last visited Nov. 4, 2026).

[78] UK PARLIAMENT, *Select Committees*, *supra* note 75.

[79] Conduct regulator for financial services firms and financial markets in the United Kingdom, and prudential regulator for some of those firms.

[80] Responsible for prudential matters ensuring financial stability of larger organizations.

[81] *See*, *e.g.*, FINANCIAL CONDUCT AUTHORITY ("**FCA**"), *Committees*, https://www.fca.org.uk/about/who-we-are/committees (last updated Jul. 6, 2026); BANK OF ENGLAND, *Prudential Regulation Committee*, https://www.bankofengland.co.uk/about/people/prudential-regulation-committee (last updated Jul. 2, 2026); BANK OF ENGLAND, *Practitioner Panel and Insurance Practitioner Panel*, https://www.bankofengland.co.uk/prudential-regulation/pra-practitioner-panel (last updated Sept. 15, 2026).

[82] FCA, *Publications Search Results – Live Consultations*, https://www.fca.org.uk/publications/search-results?live_c=1 (last visited Nov. 4, 2026); BANK OF ENGLAND, *Prudential Regulation*, https://www.bankofengland.co.uk/prudential-regulation (last updated Nov. 2, 2026).

[83] FCA, *National and Regional Engagement Programme – Executive Committee and Chair*, https://www.fca.org.uk/national-regional-engagement-programme-executive-committee-chair (last updated Feb. 23, 2023).

European Union laws. Under the ordinary legislative process, proposals are generally initially developed by the European Commission (the "**Commission**"), which is the EU executive, and then submitted to the European Parliament and the Council of the European Union (the "**Council**"), who act as co-equal parties. The proposal is then further reviewed and discussed in committees. The European Parliament has 22 standing committees.[84] The details of the members of each of those committees, their meeting dates, and meeting documentation are all available online.[85] Their meetings are generally held in public and streamed online. The Council has approximately 150 working parties and committees. Some details of those committees are available online,[86] although not the individual membership details. The results of Council votes are automatically made public when the Council acts in its capacity as legislator; if a member wants to add a note to the vote, that note will also be made public.[87] When acting as a legislator, meetings of the Council are also open to the public,[88] though working party and committee meetings are not generally open to the public. Thus, the public is provided some means to observe how the proposals are crafted into final form.

The European Securities and Markets Authority ("**ESMA**") and the European Banking Authority ("**EBA**")—"independent" authorities accountable to the European Parliament and Council[89]— also play a role in the regulation of financial markets and institutions in the EU and their practices also evince a strong policy in favor of transparency. They are authorized to develop "technical standards" (i.e., EU rules) only when they have been granted such power in specific legislation.[90] They also issue guidance on the application or implementation of legislation[91] and provide opinions to competent authorities to build and promote a common supervisory culture and consistent supervisory practices.[92] Both bodies hold public open hearings on consultations regarding technical standards. Moreover, ESMA and EBA are required to consult on draft technical standards with stakeholder groups consisting of 30 members who represent industry, academia, consumers, and users of

[84] EUROPEAN PARLIAMENT, *The Committees of the European Parliament*, https://www.europarl.europa.eu/about-parliament/en/organisation-and-rules/organisation/committees (last visited Nov. 4, 2026) ("Parliament can also set up standing sub-committees and special temporary committees to deal with specific issues").
[85] EUROPEAN PARLIAMENT, *Committees*, https://www.europarl.europa.eu/committees/en/home (last visited Nov. 4, 2026).
[86] THE COUNCIL OF THE EUROPEAN UNION, *The Council's Working Parties* (Jul. 7, 2026), https://www.consilium.europa.eu/en/council-eu/how-the-work-in-the-council-is-organised/the-councils-working-parties/.
[87] THE COUNCIL OF THE EUROPEAN UNION, *How does the Council Vote*, https://www.consilium.europa.eu/en/council-eu/how-does-the-council-vote/ (last updated Feb. 23, 2026).
[88] THE COUNCIL OF THE EUROPEAN UNION, *Transparency and Access to Document*, https://www.consilium.europa.eu/en/general-secretariat/corporate-policies/transparency/ (last updated Jan. 23, 2026)
[89] EUROPEAN PARLIAMENT and THE COUNCIL OF THE EUROPEAN UNION, *Regulation (EU) No 1095/2010 Establishing a European Supervisory Authority (European Securities and Markets Authority)*, Arts. 1, 3 (Nov. 24, 2010), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010R1095 (hereinafter, "ESMA Founding Regulation"); EUROPEAN PARLIAMENT and THE COUNCIL OF THE EUROPEAN UNION, *Regulation (EU) No 1093/2010 Establishing a European Supervisory Authority (European Banking Authority)*, Arts. 1, 3, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A02010R1093-20160112&from=EN (hereinafter, "EBA Founding Regulation").
[90] ESMA Founding Regulation, Art. 1(2); EBA Founding Regulation, Art. 1(2).
[91] *See*, *e.g.*, EBA, *Single Rulebook Q&A*, https://www.eba.europa.eu/single-rule-book-qa (last visited Nov. 4, 2026).
[92] ESMA Founding Regulation, Art. 29; EBA Founding Regulation, Art. 29.

financial services and banking services.[93] The members of these groups are disclosed, as are minutes or summaries of their meetings.[94]

In Japan, the lawmaking and financial regulatory rulemaking processes include several mechanisms for public transparency. All bill texts, legislative progress, and enacted laws are available online. Parliamentary proceedings are accessible through live and recorded broadcasts. Committees of the National Diet, which are parliamentary bodies composed of legislators, scrutinize proposed legislation and may hold public hearings and summon witnesses.[95] Public hearings are required for general budget and important revenue bills.[96]

The Japan Financial Services Agency ("**JFSA**") is the principal agency responsible for financial regulation in Japan.[97] It regulates and supervises banks, insurers, securities firms, and exchanges, with responsibilities including inspections, market surveillance, and enforcement actions.[98] The JFSA designs and implements regulatory frameworks under the statutes governing the regulation of securities markets, banking, and insurance.[99] The JFSA's regulatory proposals are deliberated at meetings of the JFSA's advisory board, the Financial System Council.[100] The Council accepts stakeholder input, inviting academics, officials of relevant administrative bodies, and other relevant experts to attend Council meetings and share views.[101] Council meetings are made public through livestream and published minutes.[102]

B. Public Comment and Input

1. International Standard Setters

International standard setters generally provide for "public consultations" or what is commonly referred to in the United States as "public notice and comment" about proposed standards and principles. However, their notice-and-comment procedures are questionable for several reasons. For example, standard setters often retain significant discretion about when to seek public comment; when public input is sought it frequently occurs late in the standard adoption

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[93] ESMA Founding Regulation, Arts. 10, 15, 37; EBA Founding Regulation, Arts. 10, 15, 37.
[94] ESMA, *SMSG*, https://www.esma.europa.eu/smsg (last visited Nov. 4, 2026); EBA, *Banking Stakeholder Group*, https://www.eba.europa.eu/about-us/organisation-and-governance/governance-structure-and-decision-making/banking-stakeholder-group (last visited Nov. 4, 2026).
[95] THE HOUSE OF REPRESENTATIVES, JAPAN, *Committees*, https://www.shugiin.go.jp/internet/itdb_english.nsf/html/statics/guide/committee.htm (last visited Nov. 4, 2026).
[96] JAPAN SENATE, *Kokkaihō* [*Diet Law*], Act No. 79 of 1947, Art. 51, https://www.sangiin.go.jp/eng/law/diet/index.htm.
[97] JAPAN FINANCIAL SERVICES AGENCY ("**JFSA**"), *Financial Services Agency* (Dec. 2025), https://www.fsa.go.jp/en/about/pamphlet_e.pdf.
[98] *Id*.
[99] *Id*. at 6.
[100] INTERNATIONAL MONETARY FUND, *Japan: Financial Sector Assessment Program—Technical Note on Regulation and Supervision of Fintech* at 18, n.23 (2024), https://www.elibrary.imf.org/view/journals/002/2024/116/article-A001-en.xml.
[101] JFSA, *Kin'yū Shingikai Giji Kisoku no Ichibu Kaisei (An) Shinkyū Taishōhyō* [*Comparative Table of Proposed Partial Amendments to the Financial System Council's Rules of Procedure*], Art. 3 (Sept. 11, 2020), https://www.fsa.go.jp/singi/singi_kinyu/soukai/siryou/20200911/1-2.pdf.
[102] *See*, *e.g.*, JFSA, *Minutes of the 4th meeting of the Financial Services Agency's "Disclosure Working Group,"* (Dec. 18, 2025), https://www.fsa.go.jp/singi/singi_kinyu/disclosure_wg/gijiroku/20251218.html.

process;[103] and international standard setters are not always required to consider or respond to the public comments they receive.

The following table summarizes the key characteristics of the international standard setters' notice-and-comment processes.

Table 2: International Standard Setters' Notice-and-Comment Processes

Characteristic	Basel Committee	FSB	IAIS	IOSCO
Public Notice-and-Comment Required for Standards	Yes	Discretionary	Yes	Discretionary
Length of Comment Period	90 days	60 days	60 days	90 days
Comments Published	Yes	Yes	Yes	Yes
Responses to Comments Required	No	Yes	Yes	Yes

The Basel Committee's charter outlines its public comment requirements. Specifically, the charter requires that the adoption of standards "will include issuing a public invitation . . . to provide comments in writing," typically during a 90-day window.[104] In addition, public comments are supposed to be published on the Basel Committee's website, unless the commenter requests confidential treatment.[105] Importantly, public comment is only required for the adoption of standards and not for the adoption of guidelines or sound practices. Moreover, the Basel Committee is not required to respond to or address the comments it receives in the final adopting release of the standards or in any other form. For example, in 2025 the Basel Committee adopted amendments to standards regarding the hedging of counterparty credit risk exposures based on a previously published consultative document.[106] The Basel Committee published the comments to the consultative documents that it received,[107] and noted changes in the final standard document

[103] *See*, *e.g.*, Christina Parajon Skinner, *Testimony Before the Subcommittee on Financial Institutions and Monetary Policy of the House Committee on Financial Services* at 5 (Sept. 11, 2024), https://docs.house.gov/meetings/BA/BA20/20240911/117629/HHRG-118-BA20-Wstate-SkinnerC-20240911.pdf (noting with regard to the Basel Committee, "although the working groups may hold hearings or invite written submissions in regard to a fledging rule… they are not required to do so. It follows that there are no set parameters for balancing viewpoints or otherwise checking against group think in the working groups.").

[104] BIS, *supra* note 9, § 17.

[105] *Id*.

[106] BIS, *Technical Amendment, Hedging of Counterparty Credit Risk Exposures* (Oct. 2025), https://www.bis.org/publications/202510-standards-technical-amendment-hedging-counterparty-credit-risk-exposures.pdf.

[107] BIS, *Technical Amendment, Hedging of Counterparty Credit Risk Exposures – Comments received*, https://www.bis.org/publications/202411-consultation-technical-amendment-hedging-counterparty-credit-risk-exposures (last visited Nov. 4, 2026).

compared with the consultative document that were based on feedback received but did not publicly respond to or describe whether it was taking or rejecting individual comments.

The FSB has long been subject to criticism for an opaque policy development process, especially because it does not have a mandated notice-and-comment process.[108] While the FSB's charter states that it "should have a structured process for public consultation on policy proposals," it does not make that process compulsory.[109] The FSB's procedural guidelines specify that *when* public consultation processes are used, FSB should provide a 60-day notice-and-comment period, publish the comments received on its website, and explain how the comments were addressed in the post-consultation version of the international standards.[110] However, although the FSB has announced "an explicit expectation that documents that may materially affect external stakeholders" should be subject to this procedure,[111] and the FSB's website now states that "[t]he FSB issues consultations for all policy documents,"[112] this position has not been formalized in its procedural guidelines, which instead specify that "[t]he Plenary *may* decide to conduct a public consultation… on specific issues or policy proposals."[113] While the action of standardizing the elements of its notice-and-comment process was an important step forward, the FSB formally retains substantial discretion to determine when to engage in this process.

In October 2026 the FSB published a report analyzing whether its internal policy-making processes create obstacles to domestic implementation and making recommendations to improve these processes.[114] The report found that given the FSB's considerable discretion in how it conducts the standard-setting process, "the quality of design [of any particular policy recommendation] is dependent heavily on the practices adopted by a particular working group or workstream, and lessons learnt in one exercise have not reliably been carried into the next."[115] The FSB therefore announced it would adopt a written framework for the development of policy recommendations. However, the framework is intended to serve as a "default method," and will continue to allow the FSB discretion to deviate.[116] The report also observed that early stakeholder engagement can help ensure subsequent recommendations "reflect real-world realities" and stated that the FSB will engage with the public during the policy-development process "[w]hen helpful

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[108] *See*, *e.g.*, Michael S. Barr, *Who's in Charge of Global Finance*, 45 GEORGETOWN JOURNAL OF INTERNATIONAL LAW 971 (2014).
[109] FSB, *supra* note 54, at Art. 3(2).
[110] FSB, *supra* note 56, at I(88)-(89); FSB, *G20 Implementation Monitoring Review – 2026 Report* (Oct. 14, 2026), https://www.fsb.org/uploads/P141026-2.pdf (Announcing that the statement explaining how comments were addressed "will now also regularly include the reason why a significant alternative was not adopted, where that is the case").
[111] FSB, *FSB Completes a Review of its Processes and Transparency to Maximize its Effectiveness*, http://www.fsb.org/2018/11/fsb-completes-a-review-of-its-processes-and-transparency-to-maximise-its-effectiveness/ (Nov. 27, 2018).
[112] FSB, *Consultations*, https://www.fsb.org/consultations/ (last updated Aug. 19, 2024).
[113] FSB, *supra* note 56, at I(88).
[114] FSB, *G20 Implementation Monitoring Review – 2026 Report*, *supra* note 110.
[115] *Id*. at 9.
[116] *Id*. at 23-24.

and where time is not of the essence."[117] In a separate October 2026 consultation, the FSB also proposed that its *members* should engage with stakeholders at the policy development stage.[118]

The IAIS by-laws require it to consult publicly and transparently in developing standards and guidelines.[119] The IAIS has adopted formal, publicly available procedures to this end, last updated in 2023, which impose requirements at several different stages of the policy development process.[120] First, when a committee or subcommittee engages in initial discussions regarding the development or substantial revision of standards and guidelines, the IAIS will engage with stakeholders to gather relevant perspectives, including potentially through webinars or by inviting experts to subcommittee meetings.[121] If the project is significant, the IAIS will also consider organizing a public session to elicit feedback on specific issues. Second, at least once before the IAIS adopts standards, such standards must be put out for a public comment period of at least 60 days with comments made publicly available.[122] Third, following adoption of a standard, IAIS is required to publish a document outlining the resolution of comments received and should generally organize a public discussion session describing main issues raised during consultation and how IAIS has resolved or proposes to resolve such issues.[123]

At the time of the 2019 Report, stakeholders had noted that opportunities to provide comments to IAIS were typically late in the policy-development process, minimizing their ability to affect the policies at issue.[124] However, a December 2024 report to Congress by the U.S. Treasury Department and Fed lauded the 2023 revisions to the IAIS's consultation procedures, highlighting that the revised policy "establishes specific engagement commitments and responsibilities that apply before the start of the project [and] at the point of initial discussion and development of the material," and noting positively that "the IAIS continued to publicly engage concerning the work under development by its committees and subcommittees."[125]

Finally, IOSCO has adopted consultation policies and procedures that provide IOSCO extensive discretion in deciding when to seek public input. More specifically, IOSCO "maintain[s] a flexible approach" about whether to seek public input that takes into consideration the scope and applicability of the project; the extent to which application of the work will affect business practices of regulated entities; the extent to which technical or industry-specific information is necessary; the likelihood that other international or domestic bodies are considering similar issues;

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[117] *Id*. at 19.
[118] FSB, *Regulatory and Supervisory Modernisation Principles – Consultation Report* (Oct. 14, 2026), https://www.fsb.org/uploads/P141026-1.pdf.
[119] IAIS, *supra* note 32, at Art. 2(3).
[120] IAIS, *Stakeholder Engagement and Consultation Policy* (Nov. 2023), https://www.iais.org/uploads/2023/11/Stakeholder-Engagement-and-Consultation-Policy.pdf.
[121] *Id*. at 9.
[122] *Id*.
[123] *Id*. at 9-10.
[124] FED, *Report on Efforts to Increase Transparency at Meetings of the International Association of Insurance Supervisors* (Sept. 10, 2019), https://www.federalreserve.gov/publications/November-2018-Efforts-to-Increase-Transparency-at-Meetings-of-the-International-Association-of-Insurance-Supervisors.htm.
[125] FED and DEPARTMENT OF THE TREASURY, *Engagement in Global Insurance Regulatory or Supervisory Forums in 2023* at 19 (Dec. 2024), https://home.treasury.gov/system/files/311/2024_GlobalInsuranceForumsReport_final.pdf.

the degree to which public comment will contribute to the objectives of the project; and the practicality of requesting comments and the urgency of the need for an IOSCO response.[126]

When IOSCO chooses to seek public comment, its policies provide that the comment period should generally last for three months, that comments received should be made publicly available, and that at the end of the comment period, IOSCO will "normally publish a final report" and a "summary explanation of the manner in which public comments received have been addressed."[127]

While not related to the "public notice and comment" process, it is notable that the Basel Committee, FSB, and IOSCO each make use of standing advisory groups. These groups include non-members and provide input and advice at different stages of the standard-setting process, including early consideration of emerging issues and possible responses, providing an additional mechanism for early stakeholder engagement with a broader range of stakeholders. However, these advisory bodies vary in the types of non-members that may participate. The FSB's six Regional Consultative Groups are composed of representatives from national regulators while the Basel Committee's Basel Consultative Group includes national regulators as well as regional groups of banking supervisors and international non-governmental institutions such as the IMF.[128] IOSCO's Affiliate Members Consultative Committee has a broader membership drawn from the non-voting "affiliate" members of IOSCO, including self-regulatory organizations, exchanges, market infrastructures, and associations of regulated entities, among others.[129]

In sum, standard setters have significant discretion about whether to seek public input and comment and at what stage in the process to seek public comment. And while their policies typically state that they should explain how they have responded to comments, there is no mechanism to ensure that it occurs or that comments are considered in a serious and robust manner. As a result, impacted market participants are denied the ability to provide input on standards, guidelines, and policies that affect their business practices, product offerings, operations, and clients. Moreover, policymakers are deprived of relevant data, information, and expertise necessary to make sound public policy decisions. If the public and market participants do not believe their views are being considered or heard, then the legitimacy of and confidence in international bodies are compromised.

2. The United States and Other Jurisdictions

In the U.S., agencies are obligated to provide the public with a proposed rule before it is adopted, accept public comments, and take those public comments into consideration in adopting a final rule. Under the Administrative Procedure Act of 1946 ("**APA**"), substantive agency rules

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[126] IOSCO EXECUTIVE COMMITTEE, *IOSCO Consultation Policy and Procedure* (Apr. 2005), https://www.iosco.org/library/annual_conferences/pdf/ac30-19.pdf.

[127] *Id*. at 4; *see also* IOSCO BOARD, *Final Report on Post Trade Risk Reduction Services: Sound Practices for Consideration* at 33 (Nov. 2024), https://www.iosco.org/library/pubdocs/pdf/IOSCOPD780.pdf.

[128] BIS, *supra* note 7*;* FSB, *Regional Consultative Groups (RCGs)* (Aug. 17, 2026), https://www.fsb.org/about/rcgs/.

[129] IOSCO, *Annual Report 2024* at 10–11 (2025), https://www.iosco.org/annual_reports/2024/pdf/annualReport2024.pdf.

must first be published in the Federal Register as proposed rules.[130] After publication of the proposed rule, the public must be given "an opportunity to participate in the rule making through submission of written data, views, or arguments."[131] While the statute does not delineate a minimum period of time for the solicitation of public comments, courts have held that they will ensure the public has a "meaningful" opportunity to comment,[132] and a President Clinton-era executive order stated that 60 days should generally be the minimum period of time.[133] Agencies are required to "consider" the relevant information presented.[134] This requirement has been construed by courts as obligating agencies to respond to "significant" comments, which are understood to be comments that, if true, would require a change in the proposed rule.[135] U.S. courts have also held that if the revised rule is not a "logical outgrowth" of the proposal, then the revised rule must be reopened for comment.[136] These requirements are enforceable under the APA statutory scheme.[137]

The notice-and-comment requirements differ substantially from the policies adopted by international standard setters. Most obviously, they are enforceable, whereas there are no legal consequences if a standard setter fails to follow its procedural requirements. But perhaps more relevant, the obligation to seek public input is mandatory – it is not left up to the discretion of the agency or a determination about whether the rule will have a material or substantial effect on private actors. U.S. regulators must show that they considered the comments, something that not all standard setters are required to do under their published policies, most notably the Basel Committee. However, it should be noted that U.S. financial regulators also rely extensively on informal tools not subject to the APA requirements to articulate policy, including guidance documents, FAQs, interpretive letters, and no-action letters. These informal regulatory actions

[130] 5 U.S.C. § 553(b).
[131] 5 U.S.C. § 553(c).
[132] *See*, *e.g.*, Chamber of Commerce v. SEC, 85 F.4th 760, 779 (6th Cir. 2024)
[133] EXECUTIVE OFFICE OF THE PRESIDENT, *Executive Order No. 12,866* at § 6(a) (Sept. 30, 1993), https://www.archives.gov/files/federal-register/executive-orders/pdf/12866.pdf; *see also* EXECUTIVE OFFICE OF THE PRESIDENT, *Executive Order No. 14,215* (Feb. 18, 2025), https://www.federalregister.gov/documents/2025/02/24/2025-03063/ensuring-accountability-for-all-agencies (extending the prior executive order to "independent" agencies).
[134] 5 U.S.C. § 553(c).
[135] Perez v. Mortg. Bankers Ass'n, 575 U.S. 92, 96 (2015); City of Portland v. EPA, 507 F.3d 706, 715 (D.C. Cir. 2007); Texas Corn Producers v. EPA, 141 F.4th 687, 701 (5th Cir. 2025); *see also* Ohio v. EPA, 603 U.S. 279 (2024).
[136] Long Island Care at Home, Ltd. v. Coke, 551 U.S. 158, 174 (2007); National Ass'n of Broadcasters v. FCC, 147 F.4th 978, 992 (D.D.C. 2025); South Terminal Corp. v. EPA, 504 F.2d 646, 659 (1st Cir. 1974).
[137] 5 U.S.C. §§ 701–706.

have at times been criticized as crossing the threshold into substantive rulemaking issued without notice-and-comment.[138]

U.S. financial regulators also make substantial use of advisory bodies that provide external expertise and perspectives to inform policy development, although the extent of their use varies across agencies. For example, the SEC has two advisory bodies—the Investor Advisory Committee and the Small Business Capital Formation Advisory Committee—that provide advice and recommendations on SEC regulations and policies, including on policy issues under consideration.[139] Membership across the two committees includes representatives from industry, investors, academia, and other stakeholder groups, as well as government officials.[140] The recommendations of each committee are submitted to the SEC and published on the SEC's website. The CFTC and the Fed each also maintain five advisory bodies.[141]

In the United Kingdom public consultation is an important part of the regulation development process. First, a need for legislation to implement an international standard may be initially addressed by the work of one of the "Law Commissions" (for England & Wales,[142] or for Scotland), which hold public consultations before developing a report that is submitted to the relevant Minister.[143] Details of all the consultations are available online, including the expected

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[138] *See, e.g.,* DEPARTMENT OF THE TREASURY, *A Financial System That Creates Economic Opportunities – Capital Markets* at 10 (Oct. 2017), https://home.treasury.gov/system/files/136/A-Financial-System-Capital-Markets-FINAL-FINAL.pdf ("Treasury… recommends that the SEC and the CFTC avoid imposing substantive new requirements by interpretation or other guidance."); Commissioner Hester M. Peirce, *At the SEC: Nothing but Crickets Remarks at SEC Speaks*, SEC (Apr. 2, 2024), https://www.sec.gov/newsroom/speeches-statements/peirce-remarks-sec-speaks-040224 (Observing that the SEC maintains a "maze of staff guidance… not promulgated through notice-and-comment" but for which "compliance is mandatory"); Commissioner Allison Herren Lee, *Statement of Commissioner Allison Herren Lee On Proxy Voting and Proxy Solicitation Releases*, SEC (Aug. 21, 2019), https://www.sec.gov/newsroom/speeches-statements/statement-lee-082119 (Criticizing SEC proxy guidance as creating "new substantive requirements," "without formally seeking input, justifying that choice to the public, or even identifying any benefits for investors"); Governor Michelle W. Bowman, *Building a Community Banking Framework for the Future*, FED (Oct. 2, 2024), https://www.federalreserve.gov/newsevents/speech/bowman20241002a.htm ("While regulation carries with it the obligation to comply with [APA] public notice and comment procedures… regulators have far more discretion… in issuing "guidance" that is technically non-binding but often operates as a de facto requirement…. This is true even though the expectations created by guidance can be equally or more impactful to banks than rules.").

[139] SEC, *Advisory Committees* (Feb. 12, 2026), https://www.sec.gov/about/advisory-committees .

[140] SEC, *Investor Advisory Committee*, (Sept. 23, 2026), https://www.sec.gov/about/advisory-committees/investor-advisory-committee; SEC, *Small Business Capital Formation Advisory Committee* (Oct. 15, 2026), https://www.sec.gov/about/advisory-committees/small-business-capital-formation-advisory-committee.

[141] CFTC, *Advisory Committees*, https://www.cftc.gov/About/AdvisoryCommittees/index.htm (last visited Nov. 4, 2026); FED, *Advisory Councils* (Jan. 25, 2019), https://www.federalreserve.gov/aboutthefed/advisorydefault.htm.

[142] The protocol between the Lord Chancellor (on behalf of the U.K. Government) and the Law Commission of England & Wales [*LAW COM No 321* (Mar. 29, 2010), https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2010/03/Protocol_between_Government_and_Law_Commission.pdf] together with the Welsh Protocol [*PROTOCOL BETWEEN THE WELSH MINISTERS AND THE LAW COMMISSION* (Jul. 10, 2015), https://cdn.websitebuilder.service.justice.gov.uk/uploads/sites/54/2015/07/Law_Commission_Welsh_Protocol.pdf] set out government responsibilities once a Law Commission report is published.

[143] For England & Wales, *see* LAW COMMISSION, *About the Law Commission*, https://www.lawcom.gov.uk/about/how-we-work/ (last visited Nov. 4, 2026); for Scotland, *see* SCOTTISH LAW COMMISSION, *Our Processes: An explanation of how we research, consult, and develop law reform proposals*, https://www.scotlawcom.gov.uk/our-processes (last visited Nov. 4, 2026).

impact of the proposals. Second, the U.K. government seeks public input on legislation before legislative text is proposed for adoption. During each parliamentary year, the U.K. government publishes a number of draft Bills (not the actual legislative proposals), to enable consultation and pre-legislative scrutiny, before introducing those proposals to Parliament, as draft legislation. The consultation details are available online. Once the consultation is closed, the U.K. government publishes its response.[144] Third, industry regulators, such as the FCA and PRA, likewise consult widely on the measures they propose to implement, publishing their consultation papers online, as well as impact assessments of proposed regulations.[145] From 2023, the FCA and PRA must also publish a list of respondents to each consultation where the respondent consents and, where a parliamentary committee submitted comments, explain how they considered those comments.[146]

The European Union's "Better Regulation Guidelines"[147] cover issues such as stakeholder consultations[148] and impact assessments. At the outset of policy initiatives, the framework generally calls for the publication of a "call for evidence" document or a more structured public consultation posing specific questions via a questionnaire.[149] As a rule, public consultations are held open for 12 weeks.[150] Non-confidential contributions to a consultation are published. The responses are analyzed, and a short summary of the consultation results is published online within eight weeks of the consultation closing, with a qualitative analysis synopsis report being published online at a later date.[151] Once the Commission has finalized its proposal and all comments from its consultation are passed on to the European Parliament and the Council, the public has a further eight weeks to provide feedback.[152]

With respect to the ESMA and the EBA, the legislation establishing these bodies requires that technical standards generally be subject to open public consultation,[153] and that guidelines and recommendations to national authorities be subject to such consultation "where appropriate."[154] In

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[144] *See, e.g.*, UK PARLIAMENT, *Draft Bills before Parliament*, https://www.parliament.uk/business/bills-and-legislation/draft-bills/ (last visited Nov. 4, 2026).

[145] *See generally*, FCA, *Publications Search Results – Impact Assessments*, https://www.fca.org.uk/publications/search-results?np_category=corporate%20documents-impact%20assessments&start=1. (last visited Nov. 4, 2026).

[146] UK PARLIAMENT, *Financial Services and Markets Act 2000*, Ch. 8, §§ 138I(4A)–(4D), 138J(4A)–(4D).

[147] EUROPEAN COMMISSION, *Better Regulation Guidelines* (Nov. 3, 2021), https://commission.europa.eu/system/files/2021-11/swd2021_305_en.pdf; EUROPEAN COMMISSION, *Better Regulation Toolbox* (Dec. 1, 2025), https://commission.europa.eu/law/law-making-process/better-regulation/better-regulation-guidelines-and-toolbox_en.

[148] The European Commission has specific duties, under Article 11 of the Treaty on European Union and Protocol No. 2 of it, to consult widely.

[149] EUROPEAN COMMISSION, *Better Regulation Guidelines*, supra note 147, at 13; EUROPEAN COMMISSION, *A Simpler, Clearer and Better Enforced EU Rulebook* (Apr. 28, 2026), https://commission.europa.eu/publications/simpler-clearer-and-better-enforced-eu-rulebook_en.

[150] *But see* EUROPEAN COMMISSION, *A Simpler, Clearer and Better Enforced EU Rulebook*, *supra* note 149 (Where other public or targeted consultations occur on the same initiative, the standard 12-week questionnaire period may be shortened by up to six weeks.).

[151] For more detail on Commission consultation processes, *see* EUROPEAN COMMISSION, *Better Regulation Toolbox, supra* note 147, at Chapter 7.

[152] *See id*. at 455–56.

[153] ESMA Founding Regulation, Arts. 10, 15; EBA Founding Regulation, Arts. 10, 15.

[154] ESMA Founding Regulation, Art. 16; EBA Founding Regulation, Art. 16.

practice, both ESMA and the EBA post the proposals and questions for consultation on their websites, along with any comments that they receive.[155]

In Japan, the Administrative Procedure Act mandates public consultation as part of administrative rulemaking.[156] Agencies must publish proposed regulations and supporting materials in advance, and establish a public comment period of at least 30 days from the date of initial public notice.[157] The agency must consider all timely submitted comments.[158] The JFSA publishes on its website all comments received, an explanation of how it considered those comments, and any changes it made to the proposed regulation in response.[159]

In addition, the JFSA has established the Financial Policies Monitor to receive public suggestions concerning the JFSA's regulatory policies and priorities.[160] The JFSA also meets regularly with banking, insurance, securities, and other industry bodies and publishes summaries of the issues discussed in these meetings.[161]

C. Cost-Benefit Analysis

1. International Standard Setters

Despite the benefits of ex-ante cost-benefit analysis,[162] the Basel Committee, FSB, and IAIS generally do not require a cost-benefit analysis prior to the adoption of standards.[163] Moreover, in practice, these standard setters do not consistently publish cost-benefit analyses of their standards or guidelines.[164] And where they have published such analyses (often referred to as "quantitative

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[155] EBA, *Consultations*, https://www.eba.europa.eu/publications-and-media/consultations (last visited Nov. 4, 2026); ESMA, *Consultations*, https://www.esma.europa.eu/press-news/consultations (last visited Nov. 4, 2026).

[156] JAPAN E-GOV, *Paburikku Komento Seido ni Tsuite* [*About the Public Comment System*], https://public-comment.e-gov.go.jp/contents/about-public-comment/ (last visited Nov. 4, 2026).

[157] JAPAN E-GOV, *Administrative Procedure Act*, Art. 39, https://laws.e-gov.go.jp/law/405AC0000000088?occasion_date=20231115 (last visited Nov. 4, 2026).

[158] *Id*., at Art. 42; JAPAN E-GOV, *supra* note 156.

[159] JAPAN E-GOV, *supra* note 157, Art. 43.

[160] JFSA, *Financial Policies Monitor* (Sept. 12, 2025), https://www.fsa.go.jp/en/monitor/index.html.

[161] JFSA, *Newsletter: Access FSA* (Dec. 2023), https://www.fsa.go.jp/en/newsletter/accessfsa2023/244.pdf.

[162] *See*, *e.g.*, COMMITTEE ON CAPITAL MARKETS REGULATION ("**CCMR**"), *A Balanced Approach To Cost-Benefit Analysis Reform* at 10 (Oct. 2013), https://capmktsreg.org/wp-content/uploads/2013/10/A-Balanced-Approach-to-Cost-Benefit-Analysis-Reform.pdf (noting that cost-benefit analysis reduces unjustified regulatory burdens and costs and is a commonsense approach).

[163] In October 2026 the FSB proposed improvements to its own standard-setting processes and those of its members. While the FSB proposed that its financial authority members should "[c]onsider the expected costs, benefits, and other impacts of significant regulatory and supervisory changes" when developing policy, it did not propose that cost-benefit analysis should be required in the FSB's own standard-setting process. FSB, *supra* note 118, at 5; FSB, *G20 Implementation Monitoring Review – 2026 Report*, *supra* note 110.

[164] *See, e.g.,* Murphy and Skinner, *supra* note 56, at 543 (stating that the Basel Committee's rule-making process is "unsupported by cost-benefit analysis"); Skinner, *supra* note 103 ("As regards the BCBS… the use of evidence to inform the group's work and the study of the impact of proposed regulation is optional…"); IAIS, *Public consultation comments on Stakeholder Engagement and Consultation Policy* (Nov. 2023), https://www.iais.org/uploads/2023/11/Resolution-of-comments-from-SECP-consultation.pdf (The Association of British Insurers noted that "[i]n developing proposals for consultation, a cost benefit analysis/impact assessment should be undertaken to ensure that the proposals have merit." The IAIS responded that it "undertakes cost-benefit analysis of its standards on a proportionate basis" and that it believes "more comprehensive cost benefit analysis is best undertaken at the level of each implementing authority.").

impact" studies or assessments), those assessments have often been published after the proposal is closed for public comment. For example, the IAIS issued a proposal on adopting the insurance capital standard as a prescribed capital requirement for internationally active insurance groups in June 2023 and then finalized it in December 2024. IAIS published an economic impact assessment with the final standard, not at the time of the proposal.[165]

IOSCO is unique among the international standard setters in that it has published formal "Impact Assessment Guidelines." The 2011 guidelines provide that impact assessments are a "key tool" in ensuring regulations are "based on sound analysis" and "provide a framework that ensures that policy proposals are justified."[166] IOSCO's policy states that these assessments should be "prepared as a matter of course whenever a new policy initiative with structural and cost implications is proposed."[167] Moreover, its policy provides that the public report released to seek public comment and input on policy proposals should report on the cost-benefit analysis work done on the proposed policy options.[168] In practice, however, IOSCO has not consistently disclosed any impact assessment it has conducted when publishing policy consultations.[169]

The following table summarizes the key characteristics of the international standard setters' cost-benefit analysis practices.

Table 3: Cost-Benefit Analysis Practices

Characteristic	Basel Committee	FSB	IAIS	IOSCO
Cost-Benefit Analysis Required to Adopt Standard	No	No	No	Yes
Cost-Benefit Analyses Regularly Released for Comment Simultaneously with Proposed Standard	No	No	No	No

[165] IAIS, *Insurance Capital Standard as a Prescribed Capital Requirement* (Jun. 23, 2023), https://www.iais.org/uploads/2023/06/ICS-as-a-PCR-Public-consultation-document.pdf (proposal stating that an economic impact assessment would take place in 2023 and 2024 despite the proposal being released in June 2023); IAIS, *IAIS Adopts Insurance Capital Standard and other Enhancements to its Global Standards to Promote a Resilient Insurance Sector* (Dec. 5, 2024), https://www.iais.org/2024/12/iais-adopts-insurance-capital-standard-and-other-enhancements-to-its-global-standards-to-promote-a-resilient-insurance-sector/ (press release announcing the final standard as well as the publication of the economic impact assessment report which "informed the finalization" of the standard).

[166] IOSCO, *Impact Assessment Guidelines* at 5 (Jul. 2011), https://www.iosco.org/library/pubdocs/pdf/ioscopd456.pdf.

[167] *Id*. at 16.

[168] *Id*. at 34.

[169] *See*, *e.g.*, IOSCO, *Revised Recommendations for Liquidity Risk Management for Collective Investment Schemes* (Nov. 2024), https://www.iosco.org/library/pubdocs/pdf/IOSCOPD770.pdf; IOSCO, *Valuing Collective Investment Schemes (CIS)* (Nov. 2025), https://www.iosco.org/library/pubdocs/pdf/IOSCOPD811.pdf.

Conducting cost-benefit analyses or impact assessments after policy development is substantially underway undercuts the benefits of such an undertaking. First, the fact that a decision has already been made to implement policy reforms could affect judgments made in the cost-benefit analysis that skew its results. Second, without conducting an ex-ante analysis, policymakers do not have the benefit of knowing the magnitude of the problem being solved for or the costs or benefits of different possible policy options to help them make informed decisions. Third, when the analysis is released after the substantive proposal is released, the public is not provided an opportunity to evaluate the analysis as part of the comment process.

2. The United States and Other Jurisdictions

The Committee has previously written about the need for improvements in the cost-benefit analysis requirements in the United States, particularly with respect to the requirements imposed on capital markets and banking regulators.[170] However, the existing requirements and practices are still instructive.

The primary cost-benefit requirement that applies to U.S. agencies is the mandate under Executive Order 12866. If a proposed rule is expected to have an annual economic impact of more than $100 million, an agency must assess the anticipated costs and benefits of the rule, as well as the costs and benefits of reasonably feasible alternatives.[171] In 2025, President Trump issued Executive Order 14215, extending cost-benefit analysis requirements to "independent" regulatory agencies, including the SEC, CFTC, Fed, FDIC, and OCC.[172] Historically, these agencies were encouraged to apply these cost-benefit analysis requirements by executive branch officials.[173] Some agencies are also subject to separate statutory cost-benefit analysis requirements. For example, when the SEC is engaged in rulemaking and is required by statute to determine if the rule is necessary or appropriate in the public interest, it must consider the impact of the rulemaking on efficiency, competition and capital formation.[174] The CFTC is also statutorily required under the Commodity Exchange Act to consider the costs and benefits of its regulatory actions.[175] U.S. banking regulators – the Fed, FDIC, and OCC – are subject to statutory requirements with a limited focus on the "administrative burdens and benefits"[176] of regulations and impacts on small businesses.[177] When agencies conduct cost-benefit analyses, they are included in the proposal published for public notice and comment. However, cost-benefit analyses conducted by U.S.

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[170] CCMR, *supra* note 162.
[171] EXECUTIVE OFFICE OF THE PRESIDENT, *Executive Order No. 12,866*, *supra* note 133, at §§ 3(f), 6(a)(3)(C).
[172] EXECUTIVE OFFICE OF THE PRESIDENT, *Executive Order No. 14,215*, *supra* note 133.
[173] *See*, *e.g.*, Cass R. Sunstein, *Memorandum for the Heads of Executive Departments and Agencies, and of Independent Regulatory Agencies Re: Executive Order 13563, "Improving Regulation and Regulatory Review,"* OFFICE OF MANAGEMENT AND BUDGET (Feb. 2, 2011), https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2011/m11-10.pdf.
[174] 15 U.S.C. §§ 77b(b), 78c(f), 80a-2(c), 80b-2(c).
[175] 7 U.S.C. § 19(a)(2). The statute enumerates specific categories of costs and benefits to be considered, which are: "considerations of protection of market participants and the public; considerations of the efficiency, competitiveness, and financial integrity of futures markets; considerations of price discovery; considerations of sound risk management practices; and other public interest considerations."
[176] 12 U.S.C. § 4802.
[177] 5 U.S.C. §§ 601–12

financial regulators have been criticized for emphasizing administrative compliance costs rather than a more comprehensive assessment of broader economic effects.[178]

In the United Kingdom, as noted in the Committee's 2013 report on cost-benefit analysis, cost-benefit analysis is a critical component of regulatory development.[179] Indeed, the regulatory approach is informed by the U.K. government's commitment to follow "better regulation" policies[180] and impact assessments (which use a cost-benefit analysis) that are central to such policies. The U.K.'s 2023 Better Regulation Framework aims to encourage "earlier and more holistic scrutiny of regulatory proposals through consideration of wider impacts beyond direct costs to business," including, for example, effects on society, business, households, competition, and international trade and investment.[181]

All new government policies, programs and projects are expected to be subject to a proportionate assessment of costs and benefits, so that anyone commenting on the proposal or scrutinizing it has enough information.[182] For certain measures that impact business[183] and whose impact is estimated to be above a certain threshold, an "Options Assessment" must be produced for independent scrutiny by the Regulatory Policy Committee ("**RPC**").[184] The RPC is an advisory body sponsored by the Department for Innovation, Science and Trade.[185] RPC opinions on Options Assessments are published.[186] The Options Assessment is then updated to create a regulatory impact assessment ("**RIA**").[187] If Parliament heavily amends the legislative proposal during its adoption process in a way that significantly alters its impacts, a new "enactment impact assessment" is prepared and published after the legislation is enacted.[188]

With respect to the U.K.'s financial regulators, the Financial Services Act of 2012 mandated that the FCA and PRA conduct a quantitative cost-benefit analysis if possible, and a qualitative one if a quantitative one is impractical.[189] In 2023, further cost-benefit analysis reform was enacted to require the FCA and PRA to publish a statement of policy in relation to the preparation of CBAs (including information about the methodology used) and to establish and

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[178] *See, e.g.*, CCMR, *supra* note 162, at 9-10; Thomas L. Hogan, *A Review of the Regulatory Impact Analysis of Risk-Based Capital and Related Liquidity Rules*, 14(1) JOURNAL OF RISK AND FINANCIAL MANAGEMENT 24 (2021); Richard L. Revesz, *Cost-Benefit Analysis and the Structure of the Administrative State: The Case of Financial Services Regulation*, 34 YALE JOURNAL ON REGULATION 545, 549 (2017).

[179] CCMR, *supra* note 162, at 15–16.

[180] DEPARTMENT FOR BUSINESS & TRADE, *Better Regulation Framework Guidance* (Sept. 2023), https://assets.publishing.service.gov.uk/media/67587ba55a2e4d4b993bfa83/better-regulation-framework-guidance-2023.pdf.

[181] *Id*. at 3, 30.

[182] HM TREASURY, *The Green Book: UK Government Guidance on Appraisal* (2026), https://assets.publishing.service.gov.uk/media/698dbcd17da91680ad7f4308/The_Green_Book_2026.pdf.

[183] With certain specified exclusions. The list of categories for exclusion from independent scrutiny is included at DEPARTMENT FOR BUSINESS & TRADE, *supra* note 180, at Annex 1.

[184] *See id*., at Paras. 6.9–6.14, Annex 4.

[185] REGULATORY POLICY COMMITTEE, *About This Blog*, https://rpc.blog.gov.uk/about/ (last visited Nov. 4, 2026). In July 2026, the Department of Business and Trade was renamed the Department for Innovation, Science and Trade.

[186] *See* DEPARTMENT FOR BUSINESS & TRADE, *supra* note 180, at Para. 8.11.

[187] *See id*., at Paras. 3.5–3.6.

[188] *Id.*, at Para 10.32

[189] UK PARLIAMENT, *supra* note 146, at Ch. 8 §§ 138I–138J.

maintain a panel of persons to provide advice in relation to cost-benefit analyses.[190] The agencies' detailed cost-benefit analysis methodologies encompass the broader economic effects of regulation, including effects on consumers, competition, financial markets, financial stability, and economic output, rather than limiting analysis to compliance costs.[191]

In the European Union, as described above, when the Commission has a new regulatory proposal, it first publishes a call for evidence or a public consultation questionnaire.[192] For proposals expected to have a significant impact, an impact assessment—including consideration of costs and benefits as well as alternative policy options—is produced taking into consideration stakeholder feedback and other evidence.[193] Commission impact assessments are scrutinized by an independent body, the Regulatory Scrutiny Board.[194] The Commission then publishes the final legislative proposal along with the final impact assessment and submits them to the European Parliament and the Council.[195] Stakeholders then have an opportunity to provide feedback on the proposal and accompanying impact assessment for a further eight weeks, which the Commission makes available to the Parliament and Council during the legislative process.[196]

With regard to the ESMA and the EBA, the legislation establishing these bodies requires that technical standards generally be subject to cost-benefit analyses,[197] and that guidelines and recommendations to national authorities be subject to such cost-benefit analyses "where appropriate."[198] Both ESMA and the EBA typically publish draft technical standards and the accompanying cost-benefit analyses on their websites.[199]

In Japan, the Government Policy Evaluations Act requires regulatory agencies including the JFSA to conduct impact assessments of proposed regulations that analyze potential costs and benefits and to publish the results of their analyses.[200] Agencies must also conduct and publish

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[190] UK PARLIAMENT, *Financial Services and Markets Act 2023*, at Ch. 3, https://www.legislation.gov.uk/ukpga/2023/29/contents.

[191] FCA, *Statement of Policy on Cost Benefit Analyses* at Ch. 5, 10 (Jul. 2024), https://www.fca.org.uk/publication/corporate/statement-policy-cba.pdf; BANK OF ENGLAND, *The Prudential Regulation Authority's Approach to Cost Benefit Analysis* at Ch. 2 (Apr. 29, 2026) https://www.bankofengland.co.uk/prudential-regulation/publication/2026/april/pra-approach-to-cost-benefit-analysis-statement-of-policy; *see also,* CCMR, *supra* note 162 at 15-16.

[192] EUROPEAN COMMISSION, *Communication from the Commission to the European Parliament, The Council, The European Economic and Social Committee and the Committee of the Regions Re: Better Regulation: Joining Forces to Make Better Laws* (Apr. 29, 2021), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52021DC0219.

[193] EUROPEAN COMMISSION, *Better Regulation Toolbox*, *supra* note 147, at 42, 52, 70-73; EUROPEAN COMMISSION, *A Simpler, Clearer and Better Enforced EU Rulebook*, *supra* note 149 ("Consideration of costs and benefits will remain a key part of this more focused and concise analysis, with figures, data and statistics playing a prominent role...").

[194] EUROPEAN COMMISSION, *Law-Making Process*, https://commission.europa.eu/law/law-making-process_en (last visited Nov. 4, 2026).

[195] *Id.*; EUROPEAN COMMISSION, *Better Regulation Toolbox*, *supra* note 147 at 54.

[196] EUROPEAN COMMISSION, *Better Regulation Toolbox*, *supra* note 147 at 456-57.

[197] ESMA Founding Regulation, Arts. 10, 15; EBA Founding Regulation, Arts. 10, 15.

[198] ESMA Founding Regulation, Art. 16; EBA Founding Regulation, Art. 16.

[199] EBA, *supra* note 155, ESMA, *supra* note 155.

[200] JFSA, *Kisei no Seisaku Hyōka (RIA)* [*Regulatory Policy Assessment*], https://www.fsa.go.jp/seisaku/r7ria.html (last visited Nov. 4, 2026).

analyses of the effects of implemented regulations following implementation.[201] The reviews assess whether expected impacts materialized as anticipated.[202]

[201] ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT ("**OECD**"), *OECD Regulatory Policy Outlook 2025 (Japan)*, https://www.oecd.org/en/publications/oecd-regulatory-policy-outlook-2025_56b60e39-en/full-report/japan_ab702875.html (last visited Nov. 4, 2026); CABINET OF JAPAN, *Kisei Kaikaku Jisshi Keikaku* [*Regulatory Reform Implementation Plan*] (Jun. 24, 2014), https://www8.cao.go.jp/kisei-kaikaku/kaigi/review/keikaku.pdf.
[202] OECD, *supra* note 201.

III. Policy Reforms at the International Standard Setters

In the Committee's view, there is a fundamental need and vast room for improvement in the standard development process used by international standard setters to further improve their processes with regard to transparency, public input, and cost-benefit analysis. Domestic regulatory processes in the United States, United Kingdom, European Union, and Japan can provide examples of how the international standard setters' processes can be improved or reformed. Reforms to improve such processes will make the standard development process more robust, rigorous, rational, and legitimate, and will ensure that the domestic processes employed in the U.S. to implement those standards are not undermined. As the OECD has said, "transparent, evidence-based and inclusive international rulemaking is recognised as increasingly critical," and stakeholder engagement is a "core element of good governance, and a fundamental determinant of public trust, process legitimacy, and rule credibility."[203] The Committee encourages the international standard setters and U.S. regulators to adopt the following policy proposals to enhance international standard-setting processes.

A. Enhancing Transparency

- **Each standard setter should fully disclose on its website all existing committees, working groups, task forces, and similar groups, the national regulatory bodies that serve on each group, and a point of contact for the committee or working group**.[204] The public deserves to know the various committees and groups of the standard setters and their compositions and have the ability to engage with such groups. Such a reform could also help the standard setters and their members operate more effectively. Lee Reiners, a former official at the Federal Reserve Bank of New York who worked on matters pertaining to the Basel Committee and FSB, has noted that such reforms "would actually assist standard setters and their member organizations, who for the first time would be able to holistically assess the organizations they are a part of and contribute to. The [Basel Committee] for instance, could use the information to determine if their committee structure has grown too unruly and decide to streamline their decision making process. U.S. regulators could use the information to assess [U.S.] contributions to international committees and whether that's the best use of their staff's time and energies. U.S. agencies could also use the information to better coordinate with each other ahead of critical committee meetings."[205] The Committee agrees with this assessment.

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[203] OECD, *Compendium of International Organisations' Practices* (Sept. 13, 2021), https://www.oecd.org/en/publications/compendium-of-international-organisations-practices_846a5fa0-en/full-report/component-11.html.

[204] A similar recommendation has been made by Lee Reiners, a former official at the Federal Reserve Bank of New York who is now at Duke University. Lee Reiners, *Increasing Transparency at the Financial Stability Board and Basel Committee*, THE FINREG BLOG (Mar. 14, 2017), https://sites.duke.edu/thefinregblog/2017/03/14/increasing-transparency-at-the-financial-stability-board-and-basel-committee/.

[205] *Id*.

- **Each standard setter should disclose the substantive projects that are being worked on within the body.**[206] The public and financial sector participants should be aware of projects in the pipeline. Such knowledge allows them to prepare for potential regulatory changes, begin to evaluate potential policy changes before they are proposed, and attempt to engage with policymakers earlier in the process about whether policy reforms are desirable or how they should be structured or implemented. This practice has begun to be adopted, as from 2019 each of the standard setters publishes an annual work program. However, none of the standard setters currently have webpages that, in one place, disclose the projects the body and each of its committees, task forces, or working groups are working on.

- **Each standard setter should provide public notice and publish a list of topics to be covered at any meeting of the decision-making organization, and any committee, working group, or task force working on standards that would be expected to be implemented by members if finalized.**[207] Currently such advance disclosures are not made by the standard setters. Such a reform would provide the public more information about what the standard setters are working on, the progress they are making, and enhance public confidence in the deliberative nature of the standard setters.

- **Each standard setter should increase the transparency about the discussions held at meetings of the body's decision-making organization, and committees, working groups, task forces, or similar groups.**[208] As described earlier, none of the standard setters open their meetings to the general public, publish a list of meeting attendees, or post minutes, transcripts, or detailed agendas reflecting all issues discussed during all meetings. Reforms, including through the posting of high-level summaries of meetings within one month of their being held (as is the practice of the IAIS), disclosing the attendees of the meetings, and opening certain meetings to the general public or streaming them live online, would enable the public to understand the positions being taken by various members and increase accountability in their home jurisdictions by knowing what positions the officials advocated for and how strenuously. The exact mechanism used to increase transparency may depend on the topic being addressed or the stage of deliberations. For example, if discussions could result in disruptive market speculation, there could be reasons to delay release of some information for a period of time or provide it in redacted form. In the

[206] Several recent proposals in Congress have highlighted the need for greater transparency in the policy-making process at international standard setters. *See, e.g.,* Congressional Banking Regulation Priorities and Accountability Act of 2024 (H.R. 9512, 118th Congress) (requiring federal agencies to give Congress advance notice of policy issues under discussion at each standard setter, a schedule of negotiations thereon, and access to documents relating to negotiations and discussions); Transparency in Banking Act (S. 940, 119th Congress) (requiring federal agencies to submit annual reports to Congress regarding what standards are under consideration at the Basel Committee as well as an explanation of the proposed activities of all subcommittees); International Regulatory Transparency & Accountability Act (H.R. 4642, 118th) (requiring federal financial regulators to post a summary of each meeting of the international standard setters they participate in online, including topics discussed and outcomes).

[207] Similar proposals have been made by others. *See* Eric Helleiner, *FSB Governance*, in GLOBAL FINANCIAL GOVERNANCE & IMPACT REPORT 2013 (Sept. 27, 2013), https://us.boell.org/sites/default/files/global_financial_governance_impact_report_2013_.pdf.

[208] A similar proposal has been made by Eric Helleiner. *See id*.

United States, for example, Federal Open Market Committee meetings that set interest rates are not streamed live. Nevertheless, policy statements are released immediately after the meetings, minutes are released three weeks later, and full transcripts are released five years after the meeting.[209] In any event, more light should be shone on what is actually said and debated in meetings of standard setters where policy is being developed.

B. Enhancing Opportunities for Public Input

- **Each standard setter should adopt policies requiring that it seek public comment on any proposed standards or other policy that is expected to be implemented by members if finalized.**[210] Each of the standard setters recognizes, to some extent, the value of providing the public the opportunity to comment on policies that the body expects its members to implement. Yet, the FSB and IOSCO retain significant discretion about choosing whether to seek input. Public comment should be sought in all matters where policies are being developed that members will be expected to implement. Notice-and-comment procedures should not be discretionary. Indeed, if global standards are so important that international bodies believe they need to be adopted, it is only logical to conclude that those standards will be material and impact markets, institutions, and consumers, who should all be provided ample opportunity to provide input on standards that will affect them.

- **Each standard setter should include an explanation of how the body considered the comments received during the consultation period as part of the final release of any standard, principles, guidelines, or other policy expected to be implemented by its members.** Public input is only valuable to the extent that it is considered and addressed. Yet, the Basel Committee is not required by any of its policies to respond to public comments and demonstrate that they have been seriously considered. To ensure standard setters are seriously wrestling with public comments, the Basel Committee should provide a narrative explanation of how comments were addressed in final standards, and if a comment did not result in a change, why it did not. The standard setters could look to the United States as an example, where the preamble of the announcement of the text of a final rule includes discussion of how comments submitted were incorporated or not into the final rule.

- **Each standard setter should seek public input prior to the publication of proposed standards or other policies expected to be implemented by members.** Even where policies that are expected to be adopted domestically are subject to public notice and comment at the stage the proposal is published, there are still legitimate concerns that such

[209] *See* FED History, *Transparency* (Aug. 5, 2024), https://www.federalreservehistory.org/essays/transparency (noting the same-day disclosure of policy actions beginning February 1994); FED, *Meeting Calendars, Statements and Minutes*, https://www.federalreserve.gov/monetarypolicy/fomccalendars.htm (last visited Nov. 4, 2026) ("The minutes of regularly scheduled meetings are released three weeks after the date of the policy decision."); Fed, *FOMC Transcripts and other Historical Materials*, https://www.federalreserve.gov/monetarypolicy/fomc_historical.htm (last visited Nov. 4, 2026) (transcripts released "with about a five-year lag").

[210] *See also* Reiners, *supra* note 204.

input might be provided too late in the process and standard setters could become invested in the proposals they have made.[211] Public participation earlier in the process might inform the standard setter about whether an international policy on the topic is necessary, alternative regulatory approaches, or facts that might influence the proposal's approach or framework. Public input should be sought during the development of the proposal itself. Even if regulators substantially revise proposals submitted for comment at a later stage based on the public comments received,[212] earlier public consultation would make the process more efficient by incorporating the public's perspective into the original proposal. The IAIS has made progress in this regard by formally committing to engage with stakeholders during initial policy development discussions.[213] The other international standard setters do publicly consult at an early stage on some occasions, but not consistently. For example, the Basel Committee published a "discussion paper" in December 2019 on designing a prudential treatment for crypto-assets,[214] before publishing a preliminary policy proposal on the topic in June 2021 that built on the responses received to the discussion paper.[215] The FSB has also recently announced that it will engage with the public during the policy-development process more regularly, but retains discretion to forego early engagement.[216] Standard setters could regularly request input by the public at the beginning of the standard-setting process or during the process before proposed standards are announced in several ways. One way to get earlier public input could be by announcing that a proposal is being developed and identifying a contact that interested parties could communicate with on the matter. Alternatively, a more formal approach could be used where an interim consultation request is published prior to the disclosure of the particulars of a proposal that asks for responses on numerous questions relevant to the development of the proposal. Standard setters could also consider establishing advisory bodies including industry stakeholder members to provide input and expertise on policy matters. The approach chosen may depend on the particular facts and circumstances of the issue at hand.

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[211] *See, e.g.*, Hugh Carney, *What Happens in Basel Doesn't Stay There*, AMERICAN BANKERS ASSOCIATION (Jan. 8, 2025), https://bankingjournal.aba.com/2025/01/what-happens-in-basel-doesnt-stay-there; BANK POLICY INSTITUTE, *Governance and Authority of the Basel Committee on Banking Supervision* (Nov. 16, 2022), https://bpi.com/governance-and-authority-of-the-basel-committee-on-banking-supervision/ (arguing that domestic notice-and-comment has become "more of a box-ticking exercise" because substantive debate occurs years earlier in the Basel Committee).

[212] For example, the FSB's proposal for designating asset managers as systemically important financial institutions had to be reworked after opposition emerged to its original proposal. *See* Huw Jones, *Global watchdog finalizes proposed rules to tackle asset management risks*, REUTERS (Jan. 13, 2017), https://www.reuters.com/article/us-g20-funds-regulations/global-watchdog-finalizes-proposed-rules-to-tackle-asset-management-risks-idUSKBN14W2HJ.

[213] IAIS, *Stakeholder Engagement and Consultation Policy*, at 8-9 (Nov. 2023), https://www.iais.org/uploads/2023/11/Stakeholder-Engagement-and-Consultation-Policy.pdf.

[214] BIS, *Designing a Prudential Treatment for Crypto-Assets*, https://www.bis.org/publications/201912-consultation-designing-prudential-treatment-crypto-assets (last visited Nov. 4, 2026).

[215] BIS, *Prudential Treatment of Cryptoasset Exposures*, https://www.bis.org/publications/202106-consultation-prudential-treatment-cryptoasset-exposures (last visited Nov. 4, 2026).

[216] FSB, *G20 Implementation Monitoring Review – 2026 Report*, *supra* note 110, at 19.

C. Enhancing the Use of Cost-Benefit Analysis

- **Each standard setter should conduct a cost-benefit analysis of any standard or policy expected to be implemented by its members, and that analysis should be published with the proposed standard and subject to public notice and comment.** To analyze whether standards are advisable and necessary, standard setters should conduct cost-benefit analyses before releasing any proposed standards. Only IOSCO has policies in place requiring the use of cost-benefit analysis in the adoption of a standard. Although IOSCO's policies also require it to include that analysis in the proposal itself, it has not consistently done so in recent years. Further, the Basel Committee, FSB, and IAIS have repeatedly conducted and published impact assessments after a proposed standard has been put out for public comment. Consistently conducting cost-benefit analyses and subjecting them to the public notice-and-comment process will enable standard setters to compare the costs and benefits of alternative regulatory approaches. Such analyses should be conducted on all standards, principles, or guidelines expected to be implemented by members without a materiality threshold. It is impossible to truly know the impact of a proposal unless it has been studied, and if an issue is vital enough to be raised at the international level, the presumption should be that its impacts will be significant. Finally, subjecting the cost-benefit analyses to public notice and comment enables the analysis, assumptions, and data to be reviewed by outsiders.

- **The standard setters should conduct ex-post cost-benefit analyses of existing standards and work to identify and reduce conflicting or duplicative standards as part of those analyses.** At the time standards are proposed, it can be difficult to predict the costs and benefits of the new standards and to correctly predict the types and magnitude of first- and second-order effects of the proposal. It also can take time for the costs and benefits to manifest themselves. As the OECD has stated, "[r]egulations should be periodically reviewed" because "not all effects can be known with certainty in advance," and "the original environment justifying the regulation may have changed."[217] In addition, different standards may be adopted at various times to address different issues, which may result in unintended conflicts or duplication of standards. FSB Chair of the Standing Committee on Standards Implementation Ryozo Himino has stated that evaluations of financial regulatory reforms are "a core part of the FSB's mandate, as they help us to assess whether agreed reforms are achieving their intended outcomes and identify any material unintended consequences that may have to be addressed."[218] However, while the FSB adopted a framework in 2017 for post-implementation review of the effects of reforms adopted across the international standard setters—which includes an assessment of benefits

[217] OECD, *supra* note 201, at 85.

[218] FSB, *FSB Finds that the G20 Financial Regulatory Reforms have Enhanced the Resilience of Securitisation Markets* (Jan. 22, 2025), https://www.fsb.org/2025/01/fsb-finds-that-the-g20-financial-regulatory-reforms-have-enhanced-the-resilience-of-securitisation-markets/.

and costs—it has only conducted five such evaluations to date.[219] The Committee therefore recommends that within several years after a standard is implemented, a formal cost-benefit analysis be conducted and published to determine the actual (rather than predicted) costs and benefits and determine if any revisions or recalibrations are necessary, including whether the standard conflicts with others or is duplicative in light of other adopted standards.

D. How U.S. Regulators Can Enhance the Standard Setting Process

- **U.S. regulators that are members of a standard setter should publish the proposed international standards, as well as the agency's views on the proposal, for comment in the United States.**[220] This is a practice that U.S. banking regulators used in the development of Basel II capital standards[221] but did not use during the development of the Basel III standards. Adoption of this practice would ensure that U.S. agencies are informed by public input before agreeing to any final international standards, principles, or guidelines. It would provide U.S. interested parties an avenue to comment on proposed international standards even if the standard setter does not engage in a notice-and-comment process. Given that U.S. regulators may feel obliged or pressured to implement international standards, taking comments at this earlier stage could help ensure that comments disagreeing with an international standard are considered and not rejected outright because they are submitted in response to a proposed domestic rulemaking that is merely meant to implement an already agreed-upon-standard. Public comment earlier in the process reduces the potential for domestic gold plating of agreed-upon-international standards, because public input could provide a justification and grounds for U.S. regulators to push for heightened international standards within an international body if U.S. firms and the U.S. public support more stringent standards. Gold plating can put U.S. firms, markets, and the economy at a competitive disadvantage. Therefore, U.S. regulators should aim to incorporate more stringent standards that they support for U.S. markets into the relevant international standard so that they are applied equally across markets and jurisdictions. Moreover, obtaining and considering input on international standards can increase the credibility of those standards upon adoption and domestic implementation. This provides room for U.S. regulators to permit substituted compliance for comparable

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[219] FSB, *Framework for Post-Implementation Evaluation of the Effects of the G20 Financial Regulatory Reforms* (Jul. 3, 2017), https://www.fsb.org/uploads/P030717-4.pdf; FSB, *Assessing the Effects of Reforms* (Jan. 22, 2025), https://www.fsb.org/work-of-the-fsb/assessing-the-effects-of-reforms/.

[220] Similar proposals have been made in Congress. *See, e.g.,* International Regulatory Transparency and Accountability Act (H.R. 4642, 118th) (providing that a federal financial regulator may not enter into an international agreement with the Basel Committee, FSB, IAIS, or IOSCO unless it first "notifies the public of the proposed agreement and provides for a public comment period of 60 days or more"). The American Bankers Association has also made similar recommendations, *see*, *e.g.*, Carney, *supra* note 211; Touhey, *supra* note 5, at 7 (encouraging U.S. agencies to seek comment at the beginning stages of the development of international standards).

[221] OCC, FDIC, FED, and OFFICE OF THRIFT SUPERVISION, *Risk-Based Capital Guidelines; Implementation of New Basel Capital Accord*, 68 FED. REG. 45,900, 45,901 (Aug. 4, 2003), https://www.federalregister.gov/documents/2003/08/04/03-18977/risk-based-capital-guidelines-implementation-of-new-basel-capital-accord.

rules in other jurisdictions given that rules in foreign jurisdictions would be substantially equivalent to U.S. rules.

- **U.S. regulators should advocate for enhanced transparency, enhanced opportunity for public comment and enhanced cost-benefit analysis within the standard setters themselves.** The United States holds considerable sway within these international standard setters as one of the world's largest economies and as a global financial and banking center. The Fed's Vice Chairman for Supervision currently is the Chair of the Standing Committee on Supervisory and Regulatory Cooperation of the FSB, and an SEC Commissioner is Vice-Chairman of the IOSCO board, while the CFTC also has a representative on the IOSCO board. U.S. agencies should use their power and influence within the standard setters to increase transparency and public participation in the development of international standards. For example, in 2018 Congress directed Treasury and the Fed to "support increasing transparency" at the IAIS and report to Congress on their efforts.[222] Treasury and the Fed repeatedly advocated for such reforms, and the IAIS has strengthened its consultation and stakeholder-engagement procedures, including by providing for engagement earlier in the policy-development process.[223]

- **U.S. regulators should provide periodic information to Congress on the standards under development at international standard setters where that information is not publicly available.** U.S. financial regulators operate within the confines of the statutory authority delegated to them by Congress and are subject to congressional oversight.[224] Congress's ability to exercise informed oversight of U.S. regulators in the development of significant elements of financial regulatory policy is impaired when those regulators participate in opaque international standard-setting processes before a domestic rulemaking begins. Earlier congressional visibility can identify domestic statutory or policy constraints while international standards remain under development, enabling U.S. regulators to incorporate those constraints into their negotiating positions rather than discovering them only during domestic implementation. Until the processes at the international standard setters become sufficiently transparent, U.S. financial regulators should therefore provide frequent reporting or notification to Congress regarding the activities of the international standard setters in which they participate, including policy issues under discussion, the agency's positions on those issues, and the likely domestic consequences of international proposals. Similar proposals have been made recently in

[222] *Economic Growth, Regulatory Relief, and Consumer Protection Act*, Pub. L. No. 115-174, 132 Stat. 1296, 1316 (2018), https://www.congress.gov/115/plaws/publ174/PLAW-115publ174.pdf.
[223] FED and DEPARTMENT OF THE TREASURY, *supra* note 125.
[224] *See*, *e.g.*, CONGRESSIONAL RESEARCH SERVICE, *Independence of Federal Financial Regulators: Structure, Funding, and Other Issues* (Feb. 28, 2017), https://www.congress.gov/crs_external_products/R/PDF/R43391/R43391.14.pdf.

Congress.[225] The exact mechanism used to increase transparency may depend on the particular facts and circumstances of the policy under discussion, but could include semiannual or annual reports or testimony, and prompt notification of projects that may require substantial U.S. regulatory action.

Appendix A briefly summarizes the extent to which each international standard setter has adopted our recommendations to date. We classify each standard setter's progress in implementing each recommendation according to three categories – not addressed; partially addressed; or substantially addressed. Below, we provide summary statistics on the extent to which our recommendations have been addressed. Because no recommendation has been substantially addressed by every international standard setter, all our recommendations remain relevant. Overall, we find that the international standard setters have not addressed the recommendations approximately 22% of the time, partially addressed the recommendations approximately 58% of the time, and substantially addressed the recommendations approximately 19% of the time. Each of the FSB, IAIS, and IOSCO has not addressed approximately 22% of the recommendations, partially addressed approximately 56% of the recommendations, and substantially addressed approximately 22% of the recommendations. The Basel Committee has made somewhat less progress than the other standard setters in implementing the recommendations. Specifically, the Basel Committee has not addressed approximately 22% of the recommendations, partially addressed approximately 67% of the recommendations, and substantially addressed approximately 11% of the recommendations.

Table 4: Recommendation Uptake Statistics

Recommendation Uptake	Overall	Basel Committee	FSB	IAIS	IOSCO
Not addressed	22%	22%	22%	22%	22%
Partially addressed	58%	67%	56%	56%	56%
Substantially addressed	19%	11%	22%	22%	22%

[225] *See, e.g.,* H.R. 9512, Congressional Banking Regulation Priorities and Accountability Act of 2024 (requiring federal financial agencies to notify Congress of issues under discussion at covered international organizations); H.R. 4823, American Financial Institution Regulatory Sovereignty and Transparency Act of 2023 (requiring banking agencies to provide annual reports to Congress regarding their interactions, and any recommendations made during those interactions, with the Basel Committee and FSB); H.R. 4601, Banking Regulator International Reporting Act (requiring federal banking agencies to keep complete records and report annually to Congress regarding all interactions with the Basel Committee and FSB); H.R. 4642, International Regulatory Transparency and Accountability Act (requiring federal financial regulators to notify Congress prior to entering into negotiations at international standard setters, report to Congress on U.S. positions, post meeting summaries online, and subject proposed standards to U.S. notice-and-comment before agreeing to those standards). *See also* 118th Congress, *Transparency in Global Governance: Hearing Before the Subcommittee on Financial Institutions and Monetary Policy of the House Committee on Financial Services*, (Sept. 11, 2024), https://www.govinfo.gov/content/pkg/CHRG-118hhrg57123/pdf/CHRG-118hhrg57123.pdf and §211 of EGRRCPA (requiring reports and testimony to Congress through the end of 2024 regarding issues under discussion at the FSB and IAIS, the effects international insurance proposals could have in the U.S., and positions taken by U.S. agencies).

Appendix A: Recommendation Uptake by International Standard Setters

A. Enhancing Transparency

Recommendation	Basel Committee	FSB	IAIS	IOSCO
Each standard setter should fully disclose on its website all existing committees, working groups, task forces, and similar groups, the national regulatory bodies that serve on each group, and a point of contact for the committee or working group.	**Partially addressed** • Disclosure of subcommittee membership limited to co-chairs • No disclosure of working groups or task forces	**Substantially addressed**	**Partially addressed** • Disclosure of committee, subcommittee, working group and task force membership limited to chair and vice chair • Full ExCo membership published annually	**Substantially addressed**
Each standard setter should disclose the substantive projects that are being worked on within the body.	**Partially addressed** • Disclosure of limited annual work program • No webpage detailing all projects of the body and each of its committees, task forces, or working groups	**Partially addressed** • Disclosure of annual work program • No webpage detailing all projects of the body and each of its committees, task forces, or working groups	**Partially addressed** • Disclosure of annual work program • No webpage detailing all projects of the body and each of its committees, task forces, or working groups	**Partially addressed** • Disclosure of annual work program • No webpage detailing all projects of the body and each of its committees, task forces, or working groups
Each standard setter should provide public notice and publish a list of topics to be covered at any meeting of the decision-making organization, and any committee, working group, or task force working on standards that would be expected to be implemented by members if finalized.	**Not addressed**	**Not addressed**	**Not addressed**	**Not addressed**

Recommendation	Basel Committee	FSB	IAIS	IOSCO
Each standard setter should increase the transparency about the discussions held at meetings of the body's decision-making organization, and committees, working groups, task forces, or similar groups.	**Not addressed**	**Not addressed**	**Partially addressed** • Closed meetings • No disclosure of attendees or minutes reflecting all issues discussed • Disclosure of high-level summaries of meetings within one month	**Not addressed**

B. Enhancing Opportunities for Public Input

Recommendation	Basel Committee	FSB	IAIS	IOSCO
Each standard setter should adopt policies requiring that it seek public comment on any proposed standards or other policy that is expected to be implemented by members if finalized.	**Substantially addressed**	**Partially addressed** • Public notice-and-comment is discretionary	**Substantially addressed**	**Partially addressed** • Public notice-and-comment is discretionary
Each standard setter should include an explanation of how the body considered the comments received during the consultation period as part of the final release of any standard, principles, guidelines, or other policy expected to be implemented by its members.	**Partially addressed** • Not required to address comments • In practice, publishes comments and in some cases identifies changes to final standards based on comments	**Substantially addressed**	**Substantially addressed**	**Substantially addressed**
Each standard setter should seek public input prior to the publication of proposed standards or other policies expected to be implemented by members.	**Partially addressed** • Discretionary early public engagement • Standing advisory group comprises public authorities and international institutions, without industry representation	**Partially addressed** • Recently announced an intention to seek early public input more regularly, but will remain discretionary • Standing advisory groups comprise public authorities, without industry representation	**Partially addressed** • Formal policy committing to engage with stakeholders during initial policy development • No formal advisory groups	**Partially addressed** • Discretionary early public engagement

C. Enhancing the Use of Cost-Benefit Analysis

Recommendation	Basel Committee	FSB	IAIS	IOSCO
Each standard setter should conduct a cost-benefit analysis of any standard or policy expected to be implemented by its members and that analysis should be published with the proposed standard and subject to public notice and comment.	**Partially addressed** • Cost-benefit analysis not required to adopt standards • Cost-benefit analysis not regularly released for public comment simultaneously with proposed standard	**Partially addressed** • Cost-benefit analysis not required to adopt standards • Cost-benefit analysis not regularly released for public comment simultaneously with proposed standard	**Partially addressed** • Cost-benefit analysis not required to adopt standards • Cost-benefit analysis not regularly released for public comment simultaneously with proposed standard	**Partially addressed** • Cost-benefit analysis formally required to adopt standards • Cost-benefit analysis not regularly released for public comment simultaneously with proposed standard
The standard setters should conduct ex-post cost-benefit analyses of existing standards and work to identify and reduce conflicting or duplicative standards as part of those analyses.	**Partially addressed** • Has conducted selected empirical ex-post analyses of the effectiveness of Basel III standards and analyses of potential conflicts with other standards	**Partially addressed** • Formal framework for post-implementation review of the effects of reforms (including cost-benefit assessment) • Only five evaluations conducted to date	**Not addressed**	**Partially addressed** • Formal guidelines contemplate ex-post impact analyses • No routine disclosure of any ex-post analyses that may have been conducted



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