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Chief Counsel's Office
Office of the Comptroller of the Currency
Attention: Comment Processing
Docket ID OCC-2023-0016
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Jennifer M. Jones
Deputy Executive Secretary
Attention: Comments—EGRPRA
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve
System
Docket No. OP-1828
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996; Docket ID OCC-2023-0016; Docket No. OP-1828; RIN 3064-ZA39; Document No. 2025-14060; 90 Fed. Reg. 35241 (July 25, 2025)

Dear Ladies and Gentlemen:

Better Markets¹ appreciates the opportunity to comment on the joint notice of regulatory review (“Regulatory Review”) of the Office of the Comptroller of the Currency (“OCC”), the Board of Governors of the Federal Reserve (“Fed”), and the Federal Deposit Insurance Corporation (“FDIC”) (collectively, “the Agencies”).²

The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (“EGRPRA”) requires the Federal Financial Institutions Examination Council (“the Council”), the interagency body responsible for uniform principles, standards, and report forms for bank supervision, and the Agencies to conduct a review of all regulations prescribed by the Council. The Agencies categorize the regulations at least every 10 years, provide public notice, and solicit public comment. The public is asked to identify outdated, unnecessary, or unduly burdensome areas of the regulations.

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

² Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 90 Fed. Reg. 35241 (July 25, 2025), <https://www.federalregister.gov/documents/2025/07/25/2025-14060/regulatory-publication-and-review-under-the-economic-growth-and-regulatory-paperwork-reduction-act>.

Importantly, however, *the pursuit of burden reduction cannot come at the expense of consumer protection or the safety and soundness of banks, their affiliates, or the financial system.*³

In this Regulatory Review, the Agencies seek comment on regulations in three categories:

- Banking Operations,
- Capital, and
- Community Reinvestment Act (“CRA”).⁴

Better Markets offers the following recommendations on these topics:

- First, related to bank capital, especially for the largest banks that benefit from an implicit government guarantee because they are too big to fail, the Agencies need to strengthen capital requirements to accurately reflect banks’ riskiness and the risks that large banks can pose to the economy and the public.⁵ Stronger capital rules and requirements that are appropriately calibrated for all of a bank’s risks will shift the burden and accountability for these risks away from the public and back to the banks and their shareholders.
- Second, related to bank stress testing, the Fed should strengthen the current stress test framework and prioritize the public interest over banks’ private interests.⁶ This is especially vital in an economy that can be shocked by sudden and unpredictable domestic and global events that are strong enough to quickly and dramatically cause significant deterioration in banks’ financial condition.
- Third, related to the CRA, the Agencies should protect Main Street families by holding banks accountable for serving low-income communities that have been illegally denied credit, investment, and banking services for decades. The decision to rescind the 2023 CRA rule was a mistake. The 2023 CRA rule was not perfect and needed improvement, as

³ *Id.* at 35243.

⁴ *Id.* at 35241.

⁵ See, e.g., Better Markets Comment Letter, *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity* (Jan. 16, 2024), <https://bettermarkets.org/wp-content/uploads/2024/01/Better-Markets-Comment-Letter-Regulatory-Capital-Rule-1-16-24.pdf>.

⁶ See, e.g., Better Markets, Comment Letter, *Modifications to the Capital Plan Rule and Stress Capital Buffer Requirement* (June 23, 2025), <https://bettermarkets.org/wp-content/uploads/2025/06/Better-Markets-Comment-Letter-FRS.pdf>; Shayna Olesiuk, *The Fed’s Bank Stress Tests Protect Americans’ Jobs and Homes: They Need to Be Stronger*, BETTER MARKETS (May 29, 2025), <https://bettermarkets.org/wp-content/uploads/2025/05/Fact-Sheet-Stress-Tests-5.28.2025.pdf>.

detailed by Better Markets' comments and analysis,⁷ but it still would have resulted in critical investments in many communities and provided some protection for low- and moderate-income families against discrimination by banks.

In summary, financial regulations are vital to protect Main Street Americans and financial stability. We recognize that banks face a long list of rules with which they must comply, and this can create significant costs to banks.⁸ However, as detailed in this letter, ***rescinding or weakening rules is not the right move to protect consumers or financial stability***. We welcome the opportunity to contribute to the review of these regulations and encourage the Agencies to implement changes to strengthen rules that protect consumers and financial stability as soon as practicable.

BACKGROUND

This EGRPRA review is the fourth in a series of similar reviews conducted by the Agencies; the two prior reviews were completed in 2007 and 2017.⁹ While useful changes were made as a result of those prior reviews, additional opportunities for improvement remain.

Recent decades have been characterized by intense regulatory activity, often following crises that exposed fragilities in the system. This has affected all banks. The rules are intended to protect society and the financial system from harm, so they should be regarded as the cost of doing business in a well-regulated financial system. But they also require time, resources, understanding, and action by banks. This burden often weighs heavily on community banks.¹⁰ Over time, the largest banks have consistently and vigorously lobbied to tip the regulatory framework in their

⁷ See, e.g., Better Markets Comment Letter, *Community Reinvestment Act Regulations* (Aug. 18, 2025), <https://bettermarkets.org/wp-content/uploads/2025/08/Better-Markets-Comment-Letter-CRA.pdf>; Dennis Kelleher & Peter Rappoport, *The Banking Regulators' Proposed Community Reinvestment Act Rule Will Not Work, But Dramatically Improving It Is Not Complicated*, BETTER MARKETS (Sept. 18, 2023), https://bettermarkets.org/wp-content/uploads/2023/09/BetterMarkets_CRA_Rule_Will_Not_Work_09-18-2023.pdf; Better Markets Comment Letter, *Supplement Filing Regarding the Community Reinvestment Act (CRA) Proposed Rule Reviewing Fed Data Demonstrating That the CRA Rule Will Not Work and Redlining Will Continue* (Aug. 7, 2023), https://bettermarkets.org/wp-content/uploads/2023/08/Better_Markets_Supplemental_Comment_Letter_CRA.pdf; Better Markets Comment Letter, *Proposal to amend their regulations implementing the Community Reinvestment Act of 1977 (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated* (Aug. 5, 2022), https://bettermarkets.org/wp-content/uploads/2022/08/Better_Markets_Comment_Letter_Community_Reinvestment_Act.pdf.

⁸ It should be noted that a strong regulatory regime also creates advantages for banks, as those that are viewed as well regulated and supervised can attract customers based on their perceived financial and managerial strength relative to banks subject to a flimsier, less credible regulatory regime.

⁹ See, e.g., ECONOMIC GROWTH AND REGULATORY PAPERWORK REDUCTION ACT, HISTORY, FFIEC, <https://egrpra.ffiec.gov/index.html> (last visited Oct. 10, 2025).

¹⁰ See, e.g., Phillip Basil & Shayna Olesiuk, STRENGTHENING COMMUNITY BANKS CREATES AN ECONOMY THAT WORKS FOR ALL AMERICANS 7-10, BETTER MARKETS (Sept. 24, 2025), https://bettermarkets.org/wp-content/uploads/2025/09/BetterMarkets_Strengthening_Community_Banks_09-24-2025.pdf.

favor, disadvantaging community banks. This has created clear market incentives that result in large banks becoming ever larger and small banks unable to keep up, ultimately stagnating or shrinking.

Throughout the country, community banks are the lifeblood of Main Street, providing essential financial services and support to individuals, businesses, and community organizations. The data show that almost two-thirds—65 percent—of the more than 1,200 rural counties across the country are served by at least one community bank.¹¹ In many counties, these community banks provide the *only bank access* to consumers and small businesses because there are no large bank branches in the area.¹²

While bank regulations are essential to ensure that banks operate safely and fairly, it is also important to make sure that regulations are appropriate to the size and systemic importance of banks. FDIC research notes that between December 2007 and year-end 2019, 157 substantive final rules or federal programs affecting community banks were issued by federal banking regulatory agencies, which equates to an average of 1 new rule or program per 28 days.¹³ The FDIC appropriately states:

So numerous were the new regulations that keeping current with them would have challenged any bank, but *especially a small bank with limited compliance resources*. Some of these regulatory actions created new obligations for banks, but many of them benefited banks. . . . A common feature of these rules, however, is that the affected banks needed to understand them. Putting aside any consideration of the substantive effects of these rule changes, their large number and scope make clear that *merely being knowledgeable about changes in bank regulation can be, by itself, an important and potentially daunting task for any bank*.¹⁴

While Better Markets supports reducing regulatory disadvantages and imbalances that harm community banks and Main Street America,¹⁵ it is also important to *hold the largest and most complex banks accountable for protecting consumers and financial stability*. Large banks' risky activities are often the catalyst for financial instability; community banks are then subsequently hurt by the broader instability and often end up paying the price for banks that fail through necessary replenishment of losses to the FDIC's Deposit Insurance Fund. Main Street Americans and taxpayers also pay the price when taxpayer-funded bailout programs are needed to protect the financial system and economy during crisis periods. In short, while it is true that

¹¹ Michael Hoffman, Camille Keith, Joycelyn Lu, & LaShawn Reed-Butler, *2023 Summary of Deposits Highlights*, 18 FDIC QUARTERLY, at 70 (2024), <https://www.fdic.gov/analysis/quarterly-banking-profile/fdic-quarterly/2024-vol18-1/fdic-v18n1-4q2023.pdf>.

¹² *Id.*

¹³ FEDERAL DEPOSIT INSURANCE CORPORATION, FDIC COMMUNITY BANKING STUDY, at 5-2 (Dec. 2020), <https://www.fdic.gov/resources/community-banking-report/2020/2020-cbi-study-full.pdf>.

¹⁴ *Id.* at 5-1.

¹⁵ *See, e.g.*, Basil & Olesiuk, *supra* note 10, at 15-16.

community banks could benefit from the scaling back or elimination of rules that require time and resources to understand and implement, *community banks unquestionably benefit when regulators establish and maintain strong rules and regulations for large and complex banks. This approach results in a stronger and more stable economy and financial system.*

SUMMARY OF THE REGULATORY REVIEW

Pursuant to EGRPRA, this Regulatory Review assesses three categories of regulations to identify outdated or unnecessary components as well as other necessary changes, including:

- Banking Operations,
- Capital, and
- CRA.¹⁶

The focus of the EGRPRA review process is on smaller banks, specifically, how to reduce the regulatory burden on these institutions.¹⁷ Importantly, this goal must be considered in relation to consumer protection, bank safety and soundness, and stability of the entire financial system.¹⁸

COMMENTS

As stated earlier in this letter, Better Markets welcomes the opportunity to participate in the Regulatory Review by offering several comments on ways in which regulations should be changed to meet the goals of reducing the burden on small banks while protecting bank safety and soundness as well as financial stability.

Our recommendations are as follows:

1. Capital requirements for large banks should be strengthened, not weakened.

We strongly urge the Agencies to remember the hard lessons learned during the 2008 Financial Crisis (“2008 Crash”),¹⁹ as well as those learned more recently during the 2023 banking

¹⁶ Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, *supra* note 2, at 35241.

¹⁷ *Id.* at 35242-43.

¹⁸ *Id.* at 35243.

¹⁹ See, e.g., BETTER MARKETS, COST OF THE CRISIS (July 2015), https://bettermarkets.org/wp-content/uploads/2021/07/Better-Markets-Cost-of-the-Crisis-2_0.pdf; Tyler Atkinson, David Luttrell, & Harvey Rosenblum, *How Bad Was It? The Costs and Consequences of the 2007–09 Financial Crisis*, FEDERAL RESERVE BANK OF DALLAS (July 2013), <https://www.dallasfed.org/pubs/historical/~media/documents/research/staff/staff1301.pdf>.

crisis.²⁰ Those experiences demonstrated without a shadow of a doubt that insufficient capital, especially at large banks, leads to bank failures, bailouts, and catastrophes that leave lasting scars on Main Street, often for generations.

Bank capital is essential because it protects American families, small businesses, the financial system, and the economy from bank failures, losses, and taxpayer bailouts. Well-capitalized banks are those that are strong enough to continue providing credit through the economic cycle, in good times and bad, which keeps the economy growing, creates jobs, and reduces the depth, length, and cost of recessions.²¹ The 2008 Crash is estimated to have cost the American people more than \$20 trillion in lost productivity and other costly and adverse consequences, such as unemployment, lost savings, homelessness, and foreclosures.²² Capital levels at the large Wall Street banks proved to be grossly insufficient to absorb losses when banks' loans and other investments decreased in value in 2008, and the result was bank failures and costly bailouts, and the worst global financial and economic crisis since the Great Depression.²³

The experience of the 2008 Crash led to the development of the current regulatory capital framework, made up of both *risk-based capital requirements*—which depend on estimates of relative risk levels for each type of asset—and *leverage capital requirements*—which, by design, are not adjusted for relative asset risk, but rather measure overall debt to equity relationships. These two types of capital requirements serve different but *complementary* functions:

Within the regulatory capital framework, *leverage and risk-based capital requirements play complementary roles, with each addressing potential risks not addressed by the other.* Risk-based capital requirements that are commensurate with the risk profile of a banking organization's exposures help to encourage prudent behavior by requiring a banking organization to maintain higher levels of capital for activities and exposures that present greater risk. Historical experience, however, has demonstrated that risk-based measures alone may be insufficient to support loss-absorbing capacity at banking organizations through economic cycles. For example, 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 specific risks of a banking organization's*

²⁰ See, e.g., Shayna Olesiuk, TWO YEARS AFTER THE 2023 BANKING CRISIS, MAIN STREET IS STILL IN DANGER, BETTER MARKETS (Mar. 4, 2025), https://bettermarkets.org/wp-content/uploads/2025/03/BetterMarkets_Two_Years_After_2023_Banking_Crisis_Report_03-04-2025.pdf.

²¹ See, e.g., Dennis Kelleher, Tim P. Clark, & Phillip Basil, *Protecting Our Economy by Strengthening the U.S. Banking System Through Higher Capital Requirements*, BETTER MARKETS (Dec. 22, 2022), https://bettermarkets.org/wp-content/uploads/2022/12/BetterMarkets_Strengthening_US_Banking_System_12-22-2022.pdf.

²² See, e.g., BETTER MARKETS, *supra* note 19; Atkinson, *et. al.*, *supra* note 19.

²³ See BETTER MARKETS, *supra* note 19, at 74.

*exposures, can help to mitigate underestimations of risk both by banking organizations and risk-based capital requirements.*²⁴

Contrary to the industry's claims, higher capital levels are good for the economy, the banking system, and the American people. Senior officials at the Agencies have long emphasized the direct relationship between strong capital levels and a strong, resilient economy. For example, Fed Governor Michael Barr stated:

Everyone in America depends on a safe and stable financial system. By strengthening capital standards, we are ensuring that businesses have credit to grow and hire workers, and deal with the ups and downs in the economy. Stronger capital standards mean workers can depend on getting their paychecks and families can save and borrow to plan for the future. ***Our goal is a financial system that works for everyone, and having strong capital rules is essential for that.***²⁵

Former FDIC Chairman Martin Gruenberg also emphasized several benefits of higher capital:

[S]tronger capital improves the resilience of our largest banks and enhances their ability to lend through the economic cycle. History has proven that insufficient capital can lead to harmful economic results when banks are unable to provide financial services to households and businesses, as occurred during the 2008 financial crisis. Ensuring adequate amounts of bank capital provides a long-term benefit to the economy by enabling banks to play a counter-cyclical role during an economic downturn rather than a pro-cyclical one.²⁶

Former FDIC Chairman Sheila Bair also recognized the dangers of reducing capital:

Ironically, big bank lobbyists are . . . cynically claiming deregulation will help banks support the real economy. Their primary target ***is the leverage ratio, a key measure of financial stability*** which big banks have long despised because it places hard and fast constraints on their ability to use unstable leverage to generate high

²⁴ 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, 90 Fed. Reg. 30780, 30783 (July 10, 2025); <https://www.federalregister.gov/documents/2025/07/10/2025-12787/regulatory-capital-rule-modifications-to-the-enhanced-supplementary-leverage-ratio-standards-for-us> (emphasis added).

²⁵ Board of Governors of the Federal Reserve System, *Holistic Capital Review* (July 10, 2023), <https://www.federalreserve.gov/newsevents/speech/barr20230710a.htm> (emphasis added).

²⁶ Federal Deposit Insurance Corporation, *Remarks by Chairman Martin J. Gruenberg on the Basel III Endgame at the Peterson Institute for International Economics* (June 22, 2023), <https://www.fdic.gov/news/speeches/2023/spjun2223.html> (emphasis added).

returns. *Weakening the leverage ratio will reduce the capital resiliency of the banking system . . .*²⁷

Finally, Former Federal Reserve Bank President, Federal Open Market Committee member, and FDIC Vice Chairman Tom Hoenig advocates for simple and strong leverage ratios to support financial stability:

In 2008 . . . Lehman Brothers . . . operated with an unweighted, extreme leverage ratio exceeding 30:1, almost guaranteeing failure under stress. *Post-crisis reforms led to more rules and complexity without addressing the core issue: Banks still manipulate the rules to increase leverage and maximize returns, not resilience.*

The lesson is clear: *Unnecessary complexity breeds fragility.* A straightforward leverage ratio—equity against total assets—would offer a more reliable gauge of health than risk-weighted calculus.²⁸

In summary, the Agencies should not weaken our financial system and increase the risk and severity of another financial crisis—without conferring meaningful benefits on the public, the financial markets, or the economy at large—by failing to strengthen capital requirements, particularly for the largest banks.

2. The Fed should strengthen the bank stress test framework.

The only thing standing between a failing bank, a financial crisis, a taxpayer bailout, and economic and human catastrophe is bank capital. If a bank has enough capital to absorb its own losses, then it won't fail, serve as the proximate cause of a crisis, or require a bailout, which is nothing more than taxpayers providing the necessary capital after a crash when a bank should have had enough capital to prevent the crash in the first place.

The banking industry and the Fed claim that they want to reduce volatility, increase transparency, and increase the predictability of banks' stress capital buffers.²⁹ They also say that they want to decrease the regulatory reporting burden for banks and enable more lending by banks by avoiding huge and painful swings in capital requirements.³⁰ However, these claims are

²⁷ Sheila Bair, *Sheila Bair: The Danger of Allowing Banks to Artificially Boost Capital Ratios*, YAHOO FINANCE (Aug. 7, 2020), <https://finance.yahoo.com/news/bair-the-danger-of-allowing-banks-to-artificially-boost-capital-ratios-160415696.html> (emphasis added).

²⁸ Thomas Hoenig, *Five Decades of Banking Crises: What Have We Learned?*, FINREGRAG (May 28, 2025), <https://substack.com/home/post/p-164593333> (emphasis added).

²⁹ Modifications to the Capital Plan Rule and Stress Capital Buffer Requirement, 90 Fed. Reg. 16843, 16847 (Apr. 22, 2025), <https://www.federalregister.gov/documents/2025/04/22/2025-06863/modifications-to-the-capital-plan-rule-and-stress-capital-buffer-requirement>.

³⁰ *Id.* at 16843.

unpersuasive. Recently proposed changes³¹ would actually ***weaken the stress testing framework, decrease transparency, and generate less precise, less meaningful, and much less useful measures of capital needs.*** Moreover, as to predictability, banks already can and should be evaluating and maintaining prudent capital levels that minimize volatility and maximize resilience under a wide range of possible stressful events. The financial system is defined by unpredictability. This should not and cannot be assumed away simply to help minimize the amount of capital a systemically important bank is required to have to keep the banking system and taxpayers relatively safe. The regulatory burden under the current regime is comparatively modest for large banks and, in any event, vastly outweighed by the benefits of having an effective stress testing framework and consequently a more resilient financial system.

Meanwhile, a critically important issue that the Fed does not address is that banks should not be solely relying on the regulatory stress tests and the stress capital buffer as the determinant and primary driver of their capital levels. The Fed's stress tests determine regulatory ***minimum*** capital levels, but banks have come to regard them as maximums instead of minimums. Banks should be running their own stress tests to evaluate their capital needs and levels on an ongoing basis. ***If banks seek more predictable or less volatile capital levels, achieving those is completely within their control and does not require any rule changes.*** The bottom line is that banks should not be relying on the results of the Fed's stress tests as the key determinant of their capital levels. Therefore, it is disingenuous and misleading to justify weakening the stress testing framework by saying that it will confer benefits that the banks already have at their disposal and under their control.

Furthermore, the Fed has been clear on the fact that ***reducing the volatility of results is not and should not be the goal of stress testing.*** The Fed is not and should not be helping with a capital plan that is the responsibility of each of the banks to create for themselves; instead, the Fed should work to identify risks and the minimum capital to protect against those risks. Moreover, ***volatility is expected and occurs all the time. Making banks more resilient in a volatile and uncertain world is a critical goal and component of the stress tests:***

Some degree of volatility is inherent to risk-based capital requirements, including those determined by stress testing, as such requirements are sensitive to changes in a firm's activities, exposures and changes to macroeconomic conditions. In addition, some volatility in stress test results is to be expected because the stress

³¹ *Id.*

test is designed to capture a firm's vulnerability to plausible and salient risks to the U.S. financial system, which can change and increase unexpectedly.³²

These observations are especially relevant to a banking and financial system that can be rocked by sudden and unpredictable domestic and worldwide events that quickly and dramatically cause a deterioration in banks' financial condition.

As Better Markets detailed in a recent comment letter, the stress test results *should not* be averaged for the current and prior years. This practice would only serve to dilute the value of the entire stress testing process and severely reduce the usefulness of the results. It also simply makes no logical sense. Why should capital needs be measured by stale out-of-date stress test results from the prior year when current results are available? The Fed should maintain its current practice of reporting and applying stress test results for each year for several reasons:

- Statistical problems: Simply put, when numbers of any kind are averaged, tail risks are hidden and overlooked. This is a serious problem for stress tests because tail risks are often the triggers that lead to bank failures, so masking these indicators directly robs the Fed and the public of vital information.
- Unclear and misleading results: Bank conditions and economic conditions are constantly changing. In some cases, these conditions improve from year to year, and in other cases, these conditions deteriorate from year to year. If stress test results are averaged for multiple years, the information that these trends provide is, by definition, muddled and obscured. Moreover, if a firm's condition improves between the first year and the second year, its capital buffer would be unnecessarily high. If, on the other hand, a firm's condition deteriorates between the first year and the second year, its capital buffer would be too low. This is, of course, the more dangerous result because it means that the public disproportionately shoulders the risk of that firm's failure until the statistical calculations are no longer diluted by the prior—and now irrelevant—stronger year. The bottom line is that averaging results ensures that the results are not reflective of current bank activities or macroeconomic conditions.
- Added complexity: While calculating an average may seem simple at first, this change would actually add complexity, not reduce it. Systems at both the Fed and the banks would need to change to accommodate new calculations. At the same time, understanding the meaning of the new, average result would become more challenging and complicated. It would likely require dissecting the average into its parts—the results of each year's stress test—which again illustrates and proves why it is not wise or helpful to implement such a

³² Regulations Q, Y, and YY: Regulatory Capital, Capital Plan, and Stress Test Rules at 15580-81; RIN: 7100-AF02; Docket Number R-1603; Document Number 2020-04838; 85 Fed. Reg. 15576 (Mar. 18, 2020), <https://www.federalregister.gov/documents/2020/03/18/2020-04838/regulations-q-y-and-yy-regulatory-capital-capital-plan-and-stress-test-rules>; see also Memorandum of Law in Support of Defendant's Cross-Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment at 46–47, *Bank Policy Institute v. Board of Governors of the Federal Reserve System*, No. 2:24-cv-04300 (S.D. Oh. Apr. 29, 2025).

change.

- Uneven application: Requiring firms in Categories I-III—the largest and most complex banking organizations that participate in the supervisory stress test each year³³—to average their stress test results from the current year and the prior year, while having firms in Category IV—which are not as large and typically not as complex, and only participate in the supervisory stress test every other year³⁴—to not average their stress test results would yield confusing, uneven and incomparable results. Such a change would further erode the value of the stress test results because the largest systemically important banks would report a diluted average while the smaller and less complex Category IV banks would continue to report single-year results that are not averaged. Moreover, Category IV firms could opt in and participate in the stress test each year, and therefore average stress test results, but a firm would only have an incentive to do this if its capital requirement would be reduced by the choice, which does not enhance the value of the stress test or benefit the public interest.
- Increased cost: Such changes, if implemented, will require public resources at the Fed and other regulators for staff and technical systems. At a time when the Fed and regulatory agencies are facing severe staffing cuts,³⁵ staff should be deployed to more important functions, not distracted by changes like these that only benefit a small number of large banks while increasing risks to the financial system and the public interest.
- Loss of public confidence: The initial success of the stress test came from the fact that it provided a credibly severe test and showed that the largest banks could withstand a severely negative event or economic downturn.³⁶ By watering down the results with a multi-year average, the Fed would undermine its own success with the stress testing framework, reducing transparency, and eroding the credibility of the informational value of the test results. Such a change would, in effect, reintroduce a measure of uncertainty and reduced confidence that largely defeats the purpose of stress tests.
- Increased chance of bank failures and financial crisis: As detailed earlier, the only thing

³³ See, e.g., *Requirements for Domestic and Foreign Banking Organizations*, Board of Governors of the Federal Reserve System (Oct. 10, 2019), <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/tailoring-rule-visual-20191010.pdf>.

³⁴ *Id.*

³⁵ See, e.g., Jesse Pound, *Federal Reserve Will Reduce Staff By 10% in Coming Years, Powell Memo Says*, CNBC (May 16, 2025), <https://www.cnbc.com/2025/05/16/federal-reserve-will-reduce-staff-by-10percent-in-coming-years-powell-memo-says.html>; Katanga Johnson & Weihua Li, *Trump Cuts Thousands of Wall Street Cops While Markets Swing*, BLOOMBERG (May 7, 2025), <https://www.bloomberg.com/news/articles/2025-05-07/trump-s-layoffs-cut-more-than-2-300-from-us-bank-and-markets-regulators>; Pete Schroeder, *US Bank Regulator Lays Out Plans for 20% Staff Reduction, Emails Says*, REUTERS (Apr. 21, 2025), <https://www.reuters.com/business/world-at-work/us-bank-regulator-lays-out-plans-20-staff-reduction-emails-says-2025-04-21/>.

³⁶ See, e.g., Olesiuk, *supra* note 6.

standing between a failing bank, a financial crisis, a taxpayer bailout, and economic and human catastrophe is bank capital. Moreover, it is an indisputable fact that the economy and financial markets are moving faster, not slower. The 2023 banking crisis proved the speed at which a bank's condition can deteriorate and precipitate failure and the need for government bailouts. Such triggering events can occur within days, weeks, or months, not just years. If the Fed chooses to average results, it will block or at least impede its ability to see a firm's rapidly deteriorating conditions that require larger capital buffers. This is a clear and easily avoidable mistake.

If the Fed decides to go against this advice and proceeds with averaging the stress test results, *the current year's result should be weighed much more heavily than the prior year's result in the calculation of the two-year average, and both results should be reported in detail so the public can see the impact of the averaging and the drivers of the most current results.*

Moreover, all these problems should be considered alongside the status quo of calculating stress test results on an annual basis, which works well. Making changes only adds cost and complication while providing *no benefit to the public interest.*

3. Maintain, rather than rescind, the 2023 CRA rule.

There is no legitimate basis to discard the 2023 CRA rule and revert to the 1995 CRA rule. To do so is a grievous mistake that will inflict terrible financial damage on communities across the country. This action will harm millions of American families and small businesses while reducing or eliminating the obligation of banks to invest in their communities. It is also wrong because the Agencies' decision to rescind the 2023 CRA final rule is based on the uncertainty that the banking industry's litigation has caused, as well as a "change in agency priorities" that is focused on benefitting banks rather than benefitting American families who depend on the CRA to make sure that banks are lending fairly and serving local communities.³⁷

Moreover, the Agencies' work to rescind the 2023 CRA rule is arbitrary and capricious. The Agencies are sweeping aside, without adequate justification, an extensive body of research, data, analysis, and public input that resulted in a strong, affirmative, interagency statement that the 2023 rule would achieve the Agencies' objectives related to the CRA. In advance of the 2022 proposal and for more than a year between the 2022 proposal and the 2023 final rule, all three Agencies engaged in a thoughtful and thorough review of data, research, and public comments. Based on this data and analysis, they concluded that the 2023 rule rightly encourages "banks to expand access to credit, investment, and banking services in low- and moderate-income communities;" "adapts to changes in the banking industry, including internet and mobile banking;"

³⁷ Community Reinvestment Act Regulations, 90 Fed. Reg. 34086, 34089 (July 18, 2025); <https://www.federalregister.gov/documents/2025/07/18/2025-13559/community-reinvestment-act-regulations>.

and tailors “CRA evaluations and data collection to bank size and type.”³⁸ However, now the Agencies suddenly declare that rescission of the entire 2023 rule is the best course of action, citing merely litigation and regulatory uncertainty facing the banks. Moreover, the Agencies offer no new data or evidence to rebut their prior empirical analysis or to justify their sharp retreat from their 2023 improvements to the old rule.

This change in position without a credible basis violates at least two core principles of rulemaking that apply whenever an agency seeks to deviate from a prior policy position.

- First, the Supreme Court has made clear that when an agency changes its position, it must at least “show that there are good reasons for the new policy.”³⁹ The Agencies have violated this most fundamental regulatory obligation, since the reasons offered for the rescission—litigation and uncertainty—cannot be regarded as “good” by any measure, let alone when compared to the many benefits of the 2023 proposal, as Better Markets has detailed in its advocacy on this topic.⁴⁰
- Second, the Supreme Court has made clear that an agency altering course must “provide a more detailed justification than would suffice for a new policy created on a blank slate” whenever the “new policy rests upon factual findings that contradict those which underlay its prior policy.”⁴¹ In other words, any new data must be reconciled with prior data. The Agencies have violated this rule in the extreme: they have offered no relevant factual findings to support changes and have therefore made no effort whatsoever to explain how or why the exhaustive findings underpinning the 2023 rule should now be discounted or ignored. In short, they have failed to reconcile the extensive findings for the 2023 rule with the null set of findings that support additional changes, in essence creating a per se violation of the Supreme Court’s requirements. For these reasons, as well as others discussed herein, additional changes are arbitrary and capricious.

Moreover, the Agencies’ action rescinding the 2023 rule actually makes the regulatory uncertainty—that it claims to be remedying—worse, not better, by bending to the administration’s political agenda. The Agencies state that the 2023 rule is no longer consistent with current priorities.⁴² This is a confusing statement because the Agencies have recently said that they are focused on fair access to the banking system for all Americans and also that they are embracing

³⁸ See, e.g., Press Release, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, & Office of the Comptroller of the Currency, *Agencies issue final rule to strengthen and modernize Community Reinvestment Act regulations* (Oct. 24, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20231024a.htm>.

³⁹ *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

⁴⁰ See, e.g., Better Markets Comment Letter, *Community Reinvestment Act Regulations* (Aug. 18, 2025), *supra* note 7.

⁴¹ *F.C.C. v. Fox Television Stations, Inc.*, *supra* note 39, at 515.

⁴² Community Reinvestment Act Regulations, *supra* note 37, at 34089.

innovation.⁴³ Unfortunately, the Agencies' "current priorities" have been focused on finding ways to help cryptocurrency and fintech firms gain access to the banking system, not on helping underserved families find fair and equitable treatment by banks to build wealth and homeownership. Not only does this focus conspicuously exclude low-income families and communities of color, but the willingness of the Agencies to engage in such drastic swings in policy objectives is only making the problem of uncertainty worse.

Finally, ignoring the drastic shift in technology and its impact on how banks deliver services to customers by reverting to the 1995 CRA rule is a mistake that will disadvantage families in every community across the country. Bank regulatory agencies, researchers, and every person living in America recognize the degree to which technology has changed the banking industry during the last two decades. For example, with the growth in online and mobile banking, the way in which consumers and businesses interact with banks and access money looks nothing like it did in 1995. In fact, some customers interact with banks, such as Ally, exclusively online. The 2023 rule recognized these changes and made corresponding changes to the way in which CRA requirements were measured and implemented. The Agencies' decision to revert to the 1995 CRA rule now ignores these realities, does not comply with the letter or spirit of the law, and robs local communities of the financial benefits they deserve.

CONCLUSION

We hope these comments are helpful for this Regulatory Review.

Sincerely,



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⁴³ See, e.g., Michelle W. Bowman, *Embracing Innovation*, Board of Governors of the Federal Reserve System (Aug. 19, 2025), <https://www.federalreserve.gov/newsevents/speech/bowman20250819a.htm>.

