BETTER MARKETS

May 16, 2024

Chief Counsel's Office
Attention: Comment Processing, Docket ID: OCC–2023–0008
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219

Ann E. Misback, Secretary
Attention: Docket No. R–1813, RIN 7100–AG64
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

James P. Sheesley, Assistant Executive Secretary
Attention: Comments/Legal OES (RIN 3064–AF29)
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity; OCC Docket ID: OCC–2023–0008; Board Docket No. R–1813, RIN 7100–AG64; FDIC RIN 3064–AF29; 88 Fed. Reg. 64028 (Sep. 18, 2023)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to provide additional comments on the above-captioned proposed rule ("Proposal") issued by the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System ("Fed"), and the Federal Deposit Insurance Corporation ("FDIC"), collectively ("Agencies").[2]

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1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity; RIN 1557-AE78, RIN 3064-AF29, RIN 7100-AG64; 88 FED. REG. 64028 (Sep. 18, 2023), https://www.federalregister.gov/documents/2023/09/18/2023-19200/regulatory-capital-rule-large-banking-organizations-and-banking-organizations-with-significant.

The Proposal would revise capital measures and definitions for large banks to more accurately reflect risk and shift the burden of that risk to the banks as well as their shareholders and away from the public. While the industry criticizes the Proposal for ***increasing*** capital requirements, as the Agencies know, it does not increase minimum requirements, but rather seeks to improve the measurement of risks that is used to determine banks' capital needs. We continue to strongly support the Proposal, as we explained in our last comment letter submitted on January 16, 2024,[3] and strengthening and improving the measurement of risks used to calculate capital requirements, as we have done for more than a decade.[4] All of the points in that comment letter are still valid and are incorporated herein. However, since submitting that letter, we have had the opportunity to review the public comment file and find it necessary to file this supplementary letter to clarify and emphasize several key points. Wall Street's biggest banks and their supporters have led a widespread resistance effort to convince the American people, community organizations, and the Agencies that modestly higher capital requirements will have far-reaching dire consequences. Along with lobbying, media campaigns, television advertising, billboards, and websites, those capital critics have used seemingly limitless resources to fill the public comment file with letters opposing the Proposal. By count, the comment letters opposing the Proposal certainly outnumber those in favor of it. However, many banks and their allies saying similar things many times over doesn't make them any less inaccurate and quantity is certainly not a substitute for merit.

As to the merits, there is simply no basis (in the comment file or otherwise) supporting any broad or material changes in the Proposal. Indeed, the comment file and the history of the post-2008 financial crash ("2008 Crash") capital increases clearly rebut the industry's arguments, which are very similar to the arguments that they have made opposing every increase in capital since the 2008 Crash. For example, the industry claimed that those past capital increases would harm the economy, cause lending to decrease, and hurt small businesses, minorities, and low- and moderate-income households, among other things. The Agencies properly and fully evaluated those objections and nonetheless increased capital requirements. Between the fourth quarter of 2008 and the fourth quarter of 2023, global systemically important banks' ("GSIB") capital ratios increased by nearly 300%.[5]

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[3] Better Markets Comment Letter, *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity* (Jan. 16, 2024), https://bettermarkets.org/wp-content/uploads/2024/01/Better-Markets-Comment-Letter-Regulatory-Capital-Rule-1-16-24.pdf.

[4] *See, e.g.*, Dennis Kelleher, Tim P. Clark, & Phillip Basil, *Protecting Our Economy by Strengthening the U.S. Banking System Through Higher Capital Requirements*, Better Markets (Dec. 22, 2022), https://bettermarkets.org/wp-content/uploads/2022/12/BetterMarkets_Strengthening_US_Banking_System_12-22-2022.pdf; Dennis M. Kelleher, *Ten Actions Necessary to Prevent Large Bank Failures, Strengthen the Financial System, and Protect Main Street Families*, Better Markets (May 9, 2023), https://bettermarkets.org/wp-content/uploads/2023/05/Better_Markets_Policy_Brief_SVB_Banking_Crisis_Responses_5-9-2023.pdf; Better Markets Comment Letter, *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action* (Oct. 22, 2012), https://bettermarkets.org/wp-content/uploads/2023/11/OCC-FRS-FDIC-CL-Reg-Capital-Implementation-of-Basel-III-etc.-20121022.pdf.

[5] BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, FINANCIAL STABILITY REPORT 27 (Apr. 2024), https://www.federalreserve.gov/publications/files/financial-stability-report-20240419.pdf.

However, the repeatedly predicted dire consequences did not happen. In fact, as the Agencies were requiring the banks to increase capital those very same banks were increasing lending, with one study showing that for every 1% increase in capital there was a 2% increase in lending.[6] Thus, the Agencies' own files and actions along with the history of the last ten-plus years conclusively disprove the bulk of the claims that the industry is making yet again now. Given this very recent history and data, to say that those repetitive baseless arguments should be met with skepticism would be an understatement.[7]

Furthermore, many of the industry's other anti-capital claims that ostensibly support their criticism of the Proposal lack a valid basis. In this supplemental letter, we provide facts and data to prove how these claims are misleading and wrong, and policies informed by the industry's specious analysis will actually lead to weaker economic growth, less lending, greater instability, and more volatility. Moreover, the industry's unsupported arguments, if successful, will shift the cost and burden of bank failures to taxpayers and Main Street Americans, while Wall Street's biggest banks are allowed to continue to reap higher profits and compensation without being accountable for the risks that they took to generate those profits. This moral hazard has been tolerated if not incentivized for too long and must end.

Well-capitalized banks are essential for a strong banking sector, financial system, and economy where Main Street families, businesses, and community banks can thrive.[8] The Proposal will ensure that well-capitalized banks are strong enough to continue providing credit to the American people through the ups and downs of the business cycle, which keeps the economy growing and creating jobs. Such appropriately capitalized banks will also reduce the depth, length, and cost of recessions that large bank failures usually cause. The only thing standing between a failing large bank, taxpayer bailouts, and an economic downturn—if not a catastrophe—is the amount of capital that a large bank has to absorb its own losses. As was clearly demonstrated in the 2008 Crash[9] and again with the regional bank failures in 2023 ("2023 Crisis") when systemically significant banks do not have enough capital to absorb the losses that stem from their

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6 Stephen G. Cecchetti, *The US Debate About the Final Basel III Accord*, Peterson Institute for International Economics Financial Statements virtual event series, at 7:35 (Dec. 13, 2023), https://www.piie.com/events/us-debate-about-final-basel-iii-accord.

7 The 300% increase in capital since 2008 does not mean that banks have enough capital now because the increase was from the lowest level in 80 years when it was so low and grossly inadequate that the entire financial system went bankrupt, collapsed, and required historically large bailouts. The question isn't how high capital has increased since the nadir, but do banks have enough capital now to reduce the threat of systemic instability, contagion, and bailouts to an acceptably low level. The answer to that question is decidedly no, making the Proposal and indeed even higher capital a necessity. *See* Dennis M. Kelleher, *The Too BIG to FAIL Problem Is Alive, Well and Getting Worse*, Better Markets (Sept. 16, 2019), https://www.bettermarkets.org/sites/default/files/documents/Better_Markets_Too-Big-To-Fail_FSB_Conference-9-16-2019.pdf .

8 *See, e.g.*, Kelleher, Clark, & Basil, *supra* note 4.

9 *See* BETTER MARKETS, THE COST OF THE CRISIS (July 2015), https://www.bettermarkets.org/sites/default/files/Better%20Markets%20-%20Cost%20of%20the%20Crisis.pdf.

risky activities, the government has to step in with a bailout, and the American people ultimately pay for that bailout.[10]

That's why **undercapitalized banks**, which can precipitate and exacerbate financial crashes, contagion, recessions, and economic downturns—not more capital—are the dangers the law mandates the Agencies prevent. In contrast, the banks are basically arguing that the greatest threat to the country is from **overcapitalized banks**, and that the Proposal will require banks to have too much capital which will lead to a variety of claimed but unsupported negative outcomes. That has never happened, but severe if not catastrophic outcomes have occurred due to undercapitalized banks.

It is important to note that this is not an issue of the banks not having enough capital. They consistently generate enormous amounts of capital every year. For example, the six largest U.S. banks had profits of $1 trillion in just the last ten years.[11] This is an issue of what the banks choose to do with the capital they generate. They could use it to lend to Main Street families and businesses or for trading and investments. They could use it for compensation and bonuses, or for stock buybacks and dividends. For example, in just the last decade the four largest banks paid out $630 billion in buybacks and dividends (which was more than 75% of their net income).[12] JP Morgan Chase alone has increased its dividend by 2000% in the last 13 years[13] – that is **after** all the post-2008 Crash capital increases that the banks opposed with the same baseless arguments they are using today.

Or those banks could choose to use a very tiny fraction of the capital they generate to fund their operations with equity capital, rather than yet more dangerous and destabilizing debt. Absent their own choice to fund themselves with sufficient capital, it is appropriate if not mandated that the Agencies require them to do so, as reflected in the Proposal. Unfortunately, the rule cannot

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10 The cost to the American people of the 2023 crisis will likely top $300 billion: about $40 billion in capital replacement costs initially covered by the FDIC ($17.8 billion for Silicon Valley Bank, $0.9 billion for Signature Bank, and $15.6 billion for First Republic Bank) and as much as 1.4% of lost GDP due to the credit contraction triggered by the crisis, as economists at Federal Reserve Bank of Boston estimated. *See* Federal Deposit Insurance Corporation, *Final Rule on The Special Assessment Pursuant to Systemic Risk Determination* 4 (Nov. 16, 2023), https://www.fdic.gov/sites/default/files/2024-03/2023-11-16-notational-mem-b.pdf; Federal Deposit Insurance Corporation Office of the Inspector General, *Material Loss Review of First Republic Bank* 4 (Nov. 2023), https://www.fdicoig.gov/sites/default/files/reports/2023-11/EVAL-24-03.pdf; Falk Bräuning & Viacheslav Sheremirov, *The Historical Effects of Banking Distress on Economic Activity* 5, FEDERAL RESERVE BANK OF BOSTON CURRENT POLICY PERSPECTIVES (May 25, 2023), https://www.bostonfed.org/publications/current-policy-perspectives/2023/the-historical-effects-of-banking-distress-on-economic-activity.

11 Max Abelson & Hannah Levitt, *Wall Street's Big Banks Score $1 Trillion of Profit in a Decade*, BLOOMBERG (Dec. 26, 2022), https://www.bloomberg.com/news/features/2022-12-27/wall-street-s-6-biggest-banks-hit-1-trillion-profit-in-10-years?sref=mQvUqJZj.

12 Better Markets Comment Letter, *supra* note 3 at 10.

13 Dan Caplinger, *JPMorgan Chase Stock Is Near All-Time Highs. Will the Bank Raise Its Dividend in 2024?*, THE MOTLEY FOOL (Jan. 11, 2024), https://www.nasdaq.com/articles/jpmorgan-chase-stock-is-near-all-time-highs.-will-the-bank-raise-its-dividend-in-2024.

dictate how the banks cover the capital increase, but that is the banks' choice as well. Put differently, the predicted dire consequences supposedly flowing from the Proposal could be avoided if the banks merely chose not to pass along any of the increased costs. For example, the four largest banks had about $4 trillion in total loans and leases outstanding in 2023; if the maximum estimated impact in the Proposal of three basis points applied to that entire amount that would only be about $1.2 billion. Those same four banks paid out nearly $57 billion in stock repurchases and dividends in 2023 alone. Thus, a mere 2% reduction in that amount would cover the entire maximum amount of increased capital for all types of lending, thereby avoiding the need to pass any of that increase along to borrowers.[14]

Finally, systemically significant banks do not even do much of the lending that they claim will be hurt the most from the Proposal, like lending to minorities, small businesses, and low- and moderate-income households. These are smokescreens behind which the banks are hiding, but the facts show that they are baseless.

Impact of the 2008 Crash on Minorities

Evidence shows that minorities suffered large losses during and after the 2008 Crash.[15] These losses hurt incomes, asset building, and overall economic and financial well-being for years after the downturn and will continue to negatively affect generations to come.[16] Black and Latino workers, for example, experience higher unemployment rates during recessions.[17] Consistent with this trend, minorities were disproportionately hurt by foreclosures and declines in property values in the 2008 Crash.[18] One study estimated that minorities shouldered about $1 trillion in losses from

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14 Better Markets, *Capital Rule Critics Proved Wrong by Facts and Data* 7 (May 1, 2024), https://bettermarkets.org/wp-content/uploads/2024/05/Better_Markets_Capital_Comments_Fact_Sheet-5.1.24.pdf.

15 *See, e.g.*, Rakesh Kochhar & Richard Fry, *Wealth inequality has widened along racial, ethnic lines since end of Great Recession*, PEW RESEARCH CENTER (Dec. 12, 2014), https://www.pewresearch.org/short-reads/2014/12/12/racial-wealth-gaps-great-recession/; Kristen Lewis & Sarah Burd-Sharps, *Zeroing In on Place and Race Youth Disconnection in America's Cities,* SOCIAL SCIENCE RESEARCH COUNCIL (June 10, 2015), https://measureofamerica.org/youth-disconnection-2015/; BETTER MARKETS, THE COST OF THE CRISIS, *supra* note 9 at 30.

16 *See, e.g.*, Andrew Haughwout, Donghoon Lee, Daniel Mangrum, Belicia Rodriguez, Joelle Scally, & Wilbert van der Klaauw, *How Are They Now? A Checkup on Homeowners Who Experienced Foreclosure*, FEDERAL RESERVE BANK OF NEW YORK: LIBERTY STREET ECONOMICS (May 8, 2024), https://libertystreeteconomics.newyorkfed.org/2024/05/how-are-they-now-a-checkup-on-homeowners-who-experienced-foreclosure/.

17 *See, e.g.*, *Comparing Unemployment Rates By Race: The Great Recession vs. COVID-19*, FEDERAL RESERVE BANK OF ST. LOUIS: THE FRED BLOG (May 23, 2022), https://fredblog.stlouisfed.org/2022/05/comparing-unemployment-rates-by-race-the-great-recession-vs-covid-19/.

18 *See, e.g.*, Debbie Gruenstein Bocian, Peter Smith, & Wei Li, *Collateral Damage: The Spillover Costs of Foreclosures* 2, Center for Responsible Lending (Oct. 24, 2012), https://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/collateral-damage.pdf.

home foreclosures and related financial losses from the 2008 Crash.[19] Recent research clarifies that losses continue even through 2024 for individuals who faced foreclosure during the 2008 Crash. Borrowers who foreclosed in 2008 still experience lower homeownership rates and lower credit scores than other individuals, even those with characteristics of higher financial risk.[20] Importantly, this does not include the range of non-financial costs such as increased crime, reduced school performance, and neighborhood blight.

Researchers show that the 2008 Crash will continue to negatively impact minority families for years to come. By 2031, White wealth is forecast to be 31 percent below what it would have been without the 2008 Crash, while Black wealth is estimated to be down almost 40 percent. Put differently, for a typical Black family, median wealth in 2031 will be almost $98,000 lower than it would have been without the 2008 Crash.[21]

Impact of the 2008 Crash on Small Business

Small firms and newly established businesses are vitally important to job creation and future recovery because they tend to grow faster than large businesses.[22] During the 2008 Crash, job losses were concentrated in the smallest businesses: job losses in small businesses exceeded job gains in those same businesses by 800,000.[23] These losses will have serious negative implications for Main Street Americans and local communities for years to come.

Impact of the 2008 Crash on Community Support/Philanthropy

The 2008 Crash had a significant negative impact on community organizations, whose primary mission is to support underserved communities. Community foundation giving decreased in both the 2008-2009 and 2009-2010 periods. This was the first consecutive-year decline in giving by these foundations to local communities since recordkeeping began in 1981.[24] It was the result of both declines in community foundation assets, given the economic downturn and stock market decline, and a decline in new gifts to these foundations.[25]

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19 *Id.*

20 Haughwout *et al.*, *supra* note 16.

21 Sarah Burd-Sharps & Rebecca Rasch, IMPACT OF THE US HOUSING CRISIS ON THE RACIAL WEALTH GAP ACROSS GENERATIONS 3, Social Science Research Council (June 2015), https://www.aclu.org/wp-content/uploads/publications/discrimlend_final.pdf.

22 *See, e.g.*, Ayşegül Şahin, Sagiri Kitao, Anna Cororaton, & Sergiu Laiu, *Why Small Businesses Were Hit Harder by the Recent Recession* 1, 17 *Current Issues in Economics and Finance*, Federal Reserve Bank of New York (2011), https://www.newyorkfed.org/medialibrary/media/research/current_issues/ci17-4.pdf.

23 Scott Shane, *Hallmark of the Great Recession: Job Loss from Small Business Closure*, FORTUNE (Apr. 29, 2012), https://www.forbes.com/sites/scottshane/2012/04/29/hallmark-of-the-great-recession-job-loss-from-small-business-closure/?sh=3266d34372be.

24 Steven Lawrence & Reina Mukai, *Foundation Growth and Giving Estimates* 10, The Foundation Center (2011), https://www.issuelab.org/resources/13532/13532.pdf.

25 *Id.*

COMMENTS

I. THE PROPOSAL PROMOTES FINANCIAL STABILITY AND INCREASES THE BANKING SECTOR'S RESILIENCE TO SHOCKS.

Some commenters incorrectly assert without supporting evidence that the Proposal will harm economic growth and banking sector resilience:

- The Business Roundtable claims that the Proposal will "reduce innovation and economic growth" and says that large U.S. banks are already resilient as demonstrated by "real life stress tests—including the COVID-19 pandemic, the Russian Invasion of Ukraine and the regional bank failures in spring 2023."[26]

- The Bank Policy Institute and the American Bankers Association, in a joint letter, say that the Proposal "would have a profound effect on the availability and cost of credit for nearly every American business and consumer, as well as on the resiliency of U.S. capital markets. The U.S. economy would suffer a significant, permanent reduction in GDP and employment; U.S. capital markets would become less liquid, and therefore more dependent on non-bank intermediation in normal times and on governmental support when those non-banks step away from financial markets during times of stress."[27]

- The Coalition for Derivatives End-Users worries that the Proposal will indirectly harm the economy through capital markets, "financial regulatory reform measures should promote economic stability, transparency and resiliency without imposing undue burdens on derivatives end-users and the broader U.S. economy. Imposing unnecessary regulation directly on end-users or indirectly, through their counterparties as these Proposals do, will create more economic instability, restrict job growth, decrease productive investment and hamper U.S. competitiveness in the global economy . . . ."[28]

The truth is that in the 2023 Crisis, Silicon Valley Bank, Signature Bank and First Republic Bank all failed because ***they did not have enough capital***. This was also the case for bank failures

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26 Business Roundtable Comment Letter, *Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity* (Dec. 21, 2023), https://www.federalreserve.gov/SECRS/2024/January/20240112/R-1813/R-1813_122123_156402_333080628246_1.pdf.

27 Bank Policy Institute and American Bankers Association Comment Letter, *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity* (Jan. 16, 2024), https://www.federalreserve.gov/SECRS/2024/January/20240126/R-1813/R-1813_012624_157261_501379814876_1.pdf.

28 Coalition for Derivatives End-Users Comment Letter, *Comment Letter on Proposed Rules: "Large Banking Organizations and Banking Organizations with Significant Trading Activity"* 2 (Jan. 16, 2024), https://www.federalreserve.gov/SECRS/2024/February/20240216/R-1813/R-1814_011624_156771_436829528402_1.pdf.

in the 2008 Crash. Indeed, inadequate regulatory capital standards that failed to accurately measure risks for large banks were a key underlying cause of the depth and severity of the 2008 financial crisis, as a massive loss of confidence in the banking system was the primary contributor to the worst financial crisis in over 75 years. In 2023, bank failures led to severe financial stress, enough to prompt a systemic risk exception, insure all bank deposits, and lead the Fed to create the Bank Term Funding Program to offer additional support to the banking system. This is exactly the type of scenario that the Agencies are mandated to ensure banks have enough capital to avoid, and it could have been avoided if the banks that failed had enough capital to internalize and absorb the losses that their business activities created rather than falling short and shifting the burden to the government and all Americans. Given the need for massive and unprecedented government intervention to avoid another crisis, it is simply bizarre that the industry would argue that the COVID pandemic and the bank failures of 2023 somehow proved the strength of current large bank capital standards.

Research from Fed economists and other experts shows that higher capital limits the economic fallout of financial crises and actually leads to stronger economic recovery and increased lending to the nonfinancial sector in the years that follow the recession. Using data from 17 countries from the 1870–2015 period, economists compare both the degree and speed of economic recovery after financial sector recessions under both high capital (green, dashed line) and low capital (red, dotted line) scenarios (See Chart 1).[29] The results are clear. Banking systems with higher capital ratios recover faster and more significantly after financial recessions, increasing both economic growth and lending several years before financial systems with lower capitalized banks.

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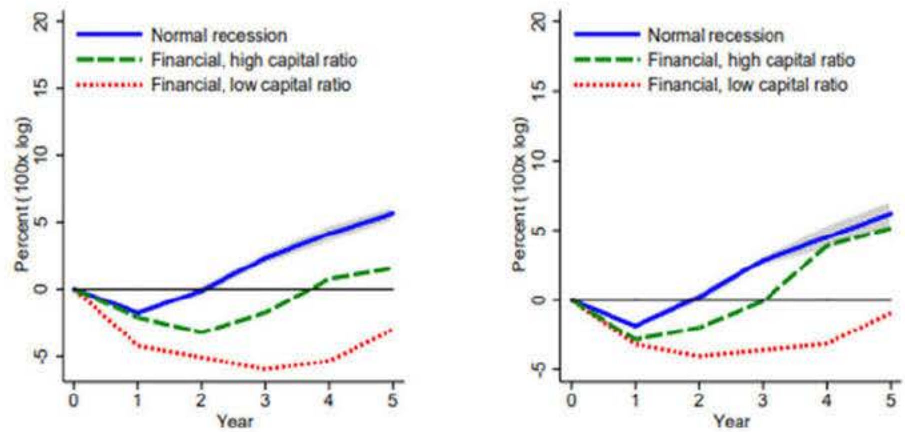
29 Òscar Jordà, Björn Richter, Moritz Schularick, & Alan M. Taylor, *Bank Capital Redux: Solvency, Liquidity, and Crisis*, National Bureau of Economic Research Working Paper Series, Working Paper 23287 (Mar. 2017), https://www.nber.org/system/files/working_papers/w23287/w23287.pdf.

Chart 1

Figure 8: *Normal versus financial recessions, real GDP per capita binned by bank capital, controls included, alternative estimates.*

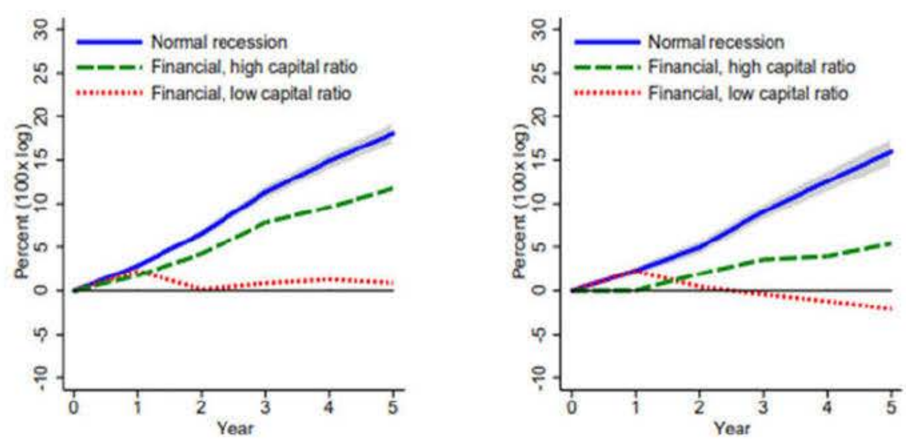
(a) *Full sample excluding post-2006.* **(b)** *Full sample including decade fixed effects.*



Notes: This figure displays the coefficient estimates on a sample excluding the global financial crisis, i.e., 1870–2006 (left) and on the full sample including decade fixed effects (right, Table 9). The solid blue line reports the average path after normal recessions. The grey area corresponds to the 90% confidence region around the recession path. The green dashed line corresponds to the sum of the coefficients of the average recession path and the financial recession coefficient when the pre-crisis capital ratio was high. The dotted red line corresponds to the sum of the average recession coefficient and the financial recession coefficient when the pre-crisis capital ratio was low.

Figure 9: *Normal versus financial recessions, real private credit per capita binned by bank capital.*

(a) *No controls, full sample.* **(b)** *With controls, full sample.*



Notes: This figure displays the coefficients for estimating Equation 9 and Equation 6 with real private credit as the dependent variable. The solid blue line reports the average path after normal recessions. The grey area corresponds to the 90% confidence region around the recession path. The green dashed line corresponds to the sum of the coefficients of the average recession path and the financial recession coefficient when the pre-crisis capital ratio was high. The dotted red line corresponds to the sum of the average recession coefficient and the financial recession coefficient when the pre-crisis capital ratio was low.

II. THE FEDERAL RESERVE AND FEDERAL GOVERNMENT'S IMMEDIATE AND MATERIAL SUPPORT OF THE FINANCIAL SECTOR, BANKS, AND CONSUMERS AT THE ONSET OF THE COVID-19 PANDEMIC AND FOR YEARS AFTER PROVES THE NEED FOR STRONGER CAPITAL REQUIREMENTS.

The COVID-19 pandemic ***did not prove that banks were a source of strength***. Instead, the scope and scale of the U.S. government's fiscal policy and unprecedented actions taken by the Fed to support financial markets served as a de facto bailout of the banking system during the pandemic. Without those trillions of dollars to support the financial system and economy, numerous banks would undoubtedly have failed almost certainly causing a financial crash.

Large banks only had to be a "source of strength" for at most a few weeks after the onset of pandemic-caused market stress in early March 2020. That's because the Fed Chair announced in late February[30] that the Fed would do whatever was necessary to provide support to the economy and financial system, which began in mid-March, monetary policy (zero interest rates and quantitative easing), and innumerable rescue programs aimed at almost every financial market. For example, within just the first 90 days of the pandemic, the Fed injected nearly $3 trillion into the markets to prop up the financial system—in which the largest banks are the dominant participants—and provided massive funding to banks and bank-owned securities dealers.[31] On top of that, the government provided the economy with more than $5 trillion of fiscal support, which also dramatically helped banks by reducing the level of business and consumer loan defaults.[32]

Banks and their advocates consistently fail to mention—much less credit—the immense Fed and taxpayer-funded support they received throughout the COVID-19 pandemic, without which many of them would have faced catastrophic losses and certain failure. In fact, this support was so massive that it not only prevented losses, but it also led to increased bank earnings. For

30 *See* Press Release, Board of Governors of the Federal Reserve System, *Statement from Federal Reserve Chair Jerome H. Powell* (Feb. 28, 2020), https://www.federalreserve.gov/newsevents/pressreleases/other20200228a.htm.

31 *See, e.g.*, Board of Governors of the Federal Reserve System, CORONAVIRUS DISEASE 2019 (COVID-19), https://www.federalreserve.gov/covid-19.htm (last visited May 15, 2024); Better Markets, *Fact Sheet: Ten False Claims About Bank Capital* 7–8 (July 25, 2023), https://bettermarkets.org/wp-content/uploads/2023/07/Better_Markets_Capital_Fact_Sheet-7.25.23.pdf; Dennis Kelleher, Tim P. Clark, & Phillip Basil, *Should Federal Reserve Chairman Jay Powell Be Reapppointed?* 13, Better Markets (Aug. 23, 2021), https://bettermarkets.org/wp-content/uploads/2023/03/BetterMarkets_Should_Jay_Powell_Be_Reappointed_August-2021.pdf.

32 *See, e.g.*, *Robust COVID Relief Bolstered Economy and Reduced Hardship for Millions*, Center on Budget and Policy Priorities (Mar. 6, 2023), https://www.cbpp.org/research/poverty-and-inequality/robust-covid-relief-bolstered-economy-and-reduced-hardship-for.

example, the net income of the four largest banks in the middle of the pandemic in 2021 was 20% higher than their net income in 2019.[33]

Furthermore, research from the Federal Reserve Bank of Minneapolis shows that capital requirements must be higher to prevent future bailouts.[34] Bank capital levels rose during the COVID-19 shock because of Fed actions that prevented stock buybacks and restricted dividends beginning in the third quarter of 2023. Then, extensive government support amounting to trillions of dollars shifted risks away from banks and to the federal government, through multiple programs that were put in place to reduce the impact of the pandemic on the financial sector. Therefore, assertions that banks' performance during the pandemic illustrates their strength and resilience are simply incorrect. Instead, the degree of federal support that was required during the pandemic actually justifies the need for the Proposal.

Finally, in a December 2022 speech, Federal Reserve Vice Chairman for Bank Supervision ("Vice Chair") Michael Barr reinforced the point that the strength of banks was not truly tested in the 2020 pandemic because of huge government (i.e., taxpayer) support:

> [W]e didn't get a real test of resilience because Congress, the President, and the Federal Reserve rightly stepped in with massive assistance to avert an economic disaster.[35]

III. <u>THE PROPOSAL WILL NOT REDUCE BANK LENDING TO HOUSEHOLDS AND BUSINESSES.</u>

Commenters assert that the Proposal will have direct and negative consequences on borrowers, particularly in underserved communities:

- The National Community Reinvestment Coalition ("NCRC") agrees that the Proposal is necessary because "many institutions were revealed to have hidden their undercapitalization [during the 2008 financial crisis] through intentional artifice" and praises the Proposal because it will "introduce sensitivities to source of funds for repayment, create uniform and transparent guidelines for measuring capital requirements,

33 Kelleher, Clark, & Basil, *Protecting Our Economy by Strengthening the U.S. Banking System Through Higher Capital Requirements*, *supra* note 4 at 9.

34 *See, e.g.*, Ron J. Feldman & Jason Schmidt, *Large Bank Strength During the COVID Financial Shock: Not All It Was Purported To Be*, Federal Reserve Bank of Minneapolis (May 18, 2022), https://www.minneapolisfed.org/article/2022/large-bank-strength-during-the-covid-financial-shock-not-all-it-was-purported-to-be.

35 Board of Governors of the Federal Reserve System, *Why Bank Capital Matters* (Dec. 1, 2022), https://www.federalreserve.gov/newsevents/speech/barr20221201a.htm.

and generally ensure banks have enough capital on hand to weather economic crises."[36] However, NCRC is concerned that the Proposal will "undermine homeownership and certain community reinvestment activities" particularly for underserved communities.[37]

- The Mortgage Bankers Association ("MBA") also agrees that capital requirements must ensure that there is a "cushion against losses under stressed financial conditions, thereby reducing the likelihood of bank failures and protecting the financial system." However, MBA opposes portions of the Proposal that it claims would result in further bank withdrawal or exit from the mortgage market.[38]

- The National Association of Realtors claims that negative impacts will transfer from the largest banks to community and local institutions. As a result, "consumers will face increased borrowing costs and a severe reduction in credit" and the Proposal "will hit underserved markets and those borrowers with low and moderate incomes the hardest, those [for] whom the American Dream has already started to become nothing more than a hopeful wish."[39]

- Goldman Sachs 10,000 Small Business Voices[40] worries that the Proposed "capital requirements for lending will make it more expensive for banks to loan to small businesses, and those added costs will no doubt be passed on to us. . . . [W]e are concerned that the new calculations in this proposal will make borrowing costs unaffordable and capital inaccessible."[41]

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36 National Community Reinvestment Coalition Comment Letter, *Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity* 1–2 (Jan. 15, 2024), https://www.federalreserve.gov/SECRS/2024/February/20240216/R-1813/R-1813_011524_156918_361727646339_1.pdf.

37 *Id*. at 2.

38 Mortgage Bankers Association Comment Letter, *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity* (Jan. 16, 2024), https://www.federalreserve.gov/SECRS/2024/February/20240216/R-1813/R-1813_011524_156918_361727646339_1.pdf.

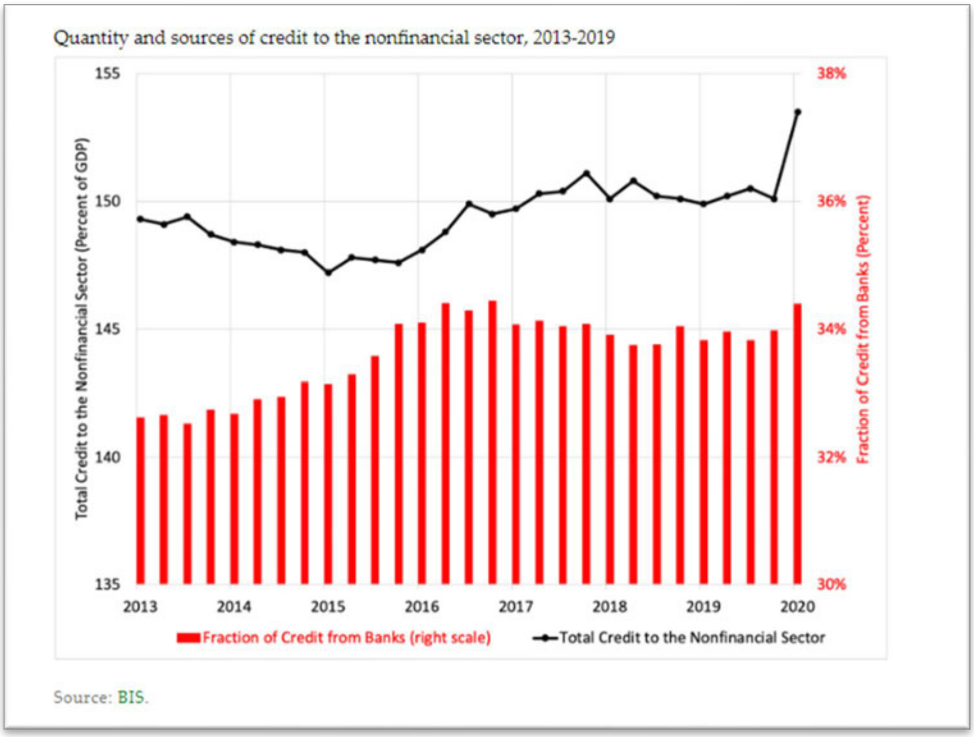
39 National Association of Realtors Comment Letter, *Notice of Proposed Rulemaking for Amendments to the Regulatory Capital Rule* (Jan. 16, 2024), https://www.federalreserve.gov/SECRS/2024/January/20240119/R-1813/R-1813_011624_156766_486539763471_1.pdf.

40 This source represents only a small fraction of the 33,185,550 small businesses in the U.S. *See* U.S. Small Business Administration Office of Advocacy, *Frequently Asked Questions About Small Business 2023* (Mar. 7, 2023), https://advocacy.sba.gov/2023/03/07/frequently-asked-questions-about-small-business-2023/.

41 Goldman Sachs 10,000 Small Business Voices Comment Letter, *Proposal: Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity* (Nov. 21, 2023), https://www.federalreserve.gov/SECRS/2024/January/20240112/R-1813/R-1813_112123_156602_328107635870_1.pdf.

The truth is that increased capital requirements do not reduce lending; in fact, as regulators required banks to increase their capital significantly after the 2008 crash, those very same banks increased their lending to the nonfinancial sector (see Chart 2).[42]

Chart 2



Furthermore, monthly data from 2010 through 2023 show that capital levels and lending are positively correlated. As Chart 3 shows, for every 1 percentage point increase in capital, bank lending increases by 2 percentage points.[43]

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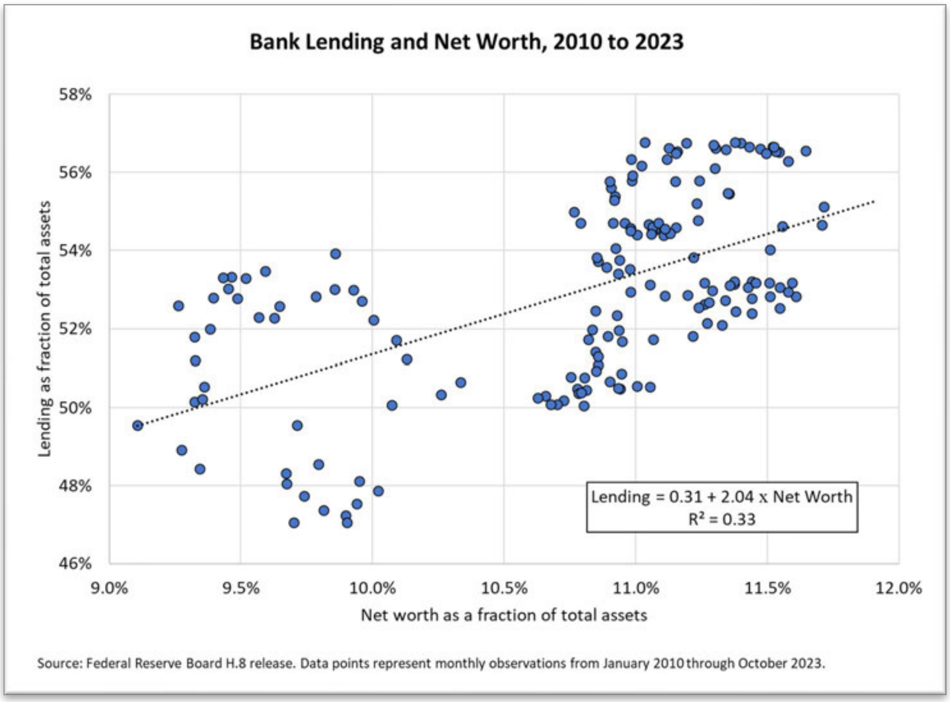
42 Stephen G. Cecchetti & Kermit L. Schoenholtz, *Setting Bank Capital Requirements*, MONEY AND BANKING (Oct. 12, 2020), https://www.moneyandbanking.com/commentary/2020/10/11/setting-bank-capital-requirements.

43 Cecchetti, *supra* note 6.

Chart 3



<u>Mortgages and Small Business Lending</u>

Some commenters expressed concern that certain borrowers—namely prospective homeowners and small businesses—will be hurt by the Proposal. This is not true. Higher capital will not hurt mortgage borrowers and small businesses. Quite the opposite, ***higher capital will protect the banking system, enabling banks to continue lending through the economic cycle to households, small businesses, and other borrowers.***

The Proposal does indeed include higher risk weights for mortgage loans with higher loan-to-value ("LTV") ratios, and this is warranted because of the higher risk inherent in these loans. Research and historical data prove that losses increase substantially for mortgage loans with higher LTV ratios.[44] If banks are not held accountable for these higher-risk loans, policymakers are essentially requiring taxpayers to instead subsidize bank lending to higher-risk borrowers by taking on the added risk and cost of bank failures while the banks continue to increase their profits.

Systemically significant banks and their advocates also argue that higher capital requirements will automatically result in higher pricing for high LTV loans or a retreat by banks from lending in this market, resulting in reduced credit availability for high LTV borrowers (who are often low-income or minority individuals or households). ***This is also not true. The estimated***

44 *See, e.g.*, Min Qi & Xiaolong Yang, *Loss Given Default of High Loan-to-Value Residential Mortgages* 12, Office of the Comptroller of the Currency Working Paper (Aug. 2007), https://occ.gov/publications-and-resources/publications/economics/working-papers-archived/pub-econ-working-paper-2007-4.pdf.

cost resulting from changes in the Proposal that affect mortgage and small business lending is very small. Furthermore, passing along higher costs to their customers is a choice that is made by the banks, not a requirement or an inevitable result of the rule.

Vice Chair Barr stated that the estimated increase in capital requirements for lending activity is on average only 3 basis points, or 0.03 percentage points.[45] To put this in context, the four largest banks—JP Morgan Chase, Bank of America, Citibank, and Wells Fargo—have about $4 trillion in total loans and leases outstanding in 2023; 0.03 percent of this amount is about $1.2 billion. These same four banks paid out nearly $57 billion in dividends and stock repurchases in 2023 alone. Thus, a mere 2% reduction in one year of dividends and repurchases would cover the entire cost of higher capital requirements for all types of lending activity and require none of the burden to be passed along to borrowers.

Moreover, systemically significant banks that will be subject to the Proposal have a relatively small mortgage and small businesses lending portfolio, especially compared to community banks, which further disproves claims of the Proposal's widespread negative impact on Main Street Americans. In fact, one study shows that the Proposal will only affect a fraction of all mortgage loans.[46] It finds that just 23 of the 62 banks that are subject to the Proposal even make mortgage loans. Of the 3.5 million mortgage loans made by these banks in the 2020-21 study period:

- Only 13% (45,000 loans) were high-LTV and made to borrowers in LMI areas, and
- Only 21% (74,000 loans) were high-LTV and made to non-white borrowers.[47]

In other words, the largest banks make relatively few mortgage loans to LMI or minority borrowers. While this is certainly a concern given these banks' promises to support minorities' goals of homeownership, it proves that the widespread damage feared as a direct result of the Proposal is exaggerated. For example, in 2017, Wells Fargo, the largest bank that has historically focused most on mortgage lending, announced $60 billion to create 250,000 Black homeowners within the next decade. In 2021, however, Wells Fargo underwrote 42% fewer mortgages to Black buyers than in the year it announced its target. Even counting mortgages purchased from other lenders (which is of questionable utility), Wells Fargo backed successively fewer mortgage loans

45 Board of Governors of the Federal Reserve System, *Capital Supports Lending* (Oct. 9, 2023), https://www.federalreserve.gov/newsevents/speech/barr20231009a.htm.

46 Laurie Goodman & Jun Zhu, *Bank Capital Notice of Proposed Rulemaking: A Look at the Provisions Affecting Mortgage Loans in Bank Portfolios* 8, Urban Institute (Sept. 2023), https://www.urban.org/sites/default/files/2023-09/Bank%20Capital%20Notice%20of%20Proposed%20Rulemaking.pdf.

47 *Id.*

in each of the past five years.[48] In conclusion, while the banks' individual lending decisions may indeed be failing to support already underserved communities, this is a problem that is separate from and not attributable to the Proposal.

IV. THE PROPOSAL INCREASES TRANSPARENCY THROUGHSTANDARDIZATION OF MEASURES AND MODELS.

Commenters oppose the proposed changes that would reduce the ability for large banks to use internal models:

- The Financial Services Forum states that the Proposal would increase the disparity between U.S. banks and foreign counterparts "primarily because of the elimination of the use of internal models for credit risk and the addition of operational risk into the binding capital stack."[49]

- The Bank Policy Institute and the American Bankers Association claim that "There is no evidence that internal models for credit risk have led to a systematic understatement (or overstatement) of risk at any bank. In fact, since 2014, banks have successfully used internal models to gauge credit risk for capital purposes, subject to backtesting and model approval from an independent risk function, an independent model validation group, internal auditors and agency examiners. The virtue of internal models is that they are inherently more granular and risk-sensitive than government-imposed, one-size-fits-all standardized methodologies; they can also be adjusted over time to reflect changing behavior."[50]

The truth is that research proves that there has been significant variation in results when banks use internal models that allow for choice and variation of inputs such as reference data, methodology, and definitions. ***Results from internal models showed that capital ratios varied up to 15-20% in either direction around a common benchmark for portfolios of the same risk, because of banks' different modeling choices.***[51] This is unacceptable. The use of standardized models is also more efficient. For standard models, regulators can save time and public resources

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48 Shawn Donnan, Ann Choi, & Christopher Cannon, *Big US Banks Fall Short on Promises to Create Black Homeowners*, BLOOMBERG (Dec. 19, 2022), https://www.bloomberg.com/graphics/2022-black-home-loan-broken-promises/?sref=mQvUqJZj.

49 Financial Services Forum Comment Letter, *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity* (Jan. 16, 2024), https://www.federalreserve.gov/SECRS/2024/February/20240220/R-1813/R-1813_011624_156778_482812551143_1.pdf.

50 Bank Policy Institute and American Bankers Association Comment Letter, *supra* note 27 at 6.

51 *See* Basel Committee on Banking Supervision, *Analysis of Risk-Weighted Assets for Credit Risk in the Banking Book* 7 (July 2013), https://www.bis.org/publ/bcbs256.pdf.

by just focusing on the results of an approved standard model, compared to bank-specific internal models that require new understanding and evaluation for each bank's models, in addition to assessment of the results.

Of course, regulators should continue to hold banks accountable for using internal models to measure and monitor risk. Any bank that argues it would use standardized regulatory measures of risk to assess its own risks is simply highlighting in advance what would be a critical failure on the part of bank managers and their overseers on boards of directors to do their jobs. Banks know their own business models and risks best, and it is their responsibility to manage themselves prudently, so if their internal models show that more capital is needed than a standardized model shows, that is what should be followed. In other words, the standardized models in the Proposal should be considered a floor that ensures all banks subject to it will at least have a standard minimum level of capital relative to certain risks. It should never be seen as obviating the need for banks to effectively measure and manage their risks themselves, using measures they design, which is a basic prerequisite for managing their banks prudently.

V. THE PROPOSAL DELIVERS BENEFITS BY ASSESSING AND PRICING RISKY CAPITAL MARKETS ACTIVITIES AT BANKS, RATHER THAN PASSING THE POTENTIAL COST OF THIS RISK TO TAXPAYERS.

Commenters oppose the proposed changes that would increase capital requirements for trading and other capital markets activities:

- The Coalition for Derivatives End-Users "has serious concerns that increased transaction costs associated with prudent risk-management hedging practices by derivatives end-users will result in two materially adverse impacts: (i) even further increased costs will flow through to consumers for goods, services and everyday necessities; and (ii) reduced capacity for derivatives end-users to hedge their commercial risks because the costs to hedge those risks could become prohibitively expensive, which would lead to greater price volatility. These results would be bad for consumers and bad for economic stability and neither result decreases risk to the broader U.S. economy."[52]

- The Options Clearing Corporation supports the broad objectives of the Proposal to "increase the strength and resilience of the banking system" but worries new capital charges are "directly counter to the goal of promoting central clearing in financial markets that has long been supported by leading global economies, Congress, and U.S. financial

[52] Coalition for Derivatives End-Users Comment Letter, *supra* note 28.

regulators" and could disincentivize market activities such as clearing at banks.[53]

While some commenters worry about the Proposal harming capital markets and derivatives activity, others worry about adverse effects on businesses that rely on banks to manage financial risks and engage in capital markets transactions. The truth is that ***trading activities at banks present risk, and banks should be held accountable for that risk with conservatively designed capital requirements.*** At the same time, careful consideration is warranted; this is long overdue, and the agencies have done that in the Proposal.

Higher capital requirements for trading activity are justified to keep the broader financial system safe. The Proposal states that this change will add about 67 basis points (2/3 of a percent) to large holding companies' required capital ratios.[54] This is a relatively small and reasonable cost when considered alongside the extreme cost of the 2008 Crash: $20+ trillion in lost GDP, about 27 million Americans unemployed within a year of Lehman's collapse, 16 million foreclosure filings, $2.8 trillion in lost retirement savings, and countless other human costs (disengagement from the labor force and society because of extended unemployment, for example).[55] Holding banks accountable for the costs and risks of their business activities (that produce their revenue, profits, and bonuses) is fair and appropriate. The moral hazard of not doing so is evident in innumerable ways leading up to the 2008 Crash. Furthermore, banks do not ***have*** to pass any increased costs on to the end user. As discussed earlier, banks could reduce their outsized and historically large shareholder payouts or retain earnings by just a very small amount to meet the increased requirements. Finally, if the risk and cost are not borne by the banks, it will by default be passed along to taxpayers when banks fail and require bailouts, which enshrines privatizing gains and socializing losses.

Research from the Federal Reserve Bank of New York, which is also cited in the Proposal, examines market liquidity in the post-crisis era in light of concerns that regulatory changes could reduce dealers' ability and willingness to make markets.[56] The researchers find that bond market liquidity remained resilient and within historical norms ***even after regulatory changes***, suggesting that it is reasonable to think that the Proposal will also have limited negative effects on capital markets. Additional research shows that average market liquidity metrics ***improved*** after the 2008 Crash and were better after more reforms were implemented, than they were before the 2008 Crash.

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53 Options Clearing Corporation Comment Letter, *Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity - Notice of Proposed Rulemaking* (Jan. 16, 2024), https://www.federalreserve.gov/SECRS/2024/February/20240220/R-1813/R-1813_011624_156765_484485531084_1.pdf.

54 Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity, *supra* note 2 at 64170.

55 *See* BETTER MARKETS, THE COST OF THE CRISIS, *supra* note 9 at 4, 8, 20, 27, 38.

56 Tobias Adrian, Michael Fleming, Or Shachar, & Erik Vogt, *Market Liquidity after the Financial Crisis*, Federal Reserve Bank of New York Staff Reports (Oct. 2017), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr796.pdf.

The improvement from 2010-2012 to 2013-2014 occurred across both investment grade and high yield bonds, also supporting the fact that financial markets were helped, not hurt, by prior policy reform.[57]

VI. THE PROPOSAL APPROPRIATELY ASSESSES AND PRICES OPERATIONAL RISK AT THE SYSTEMICALLY SIGNIFICANT BANKS.

Commenters oppose proposed changes that impose capital requirements for operational risk at banks:

- The Securities Industry and Financial Markets Association and the Futures Industry Association say that the Proposal "could have adverse effects on the U.S. capital markets by over-calibrating relatively low-risk services" and "would contravene decades of U.S. financial services policy, which has encouraged diversification in banking organizations' business models." The organizations also assert that the "Agencies have not provided sufficient rationale in support of the proposed approach or conducted an economic analysis to justify the departure from established U.S. financial services policy goals."[58]

- The Bank Policy Institute and American Bankers Association say that the operational risk component of the Proposal is "massively overstated, and the agencies provide no basis for it in the proposal." The organizations also reject Federal Reserve research cited in the Proposal which supports the fact that that past operational loss events are an indicator of future loss events.[59]

Opponents of the Proposal criticize the new operational risk component for two main reasons:

- They claim it unfairly burdens banks with business lines that rely on fee income, and
- They claim it would require more capital than historical loss experience.

Neither of these reasons are supported by the data or valid enough to not move ahead with the Proposal. The truth is that operational risks are evolving and increasing from historical periods. Greater instances of cyberattacks, for example, are occurring each year so comparing operational

57 Mike Anderson & René M. Stulz, *Is Post-Crisis Bond Liquidity Lower?*, National Bureau of Economic Research Working Paper Series, Working Paper 23317 (Apr. 2017), https://www.nber.org/system/files/working_papers/w23317/w23317.pdf.

58 Securities Industry and Financial Markets Association and the Futures Industry Association Comment Letter, *Notice of Proposed Rulemaking, Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity* 4–5 (Jan. 16, 2024), https://www.federalreserve.gov/SECRS/2024/February/20240229/R-1813/R-1813_011624_156902_379519978161_1.pdf.

59 Bank Policy Institute and American Bankers Association Comment Letter, *supra* note 27.

losses relative to historical benchmarks is not the correct yardstick.

Research from the Federal Reserve Board and the Federal Reserve Bank of Richmond offers additional perspective that supports the Proposal. The result of this research shows that past operational losses lead to future losses, even after controlling for a wide range of factors.[60] So, basing capital charges on banks with concentrations in business activities that are vulnerable to operational losses is appropriate, and not an unfair burden. Furthermore, research from the Federal Reserve Bank of Dallas, grounded in about 400,000 individual loss events from 2001 through 2018, shows that there is high variability in losses from operational risk, also known as fat tails.[61] Therefore, calibrating capital requirements by average losses is not enough to account for potential future loss events.

VII. THE PROPOSAL'S CHANGES TO CALCULATIONS OF CAPITAL REQUIREMENTS DON'T GO FAR ENOUGH TO PROTECT MAIN STREET AMERICANS; THE MINIMUM CAPITAL REQUIREMENTS SHOULD ALSO BE RAISED.

While the Proposal contains several technical changes to improve the calculations of both the numerator and denominator of capital ratios to make them more sensitive to risk and better reflect actual capital available to banks for absorbing losses***, it does not strengthen or change the required capital ratio levels that banks must maintain.*** In other words, while bank capital will be better measured under the Proposal, which may lead to increased capital at some large banks, minimum capital requirements will still not have been "strengthened."

As detailed in Better Markets' report "Protecting Our Economy by Strengthening the U.S. Banking System Through Higher Capital Requirements"[62] many independent parties have determined that substantially higher minimum capital requirements are both necessary and would be beneficial:

- The Federal Reserve Bank of Minneapolis, in its "Plan to End Too Big to Fail," estimates that increasing bank capital requirements to 23.5% of risk-weighted assets and 15% of total assets would substantially reduce the likelihood of future taxpayer-funded bailouts while strengthening the economy by making the banking and financial system more resilient.[63]

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60 Filippo Curti & Marco Migueis, *The Information Value of Past Losses in Operational Risk*, Board of Governors of the Federal Reserve System: Finance and Economics Discussion Series 2023-003 (2023), https://doi.org/10.17016/FEDS.2023.003.

61 W. Scott Frame, Ping McLemore, & Atanas Mihov, *Haste Makes Waste: Banking Organization Growth and Operational Risk*, Federal Reserve Bank of Dallas (Aug. 2020), https://www.dallasfed.org/~/media/documents/research/papers/2020/wp2023.pdf.

62 Kelleher, Clark, & Basil, *supra* note 4 at 10.

63 Federal Reserve Bank of Minneapolis, *The Minneapolis Plan to End Too Big to Fail* 1 (Nov. 16, 2016), https://www.minneapolisfed.org/~/media/files/publications/studies/endingtbtf/the-minneapolis-plan/the-minneapolis-plan-to-end-too-big-to-fail-2016.pdf?la=en.

- The Federal Reserve Board in one of its own proposals regarding so-called convertible long-term debt requirements discussed an analysis it conducted that showed the most severe loss of a bank holding company during the 2008 Crash to be 19% of risk-weighted assets—far higher than current capital requirements. This figure would have been even larger without all the government support that had been provided at that time.[64]

- Economists at the International Monetary Fund have estimated the benefits of capital for large banks set at 23% of risk-weighted assets would outweigh the costs, and that if such a requirement had been in place prior to 2008, it would have substantially reduced the need for taxpayer funded bailouts to address the 2008 crash in the US and Europe.[65]

- Economists Anat Admati and Martin Hellwig, in their book The Banker's New Clothes, determined that capital leverage requirements of at least 20–30% of total assets (leverage-based requirement) would make the banks substantially stronger without sacrificing economic growth.[66]

- The Basel Committee on Banking Supervision, in its 2010 paper "An Assessment of the Long-term Economic Impact of Stronger Capital and Liquidity Requirements," estimated risk-based capital requirements of 16% would be appropriate, substantially higher than the requirements the BCBS itself ultimately agreed upon for even the largest banks for post-Crash global standards.[67]

Until capital requirements are raised and banks are held accountable for internalizing the actual risk and costs their operations pose to the financial system and the economy, policymakers are de facto shifting these costs to Main Street Americans and taxpayers. At the same time, banks are allowed to continue to reap record profits and funnel this capital to shareholders and executives.

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64 Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations; Regulatory Capital Deduction for Investments in Certain Unsecured Debt of Systemically Important U.S. Bank Holding Companies; RIN 7100-AE37; 80 FED. REG. 74926 (Nov. 30, 2015), https://www.federalregister.gov/documents/2015/11/30/2015-29740/total-loss-absorbing-capacity-long-term-debt-and-clean-holding-company-requirements-for-systemically.

65 Jihad Dagher, Giovanni Dell'Ariccia, Luc Laeven, Lev Ratnovski, & Hui Tong, *Benefits and Costs of Bank Capital* 4, International Monetary Fund Staff Discussion Note (Mar. 2016), https://www.imf.org/external/pubs/ft/sdn/2016/sdn1604.pdf.

66 ANAT ADMATI & MARTIN HELLWIG, THE BANKERS' NEW CLOTHES: WHAT'S WRONG WITH BANKING AND WHAT TO DO ABOUT IT - NEW AND EXPANDED EDITION (Jan. 9, 2024).

67 *See* Basel Committee on Banking Supervision, *An Assessment of the Long-Term Economic Impact of Stronger Capital and Liquidity Requirements* (Aug. 2010), https://www.bis.org/publ/bcbs173.pdf.

It is imperative that policymakers hold banks accountable and complete this rulemaking which will protect banks, the financial system, and the economy.

CONCLUSION

We hope these comments are helpful as the Agencies finalize this Proposal.

Sincerely,

[redacted]

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