March 11, 2025

Via Electronic Mail

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551
Attention: Ann E. Misback, Secretary

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429
Attention: James P. Sheesley, Assistant Executive Secretary

Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, D.C. 20219
Attention: Chief Counsel's Office, Comment Processing

Re: Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Federal Reserve Docket No. OP–1828; FDIC RIN 3064–ZA39; Docket ID OCC–2023–0016)

Ladies and Gentlemen:

The Bank Policy Institute[1] is writing in response to the third of four joint notices of regulatory review pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA") issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the "Agencies").[2] Consistent with the

[1] The Bank Policy Institute is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

[2] *See* OCC, FRB, FDIC, *Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996*, 89 Fed. Reg. 99,751 (Dec. 11, 2024).

purposes of the EGRPRA review and our prior letters addressing the first and second notices,[3] we continue to advocate for changes to "outdated or unnecessary regulatory requirements" within the categories of regulations being evaluated.

As demonstrated by our previous letters, we believe the EGRPRA review is an opportunity to consider broader regulatory and supervisory trends related to the categories of regulations under review but that are not fully captured within EGRPRA's primary focus on the Code of Federal Regulations. Most notably, we have emphasized the volume of regulation and supervisory action focused on immaterial issues as a significant challenge to the safe and sound operation of the U.S. banking system. As just one example, our prior letter observed that, since 2016, compliance burdens have surged, with C-suite time devoted to compliance matters up 75%, board time up 63%, and compliance staffing increasing by 62%.[4] As of 2023, management teams spent 42% of their time and boards 44% on regulatory and supervisory compliance, an extraordinary reallocation of resources from addressing material risks.[5] Our concern with the amount of time banking organizations must devote to compliance, especially on matters not of material importance, continues to be evidenced by the regulations considered in this round of review.

As we have with each notice, we reiterate again the importance of including other agencies that issue regulations governing banking organizations, such as the Consumer Financial Protection Bureau and Financial Crimes Enforcement Network. A realistic review of the overall regulatory burden is made more challenging without their participation. To better fulfill EGRPRA's primary purpose of providing a comprehensive review of the actual operation of the regulatory and compliance framework, Congress should update the statute to explicitly include agencies beyond the banking regulators with mandates to, or histories of, creating new requirements for or affecting banking organizations. Until EGRPRA is updated, these agencies should voluntarily join the EGRPRA review, as the National Credit Union Administration has done.

I. Rules of Procedure: Uniform Rules of Practice and Procedure; Resolution and Receivership Rules; Recordkeeping for Timely Deposit Insurance Determination.

Effective regulation relies on fair, transparent, and efficient rules of procedure that uphold trust in the financial system and support effective decision-making by the Agencies and banking organizations. However, the existing frameworks for enforcement, resolution, and recordkeeping often fall short, creating unnecessary burdens, structural biases, and inefficiencies that erode confidence in the Agencies'

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[3] *See* Joshua Smith, *Comment on First EGRPRA Notice*, BANK POLICY INSTITUTE (May 6, 2024), https://bpi.com/bpi-highlights-growing-compliance-demand-on-bank-resources-in-egrpra-response/; Joshua Smith, *Comment on Second EGRPRA Notice*, BANK POLICY INSTITUTE (Oct. 29, 2024), https://bpi.com/bpi-responds-to-joint-regulatory-review-on-egrpra/.

[4] *See generally,* Joshua Smith and Benjamin Gross, *Survey Finds Compliance is Growing Demand on Bank Resources*, BANK POLICY INSTITUTE (Oct. 29, 2024), https://bpi.com/survey-finds-compliance-is-growing-demand-on-bank-resources. The survey defined "regulatory or supervisory compliance" as "compliance with law, regulation, guidance or other governmental mandate, including responding to mandates and recommendations from federal and state banking agencies, CFPB, SEC and other U.S. market and prudential regulatory agencies." By contrast, the survey defined "risk management" as "risk management in the ordinary course unrelated to prudential regulatory or supervisory requirements." By example, the survey noted that "credit underwriting is an ordinary risk management practice for any business lending money, regardless of any prudential regulatory or supervisory requirements."

[5] *Id.*

processes. Accordingly, we identify key areas for improvement across the Uniform Rules of Practice and Procedure, Resolution and Receivership Rules, and Recordkeeping for Timely Deposit Insurance Determination.

A. Uniform Rules of Practice and Procedure (12 C.F.R. Part 19; 12 C.F.R. Part 263; 12 C.F.R. Part 308; 12 C.F.R. Part 263)

The Uniform Rules of Practice and Procedure are meant to ensure fairness in the Agencies' enforcement actions. But their design and application often fall short. Structural bias, long delays, and disproportionate penalties undermine trust in the process. Fixing these flaws is critical to restoring fairness and confidence in the Agencies' adjudication.

As noted in several BPI amicus briefs filed with federal courts,[6] banks and institution-affiliated parties correctly perceive that if they challenge bank enforcement proceedings, they will almost always fail. Compounding this problem is the reality that adjudications led by administrative law judges take years to resolve, and banks and IAPs cannot freely defend their public reputation while the proceedings progress. In regulated industries like banking and financial services, the publicity associated with government allegations are particularly damaging. Moreover, in the view of the Agencies, banks and IAPs do not have a right to a jury trial and other constitutional protections.[7] Thus, because they know the scales are tipped against them, banks and IAPs virtually never risk contesting enforcement actions.

This vacuum in judicial review has broad effects. It allows regulators to act out of bias—or simple mistake—knowing they are not likely to be challenged.[8] It also disincentivizes participation in the industry.[9] Out of concern for potential personal liability and reputation risk, a bank and its personnel will tend to seek a fail-safe environment, foregoing business opportunities that might serve the best interests of their shareholders, their clients, or the financial system. And it places bank regulation in a category of its own—

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[6] *See, Jarkesy v. SEC*, Brief for Banking Groups as Amici Curiae Supporting Petitioners, No. 22-859 (U.S. 2023), available at https://www.supremecourt.gov/DocketPDF/22/22-859/285398/20231018141344498_Jarkesy%20--%20Banking%20Groups%20Amici%20Brief%20.pdf; *Burgess v. FDIC*, Brief for Banking Groups as Amici Curiae in Support of Plaintiff-Apellee/Cross-Appellant, No. 22-11172 (5th Cir. 2025), https://bankingjournal.aba.com/wp-content/uploads/2025/02/08-Burgess-v.-FDIC-Amicus-Brief.pdf; *CBW Bank v. FDIC*, Motion for Leave to File a Brief as Amici Curiae In Support of Plaintiff CBW Bank (D. Kan. 2025), https://bankingjournal.aba.com/wp-content/uploads/2025/02/09-CBW-v.-FDIC-Amicus-Brief.pdf.

[7] *Id.*

[8] *See* FDIC*, Guidelines for Appeals of Material Supervisory Determinations,* 86 Fed. Reg. 6,881 (Jan. 25, 2021) ("fear of retaliation by FDIC examiners . . . was cited as a basis for causing bankers to be reluctant to fully engage with the FDIC on material areas of disagreement").

[9] *See AABD Survey Results: Measuring Bank Director Fear of Personal Liability*, ASSOCIATION OF AMERICAN BANK DIRECTORS (Apr. 2014), at 1, https://aabd.org/wp-content/uploads/2014/04/AABD-Survey-Results-Measuring-Bank-Director-Fear-of-Personal-Liability.pdf (almost 25% of a sample of banks lost directors or director candidates due to fear of liability).

one that is increasingly incongruent with modern administrative law.[10] Overall, the deprivation of administrative and constitutional rights may weaken the banking system, not strengthen it.

Absent checks and balances, the Agencies' ALJs regularly make evidentiary and procedural rulings inconsistent with the impartiality afforded under an Article III court. In a recent notable case, an ALJ with the Office of Financial Institution Adjudication—an inter-agency group of ALJs that preside over enforcement proceedings brought by the Agencies—quashed subpoenas to bank examiners who had worked on a relevant agency ombudsman review, blocked discovery of exculpatory material, and prevented discovery into documents relied on by bank examiner witnesses.[11] Litigants have reported restrictions on cross-examination, conferring with counsel, and proffering evidence. ALJs and the agency head issuing the final decision routinely defer to the judgment and findings of the examiners or their supervisors. For these reasons, we believe a single set of rules governing OFIA proceedings and major reforms are essential. At a minimum, the following would lead to improvements.

1. The Agencies should embrace a *Brady* standard requiring the turnover to a bank or IAP defendant of exculpatory evidence in the possession of the Agencies.

2. The Agencies should disavow various legal principles that restrict scrutiny of bank examiner or agency expert testimony—examiners and experts should be subject to full scrutiny like any other witness.

3. The Agencies should apply the Federal Rules of Evidence to agency ALJ proceedings.

4. The Agencies should recognize the bank or IAP's right to attorney-client privilege.

5. The Agencies should set reasonable time limits on ALJ proceedings of five years, subject to narrow circumstances when the respondent requests additional time. In cases such as *Calcutt v. FDIC* and *In re Burgess*, enforcement targets endured investigations spanning over a decade.[12]

6. The Agencies should reemphasize to the public and to their examiners that unsafe or unsound practices enforcement proceedings cannot be based on a bank's non-conformance with guidance.

7. Any self-identified and remediated issue should not lead to an enforcement action by the Agencies.

8. The Agencies should be required to provide detailed justifications for penalties in final decisions, including the application of mitigating factors such as cooperation with the Agencies. Notably, FDIC data reveals that amounts collected through "voluntary" settlements and restitution can

[10] *See* Federal Reserve Governor Michelle Bowman, *Reflections on 2024* (Jan. 9, 2025), https://www.federalreserve.gov/newsevents/speech/bowman20250109a.htm ("regulators must also acknowledge . . . [that] administrative law increasingly demands greater transparency and accountability").

[11] *See In re David Julian et. al.*, OCC AA-ED-2019-71+, Comptroller's Decision (Jan. 14, 2025).

[12] *See supra* note 6.

sometimes exceed official monetary penalties by tenfold or more.[13] Details of penalty amounts are important to provide incentives for good behavior by evidencing the impact of cooperation credit.

9. If one or more of the Agencies believe that any requirements contained in an enforcement order should apply broadly to all industry participants, the notice-and-comment rulemaking process represents the appropriate mechanism for imposing new requirements. Enforcement cases have been used to create what are effectively new requirements that are then applied retroactively to respondents.[14]

10. The Agencies should expressly prohibit staff from citing enforcement settlements actions as precedent in subsequent guidance or other legal interpretations. These enforcement actions are simply the final output of negotiated settlements where the parties may compromise on language or conditions for reasons wholly separate from their legal validity.[15]

B. FDIC Resolution and Receivership Rules for Covered Insured Depository Institutions (12 C.F.R. Part 360)

The FDIC should take steps to modernize and improve its resolution capabilities. We have raised serious concerns about the FDIC's resolution of SVB and Signature Bank—particularly FDIC choices that increased the cost of the resolution and therefore increased the special assessment on institutions that did

[13] *See Consumer Compliance Supervisory Highlights*, FDIC (Mar. 2023), 4, https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-highlights/documents/ccs-highlights-march2023.pdf

[14] The Supreme Court of the United States has stated, "Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly." *Landgraf v. USI Film Products*, 511 U.S. 244, 265 (1994). However, banking organizations are subject to troubling enforcement actions that violate this principle. For example, in 2018, then-Judge Brett Kavanaugh strongly criticized the CFPB for imposing action not based on existing precedent, noting, the "Director discarded the Government's longstanding interpretation of the relevant statute, adopted a new interpretation of that statute, applied that new interpretation retroactively, and then imposed massive sanctions [...] for violation of the statute—even though [the] relevant acts occurred before the Director changed his interpretation of the statute […] the Director *unilaterally* added $103 million to the $6 million in penalties that had been imposed by the administrative law judge." *PHH Corp. v. CFPB,* 839 F.3d 1, 44-46 *(D.C. Cir. 2016*) (recognizing that the Bureau's retroactive application of a new interpretation of a statute "violated due process" by failing to provide "fair notice of what conduct is prohibited"), *reh'g en banc granted, order vacated* (Feb. 16, 2017)*, reinstated in relevant part on reh'g en banc*, 881 F.3d 75 (D.C. Cir. 2018)*. See also BPI and Coalition of Trades File Brief in The People of The State of New York v Citibank*, Bank Policy Institute (May 2, 2024), https://bpi.com/bpi-and-coalition-of-trades-file-brief-in-the-people-of-the-state-of-new-york-v-citibank/ (arguing "that [the] New York Attorney General […] posits an interpretation of the law governing wire-transfer payments that contradicts the text, Congressional intent, regulatory interpretation, and settled understanding of the relevant statutes and that would upend decades of legal precedent and industry practice.")

[15] *See, e.g., Design, marketing, and administration of credit card rewards programs*, Circular 2024-07, CFPB (Dec. 18, 2024), https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-07-design-marketing-and-administration-of-credit-card-rewards-programs/#footnote-53 (FN 53 citing enforcement action); *Policy Statement on Abusive Acts or Practices*, CFPB (Apr. 3, 2023), https://www.consumerfinance.gov/compliance/supervisory-guidance/policy-statement-on-abusiveness/#footnote-66 (FN 66 citing enforcement action).

not have any involvement in the March 2023 failures.[16] The FDIC can accomplish many improvements in this area by focusing on improving its practices and readiness to resolve failing banks, including by making changes to the FDIC's own governance, as described below. Changes to the FDIC's resolution and receivership rules should also be considered to the extent necessary to implement the recommended improvements. Specifically, the FDIC should consider whether any rule changes are necessary to achieve the following objectives.

1. The FDIC must better manage expenses in systemic-risk scenarios. Recent reliance on high-cost penalty-rate borrowing added as much as $2.5 billion to resolution costs, unnecessarily increasing burdens on the Deposit Insurance Fund.[17] The FDIC board could formally adopt a resolution requiring the FDIC to prioritize cost minimization in relation to the administration of receivership liabilities and associated interest cost. The FDIC board should also reconsider the scope of its standing delegation of authority under the Receivership Management Delegations, which govern the monetary threshold below which staff are free to take receivership management actions (including with respect to funding decisions and asset dispositions) without consulting the full board.

2. The FDIC should review and improve the failed bank auction process. The FDIC should review existing practices to promote comprehensive bidder outreach, such as by seeking public comment on the process it follows to construct bidder lists and the criteria that govern banks' eligibility to bid.

3. The FDIC should establish clear and predictable guidelines for special assessments. The FDIC has not clearly defined what it considers "benefits" under the statutory criteria for allocating costs associated with the systemic risk exception, leaving uncertainty about the direct and indirect factors it evaluates in special assessments. To address this, the FDIC should specify the types of benefits it will consider, as well as the data and information it will use to determine which institutions benefit from future systemic-risk exceptions. Establishing a transparent and predictable framework for structuring special assessments, including robust public discussion of methodologies, would ensure that future actions are fair, tailored to specific circumstances, and compliant with statutory requirements.

C. Recordkeeping for Timely Deposit Insurance Determination (12 C.F.R. Part 370)

Part 370 is intended to support timely deposit insurance determinations but creates significant operational and compliance challenges for covered institutions. Moreover, the FDIC's implementation of the rules has been focused on granular compliance matters and pursuit of an unrealistic objective of perfect datasets. Going forward, the FDIC should consider how to recalibrate oversight and supervision of this regulation to focus on material compliance issues.

1. The FDIC should immediately rescind and replace FAQs that unnecessarily burden banks' ability to provide the required certification. The FDIC should rescind and replace three problematic FAQs: (i) the FAQ on section 370.8, which suggests that exceptions will be granted only in cases of "a legal impediment or logical impossibility to compliance," and (ii) the two FAQs published in February 2023 on section 370.10, which significantly altered the certification standards by (a) effectively rescinding the section 370.8

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[16] *See generally*, *BPI Expresses Concern for FDIC Resolution of SVB and Signature Bank*, BANK POLICY INSTITUTE (July 10, 2024), https://bpi.com/bpi-expresses-concern-for-fdic-resolution-of-svb-and-signature-bank/.

[17] *See, e.g.,* Jeff Huther, *The FDIC's Unusual Loan from the Federal Reserve*, ABA BANKING JOURNAL (Apr. 4, 2024), https://bankingjournal.aba.com/2024/03/the-fdics-unusual-loan-from-thefederal-reserve/.

exception request process for institutions that have been subject to Part 370 since its adoption, and (b) introducing the concept of narrowly derived "minor recordkeeping deficiencies" in which an institution is still permitted to certify.[18]

Ultimately, the FDIC should remove Part 370's certification requirement. In the interim, these FAQs should be replaced with guidance that permits covered institutions to certify where the institution has determined it is in substantial compliance with Part 370. Covered institutions should be deemed to be in substantial compliance with Part 370 even in instances where the institution is unable to calculate deposit insurance for each deposit account so long as the bank has controls and processes in place demonstrating the covered institution is working to address existing data issues or other deficiencies (whether identified by the FDIC during a compliance test or by the covered institution), and has processes to address new data issues or deficiencies as they arise.

The importance of allowing for certification based on substantial compliance is further underscored by the FDIC's recent erosion of provisions within Part 370 that allow firms to request relief. FDIC FAQs impose an almost unattainable standard for relief, stating that the agency "will consider whether a legal impediment or logical impossibility to compliance exists."[19] This effectively undermines and virtually eliminates the relief provisions in 12 C.F.R. 370.8, which allow for exemptions where compliance is "impractical or overly burdensome."[20] Legally, the FDIC should not attempt to replace the established standard for relief in 12 C.F.R. 370.8 with an FAQ that has not undergone proper notice-and-comment rulemaking. In the short term, the FDIC should establish a more reasonable exception process, allowing firms to seek exceptions in cases where practical operational challenges remain even after good faith compliance efforts have been implemented. Longer term, as described below, the rule should be revised to eliminate certification and focus on material compliance, thereby eliminating the need for a burdensome exception process.

2. The FDIC should remove the certification provision or, at the least, allow for a qualified certification option. Under 12 C.F.R. 370.10, the FDIC requires covered institutions to "submit to the FDIC a certification of compliance" signed by a Chief Executive Officer or Chief Operating Officer. However, nowhere do the authorizing statutes cited by the FDIC for this rule provide the agency with explicit authority to impose such an attestation requirement.[21] Unlike other statutes, Congress has neither

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[18] *Frequently Asked Questions 12 CFR Part 370 Recordkeeping for Timely Deposit Insurance Determination*, FDIC (last updated July 18, 2023), https://www.fdic.gov/banker-resource-center/12-cfr-part-370-recordkeeping-timely-deposit-insurance-determination.

[19] *Id*. *See also*, *Guidelines for Relief from Part 370*, FDIC (undated), p. 2, https://www.fdic.gov/regulations/resources/recordkeeping/documents/guidelines-for-relief-from-part370.pdf.

[20] The FDIC's additional statement that institutions "need not submit a request for exception relief for such minor recordkeeping deficiencies" is undermined by the agency's extremely narrow definition of "minor recordkeeping deficiencies," which at points include as such "deficiencies" information not even *required* for compliance, such as certain email addresses. *See Sec. 370.10 of Frequently Asked Questions, 12 C.F.R. Part 370 Recordkeeping for Timely Deposit Insurance Determination*, FDIC (last updated July 18, 2023).

[21] The FDIC relies upon 12 U.S.C. 1817(a)(9), 1819 (Tenth), 1821(f)(1), 1822(c), 1823(c)(4) for its Part 370 authority. *See* 84 Fed. Reg. 37,042.

mandated nor authorized such an attestation or certification requirement for executives in this context.[22] Moreover, the FDIC has not demonstrated why the benefits of an executive attestation requirement cannot be achieved through its existing supervisory powers, which would likely result in fewer negative consequences. Indeed, one of the authorities the FDIC relies upon, 12 U.S.C. 1817(a)(9), directs the FDIC to "minimize the regulatory burden imposed upon insured depository institutions that are well capitalized."

In contrast, the certification standard imposes significant regulatory burdens on well-capitalized institutions. The requirements of Part 370 are granular and expansive and are not clearly qualified by any materiality standard. Though the Part 370 certification is a "qualified" standard because 12 C.F.R. 370.10(a)(1)(iii) requires that the certification be "made to the best of [a CEO's or COO's] knowledge and belief after due inquiry,"[23] concerns with the standard remain because the standard as articulated in the FDIC's FAQs suggests any known discrepancies in the data a firm collects could complicate their ability to provide the certification. This could be the case even if the discrepancy only applies to an immaterial number of accounts for which a bank collects data. This zero tolerance approach is in marked contrast to call reports, which incorporate materiality into a firm's compliance.[24] Therefore, covered institutions are understandably reluctant to attest to full compliance due to the potential for errors, insufficient FDIC guidance on key aspects of the rule, reliance on third parties for critical information, and the risk of uncertain consequences should a bank fail to certify or the FDIC later contest a good-faith attestation.

3. The FDIC should make additional targeted changes to existing Part 370 requirements. The FDIC should reevaluate the Part 370 framework to address the ongoing, granular compliance demands that have required extensive attention from bank management and FDIC examiners. The FDIC should consider how to recalibrate oversight and supervision of this regulation to focus on material compliance issues and should make any necessary rule changes to affect that outcome. Furthermore, once immediate issues with outstanding FAQs are resolved, further changes to Part 370 should be made through notice and comment rulemaking rather than staff FAQs. The practice of issuing guidance by FAQs is difficult to implement as a compliance matter, particularly FAQs that include multiple detailed requirements and that operate to substantively alter the provisions in the rule (such as the exception process). This approach also deprives affected institutions of the ability to provide substantive feedback and have that feedback considered on the record.

In addition to these broader changes to the Part 370 approach, the FDIC should also consider the following targeted changes to improve the rule's efficiency and effectiveness.

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[22] For example, to take advantage of a specific exemption in the Volcker Rule to engage in prime brokerage transactions with a related covered fund, Congress required the banking entity's chief executive officer to certify in writing that the banking entity does not guarantee, assume, or otherwise insure the obligations or performance of fund. *See* 12 U.S.C. § 1851(f)(3)(ii).

[23] *See Statement of Vice Chairman Travis Hill on Notice of Proposed Rulemaking on Custodial Deposit Accounts with Transaction Features and Prompt Payment of Deposit Insurance to Depositors*, FDIC (Sep. 17, 2024), https://www.fdic.gov/news/speeches/2024/notice-proposed-rulemaking-custodial-deposit-accounts-transaction-features-and#footnote11.

[24] *See Instructions for Preparation of Consolidated Reports of Condition and Income*, FFIEC 031 and FFIEC 041, FFIEC, 10a, https://www.fdic.gov/resources/bankers/call-reports/crinst-031-041/2022/2022-12-generalinstructions.pdf (materiality is "an entity-specific aspect of relevance based on the nature or magnitude or both of the items to which the information relates in the context of an individual entity's financial report").

- Level of customer solicitation. In an attempt to provide banks with relief for the "zero tolerance" compliance standard, the FDIC in June 2022 published an FAQ that informed covered institutions that the FDIC would consider an institution to be in substantial compliance with Part 370 where resolution of a recordkeeping deficiency was dependent solely on a depositor's response to missing data, and no response was received despite significant outreach efforts, so long as the institution complied with certain conditions, including conducting customer outreach at least three times prior to certification and annually thereafter.[25] Critically, this FAQ was limited to accounts opened before the institution's first certification.

  As an initial matter, the FDIC should permit banks to solicit information from depositors in reliance on the FDIC's FAQs on all accounts, including legacy and newly opened accounts. Additionally, the requirement to reach out to customers three times, and then annually thereafter in perpetuity in order to certify substantial compliance, creates an excessive and impractical burden on institutions. This level of outreach is disproportionate and has caused significant time and expense for institutions attempting to collect information not previously required from their customers. While institutions are committed to obtaining information to be able to accurately calculate deposit insurance, banks should have flexibility in determining the best approach to collect this information. At the most, the FDIC should require one outreach per year for a maximum of two years. The FDIC should also align customer solicitation obligations to banks' Bank Secrecy Act and customer due diligence requirements. For example, as the *Customer Due Diligence Requirements for Financial Institutions* rule did not come into effect until 2018,[26] a bank should be under no obligation to have full data for clients prior to the rule's effective date, unless it becomes aware of certain relevant information.

- Trust Account Recordkeeping. The FDIC should not make a distinction between formal and informal trust accounts with respect to recordkeeping. Accordingly, informal trusts should be able to sit in a bank's pending file.

- Unique Identifiers for Grantors. The FDIC should eliminate the requirement for banking organizations to maintain unique identifiers for grantors of trusts under § 370.4(b)(2)(ii). This information is already obtained during resolution and maintaining it duplicates efforts.

- Clearing Deposit Accounts. The FDIC should exempt clearing deposit accounts from Part 370 treatment, as outlined in § 370.4. These accounts hold funds temporarily and subjecting them to Part 370's requirements complicates reconciliation.

- Internal accounts. The FDIC should codify in Part 370 clarification that internal accounts can remain in the pending file. The list of such accounts should be expanded to include escheated accounts. The FDIC still requires firms to maintain burdensome recordkeeping for escheated accounts that have been dormant for three to five years. It's unreasonable to mandate that firms build out costly technical and information processes to return funds within 24 hours when customers haven't sought access to these accounts for years. As with other "work-in-process" accounts where the

[25] *See FDIC FAQs*, *supra* note 18.

[26] *Customer Due Diligence Requirements for Financial Institutions*, FinCEN (May 11, 2016), https://www.federalregister.gov/documents/2016/05/11/2016-10567/customer-due-diligence-requirements-for-financial-institutions ("Covered financial institutions must comply with these rules by May 11, 2018.").

FDIC has clarified by FAQ that banks can maintain these accounts in the pending file subject to certain conditions (including identifying the amount of time required to reconcile the accounts in receivership),[27] the FDIC should permit the same treatment for internal accounts holding escheated funds. The FDIC should also treat settlement deposit accounts and omnibus settlement accounts, including American Depository Receipts, similarly to "official items" under § 370.4(c). These accounts operate in a manner akin to official items, holding funds temporarily pending transfer. Applying the same treatment would simplify compliance and ensure consistent handling of these accounts.

- Loan Credit Balances. The FDIC should not require firms to calculate deposit insurance on credit overpayments within 24 hours.

- Cash Collateral Derivatives. The FDIC expects cash collateral derivatives to be treated as deposits. However, there is no statutory support for this position, and therefore, cash collateral derivatives should be entirely excluded from Part 370 requirements.

- Output File Requirements. The FDIC should clarify the utility and necessity of the DP Hold Amount field in both the Account File and Pending File to ensure it is not unnecessarily complex. Simplifying these requirements would reduce confusion and the administrative burden on banking organizations, allowing them to focus on accurate and efficient data reporting.

- Exception Process. As noted above, the rule should be revised to eliminate certification and focus on material compliance, thereby eliminating the need for a burdensome exception process. However, should an exception process be retained, the FDIC should continue to allow a single exception request for multiple covered institutions, streamlining the process and reducing administrative burdens. Additionally, the FDIC should publish exception responses in the Federal Register while protecting the identity of requestors and confidential information, ensuring transparency and consistency. Finally, the FDIC should consider shortening the review period for exceptions from 120 days to 60 days to expedite the process and provide timely responses to covered institutions.

4. In future rulemaking, the FDIC should not subject Part 370 institutions to duplicative recordkeeping requirements. The FDIC's recently proposed rule, *Recordkeeping for Custodial Accounts,*[28] fails to exclude banks subject to Part 370, despite the overlap in requirements. Since 12 C.F.R. 370.5 already mandates that covered banks take reasonable steps to ensure account holders provide the FDIC with the necessary information to determine deposit insurance, it is unnecessary and overly burdensome to impose additional requirements on these banks through new proposals. The FDIC should exclude Part 370 banks from the scope of the custodial deposit rulemaking if it moves forward.

[27] *See FDIC FAQs*, *supra* note 18, at Sec. 370.10.

[28] 89 Fed. Reg. 80,135 (Oct. 2, 2024).

II. Safety and Soundness: Liquidity Risk; Extensions of Credit by Federal Reserve Banks; Safety and Soundness Standards; Frequency of Safety and Soundness Examinations; Resolution Plans; Recovery Planning; Enhanced Prudential Standards

Current requirements and practices often impose unwarranted burdens and create inefficiencies. Accordingly, we propose a series of targeted reforms across critical areas—liquidity risk management, discount window operations, bank examination, resolution and recovery planning, and enhanced prudential standards—to modernize the regulatory landscape and promote a fair, resilient, and effective banking system.

A. Liquidity Risk (12 C.F.R. Part 50; 12 C.F.R. Part 249 [Reg. WW]; 12 C.F.R. Part 329)

The Agencies should undertake a holistic review of liquidity requirements and ensure liquidity rules promote resilience rather than rigidity.[29] Rigid requirements discourage the use of liquidity buffers during stress, undermining their intended purpose. For instance, when banks were required to maintain minimum reserve requirements, banks that used reserves to cover outflows risked falling out of compliance with the requirements, creating disincentives to deploy liquidity. Similarly, banks often hesitate to use high-quality liquid assets due to concerns about violating the Liquidity Coverage Ratio.[30] A survey of BPI treasurers revealed that none would use their HQLA if it meant falling out of compliance with the LCR, with some even pulling back from providing liquidity or selling assets into illiquid markets to avoid violations.[31]

Therefore, the overarching goal of designing liquidity regulations should be to *expand* the range of available liquidity tools, rather than restrict them. Regulations and supervisory policies should ensure firms have access to, and can effectively utilize, all available liquidity channels, which would serve to strengthen overall market resilience. For example, the discount window and standing repo facility serve as liquidity tools for banks and a bank's capacity to utilize them should be appropriately recognized within the LCR, Internal Liquidity Stress Testing, and Resolution Liquidity Adequacy and Positioning / Resolution Liquidity Execution Need calculations. Doing so would not only enhance liquidity preparedness but also help mitigate the stigma associated with the use of the discount window. Similarly, liquidity regulations' treatment of assets should focus on their ability to be monetized through appropriate channels—such as the Standing Repo Facility, discount window, and repo agreements—rather than limiting their role in liquidity planning, as has been suggested by agency staff with respect to held-to-maturity securities.[32] The Agencies should also consider how significant market reforms (such as U.S. Treasury Clearing) would affect

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[29] *See* Bill Nelson, *Is It Time For a Holistic Review of Liquidity Requirements?*, BANK POLICY INSTITUTE (Feb. 23, 2023), https://bpi.com/is-it-time-for-a-holistic-review-of-liquidity-requirements/.

[30] *See*, Brett Waxman, *Comment to Bank of England on "Discussion Paper 1/22: The prudential liquidity framework,"* BANK POLICY INSTITUTE (June 30, 2022), https://bpi.com/wp-content/uploads/2022/07/BPI-Comment-Letter-Bank-of-England-Discussion-Paper-1-22-6.30.2022-Final.pdf.

[31] *See* Bill Nelson and Brett Waxman, *BPI Survey of Bank Treasurers on Willingness and Perceived Ability to Borrow from Fed Lending Facilities,* BANK POLICY INSTITUTE (Dec. 12, 2024), https://bpi.com/bpi-survey-of-bank-treasurers-on-willingness-and-perceived-ability-to-borrow-from-fed-lending-facilities/; *see also* Bill Nelson and Brett Waxman, *Bank Treasurers' Views on Liquidity Requirements and the Discount Window*, BANK POLICY INSTITUTE (Oct. 12, 2021), https://bpi.com/bank-treasurers-views-on-liquidity-requirements-and-the-discount-window/.

[32] *See* FRB Vice Chair for Supervision Michael Barr, *Supporting Market Resilience and Financial Stability*, Remarks at the 2024 U.S. Treasury Market Conference, FEDERAL RESERVE (Sep. 26, 2024), https://www.federalreserve.gov/newsevents/speech/barr20240926a.htm.

the current liquidity framework and seek comments early on any potential adjustments or modifications. Finally, any new requirements or significant revisions to liquidity regulations should be introduced through an Advance Notice of Proposed Rulemaking to allow for thorough analysis and stakeholder input at an early stage in the rulemaking process.

1. The Agencies should fully recognize available discount window borrowing capacity for all applicable liquidity requirements, including the LCR, ILSTs, and RLAP/RLEN.

The bank failures in spring 2023 increased recognition of the importance of the use of the discount window for liquidity risk management. The FAQ issued in August 2024[33] and the speech by Vice Chair for Supervision Barr[34] in September 2024 provided welcome clarity that banks can use the discount window, Federal Home Loan Bank Advances, and the SRF as supplemental monetization channels in their internal liquidity stress tests. While these are obviously a welcome development, existing guidance for the most part does not allow banks to recognize access to these government facilities in the LCR and resolution planning requirements. For example:

> The firm may assume that its depository institutions will have access to the Discount Window only for a few days after the point of failure to facilitate orderly resolution. However, the firm should not assume its subsidiary depository institutions will have access to the Discount Window while critically undercapitalized, in FDIC receivership, or operating as a bridge bank, nor should it assume any lending from a Federal Reserve credit facility to a non-bank affiliate.[35]

Not only is this inconsistent with what banks would actually do in practice (i.e. maximizing their access to channels to monetize HQLA in order to limit reliance on any one channel), but it also contributes to public confusion and stigma around use of the discount window. Therefore, there should be an overall recalibration of all liquidity requirements including LCR, ILST, and resolution planning, to allow banks to appropriately recognize the discount window, FHLB lines and the SRF as sources of liquidity to (i) monetize highly liquid assets, and (ii) recognize cash inflows for borrowing against existing non-HLA securities or loans pledged at the discount window or FHLB.

Allowing banks to leverage the capacity available through pledged collateral at the discount window would recognize the robust contingent liquidity provided by these arrangements. At the end of 2023, banks had pledged collateral with a lendable value of $2.8 trillion to the Federal Reserve. This substantial amount of prepositioned collateral, established at considerable administrative cost and with the encouragement of supervisors, currently receives no credit under the LCR (unless it is also HQLA). This proposed adjustment would not only provide a more accurate assessment of banks' true liquidity positions but also incentivize preparedness to borrow from the discount window, thereby enhancing financial stability. Furthermore, it would allow banks to replace some portion of their HQLA that currently functions

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[33] *See Frequently Asked Questions about Regulation YY*, FEDERAL RESERVE (Aug. 2024), https://www.federalreserve.gov/supervisionreg/legalinterpretations/reg-yy-frequently-asked-questions.htm#64; *see also SR 03-15*, FEDERAL RESERVE (July 25, 2003; rev. Oct. 1, 2020), https://www.federalreserve.gov/boarddocs/srletters/2003/sr0315.htm.

[34] *See* Barr, *supra* note 32.

[35] *Final Resolution Guidance 2019*, 84 Fed. Reg. 1,459 (Feb. 04, 2019).

as government lending with loans to businesses and households that can be pledged to the discount window, potentially increasing credit supply to the private sector.

Beyond the lack of recognition in the liquidity requirements described above, there are currently two significant pitfalls that serve to limit banks' use of the discount window. The first is operational impediments, described more fully in Section II.B. and detailed in our comment letter response to the Federal Reserve's RFI on discount window operations.[36] The second is the stigma that remains associated with discount window usage. Reducing this stigma is crucial for encouraging its use. The Agencies should educate the public, Congress, examiners, and investors that borrowing from the discount window is a normal business decision, not a bailout or sign of trouble. The Federal Reserve could conduct exercises to allow banks to practice discount window usage, assure banks that using HQLA before borrowing is not expected, and reduce its balance sheet to encourage borrowing. Allowing banks to recognize discount window borrowing capacity in the LCR, ILSTs, and RLAP/RLEN would further reduce stigma and encourage use of the discount window.

2. The Agencies should ensure that monetizable assets should receive appropriate treatment in regulations, instead of limiting their utility. One reason why banks hold significant quantities as reserves as compared to other forms of HQLA, such as Treasury securities, is a result of examiner preferences for reserves that have been expressed to banks over time. As former Federal Reserve Vice Chair Randal Quarles noted, addressing these preferences would reduce unnecessary demand for reserves and allow for a smaller Federal Reserve balance sheet.[37] The Agencies, including the Federal Reserve, should address these examiner preferences through regulatory guidance and make clear that for liquidity purposes, these assets are treated the same. If firms can demonstrate monetization of their securities, including those that are classified as held-to-maturity, through appropriate channels, such as the SRF, discount window, or repo agreements, then the Agencies should not impose preferences or otherwise arbitrary limits on these assets in the LCR and ILST frameworks. Moreover, the definition of "Liquid and Readily Marketable" in the LCR rule remains problematic for institutions. BPI previously advocated that the framework should be revised to incorporate a straightforward, presumptions-based approach supplemented by additional analysis in limited circumstances.[38] At a minimum, the Agencies should clarify what qualifies as a large number of market participants or high trading volume as used in the definition of "Liquid and Readily Marketable" and should not require firms to prove these on a daily basis, as the benefits of such frequent verification are unclear.

3. The Federal Reserve should enhance clarity and uniformity in examiner instructions regarding ILSTs. BPI's recent survey of bank treasurers revealed widely divergent views on the interpretation of the recent FAQ regarding ILSTs, particularly concerning the monetization of HQLA and the permitted use of the

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[36] Brett Waxman, *Comment on Request for Information and Comment on Operational Aspects of Federal Reserve Bank Extensions of Discount Window and Intraday Credit (Docket No. OP-1838)*, BANK POLICY INSTITUTE (Dec. 9, 2024), https://bpi.com/wp-content/uploads/2024/12/BPI-Comment-Letter-RFI-on-Operational-Aspects-of-Federal-Reserve-Bank-Extensions-of-Discount-Window-and-Intraday-Credit.pdf.

[37] *Transcript of November 7–8, 2018 Meeting*, FEDERAL OPEN MARKETS COMMITTEE AND BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, p. 36–37, https://www.federalreserve.gov/monetarypolicy/files/FOMC20181108meeting.pdf.

[38] *See Comment on Notice of Proposed Rulemaking – Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements*, THE CLEARING HOUSE (BPI's predecessor organization) *et. al*., (April 5, 2016), https://www.federalreserve.gov/secrs/2016/august/20160829/r-1537/r-1537_080516_130419_430529589163_1.pdf.

discount window, standing repo facility, and Federal Home Loan Banks in these tests.[39] This lack of clarity creates uncertainty and allows for potentially inconsistent application of the rules. The survey results suggest specific areas where further clarification is needed, including the meaning of "monetizing a portion of HLA in private markets," and the permissibility of projecting inflows from the discount window, standing repo facility, and FHLBs at different time horizons. Uniform examiner instructions would further enhance consistency and reduce ambiguity. Critically, the Agencies should use notice-and-comment rulemaking, with the proper transparency and analytics, to outline best practices derived from horizontal guidance. This would ensure a level playing field between firms.

4. The Agencies should revise the definition of a "secured lending transaction" to include certain retail transactions in the LCR and NSFR. The definition of a "secured lending transaction" is limited to transactions with wholesale customers and counterparties. It should be expanded to include loans with the following characteristics: (i) extended to retail customers, (ii) fully collateralized by securities marked-to-market daily, (iii) lacking an express maturity date, (iv) terminable by either party with a notice period of less than 30 days (often one day), and (v) if the customer fails to meet a repayment obligation, the banking organization can close out the loan and liquidate securities to cover the loan amount.

Economically, open maturity securities-based loans function similarly to open maturity reverse repurchase agreements with wholesale counterparties, as both involve fully secured cash lending where the lender has the right to close out and liquidate collateral upon default. The defining characteristic of both transactions is their secured nature, with daily mark-to-market collateralization as a fundamental requirement for extending credit. Given these economic parallels, open maturity retail securities-based loans are akin to secured lending transactions and should receive similar treatment under the LCR and NSFR.

5. The Federal Reserve should streamline liquidity reporting requirements. The most recent revisions to the FR 2052a, effective as of 2022,[40] incorporate added attributes and tables of information seemingly unrelated to the LCR and NSFR and have no bearing on the calculation of the required regulatory minimum ratios or the Liquidity Risk Measurement standards.[41] In adopting these added data fields, the Federal Reserve states that they support "its supervisory mandates, including monitoring the microprudential and financial stability risks associated with large banking organizations' asset and liability profiles."[42] However, these added data fields have been in use for over two years and it remains unclear as to how this additional data is being used and ultimately enhances liquidity supervision. Compliance with these data fields unrelated to LRM standards demands significant resources and controls processes, diverting firms' attention from more impactful liquidity metrics. As a result, the Federal Reserve should clarify the necessity of these data elements and either consider if there are less burdensome approaches to collecting such data attributes (i.e., reducing the required frequency of reporting or granularity) or eliminate these attributes entirely.

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[39] *See supra* note 31.

[40] 86 Fed. Reg. 68,254 (Dec 1, 2021).

[41] For specific details on the relevant data elements and attributes s*ee Revisions to the Complex Institution Liquidity Monitoring Report (FR 2052a; OMB Control Number 7100-0361),* BANK POLICY INSTITUTE *et al.* (May 27, 2021), https://bpi.com/wp-content/uploads/2021/06/Joint-Trade-Comment-Letter-Revisions-to-the-Complex-Institution-Liquidity-Monitoring-Report-FR-2052a-OMB-Control-Number-7100-0361-5-27-2021final.pdf.

[42] 86 Fed. Reg. 68,256 (Dec. 1, 2021).

The Federal Reserve should also reduce unnecessarily burdensome and potentially redundant disclosure requirements. For example, Category I and II firms are required to submit a significant amount of data each business day on a T+2 cadence that is used for monitoring compliance with LRM standards and broader supervision. Additionally, firms with consolidated assets of $100 billion or more are required to file the FR Y-15, which includes information related to short-term wholesale funding. Firms subject to the NSFR are also required to publish NSFR disclosures on a semi-annual basis based on daily averages for each calendar quarter. The daily averaging requirement of these disclosures creates a significant burden given certain items are not updated on a daily basis, and therefore the disclosure is an average of both daily and less-frequent data. This also makes reconciling disclosure data to the balance sheet cumbersome and unnecessarily complex. The Federal Reserve should instead amend the NSFR disclosure requirement to be based on quarter-end spot data, or at most, based on three month-end averages. Moving to a spot or less frequent averaging would still provide the public with meaningful insight into firms' funding profiles while also reducing unnecessary burdens on bank personnel and systems.

B. Extensions of Credit by Federal Reserve Banks (12 C.F.R. Part 201 [Reg. A])

Targeted changes to the Federal Reserve's discount window operations will reduce burdens on banks while strengthening liquidity management and financial stability.[43] As noted above, it is essential that any new improvements establish the discount window as a standard liquidity tool, rather than a neglected emergency measure.

1. The assignment of lendable value to newly pledged securities should be expedited. Reserve Banks should aim for a three-business-day turnaround to assign lendable value to newly pledged securities and provide automated alerts with estimated valuation timelines. Valuation protocols should align with industry standards, such as those used in the triparty repo market. A central online tool allowing banks to check security eligibility and margins by CUSIP would enhance transparency. The Federal Reserve should also clarify the transfer size limits for book-entry securities transfers and ensure alignment between Fedwire Securities Service operations and Operating Circular 7. Finally, an online tool enabling streamlined and automated collateral movement between the discount window, FHLB System, SRF, and triparty repo custody would improve operational efficiency.

2. The Federal Reserve should make targeted changes to its practices addressing discount window collateral. Harmonization across Reserve Banks in determining loan collateral eligibility and assigning lendable value is essential. Transparency should be improved by publishing the rationale for any differences in practices. A central FAQ system and regular access to subject-matter experts would be beneficial. Greater clarity on haircuts within published ranges is also needed, and post-pledge, Reserve Banks should provide transparency on both the assigned market value and the applied haircut. The content of automated tests used for collateral review should be made transparent, particularly those that trigger

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[43] *See generally, BPI Comments on Federal Reserve Board's Request For Information on Extensions of Discount Window and Intraday* Credit, BANK POLICY INSTITUTE (Dec. 9, 2024), https://bpi.com/bpi-comments-on-federal-reserve-boards-request-for-information-on-extensions-of-discount-window-and-intraday-credit/; *see also* Tara Payne, *To Improve the Discount Window, Make It More Ordinary, Transparent and Efficient*, BANK POLICY INSTITUTE (Dec. 9, 2024), https://bpi.com/to-improve-the-discount-window-make-it-more-ordinary-transparent-and-efficient/; Bill Nelson, *Give Banks Credit For Robust Contingent Liquidity Arrangements*, BANK POLICY INSTITUTE (May 29, 2019), https://bpi.com/give-banks-credit-for-robust-contingent-liquidity-arrangements/; https://bpi.com/bpi-survey-of-bank-treasurers-on-willingness-and-perceived-ability-to-borrow-from-fed-lending-facilities/

Error Exceptions, while the standards for accepting imaged loan collateral should be updated to reflect modern industry practices. The Federal Reserve should consider allowing "blanket lien" pledging of new loan portfolios, similar to the FHLB System, as a streamlined option. The frequency of required reporting for pledged loans should also be reevaluated, and the use of data from existing regulatory reports should be explored to reduce duplicative reporting. Additionally, the collateral released upon repayment of discount window advances should be available the same day, regardless of time zone differences. The operating hours of the discount window and Discount Window Direct should be extended to 24/7. Finally, the Federal Reserve, in collaboration with the FHLB System, should improve the portability of loan collateral between Reserve Banks and the FHLB System. This would enhance borrowing flexibility and contingent funding capabilities. A standardized intercreditor agreement could facilitate the transfer of pledged loan collateral.

3. The Federal Reserve should make targeted changes to intraday credit operations. For example, banks eligible for primary credit should have the option to automatically convert end-of-day overdrafts into overnight discount window loans, up to the unencumbered lendable value of pledged collateral. Additionally, the Federal Reserve should extend the expiration of net debit cap board resolutions to the end of the month in which the one-year expiration date falls. Reserve Banks should also expedite the approval process for net debit caps.

4. The Federal Reserve should tailor communications with banks and the public to improve discount window operations. The Federal Reserve System should harmonize and improve communication regarding collateral valuation, eligibility, and haircuts. Clear guidance on the timing of discount window advance repayments and the authority to pledge collateral is also needed. Additionally, the Federal Reserve should consider eliminating Reserve Bank-specific disclosures on the weekly H.4.1 report or aggregating data to prevent inferences about discount window borrowers.

5. The Federal Reserve should streamline operational processes to improve efficiency. Reserve Banks should allow electronic completion, signing, submission, and updating of all discount window documents. Uniformity in when documents are required is also needed. For recurring submissions like BIC certifications, updates should only be necessary when information changes. A digital attestation confirming the accuracy of previous submissions could suffice otherwise. The Federal Reserve should also consider allowing banks to update their Official Authorization Lists through an online portal, similar to the FHLB System. Finally, the functionality of Discount Window Direct could be improved. Alternative dual-factor authentication methods should be considered to replace the physical token requirement. Simplifying FedLine access for bank employees at overseas branches is also recommended. Adding a chat box or online customer service interface would further enhance user experience.

C. Safety and Soundness Standards (12 C.F.R. Part 30; 12 C.F.R. Part 208; 12 C.F.R. Part 364); Frequency of Safety and Soundness Examinations (12 C.F.R. 4.6-.7; 12 C.F.R. 208.65 [Reg. H]; 12 C.F.R. 337.12)

The Agencies must reform the bank examination process to ensure it is objective, lawful and fair, and transparent.[44] Current practices often emphasize subjective and immaterial issues, exceed statutory

[44] *See generally*, *Bank Supervision is Broken. Here's How to Fix It.*, BANK POLICY INSTITUTE (Nov. 19, 2024), https://bpi.com/bank-supervision-is-broken-heres-how-to-fix-it/; Jeremy Newell, *4 Key Considerations on 'Evolving Bank Supervision'*, BANK POLICY INSTITUTE (Sep. 10, 2024), https://bpi.com/4-key-considerations-on-evolving-bank-

authority, and operate with a lack of public accountability. Addressing these shortcomings will promote fairer, more effective supervision focused on material risks and grounded in transparency and due process.

1. The Agencies should ensure examination is objective. The Agencies should ensure that bank examinations focus on objective, material risks rather than subjective or redundant evaluations. Reforms to the CAMELS rating system and supervisory practices are necessary to prevent overreach, and provide a more balanced assessment of financial institutions.

- The Agencies should eliminate the "M" component of the current CAMELS rating system. The "Management" (M) rating within the CAMELS system (capital, asset quality, management, earnings, liquidity, and sensitivity to market risk) is subjective and redundant. While examiners should focus on material financial risks, they currently overemphasize corporate governance, IT systems, vendor management, and other immaterial matters, as evidenced by the SVB case. The Federal Reserve rates two-thirds of large banking companies as poorly managed despite acknowledging their strong financial condition. The "M" rating is not tied to empirical standards and is superfluous, as management considerations are already embedded in the other CAMELS components. It has become a weaponized tool to dictate bank behavior rather than assess financial health. The Agencies should limit examination reports and ratings to objective matters of financial condition based primarily on objective measures of banks' capital and liquidity positions.

- The Agencies should be mindful of the risks associated with horizontal supervision, where examiners might impose a "best practice" across different banks without considering their unique circumstances. This can lead to examiner-mandated monocultures, particularly in areas like IT and risk management, where one-size-fits-all solutions can be inappropriate and dangerous. The Agencies should ensure that horizontal supervision does not stifle innovation or create unnecessary uniformity.

- The Federal Reserve should reconsider the policy of determining the composite Large Financial Institution rating—and "well-managed" status—based on the lowest component score. Some options for reform include calculating the composite rating based on the average of the three components or establishing separate rating systems for financial condition and compliance. The coverage of the Governance and Controls category should be narrowed significantly to those areas that are likely to meaningfully impact the safety and soundness of the organization. These changes would provide a more balanced and informative assessment of LFIs.

2. *The Agencies should ensure examination is lawful and subject to sufficient due process.* The Agencies have created a secret enforcement regime, imposing sanctions without due process or public disclosure. They have expanded the sanctions for an unsatisfactory "M" rating, including limits on growth, increased deposit insurance premiums, and restrictions on government funding, without statutory basis. These sanctions, often imposed for years, function as financial penalties and growth caps. Examiners currently dictate bank operations and business choices, exceeding their statutory authority to examine for legal compliance and unsafe practices. They push banks out of legitimate activities, restrict lending despite compliance with regulations, and impose their preferred practices across the industry. The Agencies should take several steps to curb this overreach.

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supervision/; *Making Sense of the Federal Reserve's Report on Supervisory Developments*, BANK POLICY INSTITUTE (Nov. 19, 2024), https://bpi.com/making-sense-of-the-federal-reserves-report-on-supervisory-developments/.

- Examiners should be restricted to enforcing existing public regulations, with their compliance subject to internal oversight; put differently, examiners should be prohibited from announcing or applying any requirement or mandate that is not already established in public regulations through an examination report or other supervisory communication.

- Additionally, the Agencies should rescind all guidance establishing non-statutory penalties for examination criticisms and should revert to using vongressionally-enacted sanctions like cease and desist orders and capital directives.

- The Agencies should codify an objective "unsafe or unsound practice" standard that is focused on the financial integrity of the institution. They should also clearly codify a definition for a "matter requiring attention" as matters that involve an unsafe or unsound practice or a violation of law with material consequences for the financial condition of the institution that must be addressed by the institution within a reasonable period of time. Consideration should also be given to reinstating a formal category of "observations" for examiner feedback of lesser severity such as unsafe or unsound practices or violations of law that do not have a material adverse impact on the financial condition of the institution, as a means to share supervisory expectations without requiring the use of an MRA.

- Examiners' compliance with such standards should be subject to routine oversight by independent compliance and audit controls (second and third "lines of defense") inside each agency.

- All exam findings and ratings should be appealable to a neutral fact-finder and judge. The Agencies must adopt bona fide due process rights in enforcement actions brought to address extreme unfairness in agency proceedings.

- Despite the Dodd-Frank Act divesting the Agencies of authority to examine for consumer law compliance for banks over $10 billion (transferring this power to the CFPB), the Agencies continue to conduct these examinations. This constitutes a willful violation of the law and diverts resources from safety and soundness examinations.

3. The Agencies should ensure examination is subject to greater transparency. The Agencies must enhance transparency in the examination process to ensure accountability, improve public understanding, and foster trust. Clearer communication on supervisory activities, rationale for regulatory decisions, and detailed reporting on supervisory findings will promote a more effective and transparent oversight framework.

- The Agencies should address the current asymmetry in public perception, where effective supervision is largely invisible while failures are highly publicized. This involves acknowledging ineffective supervision focused on immaterial matters and ensuring accountability even in cases of public failures. Increased transparency and accountability mechanisms are crucial to identify and remediate supervisory failures effectively.

- The Agencies should conduct a thorough review of the Supervisory Developments section of their semiannual reports. The goal should be to better inform the public about supervisory activities, accomplishments, and shortcomings, moving beyond routine compliance exercises. The current

format should be revised to maximize public understanding of supervisory processes and enhance transparency and accountability.

- The Agencies should provide detailed information on outstanding supervisory findings, categorized by area of concern. Additionally, they should report on the number of previous findings remediated within the past six months for each category. This will offer valuable insights into the effectiveness of supervisory efforts and the progress made by LFIs in addressing identified weaknesses.

- The Agencies should share with the relevant cohort of firms any patterns and trends they are seeing in supervisory findings. This would help firms focus on areas (e.g., processes and applications) that should be internally reviewed and may need to be improved. For example, this information could be shared through non-public Dear CEO letters.

D. Resolution Plans (12 C.F.R. 360.10)

The FDIC should significantly streamline its resolution planning rule for covered insured depository institutions ("CIDIs") (the "IDI Rule"). The IDI Rule should be drafted to elicit information that is most relevant to the FDIC's resolution readiness, without imposing unnecessary costs on CIDIs or burdening the FDIC with superfluous information.[45] For CIDIs that are affiliated with entities that already file resolution plans with the FDIC and Federal Reserve (for this section, the "Agencies") under DFA 165(d) and the Agencies' implementing regulations ("Title I"), the FDIC should also revise the IDI Rule to focus specifically on information that is not already provided to the Agencies through the Title I resolution planning process and to ensure the two frameworks are consistent.

Instead, in 2024, the FDIC introduced extensive and burdensome new resolution planning requirements in its amendments to the IDI Rule, with little effort to align those requirements with Title I. The amendments imposed significant new information requirements on CIDIs but do not appear to provide meaningful benefits to the FDIC's resolution readiness. The 2024 amendments to the IDI Rule should be replaced with a focus on practical and collaborative engagement with CIDIs, reducing unnecessary burdens for those in scope and improving the effectiveness of both CIDI resolution plans and the FDIC's own resolution capabilities.

In the near term, the FDIC should take forward the FDIC Office of Inspector General (OIG's) 2024 recommendations in its report on the FDIC's resolution readiness.[46] Those efforts should highlight what gaps in information the FDIC may have for a successful IDI resolution and should inform what the FDIC actually needs from CIDIs.

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[45] *See, e.g.,* Vice Chair Travis Hill, *Statement on Final Rule Amending the IDI Resolution Planning Rule*, FDIC (June 20, 2024), https://www.fdic.gov/news/speeches/2024/final-rule-amending-idi-resolution-planning-rule ("For example, all Group A CIDIs (i.e., IDIs with $100 billion or more in total assets) will be required to develop and include in their plan submissions hypothetical failure scenarios and provide detailed valuation information for franchise components and the IDI franchise as a whole, including under the failure scenario assumed. I am skeptical that the expected benefit of such information in a hypothetical resolution justifies the costs of producing them, and generally support shifting our focus more toward firm engagement and away from increasingly detailed plan submissions.")

[46] *See FDIC Readiness to Resolve Large Regional Banks*, FDIC Office of Inspector General (Dec. 2024), https://www.fdicoig.gov/sites/default/files/reports/2024-12/Final%20Report%20EVAL-25-02%20FDIC%20Readiness%20to%20Resolve%20Large%20Regional%20Banks.pdf.

1. The FDIC should issue a moratorium on all IDI resolution plans required under 12 C.F.R. 360.10. The FDIC should issue a moratorium on all IDI resolution plans required under the IDI Rule until the FDIC determines the information it needs to support resolvability and has established an internal approach to review the plans and incorporate them into the agency's own resolution planning processes.

Even if the FDIC ultimately determines a full moratorium is not necessary at this time, the FDIC should still issue a moratorium on IDI resolution plans from CIDIs who are affiliated with entities that are subject to Title I resolution planning requirements, given that those CIDIs already submit most of the information the FDIC needs to the Agencies through the Title I resolution planning process. The FDIC should also impose a moratorium — or at a minimum a delay — for the Group A Cohort 1 firms that have a plan due under the new rule before any other firms.[47] This will provide smaller firms the same amount of time to conform as the larger firms (e.g., until July 2026). It would also help to avoid potentially unnecessary expenses while the FDIC considers the changes to the rule suggested in this letter.

2. The FDIC should focus the IDI resolution framework on information is necessary and directly related to the FDIC's statutory authorities. At least one FDIC Board member has questioned the FDIC's authority to issue this rule,[48] and a recent report from the Government Accountability Office also raised the point about the FDIC's potential lack of statutory authority to prescribe and enforce certain requirements in the rule.[49] Reviewing the authority for this rule would be consistent with Acting Chairman Travis Hill's January 21, 2025 priorities, which include "[e]nsur[ing] the FDIC remains within [its] statutory mandates, and stops coloring outside the lines."[50] As described further below, several aspects of IDI rule could be interpreted to go beyond — and could be applied in practice to go beyond — the FDIC's statutory roles of deposit insurer and receiver of failed banks.

3. The FDIC should consider exempting 165(d) filers and making the requirements materially less burdensome for all filers. The FDIC should request comments to determine whether CIDIs affiliated with Title I filers should be required to submit resolution plans pursuant to the IDI Rule. Title I resolution plans already provide most of the information that would be necessary to facilitate an FDIC resolution of their CIDIs. For CIDIs affiliated with Title I filers that have adopted a Multiple-Point-of Entry resolution strategy, the IDI Rule requires a separate plan for the same resolution strategy. Additionally, for institutions where a bank's risk profile is substantially the same as its parent company — for example, the bank's average total consolidated assets represent 95% or more of the parent company's average total consolidated assets —

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[47] *FDIC Establishes Initial Submission Dates for Resolution Plans and Informational Filings For Covered Institutions*, FDIC (Aug. 8, 2024), https://www.fdic.gov/news/financial-institution-letters/2024/fdic-establishes-initial-submission-dates-resolution-plans.

[48] *See* Director Jonathan McKernan, *Statement on Proposed Resolution Submission Requirements for Certain Insured Depository Institutions*, FDIC (Aug. 29, 2023), https://www.fdic.gov/news/speeches/2023/spaug2923f.html ("As I read these authorities, the FDIC generally is on solid ground to the extent the proposal would require a covered insured depository institution ("CIDI") to submit resolution-related analysis and other information to the FDIC. However, this proposal would go further by requiring CIDIs to demonstrate certain resolution-related capabilities.")

[49] *Federal Deposit Insurance Act: Federal Agency Efforts to Identify and Mitigate Systemic Risk from the March 2023 Bank Failures*, GAO-25-107023, GOVERNMENT ACCOUNTABILITY OFFICE (Jan. 2025), https://www.gao.gov/assets/gao-25-107023.pdf.

[50] Acting Chairman Travis Hill, *Statement from Acting Chairman Travis Hill*, FDIC (Jan. 21, 2025), https://www.fdic.gov/news/speeches/2025/statement-acting-chairman-travis-hill.

requiring both plans is unnecessary and duplicative. For CIDIs affiliated with Title I filers that have adopted a Single-Point-of-Entry resolution strategy, the IDI Rule requires the CIDI to deviate from its SPOE strategy, potentially confusing the market and international resolution authorities about the viability of SPOE as a strategy.

If the FDIC ultimately retains some form of IDI Rule for CIDIs affiliated with Title I filers, the IDI Rule should be made materially less burdensome and leverage, where appropriate, existing Title I resolution plan information and capabilities. Consistent with that approach, the FDIC should eliminate the CIDI informational requirements if the information is already submitted through the Title I resolution plans, including as part of capabilities testing activities. Additionally, there are several concepts shared between Title I and the IDI Rule. The FDIC should ensure a unified approach across the two resolution planning rules. To the extent both sets are retained to apply to the same entities and the FDIC determines the requirements in the IDI Rule and Title I resolution planning need to deviate, the choice to do so should be well-reasoned, and the FDIC should clearly explain why a different approach is needed under the IDI Rule and how such a determination is permissible and reasonable under applicable legal frameworks.

Examples include:

(i) *Capabilities testing.* Any capability expectations should be aligned between the Title I and IDI frameworks. As part of this work, the FDIC should provide a comprehensive list of expected capabilities that is subject to a public comment process.[51] To the extent any capabilities are already addressed by Title I capabilities for firms subject to Title I capabilities testing requirements, the FDIC should rely on that Title I process to the maximum extent possible. Finally, the FDIC should review if any of its new capabilities testing requirements exceed the scope of the FDIC's statutory authority, or could be applied to exceed those authorities in practice.[52]

(ii) *Material change notice standard.* The FDIC's incorporation of the "extraordinary event" concept into the material change standard is helpful, but full alignment with Title I is necessary. Such consistency would enhance clarity and allow both the FDIC and institutions to focus resources on significant changes, ultimately strengthening resolution planning and financial stability.

(iii) *Credibility standard.* The 2024 amendments to the IDI Rule created a new, subjective approach to credibility determinations that deviates from the Title I resolution planning requirements, which do not define an approach to credibility determinations despite Title I using similar terminology. The FDIC should consider removing the credibility determination process in favor of a more practical review.[53]

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[51] *See,* Director McKernan, *supra* note 48.

[52] *See id.* ("As I read these authorities, the FDIC generally is on solid ground to the extent the proposal would require a covered insured depository institution ("CIDI") to submit resolution-related analysis and other information to the FDIC. However, this proposal would go further by requiring CIDIs to demonstrate certain resolution-related capabilities.").

[53] *See,* Vice Chair Hill, *supra* note 45 ("Finally, I continue to believe that the credibility determinations under the new framework are too subjective, and transform what should be a less formal, iterative process into a crude and binary assessment of CIDIs' resolution readiness.").

a. Short of eliminating the credibility determination, the FDIC should revoke the 2024 changes, or, at a minimum, remove the subjective first prong of the credibility standard to ensure objective and clear evaluation criteria. The requirement that a plan "maximize value from the sale or disposition of assets" should be removed entirely, as there are unlimited ways in which a particular institution could fail and be resolved, making it impractical to identify a single value-maximizing strategy. An exhaustive exploration of all possible exit options for a salable component, including valuation under hypothetical and arbitrary assumptions, is overly burdensome, time-consuming, and adds little value. Instead, filers should present viable exit strategies for salable components, with the value-maximizing option becoming apparent to the FDIC through the bidding process.

b. In addition, the first prong's emphasis on requiring the identified strategy under the IDI plan to address "adverse effects on U.S. economic conditions or financial stability" significantly overlaps and even expands upon a standard applicable to 165(d) plans, which has not previously applied to IDI plans. This part of the first-prong credibility determination standard under the IDI Rule is already separately addressed through the submission of 165(d) plans and does not need to be duplicated here. This prong's focus on U.S. economic conditions and financial stability is overbroad and inappropriate, as it is outside of intended purposes of an IDI plan. The FDIC's key responsibility in a CIDI's resolution is to protect the DIF through the orderly resolution of a failing CIDI.

c. Additionally, the FDIC should remove the "verifiable" and "observable" qualifiers from the second prong of the credibility standard to allow for flexibility in unpredictable events. These qualifiers may not be feasible in all scenarios and could hinder effective planning. A focus on practical capabilities would be more beneficial. Finally, the second prong's reference to "reasonable projections" introduces a high degree of subjectivity to the standard and should be removed.

(iv) *Franchise Components and Material Asset Portfolios*. Although the definition of Franchise components can largely be aligned to the Title I Objects of Sale, the introduction of material asset portfolios adds complexity to how firms consider separability without a clear articulation as to why these concepts need to deviate. Expectations regarding the timing for sales should be clearer, particularly for franchise components that represent incremental franchise value (i.e., one component of a business that is worth more than the sum of its portfolio of assets). The rule should provide greater clarity to prevent conflicts between existing guidance,[54] the rule's preamble, and informal agency feedback, which could otherwise lead to unnecessary confusion and inconsistent application across filers.

4. The FDIC should allow flexibility in strategy. The FDIC should allow CIDIs to present a range of resolution options instead of requiring a single identified strategy. This flexibility would accommodate

[54] *See, e.g., IDI Resolution Planning Rule Frequently Asked Questions (FAQs)*, FDIC (Dec. 17, 2024), https://www.fdic.gov/resolutions/idi-resolution-planning-rule-frequently-asked-questions-faqs.

varying circumstances and enhance the effectiveness of resolution planning. The current default to a bridge bank approach may not suit all institutions and limits strategic adaptability.[55]

5. The FDIC should eliminate the failure scenario requirement. The FDIC should eliminate the failure scenario requirement, as it relies on CIDIs to use resources to conduct analysis for speculative assumptions that may not add practical value.[56] A more practical approach would focus on realistic stress conditions. The FDIC should also eliminate 2024 changes to the IDI rule that require extensive information requirements and specific assumptions for non-bank affiliates (e.g., broker-dealer affiliates) that are generally beyond scope of FDIC authority.

6. The FDIC should remove the "economic effects of resolution" requirement. This requires CIDIs to identify activities that are material to a geographic region, business line or sector, or financial institution and discuss mitigants. This is a significant undertaking with unclear value to FDIC. CIDIs' discussion of their franchise components already should provide the FDIC with information similar to this requirement. Furthermore, it is unclear how information on economic effects is directly related to the FDIC's mandate to resolve banks in an orderly manner.

7. The FDIC should not require CIDIs to provide information on key depositors and other deposit information that should be addressed through existing liquidity and other deposit reporting regulatory requirements.

8. The FDIC should refine interim supplements. The FDIC should refine interim supplements to focus on key updates and material changes, reducing unnecessary reporting burdens. Targeted supplements should be limited in scope to updates to key personnel, select financial data not available elsewhere, and material changes to the covered IDI's organizational structure, with narrative descriptions limited to summaries of material changes.

9. The FDIC should provide timely feedback and aggregated guidance. The FDIC should provide feedback at least 12 months before the next submission to allow CIDIs adequate time to address any issues. The FDIC only endeavoring to provide feedback within one year is insufficient, as timely feedback is crucial for institutions to make necessary adjustments and enhance the quality of their resolution plans. If the FDIC committed to providing feedback well in advance of a CIDI's next submission, it would allow CIDIs to implement changes effectively and improve strategic planning. Additionally, the FDIC should offer aggregated guidance on common issues and best practices. This approach would help institutions learn from shared experiences and foster continuous improvement across the industry.

E. FRB Recovery Planning

The FRB's Recovery Planning expectations for Banks should be set out through the rulemaking process and subject to the APA. Currently, FRB recovery planning expectations for large banking

[55] *See Vice Chair Hill*, supra note 45 (explaining the final rule "sets forth detailed content requirements" including hypothetical failure scenarios and detailed valuation information under the assumed failure scenario.).

[56] *See id* ("[F]or example, all Group A CIDIs (i.e., IDIs with $100 billion or more in total assets) will be required to develop and include in their plan submissions hypothetical failure scenarios and provide detailed valuation information for franchise components and the IDI franchise as a whole, including under the failure scenario assumed.").

organizations are imposed entirely through supervisory letters and the examination process. This process lacks transparency and any opportunity for the public to provide feedback, including through this EGRPRA process. Therefore, the Federal Reserve should publish and seek comment on its recovery planning expectations.

F. OCC Recovery Planning Guidelines (12 C.F.R. Part 30, Appx. E)

The OCC should rescind the Guidelines Establishing Standards for Recovery Planning by Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches: Final Guidelines.[57] The Guidelines are unnecessary and contain a number of features that are impracticable to implement.[58] Rescission of the amendment to the guidelines would reduce redundancy and allow institutions to focus on real risks. The recommendation would address concerns around the impracticality of the assessment standards, financial versus non-financial risks, covered bank criteria and improvement incentives.

At a minimum, the new testing requirements should be reconsidered.[59] The requirement to "validate the effectiveness" of certain recovery plan elements is impractical. Unless a covered bank actually implemented a recovery plan option in a real stress event, it is unclear how it could or should validate its effectiveness or whether the plan accurately projects its impact. A bank cannot, for example, conduct a test divestiture simply to prove a recovery plan works, as this would be disruptive and could falsely signal distress. The proper focus should be on demonstrating the capability to execute recovery options, not proving their effectiveness in hypothetical scenarios. Moreover, the proposed requirement conflicts with existing OCC guidance on independent risk management and misinterprets the FDIC's resolution planning approach, which tests whether banks have the necessary capabilities, not whether their plans have been "validated [for their] effectiveness."

It is appropriate that all insured national banks, insured federal savings associations and insured federal branches (banks) with less than $250 billion in average total consolidated assets (total assets) are released from formal recovery planning under the Guidelines. This action would provide necessary and appropriate burden relief to the affected banks, allow the OCC to allocate regulatory resources among a smaller group of banks and align the recovery planning and resolution planning threshold with the statutory mandate that applicable prudential standards "differentiate among companies on an individual basis or by category, taking into consideration their capital structure, riskiness, complexity, financial activities (including the activities of their subsidiaries), size and any other risk-related factors[.]" The OCC should not have expanded recovery planning requirements, as formal recovery planning should be aligned with the differing risk profiles of banks.

G. Enhanced Prudential Standards (12 C.F.R. Part 252.33 [Reg YY], 12 C.F.R. Part 328)

1. The Federal Reserve should align enhanced prudential standards with statutory economic growth mandates. This is the first review of Enhanced Prudential Standards since the implementation of the tailoring rules, presenting a critical opportunity to assess how well the Federal Reserve is adhering to its

[57] 89 Fed. Reg. 84,255 (Oct. 22, 2024).

[58] *See generally*, *BPI and ABA Comment on OCC's Proposed Recovery Planning Rules*, BANK POLICY INSTITUTE (Aug. 2, 2024), https://bpi.com/bpi-and-aba-comment-on-occs-proposed-recovery-planning-rules/.

[59] *See id.* at Sec. II.A.

statutory mandate under Section 165 of the Dodd-Frank Act. This review should evaluate whether the thresholds and requirements effectively balance the goals of financial stability and economic growth, as mandated by the statute, while avoiding overly burdensome or insufficiently rigorous measures.

2. The Agencies should reform their approach to the Supplementary Leverage Ratio and Enhanced Supplementary Leverage Ratio Standards. In addition to the Supplementary Leverage Ratio of 3 percent that applies to certain BHCs (and IHCs) based on their regulatory tailoring category, the Enhanced Supplementary Leverage Ratio requires certain BHCs exceed a 5 percent SLR (3% base SLR plus an additional 2% buffer) to avoid limitations on distributions and certain discretionary bonus payments and also require the subsidiary institutions of these BHCs to meet a 6 percent SLR to be considered ''well capitalized'' under the prompt corrective action framework. The current regulatory framework appears to result in leverage ratios becoming the binding requirements for U.S. banks, which was not the original intent of the Basel framework.

For the eSLR, the Federal Reserve should finalize its proposal to set the buffer equal to one-half of the Method 1 GSIB Surcharge, which aligns with the Basel standard.[60] This would reduce the eSLR requirement from the current 5% at the holding company and 6% at the bank subsidiary to 3% base SLR plus one-half of the firm's Method 1 GSIB Surcharge at the holding company and bank. To adjust the denominator, the Agencies could exclude certain assets — such as reserve balances, U.S. Treasury securities, and reverse repurchase agreements financing U.S. Treasuries — from the SLR denominator. The Federal Reserve excluded reserve balances and U.S. Treasuries from the SLR denominator between April 2020 and March 2021. The Agencies should make comparable changes to both the BHC and lead IDI SLR.

The Agencies should also make denominator-related adjustments to the Tier 1 leverage ratio. Since there is no buffer in this ratio, relief requires excluding central bank placements and U.S. Treasury securities from its denominator.

In addition to these necessary adjustments to the leverage requirements, the Agencies must harmonize application. The scope of application for eSLR differs among the Agencies. The Board and the FDIC apply the eSLR for institutions based on parent BHCs being identified as global systemically important BHCs as defined in 12 C.F.R. 217.2. The OCC applies the eSLR to the institution subsidiaries under their supervisory jurisdiction of a top tier BHC that has more than $700 billion in total assets or more than $10 trillion in assets under custody. As noted in the Federal Reserve's and OCC's joint eSLR proposal released in 2018, in order to be consistent with the Federal Reserve's regulations for identifying GSIBs and measuring the eSLR standards for holding companies and their IDI subsidiaries, the OCC should revise its eSLR rule to ensure that it will apply to only those national banks and Federal savings associations that are subsidiaries of holding companies identified as GSIBs under the GSIB surcharge rule.

3. The Federal Reserve should address the possible ramifications to the Single Counterparty Credit Limit of potential privatization of Fannie Mae and Freddie Mac. Ensuring appropriate exemptions and/or transition periods for bank exposures to Fannie Mae and Freddie Mac will become important if either institution exits conservatorship by the U.S. government. The Agencies should coordinate with the banking industry well in advance of the execution of any privatization scenarios to identify key risks and regulatory

[60] *See* FRB and OCC, *Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for U.S. Global Systemically Important Bank Holding Companies and Certain of Their Subsidiary Insured Depository Institutions; Total Loss-Absorbing Capacity Requirements for U.S. Global Systemically Important Bank Holding Companies*, 83 Fed. Reg. 17,317 (April 19, 2018).

issues presented by the possible privatization of FNMA/FHLMC. For example, under the SCCL, exposures to Fannie Mae and Freddie Mac are exempt "only while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligation issued by a U.S. government-sponsored entity as determine by the [Federal Reserve Board]."[61] Appropriate regulatory actions should be taken to assure that "knock on" effects of a possible end to the conservatorship — such as bank breaches of the SCCL merely due to the change in the status of government sponsored entities — do not occur. Depending upon the scenario, regulatory assurances may also become critical in order to mitigate market disruptions in the housing sector.

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The Bank Policy Institute appreciates the opportunity to comment as part of the EGRPRA review. If you have any questions, please contact me by phone at [redacted] or by email at [redacted].

Respectfully submitted,

/s/ Joshua Smith

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[61] 12 C.F.R. 238.157(a)(1).