January 20, 2023

Via Electronic Mail

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

James P. Sheesley, Assistant Executive Secretary
Attention: Comments RIN 3064-AF86
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Advance Notice of Proposed Rulemaking: Resolution-Related Resource Requirements for Large Banking Organizations (Docket No. R-1786, RIN 7100-AG44 and RIN 3064-AF86)

Ladies and Gentlemen:

U.S. Bancorp appreciates the opportunity to comment on the Federal Reserve Board's ("Board") and the Federal Deposit Insurance Corporation's ("FDIC") joint advance notice of proposed rulemaking (the "ANPR") on resolution-related resource requirements for large banking organizations.[1] U.S. Bancorp fully supports the longstanding goals of ensuring the orderly resolution of regional banking organizations,[2] including the tiering of applicable rules based on the complexity and risks of different banking organizations. We disagree, however, with the premise that, with respect to banking organizations that are not global systemically important banks ("GSIBs"), size alone — where level of complexity and proportion of total banking sector assets both remain constant — "heightens the potential impact of a possible costly resolution," and that "size alone can limit options and increase the potential negative impacts in the resolution of an IDI."

We therefore believe that a substantial increase in total capital requirements, to address an unevidenced need for additional resolution resources, is unnecessary for large regional banks that are not complex and do not have significant nonbank assets. The actual costs of imposing long-term debt or other resolvability requirements on regional banking organizations would exceed any reasonably expected benefits those requirements might provide, which are highly theoretical in the case of regional banks, and could negatively affect the provision of credit to consumers, small businesses, and the broader economy more generally. With respect to these and other issues discussed in the ANPR, we agree with the

[1] Federal Reserve Board, Federal Deposit Insurance Corporation, Resolution-Related Resource Requirements for Large Banking Organizations, 87 Fed. Reg. 64170 (October 24, 2022).

[2] As used in this letter, the term "regional banking organization" refers to domestic large banking organizations in Categories II and III, consistent with the focus of the ANPR.

arguments put forth in the comment letter submitted by the Bank Policy Institute and the joint comment letter submitted by the group of five non-GSIB banks[3] (together, the "other LBO comment letters").

Additional Resolution Resources are Not Necessary to Support Large Banking Organizations' Resolution Strategies

As explained in detail in the other LBO comment letters, long-term debt is needed to support the feasibility of the single-point-of-entry ("SPOE") resolution strategy, which was designed for U.S. and non-U.S. GSIBs to keep the market-critical operations and cross-border operating subsidiaries of those organizations out of bankruptcy or other resolution proceedings in the U.S. and in foreign jurisdictions. Regional banking organizations, by contrast, are far simpler with more domestically focused assets and operations than the U.S. GSIBs. Consequently, they do not need to develop an SPOE strategy to be resolved without a material adverse effect on U.S. financial stability, and therefore appropriately use resolution strategies that focus on FDIC receivership of the bank subsidiary. Unlike the U.S. GSIBs, the failure of a non-GSIB regional banking organization would have a very limited effect on U.S. financial stability, as measured by their Method 1 GSIB scores (i.e., the measure used by the Federal Reserve to determine a banking organization's systemic importance).

We also agree with the other LBO comment letters that the agencies should not propose any rule-based requirements until they have finalized the forthcoming resolution planning guidance for Category II and III firms. The content of such guidance will necessarily affect the appropriate design of any new rule-based requirements. Accordingly, regional banking organizations will be unable to provide informed comment on a proposed rule until the guidance is finalized.

Although we firmly believe that the adoption of any new resolution-related requirements for regional banking organizations is not necessary or appropriate, if the agencies nevertheless proceed to consider new requirements, we provide the following recommendations on how to appropriately design and tailor any new long-term debt requirements that would apply to regional banking organizations:

- First, any proposed rule should provide for flexibility as to the issuer of long-term debt, whether debt is issued internally (i.e., by an insured depository institution ("IDI") to its parent holding company) or externally to the market, and as to the subordination of IDI debt.
- Any long-term debt requirement that would apply to regional banking organizations without significant assets outside the bank chain should be calibrated at a significantly lower level than the requirements currently in place for U.S. GSIBs and U.S. intermediate holding companies of foreign GSIBs.
  - As explained in detail below, for regional banking organizations without significant nonbank assets, the calibration should be no more than 2.5 percent of risk-weighted assets.
- No rule-based governance requirements are needed to ensure that a regional banking organization without significant nonbank assets enters resolution at a time when adequate long-term debt will be available to absorb losses.

[3] The non-GSIB Banks are Capital One Financial Corporation, The Charles Schwab Corporation, The PNC Financial Services Group, Inc., Truist Financial Corporation, and U.S. Bancorp.

- Legacy debt instruments should be permanently grandfathered, and an appropriate transition period should be provided following finalization of any rule.

I. Any new requirements should allow for flexibility in their application to a particular institution based on its structure, operations, and resolution strategy.

a. Any new requirement should provide for flexibility as to the issuer of long-term debt.

Any proposed rule should provide for flexibility as to the issuer of long-term debt that is intended to provide additional resources to support resolution and should not de facto prescribe any particular resolution strategy for regional banking organizations. Regional banking organizations are structured differently from GSIBs and accordingly have different resolution strategies. Unlike U.S. GSIBs, which follow an SPOE resolution strategy, regional banking organizations generally follow resolution strategies centered on resolution of their IDIs under the Federal Deposit Insurance Act, because the vast majority of their assets and activities are concentrated in their IDIs and their organizations do not include features like major cross-jurisdictional exposures or nonbank assets (such as trading and derivatives exposures) that are known to complicate resolution.[4] Also unlike GSIBs, the failure of such a regional banking organization poses relatively little systemic risk as measured by, for example, their GSIB scores.

Given these differences in risk profiles and resolution strategies of the regional banking organizations—none of whose resolution plans have been found by the agencies to be "not credible"—any requirement that debt be issued either solely at the parent holding company or IDI level would limit the resolution strategies that regional banking organizations can pursue, adding unwarranted complexity and rigidity to an organization's resolution planning. Consequently, any new rule should allow regional banking organizations the flexibility to issue long-term debt at the level of the parent holding company, the IDI, or a combination of the two, so long as the regional banking organization's approach is consistent with its resolution strategy.

b. Any new requirement should provide for flexibility as to whether debt is issued internally (i.e., by an IDI to its parent holding company) or externally to the market.

Given that many regional banking organizations have substantially all of their assets located in their IDI subsidiaries, the IDI is the only entity that these regional banking organizations could potentially need to recapitalize in resolution. As a result, these regional banking organizations should be permitted—but not required (as discussed above)—to meet any new long-term debt requirement through existing debt, intercompany deposit liabilities, or new issuances of debt at the IDI level.[5]

Moreover, for any regional banking organization that adopts this approach, IDI-issued debt should be eligible under the rule whether it is issued internally to the IDI's parent holding company, including deposit liabilities to the parent, or externally to the market. As evidenced by the FRB's current long-term debt requirements, internally issued long-term debt would have the same ability to absorb

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[4] For example, under U.S. Bancorp's resolution strategy, its IDI subsidiary would enter FDIC receivership and certain of its assets and liabilities would be transferred to a newly created bridge bank. Following a series of portfolio and business sales, which would reduce the size of the bridge bank, the bridge bank would be sold in an initial public offering.

[5] The decision to meet long-term debt requirements through IDI or holding company issuance would depend, among other things, on the large banking organization's resolution strategy and relative funding costs. See supra section I.a.

losses, through the write-down of the parent's claims on the IDI, as externally issued debt.[6] Therefore, positioning internally issued long-term debt or other non-runnable internal liabilities at the IDI level would support the ANPR's objective of providing the FDIC, as receiver, additional resolution-related resources to absorb losses and meet recapitalization needs at the IDI level. Internally issued debt, as compared to externally issued debt, also may simplify the FDIC's claims process and therefore minimize administrative burden. In addition, restricting any long-term debt requirement to external issuances would unnecessarily constrain an organization's optimization of available funding sources to support its resolution strategy.

c. Any new requirement should provide for flexibility with respect to the effective subordination of long-term debt.

The subordination requirements for any new long-term debt requirement should reflect the depositor preference provisions of the Federal Deposit Insurance Act. In particular, the Federal Deposit Insurance Act generally prioritizes the claims of depositors (whether insured or uninsured) over the claims of non-deposit creditors.[7] As a result, any IDI-issued debt, including debt that is not subordinate to non-deposit creditors, would be legally subordinate to depositor claims, even if the debt does not include a contractual subordination provision. In addition, notes issued by IDI subsidiaries generally include appropriate language describing their subordination to deposit liabilities. Depositors (and, by extension, the deposit insurance fund ("DIF")) would benefit from this subordination in the event the IDI enters receivership. Internal deposits could also include provisions subordinating them to third party deposits or an affiliate's claims on internal deposits could be pledged to collateralize an obligation by the parent to convert its claim against the IDI to equity if the IDI is put into an FDIC receivership. Accordingly, any proposed rule should include an option but not requirements to contractually subordinate IDI-issued debt to domestic deposit liabilities, because such requirements are unnecessary.[8] This approach would help to reduce cost by allowing regional banking organizations the flexibility to satisfy any new long-term debt requirement with internal or external senior or subordinated debt, including internal deposit liabilities.

II. Any long-term debt requirement for regional banking organizations that do not have significant nonbank assets should be calibrated at a materially lower level than the requirements currently in place for U.S. GSIBs and intermediate holding companies of foreign GSIBs.

In calibrating any long-term debt requirement for regional banking organizations, the agencies will need to consider (a) the amount of going concern capital that a regional banking organization is likely to have at the time of conversion of its long-term debt to equity and (b) the amount of capital that a regional banking organization would need to execute its resolution strategy. As explained below and shown in the visual included in the Appendix, even based on conservative assumptions, these factors should lead to a calibration at a materially lower level than the requirements currently in place under the Board's 2017 TLAC rule. <u>In particular, the below considerations should lead to a calibration for regional banking organizations without significant nonbank assets that is, at most, equal to 2.5 percent of risk-weighted assets.</u>

[6] 12 CFR part 252 subpart P (permitting internally and externally issued debt to meet long-term debt requirements depending on the resolution strategy of the banking organization).

[7] 12 U.S.C. § 1821(d)(11).

[8] Of course, debt issued by a holding company also should not require contractual subordination because it is structurally subordinate to the IDI's creditors.

a. The agencies can look to the definition of critically undercapitalized under the existing prompt corrective action framework as a simple, conservative estimate of the minimum amount of capital that a regional banking organization without significant nonbank assets would have when its long-term debt is converted to equity.

To determine the amount of capital that a regional banking organization is likely to have at the time of conversion of its long-term debt into equity, there is a longstanding statutory framework available to provide a simple basis for a conservative estimate. In 1991, Congress passed the Federal Deposit Insurance Corporation Improvement Act ("FDICIA"),[9] creating the prompt corrective action ("PCA") framework under section 38 of the Federal Deposit Insurance Act ("FDIA").[10] Like the ANPR, a primary objective of FDICIA and the PCA framework was to minimize losses to the DIF that occur in connection with the resolution of IDIs. The PCA framework requires regulators to classify banks into one of five capital categories and take increasingly severe actions as a bank's capital levels deteriorate. Notably, the PCA framework generally requires the primary federal regulator of a critically undercapitalized IDI to promptly close the IDI and appoint a receiver or conservator.[11] Under the PCA framework and related agency rules, an IDI is considered critically undercapitalized if it has a ratio of tangible equity to total assets that is equal to or less than 2.0 percent.[12]

For many regional banking organizations, the vast majority of their assets are traditional banking assets located in their IDIs and subsidiaries thereof.[13] Based on the PCA framework's requirement that agencies must close critically undercapitalized IDIs, the agencies should assume that a regional banking organization without significant nonbank assets would have a tangible equity ratio of at least 2.0 percent when its long-term debt is converted to equity, because regulators would be required to close its IDI and thereby begin its resolution no later than that time. Regulators could close—and historically often have closed—an IDI earlier, when its capital levels are higher. For example, it has generally been insufficient liquidity, rather than capital, that has caused regulators to close a bank. However, under the PCA framework resolution generally must begin no later than when the IDI has a tangible equity ratio of 2.0 percent. Accordingly, this threshold is a conservative estimate of the amount of capital that a failing regional banking organization without significant nonbank assets would have when its long-term debt is converted to equity.

In addition to the requirement that regulators close a critically undercapitalized IDI, the PCA framework also prohibits banks from continuing to make any principal or interest payments on their

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[9] Pub. L. No. 102-242, 105 Stat. 2236 (1991).

[10] 12 U.S.C. § 1831o.

[11] 12 U.S.C. § 1831o(h). The PCA framework includes an exception to the requirement that agencies close critically undercapitalized IDIs. However, the exception is narrow, requiring the approval of an IDI's primary federal regulator and the FDIC, as well of documentation of why leaving the bank open would be likely to reduce potential losses to the DIF. The statute also requires a periodic reassessment of this decision every 90 days and further narrows the agencies' authority to leave the bank open after 270 days. 12 U.S.C. 1831o(h)(3).

[12] 12 CFR 6.4(b)(5); 12 CFR 208.43(b)(5); 12 CFR 324.403(b)(5).

[13] For example, approximately 98 percent of U.S. Bancorp's assets are located in its IDIs and subsidiaries thereof.

subordinated debt after they become critically undercapitalized.[14] This prohibition lends further support to the assumption that long-term debt would be converted to equity no later than when a regional banking organization's IDI subsidiary becomes critically undercapitalized, because it reflects Congress' decision that it would be appropriate to impose losses on subordinated debt at that point. Accordingly, to be consistent with the existing statutory framework for IDI resolution, the calibration of any long-term debt requirement for regional banking organizations that do not have significant nonbank assets should assume that the regional banking organization has a tangible equity ratio of at least 2.0 percent at the time of conversion.

i. The assumption of full capital depletion, although incorporated in the calibration methodology for the Board's 2017 TLAC rule, is not appropriate for regional banking organizations without significant nonbank assets.

Under the Board's total loss-absorbing capacity ("TLAC") rules that apply to U.S. GSIBs and intermediate holding companies of foreign GSIBs (the "2017 TLAC rule"),[15] the long-term debt requirement for U.S. GSIBs and intermediate holding companies of foreign GSIBs was calibrated using a "capital refill" methodology.[16] The methodology assumed that an institution's capital would be fully depleted prior to the conversion of its long-term debt.

Notwithstanding the PCA framework, the assumption of full capital depletion is plausible for U.S. GSIB holding companies and U.S. intermediate holding companies of foreign GSIBs due to their significant nonbank operations.[17] In an organization with significant nonbank operations, capital deficits could arise outside its IDI chain, and those capital deficits could deplete the consolidated organization's overall capital levels even while the organization's IDI remains adequately capitalized. For example, a bank holding company with significant nonbank operations could have zero capital on a consolidated basis due to substantial capital deficits at one or more nonbank subsidiaries that management of the firm allows to develop prior to commencing resolution, even while the bank holding company's IDI has a tangible equity ratio greater than 2.0 percent and is therefore not critically undercapitalized.

The foregoing scenario could not arise at a regional banking organization without significant nonbank assets. Without significant nonbank operations, large capital deficits cannot arise outside the IDI chain, and there are no material nonbank entities that would need to be recapitalized in a resolution scenario. Instead, for these organizations, the IDI is the only entity that could potentially need to be recapitalized, and the IDI is likely to have a tangible equity ratio of at least 2.0 percent in resolution given (among other prudential safeguards, discussed in further detail below) the requirement that the agencies take prompt corrective action under the existing statutory framework and given the agencies' broader authorities to commence a resolution proceeding of an IDI (authority not generally available with respect to a bank holding company). Accordingly, the assumption of full capital depletion incorporated in the calibration methodology for the 2017 TLAC rule would not be appropriate for regional banking organizations.

[14] 12 U.S.C. 1831o(h)(2).

[15] 12 CFR 252 subparts G and P.

[16] 82 Fed. Reg. 8266, 8274 (Jan. 24, 2017).

[17] As the agencies have acknowledged under their tailoring framework, the amount of a banking organization's activities conducted through nonbank subsidiaries provides a measure of the organization's business and operational complexity, and nonbank subsidiaries generally are subject to less prudential regulation than regulated banking entities. See 84 Fed. Reg. 59230, 59239 (Nov. 1, 2019).

ii. **The agencies should take into account the enhanced prudential rules generally, and CECL specifically, in assessing the likely capital position of a regional banking organization entering resolution.**

Any new requirement should properly take into account the enhanced prudential rules already enacted since the 2008 financial crisis, which significantly reduce the probability of a large bank failure and are specifically designed to reduce the effect of any failure by enhancing—as compared to the pre-crisis regime—capital, liquidity, and risk management at all regional banking organizations.[18] The agencies and certain of their principals have cited historical experience from the 2008 financial crisis as part of the basis for the ANPR—in particular, the losses experienced by the DIF in connection with the resolution of certain large IDIs during that period. As explained in detail in the other LBO comment letters, the banking organizations that failed during this period were not comparable to today's regional banking organizations because of the significantly stronger prudential regulatory and supervisory requirements that Congress, under the Dodd-Frank Act, and the federal banking agencies have enacted since the 2008 financial crisis, in addition to other improvements in risk management that regional banking organizations have implemented. For example, capital and stress testing requirements have been substantially strengthened since the 2008 financial crisis through the implementation of CCAR and the stress capital buffer, among other things. In addition, the liquidity coverage ratio, net stable funding ratio, and other liquidity-related provisions of the Dodd-Frank Act's enhanced prudential standards also are designed to reduce the probability of default by decreasing the risk that a regional banking organization fails due to acute liquidity runs and ensure that structural long-dated liabilities support liquid assets; regional banking organizations remain subject to these requirements under the 2019 tailoring framework (discussed in further detail below). Moreover, existing resolution planning requirements are already designed to mute the effect of any large bank failure, and regional banking organizations have been responsive to the resolution planning guidance given by the agencies to strengthen their plans under section 165(d) of the Dodd-Frank Act and IDI resolution planning regimes.

In addition to these prudential enhancements, the implementation of the current expected credit losses (CECL) methodology deserves particular attention when considering an appropriate long-term debt calibration in light of historical experience. During the 2008 financial crisis, there were instances in which certain banks experienced significant declines in capital following their failure—in other words, capital was a "lagging indicator" and not reflective of the bank's true condition at the time of failure. Subsequent examination has attributed this effect in large part to deficiencies in loss accounting.[19] Capital did not fully reflect expected future loan losses on assets that were currently classified as performing, even when underwriting was known to have been defective. However, recent changes to credit loss accounting under GAAP to implement the CECL methodology and associated changes to the regulatory capital rules address this problem. These changes result in a more conservative and forward-looking estimate of credit losses and capital ratios, which in turn increases the accuracy, reliability, and timeliness of capital ratios during times of financial distress. Accordingly, a tangible equity ratio of 2.0 percent under today's CECL framework is a substantially stronger and more accurate financial position than a tangible equity ratio of 2.0 percent during the 2008 financial crisis. The agencies should take this into account in considering historical loss events, and should not adopt an overly conservative calibration on the basis of capital acting as a lagging indicator under then-applicable accounting standards. To do so would effectively ignore enhancements that have been put in place through the implementation of CECL.

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[18] See, e.g., 79 Fed. Reg. 17240 (March 27, 2014).

[19] See, e.g., United States Government Accountability Office, Bank Regulation: Modified Prompt Corrective Action Framework Would Improve Effectiveness (June 2011), available at https://www.gao.gov/products/gao-11-612 (identifying changes in loss accounting among those changes that could improve PCA efficacy).

b. A regional banking organization would likely need less capital than a GSIB to execute its resolution strategy.

The 2017 TLAC rule assumed that a U.S. GSIB or U.S. intermediate holding company of a foreign GSIB would need sufficient long-term debt in resolution to fully restore it to adequately capitalized status and satisfy applicable capital buffers.[20] This approach was designed for an SPOE resolution strategy, under which operating subsidiaries must maintain sufficient capital levels to remain out of resolution proceedings and instill market confidence in the operating subsidiaries and the holding company.[21] However, this is not true of regional banking organizations that appropriately rely on multiple-point-of-entry resolution strategies. For these regional banking organizations, the objective of any long-term debt requirement should be solely to provide enough capital to help ensure the resolution does not have serious adverse effects on U.S. financial stability and protect the DIF. Given that regional banking organizations are much less systemically significant than GSIBs and do not need to ensure the continuity of material operations through resolution, the amount of capital needed to accomplish this objective would be lower than that which is needed to restore the regional banking organization or its IDI subsidiary to adequately capitalized status and satisfy applicable capital buffers.

The 2017 TLAC rule also included in its calibration of long-term debt requirements for U.S. GSIBs and U.S. intermediate holding companies of foreign GSIBs an allowance for balance sheet depletion of 1.0 percent for the risk-weighted asset component and 0.5 percent for the total leverage exposure component. These allowances reflected the idea that the losses that a firm would incur leading to its failure would deplete its assets and result in a smaller balance sheet at the point of failure, meaning that a smaller dollar amount of capital would be required to restore the firm's pre-stress capital ratio.[22] This idea is equally applicable to regional banking organizations, and the related allowances should, at a minimum, be reflected in the calibration of any long-term debt requirements for regional banking organizations. However, there are additional reasons why the balance sheet of a regional banking organization might experience more shrinkage than the balance sheet of a U.S. GSIB or intermediate holding company of a foreign GSIB in resolution, and thus a greater allowance for balance sheet depletion may be appropriate. Regional banking organizations may employ a bridge bank strategy under which certain assets and liabilities would remain in the FDIC receivership and would not be transferred to the bridge bank, or otherwise would be sold rapidly after the transfer to a bridge bank. Such a strategy should neither pose a risk to the DIF or require capital for the assets left behind, which can be resolved through the FDIC's claims process in receivership. Moreover, unlike an operating subsidiary under an SPOE strategy, the FDIC would control a bridge bank and could ensure that the bridge bank's balance sheet does not grow in size during resolution. Accordingly, a greater allowance for balance sheet depletion may be appropriate for regional banking organizations.

Although the above considerations support the view that a regional banking organization would need less capital than a GSIB to execute its resolution strategy, the extent to which this is true may vary from one regional banking organization to another depending on its assets, activities, legal entity structure, and resolution strategy. To avoid undue regulatory complexity, we believe it would be reasonable to apply a uniform reduction in the calibration based on these considerations. Accordingly, we propose a 1.0 percent reduction in the risk-weighted asset component of the calibration and a 0.5 percent

[20] 82 Fed. Reg. at 8274.

[21] 82 Fed. Reg. at 8274-75.

[22] 82 Fed. Reg. 8266, 8275 (Jan. 24, 2017).

reduction in the total leverage exposure component of the calibration. These adjustments would be *in addition to* the allowances for balance sheet depletion that were included in the 2017 TLAC rule.

c. If a long-term debt requirement is adopted for regional banking organizations, the calibration for regional banking organizations without significant nonbank assets should be no more than 2.5 percent of risk-weighted assets.

As explained above, it would be appropriate to assume that a regional banking organization without significant nonbank assets would have a tangible equity ratio of at least 2.0 percent when its long-term debt is converted to equity. We estimate, based on the current capital ratios of the IDIs of Category II and III banking organizations, that if the tangible equity ratio of each Category II or III banking organization's IDI were depleted to 2.0 percent, its common equity tier 1 capital ratio would be at least 2.50 percent and its supplementary leverage ratio would be at least 1.65 percent.[23] Assuming (i) these capital levels at the time of long-term debt conversion, (ii) an additional reduction of 1.0 percent of the risk-weighted asset component and 0.5 percent of the total leverage exposure component for the reasons explained above, and (iii) the same other calibration assumptions for a full "capital refill" that the Board applied under the 2017 TLAC rule (i.e. adequately capitalized status, satisfaction of applicable capital buffers, and allowances for balance sheet depletion), the resulting long-term debt requirement would be equal to the greater of 2.5 percent of risk-weighted assets and 0.35 percent of total leverage exposure.[24] Given that the appropriate total leverage exposure component of a calibration would be so low as to be an unlikely binding constraint for any regional banking organization, we propose for simplicity to utilize solely the risk-weighted asset component. A calibration based on risk-weighted assets rather than total leverage exposure also is more appropriate for regional banking organizations in light of their focus on traditional banking activities and general lack of significant off-balance sheet activities. Accordingly, the calibration for regional banking organizations without significant nonbank assets should be no more than 2.5 percent of risk-weighted assets.

d. A lower calibration would be consistent with the banking agencies' tailoring framework and the Economic Growth, Regulatory Relief, and Consumer Protection Act.

The federal banking agencies' prudential regulations have undergone significant change in recent years in connection with the development of the agencies' tailoring framework, as required by the Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA").[25] The tailoring framework adjusts the agencies' prudential regulations for domestic and foreign banking organizations to more closely align with banking organizations' risk profiles. To be consistent with the tailoring framework and Congressional intent under the EGRRCPA, the calibration of any long-term debt requirement for regional banking organizations should be meaningfully lower than the requirement applicable to GSIBs to reflect the fact that their relatively smaller systemic footprint and size as well as simpler structures and activities would lead to a much simpler resolution than a GSIB, if one were

[23] Calculation based on Call Report data as of September 30, 2022. Common equity tier 1 capital ratio and supplementary leverage ratio were derived by reducing common equity tier 1 capital until tangible equity ratio equals 2.0 percent.

[24] Calibration assumes allowances for balance sheet depletion of 1.0 percent of risk-weighted assets and 0.5 percent of total leverage exposure, consistent with the 2017 TLAC rule. No leverage buffer or GSIB surcharge requirements are assumed, because these requirements are not applicable to Category II or III banking organizations.

[25] Pub. L. No. 115-174 (2018).

needed. For example, regional banking organizations generally do not have foreign material operating subsidiaries that could give rise to challenges in coordinating among multiple competing insolvency proceedings. As explained in more detail in the other LBO letters, these differences are reflected in the materially lower GSIB scores of regional banking organizations relative to U.S. GSIBs.[26] A lower calibration also would appropriately reflect all the progress and work that the Board and the FDIC, along with the banks submitting 165(d) and IDI resolution plans, have made over the last ten years in planning and building out their resolution-related capabilities. The calibration proposed above would achieve these ends.

III. Governance mechanisms are unnecessary to ensure that a regional banking organization without significant nonbank assets enters resolution at a time when adequate long-term debt will be available to absorb losses.

For a regional banking organization without significant nonbank assets, governance mechanisms are unnecessary to ensure a timely resolution. The assets of these regional banking organizations are comprised almost entirely of their IDIs and IDI subsidiaries. Unlike nonbank subsidiaries, IDIs are subject to close supervision, and an IDI's supervisor has comprehensive, up-to-date information about the IDI's condition at any given time—information which has grown significantly more extensive and timely in the years since the financial crisis of 2008. For example, through the FR 2052a, supervisors now have access to a wide range of liquidity data used to calculate the liquidity coverage ratio and net stable funding ratio. Likewise, supervisors receive comprehensive capital information through submission of the Call Reports and other similar reports. Moreover, as observed during the recent COVID crisis, contingency and recovery plans are in place at regional banking organizations to ensure that the staff, management, and supervisors of these organizations are in constant contact during stress events to keep all stakeholders fully informed as events develop. This transparency into the operations of an IDI would ensure that supervisors can place the IDI into receivership or conservatorship at the appropriate time, if necessary.[27]

We also note that if the calibration we propose is adopted, then governance mechanisms would be unnecessary to ensure adequate capital in resolution, because the PCA framework already requires that regulators place a regional banking organization's IDI in receivership or conservatorship when it becomes critically undercapitalized. Our proposed calibration conservatively assumes that a regulator would wait until this point to commence the resolution of a regional banking organization's IDI, and our proposed calibration would provide sufficient capital for resolution even taking into account this assumption. Accordingly, it would be unnecessary for regional banking organizations to adopt governance mechanisms that would cause them to commence resolution at an earlier time if our proposed calibration (or any higher calibration) is adopted.

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[26] As to U.S. Bancorp specifically, we note that the Board recently analyzed financial stability considerations in connection with U.S. Bancorp's acquisition of MUFG Union Bank, National Association and concluded that "resolving the combined organization would not appear to involve a level of cost, time, or difficulty such that it would cause a significant increase in risk to the stability of the U.S. banking or financial system." Federal Reserve Board, Order Approving Acquisition of a Bank, FRB Order No. 2022-22 at 42 (Oct. 14, 2022).

[27] See also 12 U.S.C. § 1821(c)(5) (describing the broad range of causes for which a supervisor may place an IDI into receivership proceedings).

IV. Legacy debt instruments should be permanently grandfathered.

The Board and FDIC should include appropriate grandfathering provisions in any rule requiring the issuance of long-term debt by regional banking organizations. In particular, consistent with the 2017 rule, the agencies should permanently grandfather all internal and external debt with an original maturity of one year or more issued before the effective date of the rule, regardless of acceleration or other features that might not otherwise be consistent with the rule's eligibility criteria. This would help to avoid potentially costly shortfalls in any final long-term debt requirement as regional banking organizations move toward issuances that meet any eligibility requirements included in the rule. To help manage costs, the rule also should provide no less than three years after finalization of the rule for regional banking organizations to come into compliance with any new long-term debt requirement. This would help to ensure that regional banking organizations have adequate time to safely meet any new requirements and that markets have sufficient time to absorb any new issuances of long-term debt.

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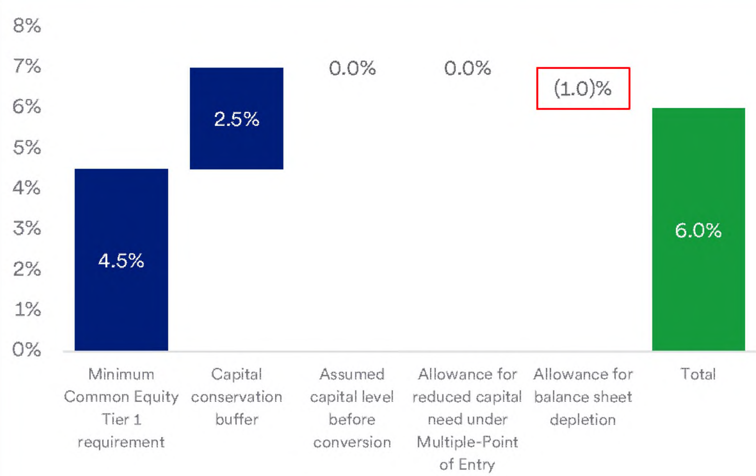
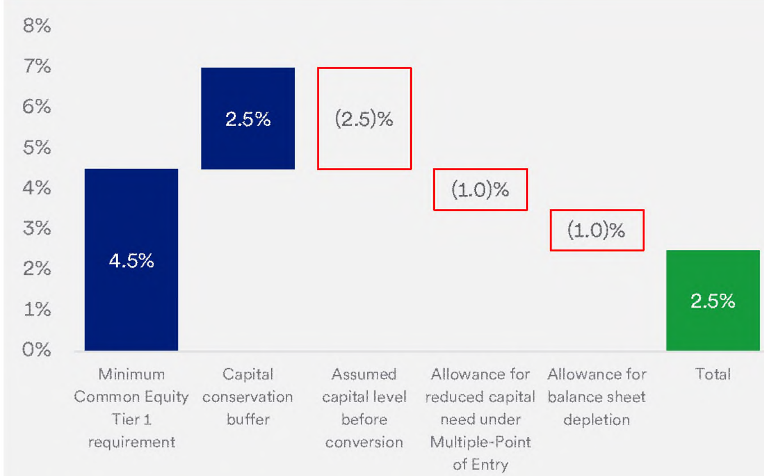
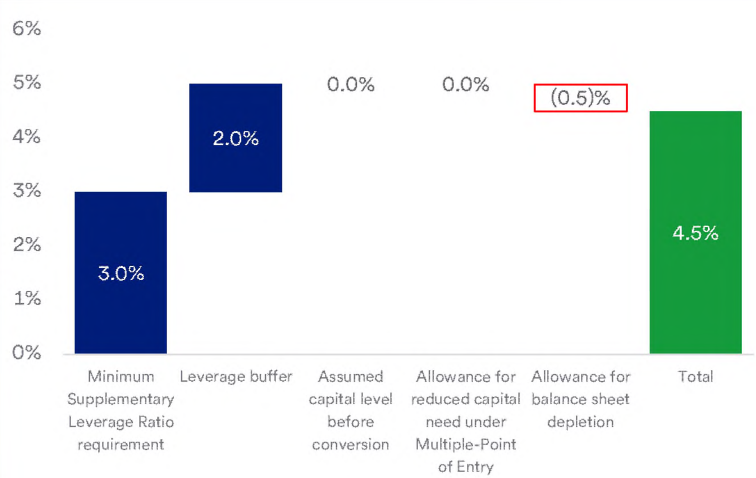
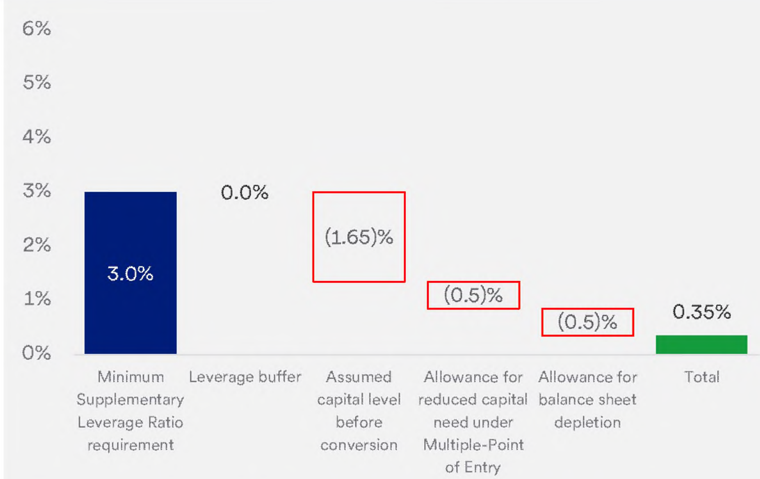
U.S. Bancorp appreciates the opportunity to comment on the ANPR. If you have any questions, please contact the undersigned at luke.wippler@usbank.com or Cristina Regojo Gedan, Senior Vice President, Deputy General Counsel, and Chief Regulatory Counsel, at cristina.regojogedan@usbank.com.

Sincerely,

Luke Wippler
Executive Vice President, Treasurer

Appendix: Calibration Visual

Ratio	Long-Term Debt Regulatory Minimum	
	Cat. I (U.S. Global Systemically Important Banks) – Rule*	Cat. II, III (U.S.) – USB Proposal
Eligible Long-Term Debt/ Risk-Weighted Assets		
Eligible Long-Term Debt/ Total Leverage Exposure		

* Risk-weighted asset requirement for global systemically important banks also includes global systemically important bank surcharge, which is not applicable to Category II and III banking organizations.