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August 26, 2025

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Board of Governors of the Federal Reserve System
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Chief Counsel's Office
Attn: Comment Processing (Docket ID OCC–2025–0006)
Office of the Comptroller of the Currency
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Re: Notice of proposed rulemaking: Regulatory Capital Rule: Modifications to the Enhanced Supplementary Leverage Ratio Standards for U.S. Global Systemically Important Bank Holding Companies and Their Subsidiary Depository Institutions; Total Loss-Absorbing Capacity and Long-Term Debt Requirements for U.S. Global Systemically Important Bank Holding Companies; Docket No. R–1867, RIN 7100–AG96 (FRB); RIN 3064–AG11 (FDIC)); Docket ID OCC–2025–0006 (OCC), 90 Fed. Reg. 30780 (July 10, 2025) ("Proposed Rule").

Thank you for the opportunity to submit this comment letter[1] in response to the proposal by your agencies to reduce the enhanced supplementary leverage ratio (eSLR) requirements that apply to U.S. global systemically important bank holding companies (G-SIBs) and their subsidiaries.[2] My comment letter strongly opposes your agencies' Proposed Rule, and I urgently

[1] This comment letter is submitted solely in my personal capacity and does not represent the views of The George Washington University, its Law School, or any other person or organization.
[2] Off. of the Comptroller of the Currency et al., Regulatory Capital Rule: Notice of proposed rulemaking, 90 Fed. Reg. 30780 (July 10, 2025) [hereinafter "Proposed Rule"].

request that your agencies withdraw the Proposed Rule. For the following reasons, the Proposed Rule would violate governing statutory mandates and would also be very likely to cause future systemic financial crises that would have catastrophic effects on U.S. and global banks, financial markets, and economies:

(1) The Proposed Rule would contravene governing federal statutes, which require federal banking agencies to establish and maintain enhanced leverage capital requirements that are effective and binding components of their enhanced capital standards governing the largest U.S. bank holding companies.

(2) Strong leverage capital requirements are necessary to prevent large, complex banking organizations from taking excessive risks that could trigger systemic financial crises comparable to the global financial crisis of 2007-09.

(3) Strong leverage capital requirements are essential to prevent large, complex banking organizations from arbitraging risk-based capital rules to justify dangerously low levels of equity capital.

(4) Federal bank regulators have permitted U.S. G-SIBs to reduce their leverage capital ratios to hazardous levels by making excessive shareholder distributions, and the Proposed Rule would allow U.S. G-SIBs to become recklessly undercapitalized as their predecessors were in 2007.

(5) The Proposed Rule would expand "too-big-to-fail" subsidies for U.S. G-SIBs and undermine the competitive viability of community banks and regional banks, thereby reducing the availability of credit to consumers, farmers, and small busineses.

(6) The Proposed Rule would not increase lending or support the real economy.

(7) The Proposed Rule would not be likely to increase intermediation of U.S. Treasury securities by U.S. G-SIBs during periods of severe financial stress.

(8) The Proposed Rule would greatly increase the likelihood of future systemic financial crises by causing U.S. G-SIBs to become dangerously undercapitalized and heavily reliant on the health and stability of the U.S. Treasury market.

(9) The Proposed Rule would create a sovereign-bank "doom loop," which would pose great dangers by linking the survival of U.S. G-SIBs to the stability of the U.S. Treasury market and the credibility of the Federal Reserve System.

The analysis set forth below provides detailed support for each of the foregoing reasons for withdrawing the Proposed Rule.

1. **The Proposed Rule Would Contravene Governing Federal Statutes, Which Require Federal Banking Agencies to Establish and Maintain Enhanced Leverage Capital Requirements as Effective and Binding Components of Their Enhanced Capital Standards Governing the Largest U.S. Bank Holding Companies.**

High levels of equity capital are essential to permit banks to absorb unexpected losses during prolonged periods of economic and financial stress. The need for robust levels of equity capital arises out of the core function of banks as intermediaries between depositors, who typically have the right to withdraw their deposits on demand or within a relatively short period of time, and borrowers who frequently desire and obtain longer-term loans. The core intermediary function of banks provides vitally important services to both business firms and consumers by providing them with safe depositories for their working capital and savings, reliable transfers of their payments, and reasonable access to credit that they often cannot obtain from the capital markets. In performing their role as crucial intermediaries, banks greatly improve the welfare of businesses, consumers, our economy, and our society, but they also face unavoidable liquidity mismatches between their longer-term and less liquid assets and their shorter-term and more liquid liabilities. Given those potential vulnerabilities, bank regulators must establish sound and effective prudential requirements, including robust equity capital requirements and demanding stress tests, to ensure the resilience and stability of banks – especially large, systemically important banks – through all phases of the business cycle.[3]

In the U.S., leverage capital requirements and risk-based capital requirements have been coequal and complementary aspects of federal bank capital regulation since the late 1980s.[4] In the following passage, the Proposed Rule recognizes the need for "strong regulatory capital standards," and the Proposed Rule also affirms the essential role of leverage capital requirements within those standards:

> The 2007–08 financial crisis demonstrated the importance of strong regulatory capital standards for the safety and soundness of individual banking organizations, as well as for the financial system as a whole. Within the regulatory capital framework, leverage and risk-based capital requirements play

[3] For discussions of the necessity for strong capital requirements and demanding supervisory stress tests to ensure the resilience and stability of banks (especially large, complex banks), see Anat R. Admati, "The Compelling Case for Stronger and More Effective Leverage Regulation in Banking," 43(2) *Journal of Legal Studies* S35, S38-S40, S43-S44, S52, S57-S58 (2014); Tobias Adrian et al., *Good Supervision: Lessons from the Field* (IMF WP/23/181, Sept. 2023), pp. 18-21, https://www.imf.org/en/Publications/WP/Issues/2023/09/06/Good-Supervision-Lessons-from-the-Field-538611; "Why Bank Capital Matters," Speech by Vice Chair for Supervision Michael S. Barr, Bd. of Governors of Fed. Res. Sys. (Dec. 1, 2022) [hereinafter Barr Bank Capital Speech], https://www.federalreserve.gov/newsevents/speech/barr20221201a.htm; Nina Boyarchenko et al., *The Theory of Financial Stability Meets Reality* (NY Fed Staff Report No. 1155, June 2025), pp. 4-7, 16-29, https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1155.pdf;; Stephen G. Cecchetti & Kermit L. Schoenholtz, "Making Banking Safe," *Money & Banking* (July 19, 2023), https://www.moneyandbanking.com/commentary/2023/7/19/making-banking-safe; "The Evolution of Capital Regulation," Speech by Governor Daniel K. Tarullo, Bd. of Governors of Fed. Res. Sys. (Nov. 9, 2011), https://www.federalreserve.gov/newsevents/speech/tarullo20111109a.htm.

[4] Howell E. Jackson & Margaret E Tahyar, *Financial Regulation: Law and Policy* §§ 2.5-2.7 (4th ed. 2025) (forthcoming) (describing the evolution of U.S. bank capital standards).

> **complementary roles**, with each addressing potential risks **not** addressed by the other."[5]

Thus, the Proposed Rule recognizes that leverage capital requirements and risk-based capital requirements "play **complementary roles**, with each addressing potential risks **not** addressed by the other."[6] Leverage capital requirements furnish important "complementary information about a banking organization's condition," and they provide "a further measure of resilience" for banks and bank holding companies.[7] As required by Section 165 of the Dodd-Frank Act, the eSLR establishes an enhanced leverage capital requirement that applies to U.S. G-SIBs and other large, complex U.S. bank holding companies.[8] The eSLR improves the stability and resilience of large, complex banking organizations by limiting their ability (i) to assume excessive risk exposures by entering into off-balance-sheet securitization transactions and derivatives, which are not captured by other capital rules,[9] and (ii) to make imprudent and overly large investments in Treasury securities, which (if designated as "held to maturity") receive a zero risk weight and a zero capital charge under risk-based capital rules.[10]

The equal importance and "complementary" roles of leverage capital requirements and risk-based capital requirements are not merely matters of administrative discretion. Congress has expressly mandated that federal banking agencies **must** apply **both** types of requirements to large bank holding companies and their subsidiary banks. Section 165 of the Dodd-Frank Act provides that the Board of Governors of the Federal Reserve System (Fed) "**shall establish** prudential standards for . . . bank holding companies described in subsection (a), that **shall include**—(i) risk-based capital requirements **and** leverage limits."[11] Similarly, the prompt corrective action provisions in Section 38 of the Federal Deposit Insurance Act provide that "the capital standards prescribed by each appropriate Federal banking agency **shall include**—(i) a leverage limit; **and** (ii) a risk-based capital requirement."[12] Finally, Section 171(b) of the Dodd-Frank Act (the Collins Amendment) mandates that federal banking agencies must establish capital rules requiring depository institution holding companies to meet the same minimum leverage capital requirements **and** risk-based capital requirements that FDIC-insured depository institutions must satisfy under Section 38's prompt corrective action provisions.[13]

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[5] Proposed Rule, 90 Fed. Reg. at 30783 (emphasis added).
[6] *Id.* (emphasis added).
[7] *Id.* at 30783 n.18 (first quote); Barr Bank Capital Speech, *supra* note 3 (second quote).
[8] *Id.* at 30783 (citing 12 U.S.C. §§ 5365(a)(1) & (b)(1)(A)(i)).
[9] Jose Maria Tapia et al., *The OFR Blog: Banks' Supplementary Leverage Ratio* (Off. of Fin. Res., Aug. 2, 2024), https://www.financialresearch.gov/the-ofr-blog/2024/08/02/banks-supplementary-leverage-ratio/.
[10] Proposed Rule, 90 Fed. Reg. at 30800 n.88 ("U.S. Treasury securities held as investment securities have a zero percent risk weight under the risk-based capital framework"); *see also id.* at 30804 ("[T]he fair value fluctuations of held-to-maturity securities are not reflected in regulatory capital and book equity calculations".); Marco Folpmers, "Sovereign Exposures: Zero Reason for Zero Risk Weight" (Jan. 10, 2025), https://www.garp.org/risk-intelligence/credit/sovereign-exposures-zero-reason-250110; Daniel K. Tarullo, "Capital Regulation and the Treasury Market," *Brookings* (Mar. 2023), https://www.brookings.edu/wp-content/uploads/2023/03/Brookings-Tarullo-Capital-Regulation-and-Treasuries_3.17.23.pdf.
[11] 12 U.S.C. § 5365(b)(1)(A) (emphasis added).
[12] *Id.* § 1831o(c)(1)(A) (emphasis added).
[13] *Id.* § 5371(b)(1) & (2).

The unambiguous terms of Sections 165, 38, and 171(b) require federal banking agencies to establish leverage capital requirements **and** risk-based capital requirements that are **both** binding and effective. The Proposed Rule recognizes that the eSLR implements Section 165's mandate for adopting enhanced leverage capital requirements applicable to G-SIBs and other large, complex bank holding companies.[14] In view of the explicit statutory commands of Sections 165, 38, and 171(b), federal banking agencies must adopt leverage capital requirements (including the Tier 1 leverage ratio and the eSLR) **and** risk-based capital requirements. In addition, they must apply those requirements in a manner that makes **both** of them effective and binding on large bank holding companies and their subsidiary banks.[15]

In defiance of Congress' clearly-stated mandates, the Proposed Rule would "recalibrate the eSLR standards to **reduce the likelihood and frequency of** the eSLR standards becoming a **binding** capital requirement for GSIBs and their depository institution subsidiaries."[16] The Proposed Rule repeatedly refers to "the **undesired** incentive effects of **binding** leverage ratio requirements" and states that its intended goal is to make the eSLR standards "more often serve as a backstop than a binding constraint."[17] To accomplish that goal, the Proposed Rule "would **meaningfully reduce** the supplementary leverage ratio requirement relative to the risk-based Tier 1 capital requirement for GSIBs."[18]

The Proposed Rule would reduce the minimum eSLR for G-SIB holding companies from its current level of 5% to a level equal to 3% plus one-half of a G-SIB's method 1 surcharge, thereby producing a range of 3.5% to 4.25% for the eight U.S. G-SIBs. The Proposed Rule would also reduce the minimum eSLR for subsidiary depository institutions of G-SIBs from its current level of 6% to the same range of 3.5% to 4.25%.[19] The federal banking agencies estimate that the Proposed Rule would reduce eSLR requirements for G-SIB holding companies by an average of 23%, and would cut eSLR requirements for their subsidiary depository institutions by an average of 36%.[20]

In addition to reducing minimum eSLR standards for G-SIB holding companies from 5% to a range of 3.5% to 4.25%, the Proposed Rule would eliminate the requirement that G-SIBs must use the higher of their "method 1" and "method 2" scores in calculating their G-SIB surcharges for purposes of their eSLR requirements. The Proposed Rule acknowledges that method 2 – which takes account of G-SIBs' reliance on short-term wholesale funding in determining their G-SIB surcharges (12 C.F.R. § 217.406) – generally produces higher G-SIB surcharges.[21] As shown by the estimates included in the Proposed Rule, the elimination of method 2 would produce very significant reductions in G-SIB surcharges. In contrast, if the

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[14] Proposed Rule, 90 Fed. Reg. at 30782-83.
[15] *See United States v. Palomar-Santiago*, 591 U.S. 321, 326-39 (2023) (When statutory "requirements are connected by the conjunctive 'and,' . . . each of the statutory requirements . . . is mandatory.").
[16] Proposed Rule, 90 Fed. Reg. at 30784 (emphasis added).
[17] *Id.* at 30782, 30786 (emphasis added), 30785.
[18] *Id.* at 30797 (emphasis added).
[19] *Id.* at 30784-85; *see also* Fin. Stability Bd., "2024 List of Global Systemically Important Banks (G-SIBs)" (Nov. 26, 2024) (specifying the required capital buffers for the eight U.S. G-SIBs), https://www.fsb.org/2024/11/2024-list-of-global-systemically-important-banks-g-sibs/.
[20] Proposed Rule, 90 Fed. Reg. at 30796.
[21] *Id.* at 30784-85 n.24, 30786, 30807.

Proposed Rule reduced minimum eSLR requirements but retained method 2 – an approach presented as Alternative 3 – minimum eSLR requirements would decline by 8% (instead of 23%) for G-SIB holding companies and by 23% (instead of 36%) for G-SIB subsidiary banks.[22]

The Proposed Rule states that eliminating method 2 would have a positive impact in advancing the Proposed Rule's goal of making leverage capital requirements merely "a backstop to risk-based capital requirements."[23] However, as former Treasury Assistant Secretary for Financial Institutions Graham Steele pointed out, that statement "contradicts the agencies' rationale for creating the method 2 score in the first place," along with the requirement that G-SIBs must use "the greater of their [method 1 and method 2] scores" in calculating their G-SIB surcharges.[24]

In 2015, the Fed adopted the method 2 formula for calculating G-SIB surcharges for purposes of eSLR requirements, including the factor measuring G-SIBs' reliance on short-term wholesale funding. The Fed explained that it adopted method 2 because (1) "other liquidity measures, such as the [Liquidity Coverage Ratio], do not fully address the systemic risks of short-term wholesale funding"; (2) "use of short-term wholesale funding is a key determinant of the impact of a firm's failure on U.S. financial stability" as well as "the systemic losses resulting from a firm's failure"; (3) "short-term wholesale funding has particularly strong contagion effects that could more easily lead to major systemic events, both through the freezing of credit markets and through asset fire sales"; and (4) "[s]ystemic losses in the event of default can be expected to generally increase in proportion to the total amount of short-term funding a firm has used."[25] The Fed's stated reasons in 2015 for adopting method 2, including the factor measuring G-SIBs' reliance on short-term wholesale funding, received (A) abundant support from events during the global financial crisis of 2007-09, when many large financial institutions failed because they relied excessively on short-term wholesale liabilities to fund their operations; and (B) additional support in 2023 from the failures of three large regional banks – Silicon Valley Bank (SVB), Signature Bank (Signature), and First Republic Bank (First Republic) – that also relied excessively on uninsured deposits and other wholesale liabilities.[26]

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[22] *Id.* at 30796, 30797.

[23] *Id.* at 30786; *see also id.* at 30807 (retaining method 2, as proposed in Alternative 3, "would not fully achieve the objectives of the proposal")..

[24] Comment letter from Graham S. Steele (July 25, 2025), at 15 [hereinafter Steele Comment Letter].

[25] Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies: Final rule, 80 Fed. Reg. 49082, 49088-90, 49097 (Aug. 14, 2015)) [hereinafter 2015 G-SIB Surcharge Rule].

[26] For the fatal reliance of many large financial institutions on short-term wholesale liabilities during the period leading up to the financial crisis, *see, e.g.*, *The Financial Crisis Inquiry Report* xvii-xx, 30-32, 103, 113-14, 134-38, 153-54, 228-30, 233-34, 246-55, 281-98, 324-86 (Jan. 2011) hereinafter FCIC Report], https://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf; Gary Gorton & Andrew Metrick, "Securitized banking and the run on repo," 104 *Journal of Financial Economics* 425 (2012); Marcin Kacperczyk & Philipp Schnabl, "When Safe Proved Risky: Commercial Paper During the Financial Crisis of 2007–09," 24 *Journal of Economic Perspectives* 29 (2010). For the equally fatal reliance of SVB, Signature, and First Republic on uninsured deposits and other wholesale liabilities, *see, e.g.,* Bd. of Governors of Fed. Res. Sys., *Review of the Federal Reserve System's Regulation of Silicon Valley Bank* ii, 2-5, 21-24, 51-54, 64, 72, 83 (2023) [hereinafter Fed SVB Report], https://www.federalreserve.gov/publications/review-of-the-federal-reserves-supervision-and-regulation-of-silicon-valley-bank.htm; Stephen G. Cecchetti & Kermit L. Schoenholtz, "The Extraordinary Failures Exposed by Silicon Valley Bank's Collapse, *Money & Banking* (Mar. 20, 2023) [hereinafter Cecchetti & Schoenholtz, "SVB"], https://www.moneyandbanking.com/commentary/2023/3/20/the-extraordinary-failures-

The Proposed Rule does not provide any reasoned explanation for abandoning the policy rationale that the Fed articulated when it adopted the method 2 formula, including the factor measuring reliance on short-term wholesale funding. The Proposed Rule also does not present any reasoned basis for concluding that its plan to eliminate method 2 would be consistent with the congressional mandates set forth in Section 165 of the Dodd-Frank Act. As the Fed pointed out when it adopted method 2 in 2015 – and again when it discussed method 2 in a 2018 report to Congress – Section 165 requires the Fed to adopt and implement enhanced leverage capital requirements and other enhanced prudential standards for large bank holding companies that will (1) "prevent or mitigate risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected financial institutions," **and** (2) "increase in stringency" for the largest, most complex, and most interconnected bank holding companies that pose the highest levels of systemic risk to U.S. financial stability.[27] In its 2018 report to Congress, the Fed referred to its 2015 rule requiring G-SIBs "to calculate their surcharges under two methods and use the higher of the two surcharges," and the Fed stated that its 2015 rule "will increase the resiliency of companies covered under section 165 and should mitigate the risk that the failure or material financial distress of these firms could pose to U.S. financial stability."[28] The Proposed Rule does not offer any reasoned basis for concluding that its proposed elimination of method 2 would be consistent with Section 165's clearly-stated commands. Accordingly, the Proposed Rule's plan to eliminate method 2 would be invalid, if adopted, because the Proposed Rule (i) does not explain how its elimination of method 2 would be consistent with Section 165's mandates, and (ii) does not provide "good reasons" for making such a significant change to existing eSLR requirements.[29]

The Proposed Rule estimates that its proposed reduction of minimum eSLR requirements and its proposed elimination of method 2 calculations for G-SIB surcharges would, in combination, reduce average eSLR requirements for G-SIB holding companies from 98% to 75% of their average risk-based capital requirements. The magnitude of that reduction "would set the level of the supplementary leverage ratio requirement **below** the level of the risk-based tier 1 capital requirement **for all GSIBs**, thereby making the supplementary leverage ratio a **backstop for all holding companies**."[30] In other words, the Proposed Rule would make eSLR standards essentially nonbinding and ineffective for **all** G-SIB holding companies.

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exposed-by-silicon-valley-banks-collapse; Fed. Deposit Ins. Corp., *FDIC's Supervision of First Republic Bank* 2-21, 29-30 (2023) [hereinafter FDIC First Republic Report], https://www.fdic.gov/news/press-releases/2023/pr23073a.pdf; Fed. Deposit Ins. Corp., *FDIC's Supervision of Signature Bank* 2, 6–7, 10–15, 20, 25, 40 (2023) [hereinafter FDIC Signature Bank Report], https://www.fdic.gov/news/press-releases/2023/pr23033a.pdf;

[27] 12 U.S.C. §§ 5365(a)(1)(A) & (B), 5365(b)(1)(A)(i); *see* 2015 G-SIB Surcharge Rule, *supra* note 24, 80 Fed. Reg. at 49082, 49083, 49089, 49091, 49108-09 (Aug. 14, 2015); Bd. of Governors of Fed. Res. Sys., *Report to Congress on the Implementation of Enhanced Prudential Standards – January 2018* (last updated Mar. 8, 2018) [hereinafter 2018 Fed Report], https://www.federalreserve.gov/publications/2018-january-report-to-congress-on-implementation-of-enhanced-prudential-standards.htm.

[28] 2018 Fed. Report, *supra* note 27. The method 2 formula for calculating the G-SIB surcharge discourages excessive reliance on uninsured deposits from wholesale customers by including such deposits in its factor for short-term wholesale funding. *See* 2015 G-SIB Surcharge Rule, *supra* note 25, at 49098-99.

[29] *Encino Motorcars LLC v. Navarro*, 579 U.S. 211, 221 (2016) (Federal agencies must "provide a reasoned explanation" when they "change their existing policies" and must "show that there are good reasons for the new policy") (quoting in part *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

[30] Proposed Rule, 90 Fed. Reg. at 30797 (emphasis added).

The Proposed Rule's intended "backstop" outcome would represent a drastic change from the current minimum eSLR standard, which "from Q2 2021 to Q4 2024 . . . was the binding tier 1 capital requirement 60 percent of the time, on average, for seven out of the eight GSIBs."[31] The Proposed Rule acknowledges that "[o]n average, for [holding companies of] GSIBs, the supplementary leverage ratio requirement is at a similar level to the risk-based tier 1 capital requirement."[32] Thus, the Proposed Rule concedes that the current eSLR standard operates – in accordance with congressional intent – as a complementary and equally binding component of the capital requirements governing G-SIB holding companies.

In stunning contrast, as shown above, the Proposed Rule "would set the level of the supplementary leverage ratio requirement **below** the level of the risk-based tier 1 capital requirement **for all GSIBs**," thereby relegating the eSLR to the status of a deeply subordinated and rarely applicable "backstop."[33] That deeply subordinated status would be unprecedented and completely at odds with the governing statutes. As explained above, the clearly-stated commands of Sections 165, Section 38, and 171(b) forbid federal banking agencies from treating the eSLR or other leverage capital requirements as mere "backstops" that would rarely, if ever, apply.

Accordingly, the Proposed Rule's analysis demonstrates that its proposed changes to eSLR requirements (including the elimination of method 2) would make those requirements effectively inoperative and nonbinding for G-SIB holding companies. As Professor Jeremy Kress stated in his comment letter, the Proposed Rule

> defeats the very purpose of having a leverage requirement. If the [eSLR] leverage ratio never constrains bank behavior, it provides no meaningful protection against the risks it was designed to address. A leverage ratio that never binds is essentially no leverage requirement at all.[34]

By making eSLR leverage requirements ineffective and nonbinding for U.S. G-SIBs, the Proposed Rule, if adopted, would contravene the governing statutory mandates set forth in Sections 165, 38, and 171(b). As shown above, those statutes require federal banking agencies to adopt and apply leverage capital requirements – including enhanced leverage capital requirements under Section 165 – that are effective and binding components of the federal bank capital framework. By making the eSLR's leverage requirements ineffective, the Proposed Rule would violate "one of the most basic interpretive canons," which requires that each statute must be construed and applied "so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant."[35]

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[31] *Id.* at 30791.
[32] *Id.* at 30793.
[33] *See id.* at 30797 (emphasis added); *see also id.* at 30807 ("The proposed changes to the eSLR standards would adjust the supplementary leverage ratio requirement such that it would be **below** risk-based capital requirements **for all GSIBs** and most of their depository institution subsidiaries.") (emphasis added).
[34] Comment letter from Prof. Jeremy C. Kress (Aug. 20, 2025), at 3 (footnote omitted) [hereinafter Kress Comment Letter].
[35] *Corley v. United States*, 556 U.S. 303, 314 (2009) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (quoting 2 A. N. Singer, *Statutes and Statutory Construction* § 46.06, pp. 181–186 (rev. 6th ed. 2000)); *accord*, *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 698-99 (2022).

In addition, as previously shown, the Proposed Rule does not provide any reasoned basis for concluding that the drastic changes set forth in the Proposed Rule would be consistent with Section 165's clearly-stated commands.[36] Accordingly, the Proposed Rule, if adopted, would be invalid,[37] and the federal banking agencies should withdraw it.

2. Strong Leverage Capital Requirements Are Necessary to Prevent Large, Complex Banking Organizations from Taking Excessive Risks That Could Trigger Systemic Crises Comparable to the Global Financial Crisis of 2007-09.

Robust leverage capital standards that require large, complex banks to maintain high levels of common equity capital are an essential component of effective banking regulation. Common equity capital is the single most important indicator of strength and resilience for banks[38] because common stock (i) is the most permanent form of bank capital, as it never needs to be repurchased or redeemed by the issuing bank, (ii) does not require the payment of dividends, and (iii) has the most deeply subordinated claim against the bank's assets if the bank fails.[39]

Thus, a high level of common equity capital provides a crucial buffer to absorb losses, thereby reducing the risks of insolvency from external shocks or internal mismanagement. In addition, high levels of common equity capital provide bank shareholders with substantial ownership interests in their bank. When shareholders have meaningful "skin in the game," they have stronger incentives to discourage bank managers from taking excessive risks.[40] In contrast, low levels of common equity capital create perverse incentives for both shareholders and bank managers to embrace high-risk, "bet the farm" business strategies. Such strategies produce elevated returns for shareholders and bank managers during economic and financial booms, but they impose most of the losses from busts and bank failures on debtholders of banks (including bondholders, government deposit insurers, and uninsured depositors) and ultimately on taxpayers if failing banks are bailed out.[41]

As noted above, the Proposed Rule acknowledges that the "2007-08 financial crisis demonstrated the importance of strong regulatory capital standards for the safety and soundness of individual banking organizations, as well as for the financial system as a whole."[42] The Financial Crisis Inquiry Commission (FCIC) determined that "excessive risks and unsound practices," together with "[h]igh leverage" and "inadequate capital," were critical weaknesses

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[36] *See supra* notes 27-29 and accompanying text.
[37] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 391 (The Administrative Procedure Act "requires courts to 'hold unlawful and set aside agency action, findings, and conclusions found to be ... not in accordance with law.' [5 U.S.C.] § 706(2)(A)."); *Encino Motorcars LLC v. Navarro*, 579 U.S. 211, 221 (2016) (cited *supra* in note 29).
[38] Anat Admati & Martin Hellwig, *The Bankers' New Clothes: What's Wrong with Banking and What to Do About It* 187 (2d ed. 2024) ("The clear lesson [of the global financial crisis] is that only equity can be relied on to absorb losses in a crisis.")
[39] Bank for Int'l Settlements, "CAP – Definition of Capital," § 10.8, https://www.bis.org/basel_framework/chapter/CAP/10.htm.
[40] Barr Bank Capital Speech, *supra* note 3; *see also* Admati, *supra* note 3, at S38-S40, S43-S44, S52, S57-S58.
[41] Admati & Hellwig, *supra* note 38, chapters 2, 7 & 8; Stephen G. Cecchetti & Kermit L. Schoenholtz. "Setting Bank Capital Requirements," *Money & Banking* (Oct. 12, 2020) [hereinafter Cecchetti & Schoenholtz, "Capital Requirements"], https://www.moneyandbanking.com/commentary/2020/10/11/setting-bank-capital-requirements.
[42] Proposed Rule, 90 Fed. Reg. at 30783.

that caused many large banks and nonbank financial institutions to fail in 2007-08, thereby precipitating the global financial crisis as well as the Great Recession.[43] The costs of the global financial crisis and the Great Recession within the U.S. were enormous and long-lasting, as shown by the following statistics:

> The total outstanding amount of emergency loans, capital infusions, guarantees, and other U.S. government assistance to financial institutions peaked at almost $7 trillion in early 2009. . . . Combining all of the separate loan transactions in the Fed's emergency lending programs produces a cumulative total of $19.5 trillion of liquidity support for financial institutions between 2007 and 2010. . . .
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> [A]bout 12 million households lost their homes to foreclosures, short sales, and other distressed transactions between 2007 and 2016. . . .
>
> Almost 9 million Americans lost their jobs, and the U.S. unemployment rate rose from 4.4% to 10% between 2007 and 2009. The U.S. recorded a net loss of more than 270,000 small businesses (employing fewer than a hundred workers) between March 2007 and March 2010. U.S. GDP fell by 4.3% during 2008 and 2009 and did not return to its 2007 level until 2011. . . .
>
> Between 2007 and 2017, the ratio of government debt to GDP increased from 63% to 103% in the U.S. . . . The U.S. lost more than $10 trillion of potential output during that decade.[44]

After reviewing the devastating consequences of the global financial crisis, Congress (like the FCIC) determined that federal regulators had allowed large, complex financial institutions to take excessive risks and operate with dangerously high degrees of leverage and woefully inadequate levels of capital.[45] As shown above, Congress adopted Sections 165 and 171(b) of the Dodd-Frank Act to prevent federal banking agencies from allowing large bank holding companies and their subsidiary banks to operate with hazardously low levels of capital in the future.

Yet that is exactly what the Proposed Rule would do. As stated above, the Proposed Rule would reduce minimum eSLR requirements for G-SIB holding companies from the current level of 5% to a range of 3.5% to 4.25%. The Proposed Rule would also reduce minimum eSLR requirements for subsidiary depository institutions of G-SIBs from the current level of 6% to the

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[43] FCIC Report, *supra* note 26, at xvii-xx, 55-56, 155, 230, 279, 352, 386. Three of the four dissenting members of the FCIC agreed that many of the "largest financial institutions" in the U.S. and Europe were "highly leveraged" and "undercapitalized," and that "a severe financial shock in September 2008, in which ten large financial institutions failed, nearly failed, or changed their institutional structure; trigger[ed] . . . [a] financial panic and the beginning of a large contraction in the real economy." *Id.* at 417-19, 427-33 (dissenting statement of Commissioners Hennessey, Holtz-Eakin, and Thomas).

[44] Arthur E. Wilmarth, Jr., *Taming the Megabanks: Why We Need a New Glass-Steagall Act* 291, 293, 297 (2020) [hereinafter Wilmarth, *Taming the Megabanks*]; *see also* Better Markets, *The Cost of the Crisis: $20 trillion and counting* (July 2015), https://bettermarkets.org/wp-content/uploads/2021/07/Better-Markets-Cost-of-the-Crisis_1.pdf; FCIC Report, *supra* note 26, at 389-410; S. Rep. No. 111-176, at 39-44.

[45] S. Rep. No. 111-176, at 2-3, 9-17, 30-31, 40, 55 (2010).

same range of 3.5% to 4.25%. Federal banking agencies estimate that the Proposed Rule would allow U.S. G-SIBs and their subsidiary banks to reduce the total amount of their Tier 1 equity capital by over $200 billion.[46]

As further explained below in Parts 3, 4, and 8, such large reductions in equity capital would severely impair the resilience of G-SIBs and greatly increase the probability that future economic and financial shocks would cause many of them to fail, thereby triggering another systemic financial crisis.[47] In addition, the Proposed Rule would endanger the subsidiary banks of G-SIBs – and increase the likelihood that they would fail with substantial costs to the Deposit Insurance Fund and taxpayers – by removing the 1% minimum additional Tier 1 equity capital buffer that they must maintain under current eSLR standards.[48]

The Proposed Rule claims that "GSIBs would continue to be a source of strength for their depository institution and other subsidiaries, providing them with equity financing and liquidity as needed."[49] However, as Professor Kress explained, history shows that large bank holding companies are very unlikely to serve as sources of strength for their subsidiary banks and broker-dealer affiliates during conditions of severe economic and financial stress. Professor Kress aptly summarized that history in the following passage:

> During the 2008 financial crisis, major holding companies systematically exploited their FDIC-insured banks to prop up failing nonbank affiliates. Citibank, Bank of America, and JPMorgan Chase Bank lent billions of dollars to their troubled broker-dealer affiliates with the Federal Reserve's encouragement. Citigroup went even further, transferring the vast majority of its toxic subprime mortgage assets into Citibank, effectively using the FDIC-insured bank as a dumping ground for the holding company's riskiest assets. The most recent banking crisis provides even more evidence that the source of strength doctrine fails when it matters most. When Silicon Valley bank collapsed in March 2023, its holding company SVB Financial provided no financial assistance despite possessing "very ample" financial resources.[50]

In addition, as Professor Kress rightly emphasized, federal banking agencies have never adopted a regulation implementing Section 616 of the Dodd-Frank Act. Section 616 "explicitly directed the agencies to issue a rule requiring bank holding companies 'to serve as a source of financial strength for any subsidiary … that is a depository institution.'"[51] Given the federal banking agencies' failure to adopt rules implementing Section 616 – despite a congressional

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[46] Proposed Rule, 90 Fed. Reg. at 30784-85, 30798 (estimating that the Proposed Rule would reduce the tier 1 equity requirements for U.S. G-SIBs by $13 billion and for their subsidiary banks by $213 billion).
[47] Sheila Bair, Tom Hoenig & Tom Curry, "Comment on Proposal to Weaken Capital Requirements for G-SIBs," *FinRegRag* (July 22, 2025), https://www.finregrag.com/p/comment-on-proposal-to-weaken-capital; "Statement on Enhanced Supplementary Leverage Ratio Proposal by Governor Michael S. Barr" (June 25, 2025), https://www.federalreserve.gov/newsevents/pressreleases/barr-statement-20250625.htm,
[48] Proposed Rule, 90 Fed. Reg. at 30784-85, 30789, 30796-99; *see also* Kress Comment Letter, *supra* note 34, at 2, 7, 9-11.
[49] Proposed Rule, 90 Fed. Reg. at 30804.
[50] Kress Comment Letter, *supra* note 34, at 11.
[51] *Id.* (quoting 12 U.S.C. § 1831o-1).

deadline that expired in July 2012 – "it is both legally and logically indefensible for the agencies to weaken depository institution capital requirements based on an unenforced legal principle they have spent over a decade ignoring."[52]

3. Strong Leverage Capital Requirements Are Essential to Prevent Large, Complex Banking Organizations from Arbitraging Risk-Based Capital Rules to Justify Dangerously Low Levels of Equity Capital.

Current eSLR requirements play a crucial role in our regulatory capital framework because strong leverage capital requirements are more reliable in preventing excessive risk-taking by large, complex financial institutions, compared to risk-based capital requirements. Large, complex banks have repeatedly shown the ability and willingness to engage in regulatory capital arbitrage, which enables them to reduce their risk-based capital requirements by using (a) aggressive and overly optimistic internal risk models,[53] and (b) off-balance-sheet securitizations and "synthetic risk transfers" (SRTs). SRTs ostensibly transfer a bank's risks to other parties while retaining significant contingent exposures to future default risks.[54] In 2017, the Basel Committee acknowledged that Basel II's risk-based capital requirements, which promoted the use of internal risk models, had failed to prevent excessive risk-taking by large banks during the period leading up to the global financial crisis:

> [T]he financial crisis highlighted a number of shortcomings related to the use of internally modelled approaches for regulatory capital, including the [internal ratings-based (IRB)] approaches to credit risk. These shortcomings include the excessive complexity of the IRB approaches, the lack of comparability in banks' internally modelled IRB capital requirements and the lack of robustness in modelling certain asset classes.[55]

Similarly, the Proposed Rule recognizes that leverage capital requirements are a crucial component of regulatory capital standards because

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[52] *Id.*

[53] For analysis of the unreliability and manipulability of internal risk-based models used by large, complex banks, see Admati & Hellwig, *supra* note 38, at 176-78, 183-87, 257-61; Andrew G. Haldane & Vasileios Madouros "The Dog and the Frisbee" (Aug. 31, 2012), pp. 7-18, https://www.bis.org/review/r120905a.pdf; Wilmarth, *Taming the Megabanks*, *supra* note 43, at 167-69, 216-20, 284, 303-05; *see also* Barr Bank Capital Speech, *supra* note 3 (recognizing that Basel III's risk-based capital rules are "complex, underinclusive under some conditions, and like all capital requirements, can be gamed").

[54] For the catastrophic risks that large, complex financial institutions created prior to the global financial crisis through their use of off-balance-sheet securitizations as well as over-the-counter derivatives that resemble today's SRTs, see FCIC Report, *supra* note 26, at xiv-xv, xx, 46-51, 63-65, 114-18, 150-51, 213-14, 228-30, 246-79, 298-308; Wilmarth, *Taming the Megabanks*, *supra* note 44, at 194-97, 216-64. For growing concerns about the current use of SRTs by big banks to reduce their risk-based capital requirements, see Martin Arnold, "Synthetic risk transfer market prompts alarm from EU banking watchdog," *Financial Times* (June 27, 2025), https://www.ft.com/content/4cef0d54-7a5f-4d6e-820a-db7f3e1461ca; Martin Arnold, "UK lenders fret over risk-transfer market after BoE warning," *Financial Times* (April 14, 2025), https://www.ft.com/content/61c56050-cf99-4b66-bcb2-884b74e4eadd; Robin Wigglesworth, "Inside Wall Street's booming $1tn 'synthetic risk transfer' phenomenon," *Financial Times* (Dec. 20, 2024), https://www.ft.com/content/d91d35fc-93ab-4963-8587-7a00fe5c63b4.

[55] Basel Comm. on Banking Supervision, *High-level summary of Basel III reforms* (Dec. 2017), p. 5, https://www.bis.org/bcbs/publ/d424_hlsummary.pdf.

> the 2007–08 financial crisis highlighted weaknesses in the design and calibration of risk-based capital requirements. Leverage capital requirements, which do not take into account the risks of a banking organization's exposures, can help to mitigate underestimations of risk both by banking organizations and risk-based capital requirements.[56]

Most of the big banks and securities broker-dealers that failed or required bailouts during the global financial crisis of 2007-09 used internal risk models, off-balance-sheet securitizations, and credit derivatives to justify highly leveraged and dangerously undercapitalized balance sheets. Between 1994 and 2008, a group of fifteen systemically important banks in the U.S., UK, and Europe effectively cut their risk-based capital requirements in half by reducing the average ratio of their risk-weighted assets to total (unweighted) assets from 65% to 33%.[57]

In 2007, the unweighted assets-to-equity (leverage) ratios for several major UK and European banks exceeded 30:1, including more than 50:1 for UBS. Goldman Sachs had an unweighted assets-to-equity ratio of 26:1, and the comparable leverage ratios for the other "Big Five" U.S. securities firms (Bear Stearns, Lehman Brothers, Merrill Lynch, and Morgan Stanley) all exceeded 30:1. None of the foregoing institutions was required to satisfy a minimum leverage capital ratio under the Basel II capital standards they followed. U.S. commercial banks were required to maintain a 4% leverage capital ratio. However, Bank of America and Citigroup pushed their operations to the outer edge of that ratio, as their total unweighted assets-to-equity ratios in 2007 were 21:1 for Bank of America and 25:1 for Citigroup.[58]

The above-named U.S. institutions – except for Lehman Brothers, which was allowed to fail – received huge bailouts during the global financial crisis, as did ABN Amro, Commerzbank, ING, Lloyds, RBS, UBS and more than twenty other large UK and European banks. AIG, the world's largest insurance company, issued credit derivatives that substantially reduced the risk-based capital requirements of many global banks under Basel II. U.S. regulators rescued AIG with $180 billion of financial assistance, and regulators protected AIG counterparties that were large financial institutions by requiring AIG to honor 100% of its obligations to those institutions. The aggregate amount of outstanding capital injections, emergency loans, financial guarantees, and other financial assistance provided by the U.S., the UK, and European governments to large financial institutions peaked at more than $14 trillion in 2009.[59] As the

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[56] Proposed Rule, 90 Fed. Reg. at 30783.

[57] Richard Herring, "The Evolving Complexity of Capital Regulation," 53 *Journal of Financial Services Research* 183, 188-92 (2018); Wilmarth, *Taming the Megabanks*, *supra* note 44, at 216-18.

[58] Andrew Haldane & Alessandri Piergiorgio, "Banking on the State" (Sept. 25, 2009), *BIS Review* 139/2009, at 5-6, 17-18 (Charts 8 & 9), https://www.bis.org/review/r091111e.pdf; Herring, *supra* note 57, at 188-92; Wilmarth, *Taming the Megabanks*, *supra* note 44, at 216-18.

[59] FCIC Report, *supra* note 26, at 286-91, 344-86; Haldane & Piergorgio, *supra* note 58, at 1, 13 (Table 1); Wilmarth, *Taming the Megabanks*, *supra* note 44, at 168, 216-19, 237, 248, 250, 257, 260-61, 266-72, 276-97, 305, 433 n.121 (describing total amounts of government assistance on pp. 291 and 296); Int'l Monetary Fund, *Cross-Border Bank Resolution: Recent Developments* (June 2, 2014), pp. 25-37 (Annex I) (citing rescues of large U.S., UK, and European banks with cross-border operations during the global financial crisis), https://www.imf.org/external/np/pp/eng/2014/060214.pdf; Santiago Carbó-Valverde et al., "Do Bank Bailouts Have an Impact on the Underwriting Business?" (Aug. 2019), pp. 13-15, 47 (Appendix B, Table B) (listing emergency capital infusions received by major U.S., UK, and European banks during the global financial crisis and the ensuing

Proposed Rule admits, the global financial crisis demonstrated the inadequacy and unreliability of Basel II's risk-based capital rules.[60]

Since the global financial crisis, large, complex banks have continued to employ regulatory capital arbitrage – including the use of aggressive internal risk models and "systemic risk transfers" (SRTs) – to justify dangerously low levels of equity capital. A comprehensive study of capital regulations adopted in over 120 countries after the global financial crisis reached the following conclusions:

> The quality of bank capital may have not improved significantly as most authorities now allow a wider array of instruments to satisfy Tier 1 capital requirements. Moreover, the Basel III capital framework has been associated with increases in regulatory capital ratios but has not coincided with increases in simple leverage ratios or increased stringency in the composition of the Tier 1 regulatory capital. [¶] We . . . show that bank solvency risk is more sensitive to regulatory capital ratios for smaller banks and those that rely on traditional banking business models based on lending. Weaker sensitivity for large banks and those that rely on less traditional business models is consistent with the notion that **regulatory capital is a less effective disciplining device for those that are better able to manipulate their balance sheets to circumvent regulatory measures**.[61]

The same study further noted that:

> **Larger banks, on average, may have more opportunities to manipulate their balance sheets and circumvent regulatory measures** (e.g. through securitization or earnings management), which in turn may reduce the risk-curbing role of regulatory capital. A similar argument can be made for non-traditional banks with smaller loan books over total assets and larger non-interest income (relative to total assets). Non-interest income plays an important role in earnings management as it can smooth earnings and enables banks to manage their regulatory capital.[62]

Eurozone crisis), https://ssrn.com/abstract=3252421; "FACTBOX-What has happened to more than 30 bailed-out European banks," *Reuters* (Aug. 21, 2015), https://www.reuters.com/article/markets/factbox-what-has-happened-to-more-than-30-bailed-out-european-banks-idUSL5N10W0XJ/.

[60] Proposed Rule, 90 Fed. Reg. at 30783; *see also* authorities cited *supra* in notes 42-47.

[61] *See, e.g.,* Deniz Anginer et al., "Bank capital regulation and risk after the Global Financial Crisis" 23 (May 2021) (emphasis added), https://openknowledge.worldbank.org/server/api/core/bitstreams/eac26b35-c916-530b-b162-ef97dba1ccfe/content. For the study's reference to "regulatory capital arbitrage," *see id.* at 13 n.12 (noting that "[r]ecent growth in financial innovation and financial engineering may have also made it easier for financial institutions to manipulate regulatory risk measures."). The foregoing study was later published in 74 *Journal of Financial Stability* 100891 (Oct. 2024), https://doi.org/10.1016/j.jfs.2021.100891, but I could not obtain access to the published version.

[62] Anginer et al., *supra* note 61, at 19 (emphasis added; citation omitted); *see also id.* at 19 n.16 ("Income statement manipulation can be done [by banks with larger amounts of non-interest income] through the strategic recognition of commissions and fees.").

In 2013, the Basel Committee determined, based on a study of 16 large global banks, that the ratio of their risk-weighted trading assets to their total trading assets "varie[d] from around 10% to nearly 80%," and a large portion of that deviation resulted from "a significant disparity in reliance on internal models".[63] An International Monetary Fund (IMF) staff report issued after the failure of Credit Suisse in 2023 found that Switzerland's bank capital requirements had been compromised by "the use of the internal models that served to aggressively deflate balance-sheet risks that the capital was providing protection against—in combination, [Credit Suisse's and UBS'] risk-weighted measure of total assets deflated their asset exposures by around 70 percent."[64]

In December 2024, the combined risk-weighted assets of U.S. G-SIBs were equal to only 48% of their combined on-balance-sheet assets and just 40% of their combined eSLR leverage exposures. Those disparities indicate that U.S. G-SIBs have been very successful in using regulatory capital arbitrage to reduce their risk-based capital requirements. In sharp contrast, the combined risk-weighted assets for all U.S. banks *except for* G-SIBs were equal to 70% of their combined on-balance-sheet assets.[65]

The disparities between risk-weighted assets and leverage exposures for G-SIBs were even wider for Canadian, UK, and other European G-SIBs at the end of 2024. Their combined risk-weighted assets were equal to only 28% of their combined on-balance-sheet assets and 30% of their combined eSLR-equivalent leverage exposures.[66] The greater disparities between risk-weighted assets and leverage exposures for Canadian, UK, and other European G-SIBs have undoubtedly resulted from their much less demanding leverage capital requirements – until now – under their nations' lenient implementation of Basel III's minimum 3% leverage ratio.[67] The Proposed Rule states that its proposed changes to eSLR requirements will increase the "general alignment of domestic financial regulatory policy with international standards" by reducing minimum eSLRs for U.S. G-SIBs to a level much closer to Basel III's minimum 3% leverage ratio.[68] Accordingly, it is reasonable to expect that the Proposed Rule, if adopted, would allow U.S. G-SIBs to follow the examples of their global peers by further enlarging the disparities between their risk-weighted assets and their eSLR leverage exposures. As a result, the Proposed Rule would allow U.S. G-SIBs to significantly increase their already excessive levels of financial leverage and to intensify the systemic risks they pose to U.S. and global financial markets.

As the foregoing analysis in Parts 2 and 3 makes clear, sound regulatory and supervisory policies require federal banking agencies to establish robust leverage capital requirements that are effective and binding components of their overall federal bank capital framework. To place virtually exclusive reliance on risk-based capital requirements – as the Proposed Rule would do – would constitute shocking regulatory malfeasance. That approach (i) would repeat the

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[63] Basel Comm. on Banking Supervision, *Regulatory consistency assessment programme (RCAP) – Analysis of riskweighted assets for market risk* (rev. Feb. 2013), p. 8, https://www.bis.org/publ/bcbs240.pdf.
[64] Adrian et al., *supra* note 3, at 10.
[65] Fed. Res. Bank of K.C., *Bank Capital Analysis Semiannual Update* (May 21, 2025), at 3 (Table 1) [hereinafter FRB-KC BCA], https://www.kansascityfed.org/Root/documents/10877/Bank_Capital_Analysis_Report_-_4Q_2024_-_final.pdf.
[66] *Id.*
[67] *See* Proposed Rule, 90 Fed. Reg. at 30786 & n.31
[68] *Id.* at 30786.

catastrophic mistakes made by U.S. and international financial regulators prior to the global financial crisis, when they relied on risk-based capital requirements as the primary safeguard against excessive risk-taking by large, complex financial institutions; and (ii) would ignore abundant evidence that large, complex banks are continuing to arbitrage Basel III's risk-based capital standards with the goal of reducing their equity capital to dangerously low levels.[69]

4. Federal Bank Regulators Have Permitted U.S. G-SIBs to Reduce Their Leverage Capital Ratios to Hazardous Levels by Making Excessive Shareholder Distributions, and the Proposed Rule Would Allow U.S. G-SIBs to Become Recklessly Undercapitalized as Their Predecessors Were in 2007.

Since 2016, federal banking agencies have allowed U.S. G-SIBs to reduce their leverage capital ratios significantly. Federal regulators have permitted the largest U.S. banks to make excessive and imprudent distributions to their shareholders, except during the pandemic crisis of 2020. Regulators cleared the largest U.S. banks to make shareholder distributions, including dividends and stock buybacks, that exceeded their combined net profits between 2017 and 2019.[70] The six largest U.S. G-SIBs distributed over $350 billion to their shareholders during those three years.[71] The six largest U.S. G-SIBs also distributed over $100 billion to their shareholders in both 2021 and 2024, and they have announced plans to distribute over $200 billion to their shareholders in 2025.[72]

Thus, federal bank regulators have permitted G-SIBs to make excessive and ill-advised shareholder distributions since 2016. As a result of those distributions, the average Tier 1 leverage ratio for the eight U.S. G-SIBs dropped from 9% to 7% between 2016 and 2024, and their average eSLR declined from 7% to 6%.[73] As indicated above, the Proposed Rule would allow eSLRs for U.S. G-SIBs to drop much further, to a range of 3.5% to 4.25%.

The Proposed Rule would enable U.S. G-SIBs to become dangerously undercapitalized and vulnerable to failures. Empirical studies have shown that large banks with higher levels of equity capital are more stable, significantly less likely to fail, and more likely to increase and

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[69] *See supra* note 53-66 and accompanying text.

[70] Americans for Financial Reform, "Fact Sheet: Massive Payoffs to Shareholders Laid the Groundwork for the Current Bailout" (April 1, 2020), https://ourfinancialsecurity.org/resources/fact-sheet-massive-payoffs-to-shareholders-laid-the-groundwork-for-the-current-bailout/; Beverly Hirtle & Sarah Zebar, ""Bank Profits and Shareholder Payouts: The Repurchases Cycle," *Liberty Street Economics* (Fed. Res. Bank of NY, Jan. 9, 2023), https://libertystreeteconomics.newyorkfed.org/2023/01/bank-profits-and-shareholder-payouts-the-repurchases-cycle/; Wilmarth, *Taming the Megabanks*, *supra* note 43, at 306; *see also* Lisa Lee & Shahien Nasiripour, "Bank Dividends in Peril With Crisis Veterans Warning of Trouble," *Bloomberg Law* (June 20, 2024) (reporting that the four largest U.S. G-SIBs "cumulatively returned about $1.26 to shareholders for every $1 they reported in net income" between January 2017 and March 2020).

[71] S.P. Kothari, Hamid Mehran & Zirui Song, "Why Stock Buybacks Increase Financial Stability in Banking," *ProMarket* (Dec. 12, 2024) ("Total Dividends and Share Repurchase by Commercial Banks" graph), https://www.promarket.org/2024/12/12/why-stock-buybacks-increase-financial-stability-in-banking/.

[72] Todd Gillespie, "Banks Hand $100 Billion to Shareholders, Most Since 2021" *Bloomberg* (Jan. 16, 2025), https://www.bloomberg.com/news/articles/2025-01-16/banks-hand-100-billion-to-investors-as-regulatory-threat-wanes; Krystal Hur, "American Companies Are Buying Their Own Stocks at a Record Pace," *Wall Street Journal* (Aug. 11, 2025), https://www.wsj.com/finance/stocks/stock-buybacks-2025-3b0ddedd.

[73] FRB-KC BCA, *supra* note 65, at 2 (Chart 1).

maintain their levels of lending through the business cycle.[74] Many experts believe that required leverage equity capital ratio for G-SIBs, measured as a percentage of their total unweighted assets, should be in the range of 12-15% to provide a reasonable degree of assurance of their survival during periods of severe and prolonged economic and financial stress.[75]

A 2012 study by Andrew Haldane and Vasileios Madouros confirmed the necessity for robust leverage capital requirements to improve the survival rates for large, complex banks during systemic financial crises. Haldane and Madouros examined the performance of about 100 large, complex global banks (each with assets of more than $100 billion) during the global financial crisis of 2007-09. That group of global banks included 37 banks that failed (either by being placed in resolution or by surviving only with significant government assistance). Haldane's and Madouros' study determined that higher leverage capital ratios – derived from a harmonized application of U.S. and international accounting rules – provided a significantly better indicator of the ability of large, complex global banks to survive the crisis, compared with higher risk-based capital ratios.[76]

Haldane and Madouros also found that large global banks with reported leverage capital ratios higher than 8% survived the crisis, while five global banks failed with reported leverage capital ratios between 6% and 8% and eight other global banks failed with reported leverage capital ratios between 4% and 6%.[77] Their study indicates that all eight U.S. G-SIBs are currently operating with eSLRs that are too low. At the end of 2024, every U.S. G-SIBs had an eSLR below 7%, and four of them – Bank of America, Citigroup, Goldman Sachs, and Morgan Stanely – had eSLRs below 6%.[78] The Proposed Rule would create a far more perilous situation by allowing U.S. G-SIBs to operate with eSLRs below 5%, as Bank of America and Citigroup

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[74] Better Markets, *Capital Rule Critics Proved Wrong by Facts and Data* (May 1, 2024) [hereinafter 2024 Better Markets Capital Rule Analysis], https://bettermarkets.org/wp-content/uploads/2024/05/Better_Markets_Capital_Comments_Fact_Sheet-5.1.24.pdf; Cecchetti & Schoenholtz, "Capital Requirements," *supra* note 41; Arthur E. Wilmarth, Jr., "Regulators should reject big-bank arguments against stronger capital requirements," *The Hill* (June 11, 2024), https://thehill.com/opinion/4715182-regulators-should-reject-big-bank-arguments-against-stronger-capital-requirements/; *see also* Leonardo Gambacorta and Hyun Song Shin, *Why Bank Capital Matters for Monetary Policy* (BIS Working Paper No. 558, April 2016), https://www.bis.org/publ/work558.pdf, at 23 ("The cost advantage of a well-capitalised bank is found to be substantial. A 1 percentage point increase in the equity-to-total-assets ratio is associated with a 4 basis point reduction in the cost of debt financing. . . . We also find that such a reduction in overall funding cost translates into greater bank lending. A 1 percentage point increase in the equity-to-total-assets ratio is associated with 0.6 percentage point increase in annual credit growth."); Ion Lapteacru, "What drives the risk of European banks during crises? New evidence and insights" 7, 14 (Table 2), 36 (June 2025) (concluding, based on a study of 1,156 banks in 28 European countries between 1995 and 2015, that "higher capital" (measured as the ratio of equity to total assets) is "associated with lower bank risk and this effect is much stronger during the crisis times"), https://papers.ssrn.com/abstract=5317610.

[75] Cecchetti & Schoenholtz, "Capital Requirements," *supra* note 41 (citing *The Minneapolis Plan to End Too Big to Fail* 15-17, 41, 57, 63, 72, 99, 105, 126-27 (Fed. Res. Bank of Minneapolis, Dec. 2017) [hereinafter Minneapolis TBTF Plan], https://www.minneapolisfed.org/~/media/files/publications/studies/endingtbtf/the-minneapolis-plan/the-minneapolis-plan-to-end-too-big-to-fail-final.pdf); Letter from Anat Admati and 19 other international academic experts on financial regulation, *Financial Times* (Nov. 8, 2020), https://www.ft.com/content/63fa6b9e-eb8e-11df-bbb5-00144feab49a.

[76] Haldane & Madouros, *supra* note 53, at 10-11, 28-29 (Charts 3-5).

[77] *Id.* at 16, 29 (Chart 5).

[78] FRB-KC BCA, *supra* note 65, at 3 (Table 1) (providing SLR ratios for U.S. G-SIBs in Dec. 2024).

did in 2007.[79] Thus, the Proposed Rule would set the stage for a disaster similar to the global financial crisis of 2007-09, when U.S. and international regulators were forced to arrange massive bailouts of systemically important financial institutions that were operating with recklessly low levels of equity capital.

5. The Proposed Rule Would Expand "Too-Big-to-Fail" Subsidies for U.S. G-SIBs and Undermine the Competitive Viability of Community Banks and Regional Banks, Thereby Reducing the Availability of Credit to Consumers, Farmers, and Small Businesses.

U.S. G-SIBs currently enjoy extensive and unjustified competitive advantages over community banks and midsized regional banks, due to the undeniable too-big-to-fail (TBTF) status of U.S. G-SIBs and the unwarranted lenient treatment that U.S. G-SIBs have received from federal banking agencies since 2016.[80] As stated above, federal regulators allowed U.S. G-SIBs to reduce their average Tier 1 leverage ratios from 9% to 7% between 2016 and 2024. In sharp contrast, during that same period, community banks (with assets under $10 billion) maintained average Tier 1 leverage capital ratios at or above 10%, while regional banks (with $10 billion to $100 billion of assets) and "super-regional" banks (with assets of $100 billion to $750 billion) maintained average Tier 1 leverage ratios at or above 9%.[81]

The wide disparities in capital levels between U.S. G-SIBs and smaller categories of U.S. banks are the result of explicit and implicit "too-big-to-fail" (TBTF) subsidies that U.S. G-SIBs have long exploited.[82] Those disparities in capital levels cannot justified by claiming that smaller banks pose greater risks. On the contrary, community banks and regional banks have consistently shown better risk management and have reported better risk outcomes compared to U.S. G-SIBs.[83] Moreover, the "Contagion Index" published by the Office of Financial Research (OFR) – which "measures the loss that could spill over to the rest of the financial system if a

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[79] *See supra* note 57 and accompanying text.
[80] Wilmarth, *Taming the Megabanks*, *supra* note 44, at 305-18, 340-56
[81] FRB-KC BCA, *supra* note 65, p. 2 (Chart 1).
[82] Minneapolis TBTF Plan, *supra* note 75, at 41, 55, 64; Wilmarth, *Taming the Megabanks*, *supra* note 43, at 183-85, 316-18, 347-56, 466 n.108; *see also* Andrew Haldane, "On being the right size" 4-8, 11-13 (Bank of England, Oct. 25, 2012) (analyzing the impact of TBTF subsidies for large global banks before and after the global financial crisis of 2007-09), https://www.bankofengland.co.uk/-/media/boe/files/speech/2012/on-being-the-right-size.pdf.
[83] *See, e.g.*, Shayna Olesiuk, "Community Banks: Vital to Main Street Families, Small Businesses, and the Financial System," *Better Markets* (April 17, 2025), pp. 4-5 (showing that credit quality standards have been much better for loans made by community banks, compared to loans made by noncommunity banks), https://bettermarkets.org/wp-content/uploads/2025/04/BetterMarkets_Community_Banking_Report_04-17-2025.pdf; Arthur E. Wilmarth, Jr., "A Two-Tiered System of Regulation Is Needed to Preserve the Viability of Community Banks and Reduce the Risks of Megabanks," 2015 *Michigan State Law Review* 249, 277-79, 281 (explaining that community banks' "overall performance during the financial crisis was significantly better than the performance of larger banks. In fact, community banks recorded substantially lower levels of noncurrent loans and charged-off loans throughout the crisis, compared with bigger banks") [hereinafter Wilmarth, "Community Banks"], https://ssrn.com/abstract=2518690; "Yikai Wang, Mike Gullette and Sharon Whitaker, "Community banks, CECL, and CRE," *ABA Banking Journal* (Dec. 17, 2024) (showing that, since 2020, charge-off rates and past-due rates for commercial real estate loans have generally been highest among G-SIBs and large regional banks, while the same rates have been lower among midsized banks with assets of $10 billion to $100 billion, and lowest among community banks), https://bankingjournal.aba.com/2024/12/community-banks-cecl-and-cre/.

given bank were to default" – shows that U.S. G-SIBs pose far greater risks to the U.S. financial system than any smaller U.S. banks.[84]

Five of the six largest U.S. G-SIBs – Bank of America, Citigroup, JPMorgan Chase, Goldman Sachs, and Morgan Stanley – were leading participants in the toxic subprime credit boom that led to the global financial crisis.[85] The federal government rescued four of those financial giants – Bank of America, Citigroup, Goldman Sachs, and Morgan Stanley – from the brink of failure in 2008-09, while JPMorgan Chase and Wells Fargo received very significant government support.[86]

The fact that the largest U.S. financial institutions and many of their foreign peers were at the epicenter of the global financial crisis fits a consistent pattern shown by many past financial crises. Based on a comprehensive analysis of financial crises in 17 advanced economies since 1870, a 2023 study concluded that

> large banks account for a rising share of the aggregate financial cycle, take more risk during pre-crisis credit booms and have higher losses during the crisis. . . . Our results are consistent with theories of excessive risk taking of large banks and implicit bailout guarantees and shows [sic] that **large banks have been at the epicenter of financial instability and risk taking throughout history**."[87]

The same study also found that government rescues of banks "on the verge of failure" during financial crises were "very common for top-5 banks," and the study recommended that "macro-prudential policy objectives focused on restraining risk-taking and excessive credit growth **should primarily target the very largest banks**."[88] Thus, the lessons of history undeniably point in the direction of requiring U.S. G-SIBs to satisfy **higher** leverage equity capital requirements and strongly counsel against adopting the Proposed Rule.

When the federal banking agencies adopted a 2014 rule that instituted the eSLR requirements, their stated purposes for that rule included (i) a desire to shrink "too big to fail" subsidies for the largest U.S. banks and (ii) a corresponding goal to reduce funding and other competitive advantages for the largest U.S. banks over smaller banks:

> A perception persists in the markets that some companies remain ''too big to fail,'' posing an ongoing threat to the financial system. . . . [I]t produces competitive distortions because those companies can often fund themselves at a lower cost

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[84] Off. of Fin. Res., "Bank Systemic Risk Monitor (OFR Contagion Index)" https://www.financialresearch.gov/bank-systemic-risk-monitor/.

[85] FCIC Report, *supra* note 26, Chapters 6-14; Wilmarth, *Taming the Megabanks*, *supra* note 43, Chapters 9-11; *see also id.* at 193-97 (listing those five U.S. G-SIBs as being part of a "Big Seventeen" group of U.S. and global financial firms, which were primarily responsible for financing subprime loans and underwriting related securities and derivatives).

[86] FCIC Report, *supra* note 26, at 353-86; Wilmarth, *Taming the Megabanks*, *supra* note 43, at 285-92, 457-58 nn.135-55.

[87] Matthew Baron, Moritz Schularick, & Kaspar Zimmermann, "Survival of the Biggest: Large Banks and Financial Crises" 40 (June 2023) (emphasis added), https://ssrn.com/abstract=4189014, at 5, 30, 40 (emphasis added).

[88] *Id.* at 30 (first quote), 5 (second quote) (emphasis added).

> than other companies. This distortion is unfair to smaller companies, damaging to fair competition, and may artificially encourage further consolidation and concentration in the financial system. . . .
>
> By further enhancing the capital strength of covered organizations, the enhanced supplementary leverage ratio standards could counterbalance possible funding cost advantages that these organizations may enjoy as a result of being perceived as "too big to fail."[89]

The Proposed Rule would completely abandon and undermine the purposes articulated by the federal banking agencies in the 2014 eSLR Rule. The Proposed Rule would expand TBTF subsidies and associated competitive advantages for U.S. G-SIBs by reducing their minimum eSLR requirements to less than half of the average Tier 1 leverage capital ratios maintained by community and regional banks. As indicated above, since 2012, community banks have consistently maintained average Tier 1 leverage ratios of 10% or more, while regional banks have consistently maintained average Tier 1 leverage ratios of 9% or more.[90] By reducing the leverage capital requirements of U.S. G-SIBs, the Proposed Rule would increase their TBTF subsidies, enlarge their funding advantages, undermine the competitive viability of community banks and regional banks, and promote further consolidation and concentration within the U.S. banking industry.[91] All of those outcomes would be directly contrary to the expressly stated purposes of the 2014 eSLR Rule.[92]

There are currently about 4,000 community banks in the U.S., accounting for about 90% of all U.S. banks. Since 2000, the number of U.S. community banks has fallen by more than half, and the percentage of U.S. banking assets held by community banks has declined from 28% in 2000 to less than 12% in 2024.[93] In contrast, the six largest U.S. G-SIBs held 57% of the total assets of all U.S. banking organizations at the end of 2024.[94] Similarly, the five largest U.S. banks controlled 49.7% of all U.S. banking assets in 2021, almost twice their 28.1% share in 2000.[95] The Proposed Rule's unjustified and dangerous reduction of eSLR requirements for U.S.

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[89] Off. of the Comptroller of the Currency et al., Regulatory Capital Rules: Final rule, 70 Fed. Reg. 24528, 24528-29 (May 1, 2014) [hereinafter 2014 eSLR Rule].
[90] FRB-KC BCA, *supra* note 65, at 2 (Chart 1).
[91] Adam Turmakhan, "This new Fed policy will harm community banks' competitiveness," *American Banker* (Aug., 8, 2025), available on Westlaw at 2025 WLNR 19959456.
[92] 2014 eSLR Rule, *supra* note 89, at 24528-29.
[93] At the end of 2024, there were 4,487 FDIC-insured depository institutions, of which 4,046 were community banks (based on FDIC criteria). Community banks held $2.8 trillion of assets, representing 11.6% of the $24.1 trillion of total assets of all FDIC-insured depository institutions. 19 *FDIC Qtly.* No. 1 (2025), 4th Qtr. 2024, at 23, 26 (Table II-B), 33 (Table III-C), https://www.fdic.gov/quarterly-banking-profile/quarterly-banking-profile-fourth-quarter-2024. For discussions of the declining number of community banks and their diminishing share of the U.S. banking industry, see Matt Hanauer et al., "Community Banks' Ongoing Role in the U.S. Economy," 106:2 *Economic Review* 37, 37-40 (Fed. Res. Bank of Kansas City, 2d Qtr. 2021), https://www.kansascityfed.org/research/economic-review/community-banks-ongoing-role-in-the-us-economy/; Olesiuk, *supra* note 82, at 1-4.
[94] FRB-KC BCA, *supra* note 65, at 3 (Table 1) (showing that the six largest U.S. G-SIBs had total assets of $14.45 trillion, while all U.S. banking organizations had assets of $25.51 trillion).
[95] World Bank, 5-Bank Asset Concentration for United States [DDOI06USA156NWDB], Aug. 12, 2025, retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/DDOI06USA156NWDB.

G-SIBs would intensify pressures for consolidation and further erode the competitive viability of community banks and regional banks.

Community banks provide vitally important deposit, payment, credit, and wealth management services to consumers, farmers, and small and medium-sized enterprises (SMEs). Although community banks hold less than 12% of the nation's banking assets, they originate 70% of all agricultural loans, 36% of all small business loans, and 30% of all commercial real estate loans.[96] Community banks are widely recognized as the most dedicated and reliable lenders to farmers and SMEs through the business cycle. Community banks pursue a customer-centric, relationship-based business strategy. That strategy focuses on building long-term relationships with their borrowers, based on a detailed understanding of their borrowers' businesses, in contrast to the "cookie cutter" financial metrics and standardized lending terms applied by most big banks in their dealings with small businesses. Unlike community banks, big banks provide a significant portion of their small business credit in the form of credit card loans, which have uniform terms and charge much higher interest rates than community banks' relationship loans.[97]

A 2024 FDIC survey found that small U.S. banks "are more likely than large banks to use a wide variety of soft information, including loan officer interviews and assessments, when evaluating loan applications" by SMEs. Small banks are "more flexible in meeting credit needs and better able to engage with small businesses on a case-by-case basis," and small banks are also more likely to lend to start-up businesses.[98] In contrast to small banks, large banks rely much more heavily on "business credit scores" (which many small firms do not have) and "are much more likely than small banks to use some form of automated underwriting."[99]

In addition to community banks' crucial roles in promoting local economic development, community banks are frequently the most important supporters of civic activities and charitable organizations in the communities they serve. Community banks provide the only banking presence in about one-quarter of all U.S. counties. Studies have shown that SMEs and local communities suffer severe economic, civic, and social harms when their community banks fail, close, or are acquired by larger, out-of-town banks that have very different business models.[100]

In recent months, senior federal officials praised community banks for their major contributions and promised to support them. In February 2025, Fed Vice Chair for Supervision

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[96] Olesiuk, *supra* note 83, at 6-7.

[97] *Id.* at 1-2, 6-9; Hanauer et al., *supra* note 93, at 37-39, 52-54; Wilmarth, "Community Banks," *supra* note 83, at 288-303; *see also* Ufuk Akcigit et al., "Credit Card Entrepreneurs" 2, 5 (Nat'l Bur. Econ. Res. Working Paper 33618, Mar. 2025) ("[T]he amount of small business credit card lending accounts by large banks has almost doubled since 2010 while [their] term loan lending has stalled"), https://www.nber.org/system/files/working_papers/w33618/w33618.pdf; Matteo Benetton & Greg Buchak, "Revolving Credit to SMEs: The Role of Business Credit Cards" 10, 23-25 (Oct. 21, 2024) (stating that the average interest rate for bank credit card loans to small businesses was about 13% during 2014-19, compared to 7% for bank term loans to small businesses), https://ssrn.com/abstract=4997456.

[98] Fed. Deposit Ins. Corp., *2024 FDIC Small Business Lending Survey* 4 (first quote), 7 (second quote), 21, 25, 34-36, 73-77, https://www.fdic.gov/system/files/2024-09/small-business-lending-survey-2024-full.pdf.

[99] *Id.* at 28-36 (first quote at 31, second quote at 34).

[100] Hanauer et al., *supra* note 93, at 48-54; Olesiuk, *supra* note 83, at 1-2, 4-9; Wilmarth, "Community Banks," *supra* note 83, at 290, 294-300; Wilmarth, *Taming the Megabanks*, *supra* note 43, at 344-47.

Michelle Bowman recognized that bank regulators have a "responsibility . . . to support community banks" because community banks are "catalysts for local economic growth" and are "essential to the success of the American economy."[101] In April 2025, Treasury Secretary Scott Bessent stated that "[c]ommunity bankers can make America great again—if the government will let you. My job is to make sure it lets you." Secretary Bessent criticized past "regulatory actions [that] have entrenched the dominant position of the largest banks," and he expressed a strong interest in promoting measures that "foster competitive parity across large and small banks."[102]

The foregoing praise and promises for community banks are completely at odds with the Proposed Rule. As shown above, the Proposed Rule would expand TBTF subsidies for U.S. G-SIBs and increase their unwarranted competitive advantages over smaller banks by allowing U.S. G-SIBs to operate with eSLRs that are less than half the average Tier 1 leverage ratios maintained by community banks. If federal regulators genuinely intend to support community banks and create a more level playing field between smaller and larger banks, they must withdraw the Proposed Rule.

6. The Proposed Rule Would Not Increase Lending or Support the Real Economy.

In a a single, conclusory sentence, the Proposed Rule asserts that its adoption "is expected to support increased lending and economic activity."[103] The Proposed Rule does not cite any evidence or present any reasoned analysis to support that assertion. As shown below, the Proposed Rule would have precisely the opposite effects.

Big banks have repeatedly claimed that higher capital requirements adversely affect the real economy by forcing them to cut back on their lending to consumers and businesses.[104] Based on those claims, one might reasonably expect that big banks would have increased their lending to consumers and Main Street businesses when federal regulators allowed them to operate with lower levels of equity capital after 2016. The largest U.S. banks (those with over $250 billion of assets) clearly had the financial capacity to increase their lending at that time. The total assets held by banks larger than $250 billion grew by 70% (from $8.4 trillion to $14.2 trillion) between December 2016 and March 2025, while their total share of all U.S. banking assets rose from 50% to 58%. Despite that impressive growth, the largest U.S. banks did not increase their commitment to lending. Instead, they **reduced** the portion of their total assets devoted to lending by more than 11% between the end 2016 and the first quarter of 2025. During that period, the largest U.S. banks took advantage of more lenient capital rules (i) to

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[101] "Community Banking," speech by Fed Governor Michelle W. Bowman (Feb. 27, 2025), https://www.federalreserve.gov/newsevents/speech/bowman20250227a.htm.

[102] Remarks by U.S. Treasury Secretary Scott Bessent before the American Bankers Ass'n (April 9, 2025), https://home.treasury.gov/news/press-releases/sb0078.

[103] Proposed Rule, 90 Fed. Reg. at 30785.

[104] *See, e.g.,* Admati & Hellwig, *supra* note 38, at 97, 222; 2024 Better Markets Capital Rule Analysis, *supra* note 74, at 5-8. For example, in September 2017, the Clearing House Association – an organization comprised of the largest U.S. banks – maintained that "higher [capital] requirements (with resulting lower leverage) depress lending," and further stated that "a high level of capitalization" forces banks to "reduce their assets" and make "*less* bank credit available to support business and household investment." Letter dated Sept. 7, 2017, from Greg Baer, President, Clearing House Ass'n, to Senators Michael Crapo (R-ID) and Sherrod Brown (D-OH), pp. 2-3, https://bpi.com/wp-content/uploads/2018/07/db705aa5489c412b86b1e522ee9e5379.pdf.

make huge distributions to their shareholders and (ii) to expand significantly their investments in securities and other capital markets activities.[105]

In 2024, U.S. G-SIBs did not increase the total amount of their outstanding loans to either consumers or commercial (nonfinancial) firms. The only category of borrowers that received a substantial increase in credit from U.S. G-SIBs in 2024 were nonbank financial institutions (shadow banks).[106] The 2024 growth in loans from G-SIBs to shadow banks was part of a longer trend, as U.S. G-SIBs tripled their loans to shadow banks (from $228 billion to $695 billion) between 2015 and 2024, and loans to shadow bank loans grew from 6.2% to 14.1% of the total loan portfolios of U.S. G-SIBs during the same period.[107]

The general lack of growth in loans by G-SIBs is confirmed by the fact that Wells Fargo was the only top-six G-SIB that devoted more than 40% of its total assets to loans at the end of 2024. The other five top-six G-SIBs had loan-to-asset ratios ranging between 16% for Goldman Sachs to 35% for Bank of America. Instead of making more loans, the top-six G-SIBs have greatly increased their focus on capital markets activities, as the total portion of their assets composed of cash, money market instruments, securities, and derivatives credit exposures ranged from 46% at Wells Fargo to 76% at Goldman Sachs.[108]

In sharp contrast to the continued emphasis by community banks on making relationship loans to small businesses, the largest U.S. banks severely cut back on their lending to SMEs during and after the global financial crisis. Decisions by big banks to shrink their small business lending efforts – except in the case of credit card loans – reflected their lack of a comparative advantage in the small business lending market as well as their desire to enlarge their presence in investment banking services and other global capital markets activities.[109]

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[105] *See supra* notes 70-72 and accompanying text (describing the enormous shareholder distributions that federal regulators allowed the largest banks to make after 2016, and the resulting reductions in the eSLRs and Tier 1 leverage ratios of U.S. G-SIBs). Between December 2016 and March 2025, U.S. banks with over $250 billion of assets – the largest size category tracked in the FDIC's *Quarterly Banking Profile* – reduced the share of their total assets devoted to net loans and leases from 47.2% to 41.7%. During the same period, U.S. banks with assets of more than $250 billion increased the total notional value of their derivatives from $123 trillion to $209 trillion, and their quarterly trading revenues rose from 23.8% to 35.5% of their total operating revenues. 19 *FDIC Qtly.* No. 2 (2025), 1st Qtr. 2025, pp. 9, 14 (Tables III-A & VI-A), https://www.fdic.gov/quarterly-banking-profile/fdic-quarterly-2025-volume-19-number-2.pdf; 11 *FDIC Qtly.* No. 1 (2017), 4th Qtr. 2016, pp. 9, 14 (Tables III-A & VI-A), https://archive.fdic.gov/view/fdic/9204; *see also* Greg Buchak et al., "The Secular Decline of Bank Balance Sheet Lending" (Sept. 30, 2024), pp. 16-18, 47-48 (Tables 2 &3) (showing that (i) banks that engaged most actively in securitizations – typically larger banks – reduced their loan-to-asset ratios and increased their holdings of debt securities after 2010, and (ii) declines in the loan-to-asset ratios of U.S. banks after 2018 were highest among banks with over $250 billion of assets), https://ssrn.com/abstract=4738476.

[106] S&P Global Ratings, *Performance Should Hold Steady Amid Ongoing Change: U.S. G-SIBs Q4 2024 Update* (Mar. 6, 2025) [hereinafter S&P 2024 U.S. G-SIB Report], pp. 5, 18, https://www.spglobal.com/_assets/documents/ratings/research/101615776.pdf

[107] *Id.* at 15.

[108] S&P Global Ratings, *G-SIB Monitor 2025: Powering Through* (May 27, 2025), p. 29, https://www.spglobal.com/_assets/documents/ratings/research/101626044.pdf.

[109] Akcigit et al ., *supra* note 97, at 2, 5; Vitaly M. Bord, Victoria Ivashina & Ryan D. Taliaferro, "Large banks and small firm lending," 48 *Journal of Financial Intermediation* 100924 (Oct. 2021), https://doi.org/10.1016/j.jfi.2021.100924; Brian S. Chen, Samuel G. Hanson & Jeremy C. Stein, "The Decline of Big-Bank Lending to Small Business: Dynamic Impacts on Local Credit and Labor Markets" (Nat'l Bur. of Econ. Res. Working Paper 23843 (Sept. 2017), https://www.nber.org/papers/w23843; Rebel A. Cole, "How Did Bank

As the foregoing data show, U.S. G-SIBs do not view loans to consumers and Main Street businesses as top-priority business lines. Instead, U.S. G-SIBs have intensified their focus on investment banking and capital markets activities.[110] U.S. G-SIBs have developed symbiotic relationships with private equity firms, hedge funds, and other shadow banks because G-SIBs earn significant investment banking fees from providing prime brokerage services to hedge funds and from underwriting junk bonds, arranging leveraged syndicated loans and derivatives, and furnishing merger advisory services for private equity firms and other shadow banks.[111] Large global banks reportedly generated over $100 billion of investment banking revenues from the services they provided to hedge funds and private equity funds in 2023 and 2024.[112]

Based on the behavior of U.S. G-SIBs since 2016, it is abundantly clear that they will devote most of their savings from reduced eSLR requirements to fund larger distributions to shareholders and to make bigger investments in high-risk capital markets activities and transactions with shadow banks. Contrary to the Proposed Rule's unsubstantiated claim, there is no basis for concluding that reduced eSLR requirements for G-SIBs will "support increased lending and economic activity."[113] Instead, the Proposed Rule is virtually certain to cause a decline in lending to consumers and Main Street businesses, and to impair the health of local and regional economies, by weakening the competitive viability of community banks and undermining their ability to provide credit to the real economy.

Lending to Small Business in the United States Fare After the Financial Crisis?" (Jan. 2018), https://advocacy.sba.gov/wp-content/uploads/2019/05/439-How-Did-Bank-Lending-to-Small-Business-Fare.pdf; Wilmarth, "Community Banks," *supra* note 83, at 292-97.

[110] *See, e.g.,* Buchak, *supra* note 105, at 2-18, 35-42; Cary Springfield, "The Resurgence of Investment Banking Drives Higher Bank Earnings in 2024," *International Banker* (Sept. 5, 2024), https://internationalbanker.com/banking/the-resurgence-of-investment-banking-drives-higher-bank-earnings-in-2024/. During the second quarter of 2025, the six largest U.S. G-SIBs produced total investment banking and capital markets revenues of nearly $44 billion, representing 30% of their total operating revenues of $145 billion. The same six banks accounted for 32% of global wholesale banking revenues and 44% of global investment banking and capital markets revenues. "JPMorgan Chase Earnings Release, 2d Qtr. 2025," at 4 (reporting that JPMorgan Chase generated $44.9 billion of total revenues during the second quarter of 2025, of which $13 billion came from its investment banking and capital markets activities), https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/investor-relations/documents/quarterly-earnings/2025/2nd-quarter/ac5b7d95-9133-4fea-959c-2fa6d8fd8c5b.pdf; MarketsFN, "Major U.S. Banks Report Mixed Q2 2025 Earnings Amid Economic Shifts" (July 16, 2025) (providing total revenues and investment banking and capital markets revenues for the five other top-six U.S. G-SIBs during the second quarter of 2025), https://marketsfn.com/major-u-s-banks-report-mixed-q2-2025-earnings-amid-economic-shifts/; Morgan Stanley, "Could Trade Policy Disrupt U.S. Banking Dominance?" (June 18, 2025) (describing the dominance of the top-six U.S. G-SIBs in global wholesale banking, investment banking, and capital markets activities), https://www.morganstanley.com/insights/articles/us-wholesale-banking-dominance-multipolar-world.

[111] Arthur E. Wilmarth, Jr., "We Need a New Glass-Steagall Act to End the Toxic Symbiosis Between Universal Banks and Shadow Banks, Which Professor Corrigan Has More Fully Revealed," 40 *Journal of Corporation Law Digital* 1, 1-4, 14-21, 30-34, 37-40 (2024) [hereinafter Wilmarth, "Glass-Steagall"), https://ssrn.com/abstract=4794680; Arthur E. Wilmarth, Jr., "The Dangers of the Current 'Global Deregulatory Drive' in Financial Regulation: Written Testimony Submitted to the UK House of Lords Financial Services Regulation Committee" (July 24, 2025), Part D (¶¶ 28-40), https://ssrn.com/abstract=5375860.

[112] Rupak Ghose, "Hedge funds > Private equity," *Financial Times* (May 2, 2025), https://www.ft.com/content/9777f1b2-fc62-4f62-aad0-f0e3022a22f3.

[113] Proposed Rule, 90 Fed. Reg. at 30785.

7. **The Proposed Rule Would Not Be Likely to Increase Intermediation of U.S. Treasury Securities by U.S. G-SIBs during Periods of Severe Financial Stress.**

The Proposed Rule primarily focuses on two "benefits" that it says lower eSLR requirements to generate. First, the Proposed Rule states that lower eSLR requirements for U.S. G-SIBs would "reduce disincentives for these banking organizations to engage in low-risk activities as well as unintended incentives to engage in higher-risk activities."[114] Second, lower eSLR requirements for G-SIBs would "enhance the functioning of financial markets, including the U.S. Treasury market, by facilitating intermediation activities of the largest banking organizations."[115]

According to the Proposed Rule, the first benefit would "enable these banking organizations to substantially increase low-risk asset holdings without raising their tier 1 capital requirements." That outcome would result from the fact that risk-based capital requirements would become the "binding" constraint for G-SIBs most of the time, thereby making G-SIBs "more risk sensitive because risk-based requirements are more closely aligned with the underlying risks of different asset classes."[116]

According to a "simple estimate" presented in the Proposed Rule, the "available capacity" for U.S. G-SIBs and their subsidiaries to acquire additional reserves and Treasury securities held as investments "would increase from nearly zero [under current eSLR requirements] to $1.1 trillion, in aggregate, . . . about the size of their aggregate U.S. Treasury securities held as investment securities under the [current] baseline."[117] However, the Proposed Rule does not explain **why** the U.S. banking system, financial markets, and economy would derive any meaningful benefits from allowing U.S. G-SIBs and their subsidiaries to hold larger amounts of "low-risk assets **in general**."[118] Virtually all of the Proposed Rule's discussion focuses on the alleged "benefit" of enabling subsidiaries of U.S. G-SIBs to hold greater volumes of U.S. Treasury securities in their investment and trading accounts. The Proposed Rule is devoid of any analysis or quantitative assessment that would support its claim of a "benefit" resulting from the ability of U.S. G-SIBs to hold larger amounts of **other types** of "low-risk assets," such as Fed reserves. Accordingly, the Proposed Rule's first asserted "benefit" is unsubstantiated and does not provide a valid basis for drastically reducing eSLR requirements for U.S. G-SIBs.

The Proposed Rule devotes the lion's share of its analysis to its second claimed "benefit." That "benefit" is based on the federal banking agencies' speculation that reducing eSLR requirements for U.S. G-SIBs "**could** enhance the functioning of financial markets, including the U.S. Treasury market, by facilitating intermediation activities of the largest banking organizations" through an expansion of their "available capacity" to hold U.S. Treasury securities" in the investment and trading accounts of their subsidiaries.[119] The Proposed Rule

[114] *Id.* at 30799-30800.
[115] *Id.* at 30800.
[116] *Id.*
[117] *Id.* at 30800-01.
[118] *Id.* at 30801 (emphasis added).
[119] *Id.* at 30800 (emphasis added).

emphasizes that "GSIBs and their depository institution subsidiaries play a key role in supporting market liquidity and providing financing in Treasury markets," especially as "GSIBs' primary dealer subsidiaries are the largest U.S. Treasury securities dealers."[120]

The second claimed "benefit" is clearly the primary and motivating goal of the Proposed Rule. The Proposed Rule's central focus on the Treasury market becomes clear when it states that "[c]onfidence in the efficient functioning of the U.S. Treasury market, including during times of stress, is critical to the stability of the domestic and global banking and financial systems."[121] The Proposed Rule contends that the ability of large banking organizations to buy, sell, and hold Treasury securities is "essential to U.S. Treasury market functioning, financial intermediation, and funding market activity, particularly in periods of financial uncertainty."[122]

The Proposed Rule speculates that its proposed reduction in eSLR requirements for U.S. G-SIBs "**could** improve the functioning of [the Treasury securities] market, in both normal and stressed times."[123] The Proposed Rule further speculates that "[w]hen large banking organizations become bound by leverage capital requirements, they **can potentially face incentives to limit their intermediation** in low-risk, low-return activities in the U.S. Treasury markets."[124]

The Proposed Rule points out that, in March 2020, when the financial crisis triggered by the Covid-19 pandemic reached its most acute stage, "U.S. Treasury market liquidity rapidly deteriorated as a result of supply-demand imbalance, while [broker-dealer subsidiaries of G-SIBs acting as] primary dealers were reluctant to increase their holdings of U.S. Treasury securities."[125] As the Proposed Rule explains, "the proposed recalibration of the eSLR standards seeks to reduce disincentives for banking organizations to participate in U.S. Treasury market intermediation and reduce the need for temporary adjustments in the event of severe market stress, as occurred in 2020."[126]

However, the Proposed Rule fails to present persuasive evidence showing that its proposed drastic reduction in eSLR requirements would be likely to cause U.S. G-SIBs to increase their intermediation of U.S. Treasury securities during periods of severe financial stress. As noted above, the Proposed Rule admits that primary dealer subsidiaries of G-SIBs, "were reluctant to increase their holdings of U.S. Treasury securities" during the pandemic financial crisis in March 2020.[127] The Proposed Rule contends that the reluctance of primary dealers to increase their intermediation activities during the pandemic crisis resulted from the following factors:

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[120] *Id.* at 30786, 30791-92.
[121] *Id.* at 30784.
[122] *Id.* at 30787.
[123] *Id.* at 30803 (emphasis added); *see also id.* at 30793 ("Overall, the academic literature **suggests** that reducing the supplementary leverage ratio requirement's bindingness **could** improve the functioning of the U.S Treasury market.") (emphasis added)
[124] *Id.* at 30784 (emphasis added).
[125] *Id.* at 30784 n.23.
[126] *Id.* at 30784.
[127] *Id.* at 30784 n.23.

> [L]arge banking organizations faced reduced balance sheet capacity under the supplementary leverage ratio due to customer draws on credit lines, acquisition of significant amounts of Treasury securities, substantial increases in deposits in their accounts at Federal Reserve Banks, and other financial intermediation activities.[128]

However, as Professor Kress and former Treasury Assistant Secretary Steele explained, empirical data and studies do not verify the Proposed Rule's speculative assumption that the eSLR's limitations on "balance sheet capacity" played a substantial role in restricting intermediation of Treasury securities by subsidiaries of G-SIBs during March 2020.[129] In response to the Covid-19 financial panic, which reached its most intense phase in March 2020, the Fed temporarily excluded holdings of Treasury securities and reserves from eSLR requirements for G-SIBs between April 2020 and March 2021. That exemption was specifically intended to encourage subsidiaries of G-SIBs to generate higher volumes of intermediation of Treasury securities. Despite that goal, a subsequent Fed staff study determined that the temporary exclusion of Treasury securities from eSLR requirements did not have any "noticeable effect" on the Treasury intermediation activities of subsidiaries of U.S. G-SIBs, either with regard to their "direct holdings of Treasuries or their [secured financing transactions] backed by Treasuries."[130] Moreover, as Mr. Steele pointed out, the Proposed Rule's "own data show that, over the period from 2014 to 2024, banks' share of Treasury securities outstanding has grown by 65 percent, despite the significant growth in the market and the concurrent implementation of the SLR."[131] Other scholars have agreed that "there is no firm consensus on the role of the SLR specifically in Treasury market dysfunction."[132]

Thus, the primary "benefit" cited by the Proposed Rule – improved intermediation of Treasury securities during periods of financial stress – rests on "baseless speculation" by the federal agencies.[133] Mere speculation, unsubstantiated by persuasive supporting evidence, does not and cannot justify the federal agencies' proposal to make drastic reductions in eSLR requirements for U.S. G-SIBs.[134] As the Supreme Court explained,

> One of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decisions. The agency "must examine

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[128] *Id.* at 30784.
[129] Kress Comment Letter, *supra* note 34, at 5-6; Steele Comment Letter, *supra* note 24, at 4-5.
[130] Kress Comment Letter, *supra* note 34, at 5-6 & nn.18-19; Steele Comment Letter, *supra* note 24, at 4-5. Both Kress and Steele cite and quote Paul Cochran et al., "Dealers Treasury Market Intermediation and the Supplementary Leverage Ratio, FEDS Notes (Aug. 3, 2023), https://www.federalreserve.gov/econres/notes/feds-notes/dealers-treasury-market-intermediation-and-the-supplementary-leverage-ratio-20230803.html); *see also id.* (finding that G-SIB primary dealers' "Treasury positions, which are overwhelmingly encumbered [in repo transactions], did not change significantly during the exemption period or after its expiration.").
[131] Steele Comment Letter, *supra* note 24, at 5.
[132] *Id.* at 2 (citing and quoting Yesha Yadav & Joshua Younger, "Central Clearing the U.S. Treasury Market," 92 *University of Chicago Law Review* 545, 581 n. 209 (2025)).
[133] Kress Comment Letter, *supra* note 34, at 5.
[134] *Id.* at 5 & n.16 (citing cases).

> the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made."[135]

When an agency proposes to make a significant change to one of its existing policies, as the Proposed Rule would do, the Administrative Procedure Act (APA) requires the agency to "show that there are good reasons for the new policy."[136] The Proposed Rule plainly fails to satisfy the APA's requirements. Accordingly, the Proposed Rule, if adopted, would be "arbitrary and capricious" and invalid.[137]

The Proposed Rule's reliance on speculative and unsubstantiated "benefits" becomes even more indefensible when one takes account of the enormous risks and costs that its proposed reduction of eSLR requirements would be likely to impose on the U.S. banking system, financial markets, economy, and society. As shown below in Part 8, those risks and costs are clearly unacceptable, and the Proposed Rule must therefore be withdrawn.

8. The Proposed Rule Would Greatly Increase the Likelihood of a Systemic Financial Crisis by Allowing U.S. G-SIBs to Become Dangerously Undercapitalized and Heavily Exposed to Risks Arising out of the U.S. Treasury Market.

U.S. G-SIBs and their subsidiaries currently hold about $1.7 trillion of U.S. Treasury securities as investments and trading assets. The Proposed Rule estimates that it would allow U.S. G-SIBs and their subsidiaries to make $1.1 trillion of additional investments in reserves and U.S. Treasury securities and to increase the volume of U.S. Treasury securities held as trading assets by $2.1 trillion. Accordingly, the Proposed Rule would potentially enable U.S. G-SIBs to increase their total holdings of U.S. Treasury securities from $1.7 trillion to $4.9 trillion. In addition, the Proposed Rule would potentially allow the total leverage exposures of U.S. G-SIBs to Treasury securities to increase from 9% to 27%.[138] Thus, the Proposed Rule would encourage U.S. G-SIBs to increase their exposures to Treasury securities dramatically, thereby creating very high asset concentrations related to the Treasury market. At the same time, the Proposed Rule would allow U.S. G-SIBs to reduce their equity capital buffers to dangerously low levels, as explained above in Parts 3 and 4.

The Proposed Rule acknowledges that its adoption and implementation would have the following potential costs:

> (1) a potential increase in the leverage of GSIBs and their depository institution subsidiaries due to the reduction in their tier 1 capital requirements; (2) a potential increase in the costs associated with the failure of insured depository institution

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[135] *Encino Motorcars*, 579 U.S. at 221 (quoting *Motor Vehicles Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks omitted).
[136] *Id.* (quoting *Fox Television Stations*, 556 U.S. at 515).
[137] *Id.* (citing 5 U.S.C. § 706(2)(A); *State Farm*, 463 U.S. at 42-43).
[138] Proposed Rule, 90 Fed. Reg. at 30795 (Table 5), 30800-01 (Table 9), 30802 (Table 10); *see also* FRB-KC BCA, *supra* note 65, at 3 (Table 1) (showing that the eight U.S. G-SIBs had total leverage exposures of $18.2 trillion at the end of 2024).

> subsidiaries of GSIBs; and (3) a potential increase in the risk exposures that are not fully captured by the risk-based capital framework.[139]

The Proposed Rule also concedes that its adoption and implementation could create

> substantial interest rate risk, with the average duration of U.S. Treasury securities held as available-for-sale and held-to-maturity assets on GSIBs' balance sheets in Q4 2024 was 2.8 years and 3.6 years, respectively; and with 16 percent of such securities holdings having durations longer than 5 years, on average across GSIBs. Moreover, Greenwald, Krainer, Paul (2024) find that the majority of available-for-sale securities holdings are not fair-value hedged by large banking organizations, leaving such positions prone to yield curve shifts.[140]

The Proposed Rule does not meaningfully analyze any of the foregoing risks or explain how they could be adequately controlled or mitigated by the Proposed Rule or other regulations. For example, the Proposed Rule refers in the preceding quotation to the strong likelihood that larger holdings of Treasury securities could impose "substantial interest rate risk" on U.S. G-SIBs. The Proposed Rule also admits that current risk-based capital requirements do **not** take account of interest rate risk or market risk associated with held-to-maturity Treasury securities.[141] Moreover, the Proposed Rule's discussion of interest rate risk is largely theoretical and does not contain any analysis of **how much additional** interest rate risk is likely to be assumed by U.S. G-SIBs if they increase their Treasury holdings in accordance with the Proposed Rule's estimates.

Remarkably, the Proposed Rule does not mention the collapse and costly bailout of SVB in March 2023. As the Fed has documented, SVB's failure was due in large part to (i) SVB's very heavy reliance on uninsured deposits and other short-term wholesale liabilities (a weakness SVB shared with Signature Bank and First Republic Bank), and (ii) the rapid depreciation that occurred in the mark-to-market values of SVB's large holdings of longer-dated government securities after the Fed increased interest rates sharply during 2022.[142]

SVB was one of many banks that suffered very large actual or potential losses from their depreciated portfolios of Treasury securities and agency mortgage-backed securities. In September 2023, FDIC-insured depository institutions reported more than $680 billion of unrealized losses on their securities portfolios. About $600 billion of those unrealized losses

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[139] Proposed Rule, 90 Fed. Reg. at 30803.
[140] *Id.* at 30804 (footnotes omitted).
[141] *Id.* at 30807; *see also id.* at 30804 (acknowledging that "the fair value fluctuations of held-to-maturity securities are **not** reflected in regulatory capital and book equity calculations") (emphasis added).
[142] Fed SVB Report, *supra* note 26, at i-ii, 2-3, 21-24, 27, 45-49, 60-66, 72; *see also* Cecchetti & Schoenholtz, "SVB." *supra* note 26. Interest rate risk connected to government securities also contributed to First Republic's failure, as shown by the significant depreciation that occurred in mark-to-market values for First Republic's government securities after the Fed raised interest rates in 2022. In addition, First Republic and Signature (like SVB) relied heavily on uninsured deposits and other short-term wholesale liabilities. FDIC First Republic Report, *supra* note 26, at 2-21, 29-30; *id.* at 14-15 (discussing First Republic's depreciated government securities); FDIC Signature Bank Report, *supra* note 26, at 2, 6–7, 10–15, 20, 25, 40.

were accrued by noncommunity banks with over $10 billion of assets.[143] In December 2024, FDIC-insured depository institutions still carried $480 billion of such losses, including $430 billion reported by noncommunity banks.[144]

U.S. G-SIBs accounted for half of the unrealized losses on securities recorded by banks larger than $10 billion. In September 2023, U.S. G-SIBs reported almost $300 billion of unrealized losses on their securities portfolios, and they still carried $240 billion of such losses in December 2024.[145] The magnitude of the foregoing potential losses on securities held by U.S. banks resulted from their decisions to more than double their exposures to Treasury securities and government agency securities – from $1.3 trillion to $3.0 trillion – between January 2012 and February 2022.[146]

Following SVB's collapse, the Fed established a new emergency lending program – the Bank Term Funding Program (BTFP) – to prevent failures of significant numbers of other banks. The BTFP provided loans to banks with terms up to one year, far longer than the 90-day maximum term for the Fed's discount window loans. Unlike the Fed's non-emergency loans, BTFP loans allowed banks to borrow 100% of the par value of their pledged Treasury and government agency securities, even though market values for many of those securities had depreciated by 20% or more (due to the Fed's rapid increases in interest rates during 2022). Consequently, BTFP loans required the Fed to bear a significant risk of incurring losses if the Fed needed to liquidate pledged securities while their market values remained below their par values. More than a quarter of all U.S. banks took out BTFP loans, and banks that did so generally had "higher shares of uninsured deposits, greater amounts of unrealized losses on their securities, and . . . larger deposit outflows." The amount of outstanding BTFP loans peaked at $165 billion in early 2024. BTFP loans provided a significant subsidy to U.S. banks by ensuring that they could meet demands for depositor withdrawals without suffering losses from liquidating depreciated securities held in their portfolios.[147]

The Proposed Rule's brief reference to interest rate risk does not consider the obvious significance of the very large unrealized losses on securities that U.S. G-SIBs and many other large U.S. banks reported during 2023 and 2024. The Proposed Rule does not mention the collapse and bailout of SVB or the severe problems that many other banks faced due to the substantial declines in the market values of their government securities after the Fed's rapid increases in interest rates during 2022. The Proposed Rule also does not mention the very

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[143] 17 *FDIC Qtly.* No. 4, at 4, 21 (3d Qtr. 2023), https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2023-vol17-4/fdic-v17n4-3q2023.pdf.

[144] 19 *FDIC Qtly*. No. 1, at 5, 22 (4th Qtr. 2024), https://www.fdic.gov/quarterly-banking-profile/fdic-quarterly-2025-volume-19-number-1.

[145] S&P 2024 U.S. G-SIB Report, *supra* note 106, at 24.

[146] Bd. of Governors of Fed. Res. Sys. (US), Treasury and Agency Securities: Mortgage-Backed Securities (MBS), All Commercial Banks [TMBACBW027SBOG], Aug. 22, 2025, retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/TMBACBW027SBOG; *see also* Jose Maria Tapia & Hashim Hamandi, "The State of Banks' Unrealized Securities Losses, *OFR Blog* (Off. of Fin. Res., May 15, 2025), https://www.financialresearch.gov/the-ofr-blog/2025/05/15/the-state-of-banks-unrealized-securities-losses/.

[147] Bill Nelson et al., *Bank Term Funding Program: Experiences and Lessons* (Bank Pol'y Instit., April 1, 2025) (quote at 4), https://bpi.com/wp-content/uploads/2025/04/Bank-Term-Funding-Program-Experience-and-Lessons-Learned_.pdf;

significant risks assumed by the Fed, or the very large subsidy provided by the Fed to vulnerable U.S. banks, through its BTFP loans.

The Proposed Rule further ignores the fact that, by eliminating the method 2 formula for determining G-SIB surcharges and by drastically reducing eSLR requirements, the Proposed Rule would produce unacceptably high risks of precipitating a future systemic banking crisis. As shown above, eliminating method 2 would allow U.S. G-SIBs to increase their reliance on uninsured deposits and other short-term wholesale funding, while reducing eSLR requirements would enable U.S. G-SIBs to greatly expand their exposures to U.S. Treasury securities with significant interest rate risk.[148] Those were among the most important risk factors that led to the Spring 2023 regional banking crisis, which followed the Fed's rapid increases in interest rates during 2022 and forced the Fed to provide extensively subsidized loans under the BTFP.[149] The Proposed Rule completely disregards those developments, which have crucial bearing on the severity of the risks that would be created by eliminating method 2 and reducing eSLR requirements.

More generally, the Proposed Rule does not consider (i) the costs that would be imposed on the U.S. financial system, economy, and society by another systemic financial crisis comparable to the global financial crisis of 2007-09, or (ii) the benefits that would be gained by maintaining strong leverage capital requirements that substantially reduce the likelihood of such a crisis. In 2015, when the Fed adopted the method 2 formula for calculating the G-SIB surcharge, the Fed expressly considered those costs and benefits:

> While the GSIB surcharge may cause firms to hold additional capital, any costs on individual institutions and markets from the GSIB capital surcharge must be viewed in light of the benefits of the rule to U.S. financial stability more broadly. Notwithstanding the extraordinary support provided by U.S. and foreign governments, it is worth noting that the 2007–2008 crisis imposed significant costs on the financial markets and the real economy. Additional capital at the largest, most interconnected institutions, is intended to reduce the likelihood that the failure or material financial distress of these institutions will again pose a threat to U.S. financial stability. In particular, additional capital increases the resiliency of institutions, reducing the likelihood of failure and thereby protecting the firm's creditors and counterparties, as well as the U.S. government and taxpayers.[150]

In stunning contrast to the Fed's 2015 analysis, the Proposed Rule's discussion of "benefits" and "costs" fails to mention or consider (i) the tremendous costs of a future systemic financial crisis comparable to the global financial crisis of 2007-09 cited above, or (ii) the enormous benefits that would be derived from maintaining strong leverage capital requirements that would substantially reduce the risks of such a crisis.[151] As explained above, the Proposed Rule's plan to eliminate the method 2 calculation for the G-SIB surcharge would allow U.S. G-

[148] *See supra* notes 20-30, 46, 138 and accompanying text.
[149] *See supra* notes 26, 142-47 and accompanying text.
[150] 2015 G-SIB Surcharge Rule, *supra* note 24, at 49092.
[151] *See supra* note 44 and accompanying text (referring to the devastating costs of the global financial crisis).

SIBs to increase their reliance on volatile, short-term wholesale liabilities, thereby substantially increasing the likelihood that G-SIBs would fail during a market panic similar to the severe market disruptions that occurred between August 2007 and the end of 2008.[152] As also discussed above, the Proposed Rule would enable U.S. G-SIBs to expand greatly their exposures to interest rate risk. Those enlarged exposures would sow the seeds for a systemic crisis whose severity would far exceed the March 2023 regional banking panic when the Fed next deems it necessary to raise interest rates significantly.[153]

In sum, the federal banking agencies have failed to provide the requisite "good reasons" for the Proposed Rule's changes to existing rules for determining G-SIB surcharges under method 2 and for calculating eSLR requirements for U.S. G-SIBs.[154] The Proposed Rule's drastic changes to the G-SIB surcharge and other eSLR requirements would be invalid, if adopted, because the Proposed Rule does not consider and evaluate either (i) the devastating potential costs that would be likely to result from weakening eSLR standards and thereby significantly increasing the risks of a future systemic financial crisis, or (ii) the huge benefits that would be gained by maintaining robust eSLR requirements and thereby substantially reducing the risks of such a crisis. The existence of such costs and benefits "are not in doubt," and the Proposed Rule does not contain any reasoned analysis to support the "reasonableness" of its decision to disregard those costs and benefits.[155]

Moreover, as shown above in Part 1, the Proposed Rule contravenes the Fed's statutory authority because it fails to implement the explicit mandates set forth in Section 165 of the Dodd-Frank Act. Section 165 requires the Fed to implement enhanced leverage capital requirements and other enhanced prudential requirements for large bank holding companies that (A) are designed "to prevent or mitigate risks to the financial stability of the United States" and (B) "increase in stringency" for the largest, most complex, and most interconnected bank holding companies that pose the greatest risks to U.S. financial stability.[156] As demonstrated in Part 1, the Proposed Rule would violate Section 165 by removing the eSLR as an effective and binding component of the enhanced prudential capital standards required by Section 165(b)(1)(A)(i).[157]

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[152] *See supra* notes 21-30 and accompanying text (discussing the highly adverse consequences of eliminating method 2).

[153] *See supra* notes 142-47 and accompanying text.

[154] *Encino Motorcars*, 579 U.S. at 121 (quoting *Fox Television Stations*, 556 U.S. at 515).

[155] *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 51 (1983) ("[G]iven the judgment made in 1977 [by the National Highway Traffic Safety Administration (NHTSA)] that airbags are an effective and cost-beneficial life-saving technology, the mandatory passive-restraint rule [for automobiles] may not be abandoned without any consideration whatsoever of an airbags-only requirement."); *id.* at 52-53 ("[W]e also find that the agency was too quick to dismiss the safety benefits of automatic seatbelts. . . . [S]eatbelts unquestionably would save many thousands of lives and would prevent tens of thousands of crippling injuries. . . . [T]he safety benefits of wearing seatbelts are not in doubt and it is not challenged that were those benefits to accrue, the monetary costs of implementing the standard would be easily justified. . . . [T]here is no direct evidence in support of the agency's finding that detachable automatic belts cannot be predicted to yield a substantial increase in usage."); *id.* at 54-55 ("The agency's conclusion that the incremental costs of the [mandatory passive-restraint] requirements were no longer reasonable was predicated on its prediction that the safety benefits of the regulation might be minimal. . . . When the agency reexamines its findings as to the likely increase in seatbelt usage, it must also reconsider its judgment of the reasonableness of the monetary and other costs associated with the [passive-restraint] Standard.").

[156] 12 U.S.C. § 5365(a)(1)(A) & (B).

[157] *Id.* § 5365(b)(1)(A)(i); *see supra* notes 15, 30-36 and accompanying text; *see also State Farm*, 463 U.S. at 55 (In deciding whether to rescind its mandatory passive-restraint rule for automobiles, "NHTSA should bear in mind that

9. The Proposed Rule Would Create a Sovereign-Bank "Doom Loop," Which Would Link the Survival of U.S. G-SIBs to the Stability of the U.S. Treasury Market and the Credibility of the Federal Reserve System.

Developments since 2007 have confirmed the existence of a "dangerous web of mutual dependence" among the Treasury Department, the Fed, and the large U.S. banks. That mutual dependence has fostered recurring cycles of booms, busts, and bailouts. During the credit boom phase of each cycle, large banks and other creditors made excessive loans to public-sector and private sector borrowers, expecting that the Treasury and the Fed would intervene to contain the adverse effects of serious financial disruptions. When credit busts occurred, as in 2007-09 and 2020, the Treasury and Fed arranged massive bailouts to prevent economic and financial catastrophes, but those bailouts sowed the seeds for the next credit boom, and the infernal cycle began again.[158]

The legacies of the financial crises and enormous bailouts of 2007-09 and 2020-21 have been long-lasting and painful. The federal government's debt burden more than quadrupled between December 2007 and December 2024, rising from $8.9 trillion to $36.2 trillion.[159] During the same period, the federal government's total debt as a percentage of U.S. GDP nearly doubled from 63% to 122%.[160] To finance the rapid growth of the federal government's debts, the amount of outstanding Treasury securities increased more than fivefold between December 2007 and December 2024, expanding from $4.5 trillion to $28.1 trillion.[161]

In addition to the sweeping emergency loan programs established by the Fed in 2008 and 2020, during both crises the Fed adopted a zero-interest-rate policy (ZIRP) to minimize short-term interest rates and established large-scale quantitative easing (QE) programs to suppress longer-term interest rates. Under its QE programs, the Fed bought huge volumes of longer-dated Treasury securities and agency mortgage-backed securities. Purchases by the Fed absorbed more than one-fifth of all new Treasury securities issued between December 2007 and May 2024. During that period, the size of the Fed's balance sheet increased tenfold, from $890 billion to $8.9 trillion, and the Fed made net purchases of over $5 trillion of Treasury securities. The Fed

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Congress intended safety to be the preeminent factor under the Motor Vehicle Safety Act."); *id.* at 48 ("Given the effectiveness ascribed to airbag technology by the agency, the mandate of the Safety Act to achieve traffic safety would suggest that the logical response to the faults of detachable seatbelts would be to require the installation of airbags. At the very least this alternative way of achieving the objectives of the Act should have been addressed and adequate reasons given for its abandonment.").

[158] Wilmarth, "Glass-Steagall," *supra* note 111, at 37; Wilmarth, *Taming the Megabanks*, *supra* note 44, at 4-7, 12-14, 297, 321-27, 354-56 (quote at 325); Arthur E. Wilmarth, Jr., "The Pandemic Crisis Shows that the World Remains Trapped in a 'Global Doom Loop' of Financial Instability, Rising Debt Levels, and Escalating Bailouts," 40 *Banking & Financial Services Policy Report* No. 8, at 1, 1-6, 11-17 (quote at 1) (Aug. 2021) [hereinafter Wilmarth, "Pandemic Crisis"], https://ssrn.com/abstract=3901967.

[159] U.S. Department of the Treasury. Fiscal Service, Federal Debt: Total Public Debt [GFDEBTN], Aug. 22, 2025, retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/GFDEBTN.

[160] U.S. Office of Management and Budget and Federal Reserve Bank of St. Louis, Federal Debt: Total Public Debt as Percent of Gross Domestic Product [GFDEGDQ188S], Aug. 22, 2025, retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/GFDEGDQ188S.

[161] Bd. of Governors of Fed. Res. Sys., Federal Government; Treasury Securities; Liability, Level [FGTSL], Aug. 22, 2025, retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/FGTSL; *see also* Propose Rule, 90 Fed. Reg. at 30794 (analyzing the dramatic increase in outstanding U.S. Treasury securities between 2014 and 2024).

subsequently reduced the size of its balance sheet to $6.7 trillion in June 2025, but that level remained seven times larger than it was at the end of 2007.[162]

The exponential growth rates for the federal government's debts and outstanding Treasury securities have raised major concerns about (i) the federal government's ability to meet its debt service obligations and finance its continuing deficit spending, and (ii) the stability of the Treasury market and the credibility of the U.S. dollar.[163] In March 2025, the Congressional Budget Office warned that a loss of "investors' confidence in the U.S. government's fiscal position" would have very serious consequences for the Treasury market, the U.S. dollar, and the costs of servicing the federal government's debts:

> Such an erosion of confidence would lower the value of Treasury securities and further drive up interest rates on federal debt as investors demanded higher yields to purchase those securities. Concerns about the government's fiscal position could lead to a sudden increase in people's expectations for inflation or a drop in the value of the dollar, either of which would make a fiscal crisis more likely.[164]

Similarly, on March 5, 2025, House Budget Committee Chairman Jodey Arrington (R-TX) stated that, absent a significant reduction in the growth of federal debt, the U.S. could experience a "catastrophic sovereign debt crisis whereby our creditors lose confidence in our ability to service and repay our debt. This distrust will jeopardize the dollar's dominance as the world's reserve currency and result in massive tax hikes and austere spending cuts."[165]

Moody's echoed the foregoing concerns in May 2025, when it became the third and final major U.S. credit-rating agency to remove its "triple-A credit rating" for the U.S. government's debt.[166] Moody's explained its decision to downgrade the federal government's credit rating by

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[162] The amount of Treasury securities held by the Fed increased from $730 billion in December 2007 to $5.8 trillion in May 2024, before declining to $4.2 trillion in June 2025. Bd. of Governors of the Fed. Res. Sys. (US), Assets: Securities Held Outright: U.S. Treasury Securities: All: Wednesday Level [TREAST], Aug. 22, 2025, retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/TREAST. For changes in the size of the Fed's balance sheet, see Bd. of Governors of Fed. Res. Sys. (US), Assets: Total Assets: Total Assets (Less Eliminations from Consolidation): Wednesday Level [WALCL], Aug. 22, 2025, retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/WALCL.

[163] *See, e.g.*, Barry Eichengreen, "The Weekend Essay: Can the dollar remain king of reserve currencies?", *Financial Times* (Mar. 22, 2025), https://www.ft.com/content/8a71dceb-806f-4681-80f9-416aa4c366ca; Niall Ferguson, "Debt Has Always Been the Ruin of Great Powers. Is the U.S. Next?", *Wall Street Journal* (Feb. 21, 2025), https://www.wsj.com/politics/policy/debt-has-always-been-the-ruinof-great-powers-is-the-u-s-next-02f16402. Olivier Fines, "Opinion: The U.S. dollar is still the world's reserve currency – but maybe not for much longer," *MarketWatch* (Mar. 8, 2025), https://www.marketwatch.com/story/the-u-s-dollar-is-still-the-worlds-currency-but-maybe-not-for-much-longer-d3c5774f; Paola Subacchi & Paul van den Noord, "Will the World Keep Buying US Treasuries?", *Project Syndicate* (Mar. 28, 2025), https://www.project-syndicate.org/commentary/implications-of-falling-demand-for-us-treasuries-by-paola-subacchi-and-paul-van-den-noord-2025-03.

[164] Congressional Budget Office, *The Long Term Budget Outlook: 2025 to 2055,* at 10-11, 13 (Mar. 2025), https://www.cbo.gov/system/files/2025-03/61187-Long-Term-Outlook-2025.pdf.

[165] Press Release, "The Consequences of Debt," Statement by House Budget Committee Chairman Jodey Arrington (Mar. 5, 2025), https://budget.house.gov/press-release/the-consequences-of-debt.

[166] Kate Duguid, Peter Wells & George Steer, "Moody's strips US of top-notch triple-A credit rating," *Financial Times* (May 16, 2025), https://www.ft.com/content/e456ea34-c6ad-43fe-abe9-d4ce781c07b4; Matt Wirz & Sam

referring to failures by "[s]uccessive U.S. administrations and Congress . . . to agree on measures to reverse the trend of large annual fiscal deficits and growing [debt service] costs."[167]

The Proposed Rule plainly reflects the foregoing concerns about the stability and credibility of the Treasury market by highlighting the importance of maintaining "[c]onfidence in the efficient functioning of the U.S. Treasury market, including during times of stress."[168] Treasury Secretary Scott Bessent has repeatedly called on federal bank regulators to reduce eSLR requirements – as the Proposed Rule would do – so that the largest U.S. banks can significantly expand their investments in Treasury securities as well as their financing of trading by others in Treasury securities. Secretary Bessent has said that promoting higher levels of intermediation by the largest U.S. banks in Treasury securities is a crucial component of the Trump Administration's plan to reduce yields on longer-term Treasury securities and avoid higher debt service costs for the federal government's debts.[169]

During a radio interview in May 2025, Secretary Bessent stated, "We are pushing to have this [enhanced] supplementary leverage ratio either reduced or removed, and it will allow banks to buy more Treasuries," thereby relieving upward pressures on interest rates for longer-term Treasury securities.[170] During a television interview that same week, Secretary Bessent said that relaxing eSLR requirements could reduce longer-term Treasury yields by "tens of basis points" and create a "new buyer" for Treasury securities among U.S. banks.[171]

Secretary Bessent's statements make clear that the animating purpose of the Proposed Rule is to enable and encourage U.S. G-SIBs to assume a much larger role in the U.S. Treasury market. As indicated above, the Proposed Rule estimates that its elimination of method 2 and its reduction of eSLR requirements would permit U.S. G-SIBs to increase their dollar exposures to U.S. Treasury securities from $1.7 trillion to $4.9 trillion, and to triple their leverage exposures to Treasury securities from 9% to 27%.[172]

That outcome would convert the present unhealthy dependence of U.S. G-SIBs on the Treasury and the Fed into a toxic "doom loop," in which the fate of U.S. G-SIBs would depend on the stability of the U.S. Treasury market and the credibility of the Fed as monetary policy authority and lender of last resort. A sovereign-bank "doom loop" arises when a national government with large outstanding debts and widening budget deficits pressures its banks to buy excessive amounts of domestic sovereign bonds, thereby creating a major threat to the banks'

Goldfarb, "U.S. Loses Last Triple-A Credit Rating," *Wall Street Journal* (May 16, 2025), https://www.wsj.com/economy/central-banking/u-s-loses-last-triple-a-credit-rating-bfcbae5d.

[167] Wirz & Goldfarb, *supra* note 166 (quoting statement by Moody's).

[168] Proposed Rule, 90 Fed. Reg. at 30784.

[169] Jennifer Schonberger, "Why Scott Bessent wants to make it easier for banks to own Treasurys," *Yahoo Finance* (June 1, 2025), https://finance.yahoo.com/news/why-scott-bessent-wants-to-make-it-easier-for-banks-to-own-treasurys-140035986.html; Michael Stratford, "Trump administration prepares to ease big bank rules," *Politico* (May 31, 2025), https://www.politico.com/news/2025/05/31/trump-administration-prepares-to-ease-big-bank-rules-00377347.

[170] Stratford, *supra* note 169 (quoting Secretary Bessent's remarks during a radio interview with Roger Stone).

[171] Eric Hewitt, "It's All About the Bonds" (June 17, 2025) (quoting Secretary Bessent's remarks during an interview on Bloomberg Television's "Wall Street Week" on May 23, 2025), https://www.alpsadvisors.com/resources/two-minute-tuesdays/its-all-about-the-bonds-20250617.

[172] *See supra* note 138 and accompanying text.

solvency if market values of those sovereign bonds decline. If banks subsequently incur crippling losses due to a sharp depreciation in the market values of their sovereign bonds, the banks will need to obtain bailouts from their national government. However, the government will not be able to finance such bailouts without issuing large volumes of additional sovereign bonds, thereby impairing the credibility of all outstanding bonds. In that event, the government and its banks will face unresolvable banking and sovereign debt crises.[173]

The Eurozone only narrowly avoided the catastrophic consequences of such a "doom loop" between 2010 and 2012. During that period, the fiscally constrained national governments of Greece, Ireland, Italy, Portugal, and Spain used "moral suasion" to persuade locally-chartered banks to purchase large amounts of their home country's sovereign bonds.[174] Banks in all five countries faced solvency crises due to losses from both depreciated bonds and defaulted real estate loans, and the governments of those countries did not have the fiscal capacity to bail out their banks. Consequently, all five countries suffered a crippling loss of investor confidence in their domestic sovereign bonds between 2010 and 2012. To prevent defaults on those bonds and a potential breakup of the Eurozone's currency union, (1) the European Union (EU) established a €750 billion rescue plan for its member countries, which included €250 billion of loans from the International Monetary Fund (IMF); (2) the EU and IMF approved rescue programs for the five countries and their banks; (3) Mario Draghi, president of the European Central Bank (ECB), pledged that the ECB would do "whatever it takes to preserve the euro"; (4) the ECB subsequently launched an Outright Monetary Transactions program, which promised to buy unlimited amounts of sovereign bonds from member countries that satisfied specified conditions for fiscal policy reforms; and (5) the five most threatened countries adopted reforms that reduced investor concerns about their fiscal sustainability.[175]

Although the Eurozone avoided a collapse of its currency union in 2012, many of its member countries established aggressive fiscal stimulus programs during the Covid-19 pandemic crisis, generating large budget deficits that significantly increased the heavy debt burdens those countries had accumulated prior to 2020. Analysts have warned that the Eurozone and its banks could soon face another sovereign debt crisis as well as a recurrence of the "doom loop" they confronted in the early 2010s.[176]

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[173] *See, e.g.*, Claudio Borio, Marc Farag and Fabrizio Zampolli, "Tackling the fiscal policy-financial stability nexus" 1-12 (BIS Working Paper No. 1090, April 2023), https://www.bis.org/publ/work1090.pdf; Emmanuel Farhi & Jean Tirole, "Fatal Embrace: Sovereign and Financial Balance Sheets Doom Loops," 85(3) *Review of Financial Studies* 1781 (2018), § 1; Steven Ongena, Alexander Popov & Heeltje Van Horen, "The Invisible Hand of the Government: Moral Suasion during the European Sovereign Debt Crisis," 11(4) *American Economic Journal: Macroeconomics* 346, 375-76 (2019), https://doi.org/10.1257/mac.20160377.

[174] Ongena et al., *supra* note 173, at 346-55, 359-65, 372-76.

[175] Michele Chang & Patrick Leblond, "All in: Market expectations of eurozone integrity in the sovereign debt crisis," 22(3) *Review of International Political Economy*, 626-655 (2015); Filippo Occhino, "The 2012 eurozone crisis and the ECB's OMT program: A debt-overhang banking and sovereign crisis interpretation," 100 *European Economic Review* 337, 337-38, 349-50 (2017); *see also* Christopher Alessi & James McBride, "The Eurozone in Crisis" (Council on Foreign Relations, Feb. 11, 2015), https://www.cfr.org/backgrounder/eurozone-crisis. Adam Tooze, *Crashed: How a Decade of Financial Crises Changed the World* (2018), Chapters 14-18.

[176] Piero Cingari, "Eurozone sovereign debt crisis? ECB warns of fiscal and growth risks" (Nov. 20, 2024), https://www.euronews.com/business/2024/11/20/eurozone-sovereign-debt-crisis-ecb-warns-of-fiscal-and-growth-risks; John H. Cochrane, "Europe's Next Financial Crisis Could Be the Big One" (July 24, 2025), https://www.chicagobooth.edu/review/europes-next-financial-crisis-could-be-big-one;

Based on the experiences and lessons of the Eurozone crisis, financial experts have recommended that the EU and ECB should abandon zero risk weights for sovereign bonds issued by EU member countries and should instead apply risk weights commensurate with the actual risks posed by particular sovereign issuers. Experts have also recommended that the EU and ECB should establish diversification requirements and concentration limits that would prevent individual banks from (i) holding excessive exposures to the sovereign bonds of particular nations or (ii) accumulating excessive aggregate exposures to sovereign bonds of all issuers.[177] The recommended reforms are specifically designed to reduce the risks that another "doom loop" could arise in the Eurozone.[178]

The Proposed Rule does not mention the Eurozone sovereign debt crisis of the early 2010s, and it ignores the lessons of that crisis. Instead of taking steps to reduce the likelihood of a sovereign-bank "doom loop," the Proposed Rule calls for measures that would be virtually certain to create such a "doom loop," which would link the survival of U.S. G-SIBs to the stability of the Treasury market and the credibility of the Fed as monetary authority and lender of last resort. As discussed above, the Proposed Rule would (i) enable U.S. G-SIBs to triple their exposures to the Treasury market, thereby significantly reducing the diversification of their assets and greatly increasing their asset concentration risks; (ii) preserve zero-risk-weight treatment for Treasury securities that are "held to maturity" in the investment accounts of U.S. G-SIBs, and (iii) dramatically reduce eSLR requirements for U.S. G-SIBs, thereby drastically shrinking the equity capital buffers that protect U.S. G-SIBs from losses arising out of their Treasury-related activities.[179]

If the Proposed Rule is adopted and, as expected, U.S. G-SIBs double or triple their exposures to the Treasury market, one can easily foresee the disasters that would happen the next time that yields on Treasury securities rise sharply due to a surge in inflation or a loss of investor confidence in the federal government's fiscal sustainability. Under those circumstances, U.S. G-SIBs would suffer crippling losses from depreciation in their hugely increased Treasury exposures, and many of those financial giants would probably need bailouts to survive. The federal government could not stand by and allow uncontrolled failures of U.S. G-SIBs because (as Lehman's bankruptcy demonstrated) such failures would have devastating spillover effects on U.S. and global banking systems, financial markets, and economies.

But how could the federal government finance bailouts of U.S. G-SIBs? The Treasury Department could not issue additional Treasury securities without making the inflationary surge and/or the loss of investor confidence even worse, producing even higher yields on Treasury securities. Those higher yields would intensify the losses suffered by U.S. G-SIBs' from their Treasury exposures and require even larger bailouts. In addition, higher Treasury yields would

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Olaf Storbeck & Ian Smith, "ECB warns low growth and high debt risk Eurozone crisis." *Financial Times* (Nov. 20, 2024), https://www.ft.com/content/8f2dac5d-b64a-43dc-8f4b-5e76e1a60a43; *see also* Luis Garicano, "The Return of the Doom Loop?", *Silicon Continent* (May 28, 2025), https://www.siliconcontinent.com/p/the-return-of-the-doom-loop.

[177] Borio et al., *supra* note 173, at 11-22; Cochrane, *supra* note 176; Oliver Hülsewig & Armin Steinbach, "Banking Regulation and Sovereign Default Risk: How Regulation Undermines Rules" 3-11, 22-28 (CESifo Working Paper No. 11190, June 25, 2024), https://ssrn.com/abstract=4889238; Ongena et al., *supra* note 173, at 376.

[178] Borio et al., *supra* note 173, at 1-2, 11-22.

[179] *See supra* notes 20-30, 46, 138 and accompanying text.

increase the federal government's debt service costs and make it even more difficult for the federal government to finance the necessary bailouts.

The Fed would be equally trapped. It could not raise interest rates in response to an inflationary surge without making the Treasury market's problems much worse and without deepening the losses incurred by U.S. G-SIBs. The Fed could try to address the problems faced by U.S. G-SIBs by reviving the BTFP and extending emergency loans backed by pledges of depreciated Treasury securities. However, a revived BTFP would not address the solvency problems of U.S. G-SIBs unless the Fed agreed to accept their pledged securities at par value instead of market value, as the Fed did in 2023. Taking that approach would impose massive risks on the Fed.[180] The Fed has already recorded over $230 billion of operating losses (labeled as a "deferred asset") due to its QE legacy portfolio of low-yielding, longer-dated Treasury and government agency securities, and those losses will continue for the foreseeable future.[181] How many more losses could the Fed absorb under a revived BTFP before the Fed exhausted its capacity to act as a credible lender of last resort?

In view of widespread concerns and doubts about the federal government's ability to manage its growing debt burden, the "doom loop" scenario described above would be a logical and highly likely outcome of the Proposed Rule's plan to enable and encourage a vast expansion of U.S. G-SIBs' exposures to the Treasury market. As the regional banking crisis of 2023 and the Eurozone crisis of 2010-12 have made clear, the Proposed Rule's plan would create unacceptable risks of a future catastrophic crisis, which the Treasury Department and the Fed could not contain. It would therefore be the height of folly for the federal banking agencies to adopt the Proposed Rule, and it must be withdrawn.

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Thank you for your consideration of the foregoing comments.[182]

Very truly yours,

[redacted]

Arthur E. Wilmarth, Jr.
Professor Emeritus of Law

[180] *See supra* notes 147-49 and accompanying text (discussing the risks assumed by the Fed under the BTFP).
[181] Paul H. Kupiec & Alex J. Pollock, "Duplicity at the Fed," *Law & Liberty* (July 2, 2025), https://lawliberty.org/duplicity-at-the-fed/; Andrew Levin & Bill Nelson, "The Federal Reserve's Balance Sheet: Costs to Taxpayers of Quantitative Easing," *Mercatus Center Policy Brief* (Jan. 10, 2023), https://www.mercatus.org/research/policy-briefs/federal-reserves-balance-sheet-costs-taxpayers.
[182] As indicated above in note 1, this comment letter is submitted solely in my personal capacity and does not represent the views of The George Washington University, its Law School, or any other person or organization.