JEREMY KRESS

Proposal and Comment Information

Title: SLR-Enhanced Supplementary Leverage Ratio, R-1867

Comment ID: FR-2025-0038-01-C10

Submitter Information

Name: Jeremy Kress

Submitted Date: 08/20/2025

Please see attached

MICHIGAN ROSS

Jeremy C. Kress
Associate Professor of Business Law
Michael R. and Mary Kay Hallman Faculty Fellow

Stephen M. Ross School of Business
University of Michigan
701 Tappan Street
Ross Building, Rm R5454
Ann Arbor, Michigan 48109-1234
Tel: (734) 764-9181
Email: kressj@umich.edu

August 20, 2025

Via Electronic Mail

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, NW
Suite 3E-218
Washington, DC 20219
Docket ID OCC-2025-0006

Ms. Jennifer M. Jones
Deputy Executive Secretary
Attention: Comments/Legal OES
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
RIN 3064-AG11

Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. R-1867, RIN 7100-AG96

Re: 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

To Whom It May Concern:

I write in opposition to weakening leverage, total loss-absorbing capacity, and long-term debt requirements for global systemically important banks (GSIBs). This regulatory rollback would dismantle critical safeguards implemented in response to the 2008 financial crisis. That crisis provided a vivid reminder that when the world's largest banks operate without adequate constraints, their failures inflict catastrophic damage on the global economy. This proposal unlearns those costly lessons and would expose taxpayers to precisely the kinds of risks that Congress and the agencies sought to eliminate through post-crisis reforms.

This letter demonstrates that the proposal is fundamentally flawed across multiple dimensions:

- **Unsupported Rationales:** The agencies rest their case on two false premises. They incorrectly reframe the leverage ratio as a mere "backstop," when in fact it serves as a complement to risk-based capital requirements. They also provide no credible evidence that weakening the leverage ratio will actually improve Treasury market functioning.

- **Understated Risks to Safety and Soundness:** The agencies' static impact analysis underestimates the likely extent of GSIB capital depletion because it ignores predictable regulatory arbitrage behaviors and the agencies' own pending efforts to weaken risk-based requirements. The potential for GSIBs to deplete their capital is particularly concerning given the proposed reductions in TLAC and long-term debt requirements, which could compromise GSIBs' resolvability in the event of failure.

- **Unique Risks to Depository Institutions:** The proposal would make especially steep cuts to leverage requirements for GSIBs' depository institution subsidiaries and thereby expose FDIC-insured banks to exploitation by their nonbank affiliates. The agencies' reliance on the unenforced "source of strength" doctrine is egregious given the agencies' decade-long defiance of a Congressional mandate to codify this principle.

- **Abandonment of Core Design Principles:** The proposal would transform the leverage ratio from a simple, risk-insensitive metric into another complex, risk-sensitive measure vulnerable to the same systematic misjudgments that enabled the 2008 crisis.

- **Serious Procedural Deficiencies:** The proposal fails to meet Federal Reserve Chair Jerome Powell's standard requiring "broad support" on the Board. Additionally, the abbreviated 60-day comment period prevents meaningful public participation and follows an exclusive Federal Reserve conference that gave the banking industry special access to lobby the agencies.

For these reasons, I urge you to withdraw this misguided proposal and focus your efforts on strengthening the financial system's resilience against future crises.

1. The Proposal's Stated Rationales are Flawed

The agencies cite two justifications for proposing to cut the enhanced supplementary leverage ratio (eSLR) by 23 percent for GSIBs and 36 percent for their depository institution subsidiaries. First, they claim that the proposal is necessary to return the eSLR to a "backstop" to risk-based capital requirements. Second, the agencies assert that reducing the eSLR will alleviate strains in the U.S. Treasury market by encouraging GSIBs to intermediate more Treasuries. However, neither of these purported rationales justifies the proposed evisceration of leverage safeguards for the United States' largest and most systemic banking organizations.

A. The Leverage Ratio is a *Complement*—Not Merely a *Backstop*—to Risk-Based Capital Requirements

The agencies' first premise—that the eSLR should serve only as a "backstop" to risk-based capital requirements—reflects a fundamental misunderstanding of how leverage and risk-based requirements are supposed to work together. As the agencies have previously recognized, these capital measures are complementary rather than hierarchical, with each serving distinct and equally important functions in ensuring bank safety and soundness.[1]

Risk-based capital requirements are designed to be risk-sensitive, requiring banks to fund riskier assets with more loss-absorbing equity. However, risk-weighting is notoriously vulnerable to modeling errors, regulatory arbitrage, and underestimation of risks that are difficult to quantify.[2] Leverage capital requirements address these weaknesses by providing a simple, transparent, and risk-insensitive standard that prevents excessive leverage regardless of the perceived riskiness of assets.[3]

The agencies have consistently recognized that risk-based and leverage capital requirements work together in coordination, not in a hierarchical relationship. The agencies emphasized in the 2013 Basel III rule that they "continue to believe that a minimum leverage ratio requirement … is appropriate *in light of its role as a complement to the risk-based capital ratios*."[4] The following year, the agencies reinforced this principle, explaining that they "believe that the maintenance of a *complementary relationship* between the leverage and risk-based capital ratios is important to ensure that each type of capital requirement continues to serve as an appropriate counterbalance to offset potential weaknesses of the other."[5] Notably, the agencies generally did not characterize the leverage ratio as a mere "backstop" to risk-based capital requirements until 2018, when they floated a precursor to this proposal.[6]

The agencies' current objective—ensuring that the leverage ratio "generally serve[s] as a backstop to risk-based capital requirements rather than as a regularly binding constraint"—defeats the very purpose of having a leverage requirement.[7] If the 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.

---

[1] *See, e.g.*, Aaron Klein, *Risk Weights or Leverage Ratio? We Need Both*, BROOKINGS (Dec. 22, 2016), https://www.brookings.edu/articles/risk-weights-or-leverage-ratio-we-need-both/.

[2] *See* ANAT ADMATI & MARTIN HELLWIG, THE BANKERS' NEW CLOTHES 183-87 (2d ed. 2024).

[3] *See* Anat R. Admati, *The Compelling Case for Stronger and More Effective Leverage Regulation in Banking*, 43 J. LEGAL STUD. S35 (2014).

[4] Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-Weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule, 78 Fed. Reg. 62,018, 62,031 (Oct. 11, 2013) (emphasis added).

[5] Regulatory Capital Rules: Regulatory Capital, Revisions to the Supplementary Leverage Ratio, 79 Fed. Reg. 57,725, 57,727 (Sept. 26, 2014) (emphasis added).

[6] Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for U.S. Global Systemically Important Bank Holding Companies and Certain of Their Subsidiary Depository Institutions; Total Loss-Absorbing Capacity Requirements for U.S. Global Systemically Important Bank Holding Companies, 83 Fed. Reg. 17,317, 17,319 (Apr. 19, 2018).

[7] 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. 30,780, 30,782 (July 10, 2025) [hereinafter Proposed Rule].

Even assuming that making risk-based capital requirements the primary binding constraint were a worthwhile goal, this proposal fails to accomplish it. As the agencies discretely acknowledge in a footnote, a different leverage requirement—the tier 1 leverage ratio—would continue to be the binding constraint for "about half" of GSIB depository institution subsidiaries even after the proposed changes to the eSLR.[8] The agencies correctly recognize that they cannot change tier 1 leverage requirements because section 171 of the Dodd-Frank Act (the Collins Amendment) prohibits weakening these standards.[9] The fact that the tier 1 leverage ratio will continue to bind many GSIB depository institution subsidiaries undermines the agencies' stated rationale for eviscerating the eSLR.[10]

B. Facilitating Treasury Market Intermediation Is Not a Compelling Justification

The agencies' other premise—that reducing the eSLR will improve Treasury market intermediation—is not compelling for two reasons.

1. *The Agencies Cite No Legal Authority*

First, the agencies fail to cite a statutory basis for weakening bank capital requirements to try to alleviate strains in the Treasury market. Congress instructed the banking agencies to establish bank safety-and-soundness standards, including capital requirements, to preserve banks' solvency, protect against bank failures, and safeguard the Deposit Insurance Fund.[11] The proposal does not explain how—or if—these statutory authorities permit the agencies to prioritize Treasury markets when setting bank capital requirements. This concern is particularly salient given the Treasury Department's claim that its participation in the development of the proposal "allowed for a broader range of considerations beyond the scope of agencies' responsibilities, like tradeoffs between growth and the structure of the financial system."[12] As Chair Powell has noted, pursuing extraneous goals "however worthy, without a clear statutory mandate would undermine the case for [Fed] independence."[13] Thus, the agencies must at a minimum explain their legal authority for using bank capital requirements to try to improve Treasury market functioning.

[8] *Id.* at 30,785 n.29.

[9] *See id.* (citing 12 U.S.C. § 5371).

[10] Even more troubling, the fact that a GSIB-specific enhanced leverage ratio would be weaker than the generally applicable tier 1 leverage ratio for half of the most systemically important depository institutions exposes how inadequate the proposed eSLR standards truly are. Rather than serving as an appropriately stringent constraint on the riskiest institutions, the proposed eSLR would fall below even the baseline leverage standards that apply to ordinary banks.

[11] *See, e.g.*, 12 U.S.C. § 1831o(a)(1) (requiring the federal banking agencies to establish capital standards "to resolve the problems of insured depository institutions at the least possible long-term loss to the Deposit Insurance Fund").

[12] Victoria Guida, *A New Era for Financial Regulators*, POLITICO (June 26, 2025), https://www.politico.com/newsletters/morning-money/2025/06/26/a-new-era-for-financial-regulators-00425197 (quoting an anonymous Treasury Department official).

[13] Jerome H. Powell, Chair, Bd. of Governors of the Fed. Rsrv. Sys., Remarks at the Symposium on Central Bank Independence 2 (Jan. 10, 2023), https://www.federalreserve.gov/newsevents/speech/files/powell20230110a.pdf.

2. Reducing the eSLR is Unlikely to Facilitate Treasury Market Intermediation

Second, even if the proposal is within the agencies' statutory authority, reducing the eSLR is unlikely to increase Treasury market intermediation. The agencies attempt to justify the proposal on the grounds that it will facilitate Treasury trading, but the proposal cites no evidence that it will do so in practice. The agencies merely speculate that reducing the eSLR "*could* … help support the orderly functioning of U.S. Treasury markets."[14] However, the agencies admit that they are unable to predict how much, if any, additional Treasury intermediation the GSIBs will engage in.[15] This type of baseless speculation is insufficient to justify a rule under the Administrative Procedure Act.[16]

Contrary to the agencies' assumptions, the best available evidence suggests that reducing the eSLR *will not* improve Treasury market intermediation. When the Covid pandemic disrupted Treasury markets in 2020, the Federal Reserve temporarily exempted Treasury securities from the supplementary leverage ratio with the goal of encouraging large bank holding companies to purchase more Treasuries.[17] In the aftermath, the Federal Reserve's own research indicated that this exclusion did not achieve its intended effect.[18] The researchers concluded that large banks did not increase their Treasury market activity despite the leverage ratio carve-out.[19] This evidence

[14] Proposed Rule at 30,785 (emphasis added).

[15] *See* Proposed Rule at 30,800 n.87 (admitting that the agencies' estimates of GSIB balance sheet capacity "are not meant to suggest how or to what extent any additional capacity may be used").

[16] *See, e.g.*, Horsehead Res. Dev. Co., Inc. v. EPA, 16 F.3d 1246, 1269 (D.C. Cir. 1994) ("[A]gency actions based upon speculation are arbitrary and capricious … [S]peculation is an inadequate replacement for the agency's duty to undertake an examination of the relevant data and reasoned analysis."); Sorenson Commc'ns Inc. v. FCC, 755 F.3d 702, 708 (D.C. Cir. 2014) ("Though an agency's predictive judgments about the likely economic effects of a rule are entitled to deference, deference to such judgments must be based on some logic and evidence, *not sheer speculation*.") (quotation marks and citations omitted) (emphasis added).

[17] Press Release, Board of Governors of the Federal Reserve System, Federal Reserve Board Announces Temporary Change to Its Supplementary Leverage Ratio to Ease Strains in the Treasury Market Resulting from the Coronavirus and Increase Banking Organizations' Ability to Provide Credit to Households and Businesses (Apr. 1, 2020), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200401a.htm.

[18] *See* Paul Cochran, Sebastian Infante, Lubomir Petrasek, Zack Saravay & Mary Tian, *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. Curiously, the proposal cites this paper as background on GSIBs' importance for Treasury market intermediation, but it fails to engage with the paper's conclusions that undermine the agencies' justification for the proposal. *See* Proposed Rule at 30,792 nn.56 & 58.

[19] *See id.* ("We do not observe any noticeable effect of the exclusions on dealers' direct holdings of Treasuries or their [secured-financing transactions] backed by Treasuries."). The agencies cite a 2021 Basel Committee study for the proposition that "the exclusions enabled … GSIBs … to significantly expand their U.S. Treasury securities holdings." Proposed Rule at 30,792 (citing *Early Lessons From the Covid-19 Pandemic on the Basel Reforms*, BASEL COMM. ON BANKING SUPERVISION (2021)). However, this claim mischaracterizes the Basel Committee's findings and ignores critical methodological limitations. The Basel study analyzed only the first six months of the exclusion period (through August 2020), while the Federal Reserve's more comprehensive analysis examined the full year the exclusions were in effect. *See* Cochran et al., *supra* note 18. More importantly, the Basel Committee itself acknowledged that "[s]tructural factors other than leverage ratio constraints, such as differences in [the GSIBs' and other banks'] share of the Treasury market, may have contributed" to any observed changes—undermining the causal relationship the agencies claim. *Early Lessons From the Covid-19 Pandemic on the Basel Reforms*, at 56. The agencies' selective

supports Governor Michael Barr's assertion that GSIBs will simply "shift to other activities with low risk-based capital requirements and significantly higher returns than Treasury market intermediation" if the agencies reduce the eSLR.[20]

Moreover, the assumption that reducing capital requirements will improve Treasury market functioning during stress periods fundamentally misunderstands how banks manage their capital. GSIBs typically do not maintain excess capital during normal times, waiting to deploy it during market stress. Instead, they systematically distribute capital to shareholders up to the limits of their regulatory constraints, maintaining only minimal management buffers above required levels. Just last month, all eight GSIBs increased their dividends following the Federal Reserve's stress test results.[21] Simultaneously, JPMorgan and Morgan Stanley announced a combined $70 billion in new share buybacks.[22] This $70 billion alone could have supported $1.4 trillion of Treasury purchases, but these banks chose to return this capital to shareholders rather than maintain it for potential market-making activities. As Federal Reserve Governor Michael Barr observed, "If banks use up their excess capital in normal times, there will not be excess capital in times of stress" to use for Treasury intermediation.[23] Reducing the eSLR will simply enable GSIBs to distribute even more capital to shareholders during normal periods, leaving them no better positioned to support Treasury markets during stress.

Furthermore, the agencies have more effective tools at their disposal to promote Treasury market intermediation during times of stress. In fact, Congress directed the Federal Reserve to "make [capital] requirements countercyclical—and the Board created the countercyclical capital buffer (CCyB)—for precisely this purpose.[24] The CCyB is supposed to be an additional capital cushion that can be built up during periods of rising financial risk and released during stress to provide banks with additional capacity for critical market activities like Treasury intermediation. Regrettably, the Federal Reserve has rendered the CCyB meaningless through neglect. It has never activated the CCyB, and it has violated its own policy statement by failing to even vote on the buffer level for the past five years.[25] Rather than weakening leverage requirements, the agencies should use their existing countercyclical framework. A properly implemented CCyB would help ensure that GSIBs maintain strong capital levels during normal periods while providing additional capacity for Treasury market support when stress occurs.

---

citation of inconclusive evidence while failing to engage with their own researchers' more rigorous analysis is both troubling and telling.

[20] 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.

[21] *See* Akila Quinio & Joshua Franklin, *US Banks Announce Big Shareholder Payouts as Fed Eases Stress Tests*, FIN. TIMES (July 1, 2025), https://www.ft.com/content/081f8752-8022-4c02-9d85-cea6a133ac8f.

[22] *See id.*

[23] Barr, *supra* note 20.

[24] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 616(a), 124 Stat. 1376, 1615 (2010) (codified at 12 U.S.C. §§ 1844(b)).

[25] *See* Letter from Sen. Elizabeth Warren to Lisa D. Cook, Governor, Bd. of Governors of the Fed. Rsrv. Sys. (Aug. 7, 2025), https://www.banking.senate.gov/imo/media/doc/warren_letter_to_gov_cook_on_ccyb.pdf.

2. The Proposal Significantly Underestimates the Threat to GSIBs' Safety and Soundness

The agencies wrongly assume that the proposal poses little threat to GSIBs' safety and soundness. The agencies acknowledge that the proposal would reduce GSIB depository institutions' required capital by a staggering 27 percent.[26] Nonetheless, the agencies insist that this reduction will not threaten GSIBs' stability because "almost all of this capital would need to be retained within their holding companies."[27] Specifically, the agencies claim that GSIB holding companies' capital requirements will decline by less than two percent, at which point risk-based capital requirements will become binding and prevent GSIBs from further depleting their capital.[28]

This facile explanation significantly underestimates the likely extent of GSIBs' capital depletion—and the corresponding threat to their safety and soundness. In reality, eviscerating the eSLR will likely lead to a significant reduction in overall capital levels as GSIBs dynamically adjust their balance sheets and as the agencies further erode risk-based capital requirements. The potential for significant capital depletion is particularly concerning given the proposal's simultaneous reductions in TLAC and long-term debt requirements, which could compromise GSIBs' resolvability and increase the likelihood that taxpayers would bear losses in the event of failure.

A. The Agencies Fail to Account for GSIBs' Predictable Regulatory Arbitrage of Risk-Based Capital Requirements

The agencies' impact assessment ignores well-documented regulatory arbitrage behavior that banking organizations routinely employ to minimize their capital requirements. When risk-based ratios are binding, banks have strong incentives to shift to riskier assets within the same risk-weight categories.[29] This regulatory arbitrage frees up additional capital to distribute to shareholders, but it does not actually reduce risk.[30] The agencies' static analysis fails to account for this predictable response, leading to a significant underestimate of potential capital depletion.

Weakening the eSLR will incentivize GSIBs to resume aggressive regulatory arbitrage. In recent years, binding leverage requirements have limited the benefit GSIBs could obtain by dynamically adjusting their balance sheets because leverage ratios treat all assets equally. However, if risk-based requirements become the primary binding constraint for more GSIBs as the agencies intend, firms will have renewed incentives to game these requirements. This behavior will enable them to reduce their effective capital requirements well beyond the agencies' conservative estimates.

---

[26] *See* Proposed Rule at 30,798.

[27] Proposed Rule at 30,786.

[28] *See* Proposed Rule at 30,798. According to the agencies, the tier 1 leverage ratio will become binding for one GSIB holding company. *See id.* n.83.

[29] *See, e.g.*, Erik F. Gerding, *The Dialectics of Bank Capital: Regulation and Regulatory Capital Arbitrage*, 55 WASHBURN L. REV. 357 (2016).

[30] *See id.*

The result will be substantially more capital depletion and higher insolvency risk than the agencies project. By failing to model GSIBs' predictable balance sheet adjustments, the agencies provide false assurance about the proposal's safety-and-soundness implications.

B. The Agencies Ignore Pending Proposals that Weaken Risk-Based Capital Requirements

The agencies' assurance that risk-based capital requirements will prevent GSIBs from materially depleting their capital is unconvincing because the agencies are simultaneously weakening those very requirements. The Federal Reserve has already proposed reforms that would reduce the volatility of its stress test results and thereby allow large banks to shrink their management buffers.[31] At the banking sector's urging, the Federal Reserve has also announced that it will begin releasing its stress test scenarios and models for public notice-and-comment, which will "create a one-way ratchet" that weakens risk-based capital requirements.[32] Additionally, it appears likely that the Federal Reserve will attempt to weaken the GSIB surcharge.[33] Any of these proposed changes, individually or in combination, could materially reduce GSIBs' risk-based capital requirements and thereby significantly increase the actual capital depletion resulting from this eSLR proposal.

The agencies' narrow analysis contradicts their own stated commitment to holistically evaluate any proposed changes to the capital framework. As Federal Reserve Vice Chair for Supervision Michelle Bowman observed just last year, "We cannot fully understand the intended and unintended consequences of any regulatory reform, including capital reform, without using a broader lens to consider the interconnections and interrelationships among different capital and debt requirements that apply in the banking system."[34] Policymakers cannot credibly demand comprehensive impact assessments when proposing to increase capital requirements and then claim tunnel vision when proposing to reduce them. The Federal Reserve's industry-laden conference that purported to provide an "integrated review" of capital requirements is no substitute for actually assessing how all of the agencies' contemplated changes might collectively impair the banking system's safety and soundness.[35]

---

[31] *See* Modifications to the Capital Plan Rule and Stress Capital Buffer Requirement, 90 Fed. Reg. 16,843 (Apr. 22, 2025); *see also* Letter from Jeremy Kress, Assoc. Professor of Bus. Law, Univ. of Mich., to Ann Misback, Sec'y, Bd. of Governors of the Fed. Rsrv. Sys. (June 20, 2025), https://www.federalreserve.gov/apps/proposals/comments/FR-2025-0026-01-C07 (explaining how the proposal would reduce capital levels by allowing banks to shrink their management buffers).

[32] Statement on Stress Test Proposal by Governor Michael S. Barr (Apr. 17, 2025), https://www.federalreserve.gov/newsevents/pressreleases/barr-statement-20250417.htm.

[33] *See* Michelle W. Bowman, Bd. of Governors of the Fed. Rsrv. Sys., Unintended Policy Shifts and Unexpected Consequences 14 (June 23, 2025), https://www.federalreserve.gov/newsevents/speech/files/bowman20250623a.pdf ("[A] broader set of reforms could include amending not only the leverage capital ratio, but also G-SIB surcharge requirements.").

[34] Michelle W. Bowman, Bd. of Governors of the Fed. Rsrv. Sys., The Consequences of Bank Capital Reform 7 (June 26, 2024), https://www.federalreserve.gov/newsevents/speech/files/bowman20240626a.pdf.

[35] *See* Integrated Review of the Capital Framework for Large Banks Conference, Bd. of Governors of the Fed. Rsrv. Sys. (July 22, 2025), https://www.federalreserve.gov/conferences/integrated-review-of-the-capital-framework-for-large-banks.htm.

When combined with banks' predictable regulatory arbitrage behavior, these contemplated rule changes suggest that GSIBs' actual capital depletion could approach the full 27 percent reduction in eSLR requirements rather than the agencies' misleadingly modest 1.4 percent estimate.[36] The agencies should conduct and publish a comprehensive assessment of how this proposal would interact with all other pending capital framework changes before finalizing any component of their deregulatory agenda.

C. The Proposed Reductions in TLAC and Long-Term Debt Could Jeopardize a Failed GSIB's Orderly Resolution

The risk of significant capital depletion is particularly alarming because the proposal would simultaneously slash the TLAC and long-term debt requirements that are essential for orderly GSIB resolution. TLAC and long-term debt were centerpieces of the post-2008 regulatory reforms designed to ensure that GSIBs maintain sufficient loss-absorbing capacity to facilitate orderly resolution without taxpayer bailouts. These requirements mandate that GSIBs have minimum amounts of stable, long-term funding that can absorb losses and recapitalize a failed institution, preventing those losses from being shifted to taxpayers.

This proposal would reduce TLAC requirements by at least 5 percent and long-term debt requirements by at least 16 percent, significantly increasing the probability that taxpayers will once again be forced to rescue a failing financial conglomerate.[37] The 2023 collapse of Credit Suisse vividly illustrated the consequences when a GSIB lacks adequate loss-absorbing capacity—Swiss authorities were forced to engineer an emergency rescue that imposed substantial costs on the public and financial system. By weakening both going-concern capital requirements and gone-concern loss-absorbing capacity requirements simultaneously, this proposal increases the likelihood of a similar crisis involving a U.S. GSIB, where regulators would face the stark choice between taxpayer bailouts and financial crisis.

3. Allowing GSIBs to Exploit Their Depository Institution Subsidiaries Is Unwise

Even if the proposal maintained GSIB holding company capital levels, it would still be unwise to allow GSIBs to strip capital from their depository institutions and redeploy it to nonbank subsidiaries. Depository institutions warrant heightened safeguards because they are the only GSIB subsidiaries backed by explicit government guarantees. The agencies dismiss this concern by asserting that GSIB holding companies will serve as sources of strength to their depository institutions. However, there is scant evidence supporting this assumption, and recent experience suggests the opposite may be true. The agencies should not facilitate GSIBs reallocating capital in a way that weakens the institutions the Deposit Insurance Fund (DIF) is obligated to protect.

---

[36] The agencies' 1.4 percent estimate is already outdated, as it does not reflect the Federal Reserve's 2025 stress test results, which substantially reduced GSIBs' risk-based stress capital buffers and would amplify the capital depletion effects of this proposal.

[37] These reductions represent only the direct effects of the proposed changes. The actual decline in TLAC and long-term debt levels will likely be substantially greater because GSIBs will employ regulatory arbitrage strategies to further minimize loss-absorbing capacity requirements, just as they do with other capital requirements. *See supra* Section 2(A) (discussing regulatory arbitrage of risk-based capital requirements).

A. Depository Institutions Are the Only GSIB Subsidiaries with Explicit Government Guarantees

Depository institutions occupy a unique position within GSIB organizational structures because they alone benefit from explicit government backstops. Unlike their holding companies and nonbank affiliates, depository institutions can access the Federal Reserve's discount window and Federal Home Loan Bank advances during liquidity stresses. When depository institutions fail, the DIF must compensate insured depositors, with potential recourse to the U.S. Treasury if insurance funds prove inadequate. No comparable explicit guarantees exist for bank holding companies or their nonbank subsidiaries.

This special status has historically justified more stringent capital standards for depository institutions than their holding companies. When implementing the prompt corrective action framework in 1992, the agencies set the "well capitalized" leverage requirement for depository institutions at 5 percent—a full percentage point above the 4 percent minimum for bank holding companies.[38] Similarly, when adopting the eSLR in 2014, the agencies intentionally established a higher 6 percent well-capitalized threshold for GSIB depository institutions compared to the 5 percent standard for GSIB holding companies.[39]

This proposal recklessly abandons this prudential hierarchy by equalizing leverage standards between GSIB holding companies and their depository institution subsidiaries. Reducing leverage requirements for government-guaranteed depository institutions relative to their unguaranteed holding companies inverts the logic of risk-based regulation. This change would remove a critical layer of protection for systemically important depository institutions and thereby substantially increase the DIF's potential exposure.

B. There Is Little Evidence That GSIB Holding Companies Will Serve as Sources of Strength to Their Depository Institution Subsidiaries

The agencies dismiss concerns about weakening GSIB depository institutions by asserting that holding companies will "continue to be a source of strength for their depository institution and other subsidiaries, providing them with equity financing and liquidity as needed."[40] This assumption is not only unsupported by evidence—it is directly contradicted by historical experience demonstrating that holding companies routinely exploit their depository subsidiaries rather than support them. Furthermore, the agencies' invocation of the source of strength doctrine to justify this deregulatory rule is particularly ironic because the agencies have brazenly defied a Congressional mandate to adopt a rule codifying the source of strength doctrine.

---

[38] *See* Prompt Corrective Action; Rules of Practice for Hearings, 57 Fed. Reg. 44,866 (Sept. 29, 1992).

[39] *See* Regulatory Capital Rules: Regulatory Capital. Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions, 79 Fed. Reg. 24,528, 24,534 (May 1, 2014) ("[T]he relationship between the 5 percent supplementary leverage ratio for covered BHCs … and the 6 percent supplementary leverage ratio's well-capitalized threshold for IDI subsidiaries of covered BHCs is generally structurally consistent with the relationship between the 4 percent minimum leverage ratio for BHCs and the 5 percent well-capitalized leverage ratio threshold for IDIs under the generally applicable capital framework….").

[40] Proposed Rule at 30,804.

Historical evidence reveals a consistent pattern of large bank holding companies serving as a source of weakness—not strength—to their depository institution subsidiaries. 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.[41] 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.[42] 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.[43]

The agencies' reliance on the source of strength doctrine to justify this deregulatory proposal is particularly egregious given their decade-long defiance of a Congressional mandate to codify this very doctrine. After holding companies failed to support—and in some cases actively exploited—their depository institutions during the 2008 financial crisis, Congress enacted section 616 of the Dodd-Frank Act, which 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."[44] Congress established a firm deadline of July 21, 2012, for this rulemaking.[45] More than 13 years have passed since that deadline, yet the agencies have not even proposed a rule to implement section 616, much less finalized one. Against this backdrop, 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.

If the agencies insist on weakening the eSLR, they must first address the core governance failures that enable GSIB holding companies to exploit their depository institution subsidiaries. The agencies currently rely on bank boards of directors as the primary safeguard against such exploitation, requiring bank directors to "dissent on the record and consider actions to protect the bank's interests" when holding companies engage in harmful practices like stripping capital from the bank.[46] This reliance is fundamentally misplaced because it rests on a false premise of director independence from the holding company. My research has revealed that the vast majority of large

---

[41] *See* Saule T. Omarova, *From Gramm-Leach-Bliley to Dodd-Frank: The Unfulfilled Promise of Section 23A of the Federal Reserve Act*, 89 N.C. L. REV. 1683, 1730-33 (2011) (characterizing these loans as "a large-scale transfer of the federal subsidy from depository institutions to their securities affiliates").

[42] *See id.* at 1709-17, 1740-42.

[43] Todd H. Baker, *Why SVB Financial Is Getting Off Easy in Bankruptcy Court*, WALL ST. J. (July 25, 2023), https://www.wsj.com/opinion/why-svb-financial-is-getting-off-easy-in-bankruptcy-court-holding-company-strength-chapter-11-fdic-14ebcd2.

[44] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 616, 124 Stat. 1376, 1616 (2010) (codified at 12 U.S.C. § 1831o-1).

[45] *See id.*

[46] OFF. OF THE COMPTROLLER OF THE CURRENCY, THE DIRECTOR'S BOOK: ROLE OF DIRECTORS FOR NATIONAL BANKS AND FEDERAL SAVINGS ASSOCIATIONS 35 (2020), https://www.occ.gov/publications-and-resources/publications/banker-education/files/pub-directors-book.pdf.

bank directors simultaneously serve on their parent holding companies' boards, creating an inherent and irreconcilable conflict of interest.[47] These dual-hatted directors cannot credibly be expected to protect depository institutions from holding company exploitation when they themselves are responsible for the holding company's strategy.

More than 18 months ago, I petitioned the agencies to address this deficiency by adopting a rule requiring large insured depository institution directors to be independent from their holding companies and affiliates.[48] To date, the agencies have not responded to my petition, as required under the Administrative Procedure Act.[49] The current eSLR proposal would exacerbate the problem my rulemaking petition seeks to address by reducing capital requirements for depository institutions and leaving them vulnerable to exploitation by their nonbank affiliates. If the agencies proceed with this deregulatory proposal, they must also implement the director independence requirements outlined in my rulemaking petition to prevent the increased exploitation the eSLR proposal would facilitate.

4. <u>The Proposal Undermines the Leverage Ratio's Defining Features: Its Risk Insensitivity and Simplicity</u>

As noted above, the leverage ratio was specifically designed to operate independently of risk assessments—a critical feature that distinguishes it from risk-based capital requirements. This risk-insensitive design serves as a crucial safeguard against the systematic failures that can occur when banks, supervisors, and risk models collectively misjudge risks, as happened in the lead-up to the 2008 financial crisis. The leverage ratio's flat, non-risk-based approach ensures it cannot be rendered ineffective by flawed risk assumptions. By tying each firm's eSLR to its risk-based GSIB surcharge, the proposal would undermine this core advantage, transforming the leverage ratio into yet another risk-sensitive measure vulnerable to the same systematic misjudgments it was designed to guard against.

The proposal also injects unnecessary complexity into what should remain the most straightforward element of the bank capital framework. Rather than maintaining a flat leverage ratio that can be easily calculated, monitored, and enforced, the proposal would create a variable system with firm-specific requirements. This complexity is compounded by the confusing misalignment between the eSLR buffer (tied to Method 1 scores) and GSIB surcharges (tied to Method 2 scores), creating an internally inconsistent regulatory structure. At her nomination hearing, Vice Chair for Supervision Michelle Bowman specifically criticized the U.S. regulatory framework for being "overly complicated."[50] Against this backdrop, it defies explanation why the agencies would take the clearest and most straightforward capital rule—the eSLR—and purposefully inject needless complexity.

---

[47] *See* Jeremy C. Kress, *Who's Looking Out For the Banks?*, 93 U. COLO. L. REV. 897 (2022).

[48] *See* Letter from Jeremy Kress, Univ. of Mich., to Ann Misback, Sec'y, Bd. of Governors of the Fed. Rsrv. Sys., and Benjamin McDonough, Chief Counsel, Off. of the Comptroller of the Currency (Feb. 8, 2024).

[49] *See* 5 U.S.C. § 555(e).

[50] Michelle W. Bowman, Bd. of Governors of the Fed. Rsrv. Sys., Statement before the U.S. Senate Committee on Banking, Housing, and Urban Affairs 2 (Apr. 9, 2025), https://www.federalreserve.gov/newsevents/testimony/files/bowman20250410a.pdf.

Maintaining the eSLR's simplicity and risk-insensitivity also weighs against the various alternatives and modifications the agencies propose. Each suggested alternative—whether excluding central bank reserves and U.S. Treasury securities or setting eSLR standards equal to half of the higher of Method 1 and Method 2 surcharges—would transform the leverage ratio from a straightforward, objective measure into a complicated metric riddled with exceptions and calculations. The proposed modification to exclude Treasury securities held as trading assets by broker-dealer subsidiaries would be particularly problematic, as it would create a precedent for carve-outs that, as the agencies themselves acknowledge, would undoubtedly lead to additional requests to exclude even more exposures.[51] These proposed alternatives and modifications represent a slippery slope toward the very complexity and gaming opportunities that the leverage ratio was designed to avoid.

5. The Proposal Lacks Broad Support Required by Federal Reserve Precedent

Federal Reserve Chair Jerome Powell has established a standard that the Federal Reserve will not finalize rules without "broad support on the Board."[52] This proposal fails to meet that standard and should be withdrawn, consistent with the Federal Reserve's precedent.

Chair Powell established the "broad support" standard in response to dissents on an earlier capital proposal. When two Federal Reserve governors dissented from the Board's July 2023 vote to propose the Basel III Endgame capital reforms, Chair Powell recognized that such opposition was problematic. He stated unequivocally: "We're a consensus-driven organization. We'll come to a package that has broad support on the Board."[53] Chair Powell later clarified that "broad support, empirically, would mean a good solid vote on the Fed Board."[54] Chair Powell insisted that achieving broad support required starting over with a new proposal. Rather than simply making minor adjustments to address the dissenting governors' concerns, Chair Powell determined that "broad and material changes" were necessary, which in his view required re-proposing the rule.[55]

This proposal suffers from the same lack of broad support. Like the Basel Endgame proposal, two governors dissented from this proposal.[56] While one of the dissenting governors has since left the

---

[51] *See* Proposed Rule at 30,787 ("A potential drawback of this approach is that excluding exposures from the denominator of the supplementary leverage ratio could lead to requests to exclude additional exposures.").

[52] Kyle Campbell, *Powell Says Fed Will Pursue 'Consensus' on Capital Reform*, AM. BANKER (Nov. 1, 2023), https://www.americanbanker.com/news/powell-says-fed-will-pursue-consensus-on-capital-reform.

[53] *Id.*

[54] Kyle Campbell, *Powell Says Fed Can't Muscle FDIC, OCC on New Capital Proposal*, AM. BANKER (July 10, 2024), https://www.americanbanker.com/news/powell-says-fed-cant-muscle-fdic-occ-on-new-capital-proposal.

[55] Kyle Campbell, *Fed's Powell Says New Proposal for Basel III Endgame is 'Essential,'* AM. BANKER (July 9, 2024), https://www.americanbanker.com/news/feds-powell-says-new-proposal-for-basel-iii-endgame-is-essential ("My view, the strongly held view of the Board, is that we do need to put a revised proposal out for comment for some period, and the reason is when there are broad and material changes, that has been our practice.") (quoting Federal Reserve Chair Jerome Powell).

[56] *See* Barr, *supra* note 20; Statement on Enhanced Supplementary Leverage Ratio Proposal by Governor Adriana D. Kugler (June 25, 2025), https://www.federalreserve.gov/newsevents/pressreleases/kugler-statement-20250625.htm.

Board, two other governors expressed reservations about the proposal and "emphasized that their support for a final rule isn't guaranteed."[57] Under Chair Powell's own standard, this level of opposition indicates that the proposal lacks the "broad support" necessary for finalization. The Federal Reserve cannot credibly maintain one standard for rules that increase capital requirements and a different, more permissive standard for rules that reduce them. If two dissents necessitated re-proposing Basel III Endgame with "broad and material changes," the same approach must apply here.

6. <u>The Agencies Must Extend the Comment Period to Ensure Meaningful Public Participation</u>

At a minimum, the agencies must extend the comment period on the proposal because public interest commenters have not had an adequate opportunity to participate. The agencies allotted 60 days for public comment *from the proposal's announcement*, rather than the more typical timing *from publication in the Federal Register*. A sixty-day comment period is the bare minimum required by White House Executive Order 13563.[58] Proposals as significant as this one typically have an even longer comment period. By way of comparison, the agencies initially provided 126 days for comment on the Basel III Endgame proposal.[59] They later extended that deadline by an additional 47 days, allowing a total of 173 days for comment on that proposal.[60] This proposal is at least as significant as Basel III Endgame—indeed, it would reduce bank capital requirements by $213 billion, whereas Basel III Engame would have increased capital requirements by a comparatively paltry $170 billion.[61] This proposal therefore deserves an equivalent comment period.

Extending the comment period is especially important because the banking sector recently had an exclusive opportunity to lobby the agencies for relaxed capital rules. The Federal Reserve hosted an "Integrated Review of the Capital Framework for Large Banks" conference on July 22, 2025. The agenda for the conference featured speakers representing JPMorgan, Bank of America, Goldman Sachs, Morgan Stanley, Wells Fargo, BNY, as well as many other large banks and their outside lawyers. These bank representatives lobbied extensively for the agencies to adopt the

---

[57] *Fed Moves to Ease Big Bank Capital Rule*, CAPITOL ACCOUNT (June 25, 2025), https://www.capitolaccountdc.com/p/fed-moves-to-ease-big-bank-capital (referencing Vice Chair Jefferson and Governor Cook).

[58] *See* Improving Regulation and Regulatory Review, Exec. Order No. 13,563, 76 Fed. Reg. 3821, 3822 (Jan. 18, 2011) ("To the extent feasible and permitted by law, each agency shall afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be at least 60 days.").

[59] *See* Press Release, Agencies Request Comment on Proposed Rules to Strengthen Capital Requirements for Large Banks (July 27, 2023), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20230727a.htm (noting "more than 120 days for public comment").

[60] *See* Press Release, Agencies Extend Comment Period on Proposed Rules to Strengthen Large Bank Capital Requirements (Oct. 20, 2023), https://www.federalreserve.gov/newsevents/pressreleases/bcreg20231020a.htm.

[61] *See* Memorandum from Staff to Board of Governors of the Federal Reserve System, Proposals That Would Amend Capital Requirements for Large Banking Organizations In Line with the Basel III Accord and Modify Risk-Based Capital Surcharges Applicable to U.S. GSIBs 8 (July 18, 2023), https://www.federalreserve.gov/aboutthefed/boardmeetings/gsib-memo-20230727.pdf (stating that the Basel III Endgame proposal "would increase aggregate binding common equity tier 1 capital requirements by about $170 billion, or 16 percent….").

proposal, as well as other rollbacks to the capital framework. While the agenda included a few academics, the conference lacked the diversity of scholarly perspectives that one would expect for a comprehensive review of capital policy. Most Federal Reserve Board members, Comptroller Jonathan Gould, and FDIC Chair Travis Hill attended the industry lobbying session. Meanwhile, the Federal Reserve reportedly blocked representatives of public interest groups from even attending the conference.[62]

While the damage from this exclusionary process cannot be fully undone, substantially extending the comment period would at least provide public interest commenters additional time to analyze this proposal and present their views. Given the proposal's significance and the procedural irregularities during the comment period, the agencies should provide at least 120 days for public comment, consistent with their approach to other major capital rules.

Sincerely,

Jeremy C. Kress

[62] *See, e.g.*, *Bowman's Capital Conference Signals a New Openness at the Fed,* Capitol Account (July 22, 2025), https://www.capitolaccountdc.com/p/bowmans-capital-conference-signals ("[M]ost of the 'public' in attendance were representatives of industry—executives, trade group leaders, lawyers and consultants.")