# AMERICAN EXPRESS, KERRI BERNSTEIN

## Proposal and Comment Information

**Title:** Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations with Significant Trading Activity, and Optional Adoption for Other Banking Organizations, R-1887

**Comment ID:** FR-2026-0007-01-C132

## Submitter Information

**Organization Name:** American Express

**Organization Type:** Company

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**Submitted Date:** 06/18/2026

Attached, please find comments from American Express on the interagency proposals (i) to revise the capital requirements applicable to large banking organizations and to banking organizations with significant trading activity and (ii) to make certain related or conforming revisions to the current standardized risk-based capital framework.

Thank you in advance for your time and consideration.

**American Express Company**
200 Vesey Street
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June 18, 2026

*Via Electronic Delivery*

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Board of Governors of the Federal Reserve System
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Federal Deposit Insurance Corporation
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**Re: Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations with Significant Trading Activity, and Optional Adoption for Other Banking Organizations; Regulatory Capital and Standardized Approach for Risk-Weighted Assets**

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|---|---|
| **FRB Docket No. 1887, RIN 7100-AH20**<br>**OCC Docket ID OCC-2026-0265, RIN 1557-AF52**<br>**FDIC RIN 3064-AF29** | **FRB Docket No. 1888, RIN 7100-AH21**<br>**OCC Docket ID OCC-2026-0034, RIN 1557-AF49**<br>**FDIC RIN 3064-AG23** |

Ladies and Gentlemen:

American Express Company (together with its subsidiaries, "American Express") appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System ("Federal Reserve"), the Office of the Comptroller of the Currency ("OCC") and the Federal Deposit Insurance Corporation ("FDIC," and collectively, the "Agencies") on the Agencies' proposals (i) to implement an expanded risk-based approach ("ERBA") capital framework applicable to Category I and II banking organizations and to banking organizations with significant trading activity (the "Basel III Proposal") and (ii) to make certain related or conforming revisions to the current standardized risk-based capital framework ("Revised Standardized," and together, the "Proposals").[1]

American Express appreciates the work of the Agencies and their staffs to develop the Proposals.[2] The Proposals represent a substantial improvement over the Agencies' problematic and since-rescinded 2023 Basel III implementation proposal (the "2023 Proposal").[3] Although the current Proposals are substantially improved, as described in greater detail below, we believe there are opportunities for targeted refinements to better align the proposed revisions to the risk-based capital framework to the risks they are intended to capture.

## I. Executive Summary

Overall, American Express believes the Proposals would better align capital to risk as compared to the 2023 Proposal. However, the scope of the Proposals highlights the urgent need for the Agencies to modernize the tailoring framework, and certain elements of the Proposals still appear to be substantively miscalibrated.

As proposed, elements of the ERBA framework for credit risk would significantly overcapitalize simple and well-understood products like credit and charge cards, and potentially incentivize banking organizations to lower credit lines and reduce credit availability. Similarly, although substantially improved from 2023, the noninterest component of the ERBA operational risk framework continues to rely on the simplistic assumption that higher business volume equates to greater complexity and greater potential for operational risk, and in doing so would broadly penalize fee-based businesses (while introducing a few unique exceptions).

As shown in the chart below, industry analysis – which generally aligns with our current assessment – suggests that, if American Express is subject to ERBA, that framework would disproportionately impact American Express relative to Category I and II firms. This

1 *Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations With Significant Trading Activity, and Optional Adoption for Other Banking Organizations*, 91 Fed. Reg. 14952 (Mar. 27, 2026), *available at* https://www.govinfo.gov/content/pkg/FR-2026-03-27/pdf/2026-05959.pdf; *Regulatory Capital Rules: Regulatory Capital and Standardized Approach for Risk-Weighted Assets*, 91 Fed. Reg. 15332 (Mar. 27, 2026), *available at* https://www.govinfo.gov/content/pkg/FR-2026-03-27/pdf/2026-05960.pdf..

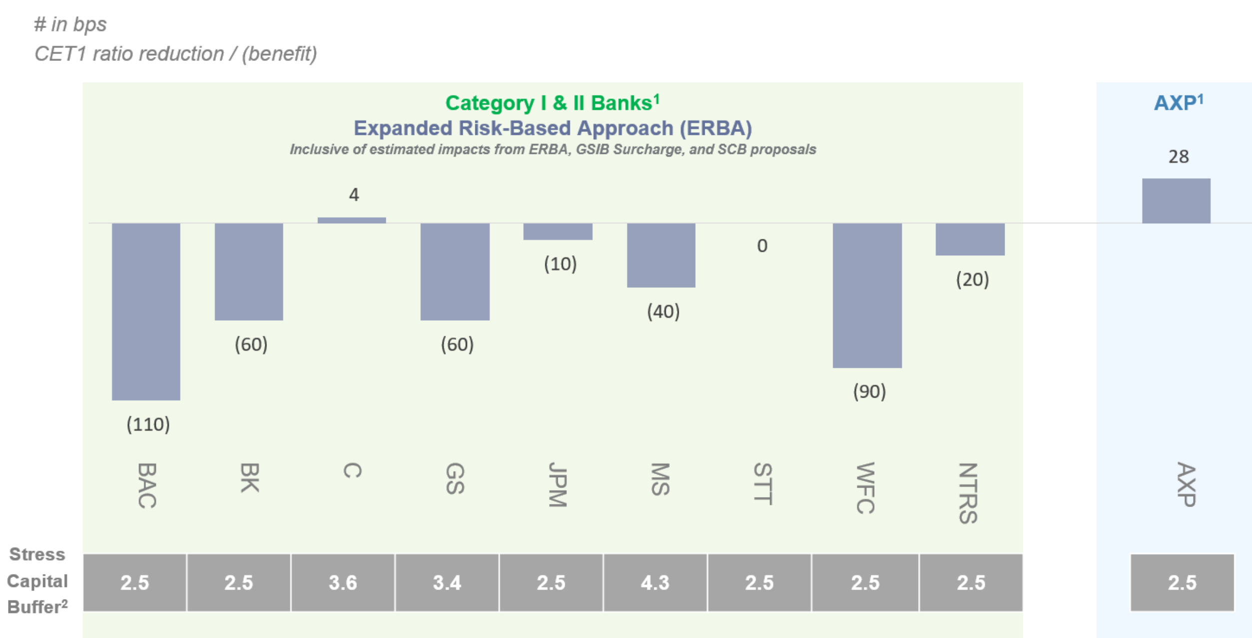
2 Related to the Proposals, the Federal Reserve also recently requested comment on revisions to its stress testing framework. American Express provided certain targeted comments to that proposal, available at https://www.federalreserve.gov/apps/proposals/comments/FR-2025-0063-01-C10. We appreciate the work of the Agencies in seeking to rationalize the large bank capital framework and continue to encourage the Agencies to evaluate changes to the capital framework holistically to avoid disproportionate outcomes, overlapping requirements, or other unintended consequences.

3 We provided our views on the 2023 Proposal in our American Express Comment Letter, dated January 16, 2024, *available at* https://www.federalreserve.gov/apps/proposals/comments/FR-0000-0086-01-C268.

disproportionate impact would not be driven by risk, but almost solely by the focused nature of our business model.

In particular, based upon the materials that accompanied the issuance of the Proposals, the Agencies appear to have calibrated the Proposals specifically to consider the interaction between ERBA and, *e.g.*, potentially overlapping or duplicative elements of the GSIB surcharge methodology and the stress testing framework.[4] In addition, for very reasonable policy purposes, the Agencies have sought to reduce the capital cost of certain mortgage-related activities traditionally conducted by banking organizations.[5] As a far smaller and simpler firm with a more narrowly focused business model, however, American Express is unable to benefit from positive refinements that either only apply to the GSIBs or apply to business lines or activities that American Express does not conduct. Accordingly, a calibration that seems to broadly balance for the GSIBs is miscalibrated when applied to our business model and once again leaves American Express as a notable outlier.

Relative Projected Impact of ERBA on American Express




Note:
1. All estimates (except for Citi) are sourced from Citi Equity Research Full Dive into Basel 3 Re-proposal Impacts published March 26, 2026. Estimate for Citi is sourced from UBS Global Research Report.
2. Stress Capital Buffer (SCB) is shown as % and was effective as of October 1, 2025.

American Express and the Agencies are aligned in wanting to see a U.S. Basel III implementation finalized in the near term that gets the rules right. We believe that getting the rules "right" means arriving at a framework that is (i) properly tailored, (ii) calibrated to risk, and (iii) fairly applied across different business models without producing inappropriate or

4 91 Fed. Reg. at 14955.

5 *Id.*

unintended consequences. As we read the Proposals, we believe there are important refinements to be made to improve on all three of those fronts. In particular, as discussed in greater detail below, we recommend that the Agencies:

- Expedite their work to **update and index the current dollar-based thresholds that underlie the definitions of the tailoring categories**. The Agencies continue to rely on the tailoring framework to differentiate among firms but the outdated thresholds have become overinclusive and now undermine that differentiation.

- **Reduce the 10 percent credit conversion factor ("CCF")** for the unused portions of unconditionally cancelable commitments. A high credit line combined with low utilization is an indicator of a borrower assessed to be low risk, but the CCF would impose the greatest overcapitalization for those borrowers. The proposed CCF should be lowered for all borrowers, and should be no more than 5 percent for low utilization accounts and transactor accounts.

- **Eliminate or simplify the proxy "line" methodology** for accounts with no pre-set spending limit ("NPSL Products"). We recommend the Agencies eliminate the proposed proxy methodology for NPSL Products. If a proxy is retained, we recommend the Agencies replace the proposed 24-month lookback with a simpler approach of using a multiplier of 1.5x current spend, or adopt the measure based on month-end instead of daily balances to improve the operational simplicity of the calculation.

- **Refine the definition of "transactor"** to consider *de minimis* outstanding balances to provide slightly greater flexibility without introducing additional credit risk.

- **Improve the simplicity and consistency of the noninterest component of the operational risk framework** by adopting a simple asset-based approach to both the interest and noninterest components to avoid overcapitalizing business models with inherently higher interest or fee margins when calculating risk-weighted assets for operational risk capital purposes.

- **Reimpose an activities-based threshold for applicability of the market risk capital framework**. We recommend simply applying the proposed $5 billion in trading assets and liabilities threshold for all firms, or alternatively retaining the threshold of $1 billion in trading assets and liabilities for Category I and II firms and applying the higher $5 billion threshold for all other firms.

- **Revise the definition of capital to apply the 25 percent DTA deduction threshold to all firms** to avoid procyclicality and encourage traditional lending activities to remain within the banking sector.

An improperly calibrated capital framework will fail to support safe and sound lending and the provision of credit and other financial services in the economy, and can unfairly penalize low risk business models, all with little benefit to resiliency. We believe these targeted refinements to the Proposals will improve the granularity and better align the risk sensitivity of the capital framework without introducing additional risk.

## II. The Scope of the Proposals Highlights the Urgency for the Agencies to Modernize the 2019 Tailoring Framework

At the outset, we note that the scope of the Proposals highlights the urgency of updating the tailoring framework to ensure that the tiering of requirements introduced in the Proposals functions as intended.

As proposed, the Basel III Proposal would apply to Category I and II firms, while Category III and IV firms would have the option of either opting into the ERBA framework or adopting the Revised Standardized approach.[6] In structuring the scope of the Proposals in this way, the Agencies continue to rely on a tailoring framework built around thresholds established almost seven years ago and held static despite steady GDP growth in the intervening period. As the Agencies continue to use the tailoring framework to differentiate among firms based on size and complexity, and to add new requirements linked to these thresholds, it is well past time for the Agencies to evaluate whether the thresholds still capture the right cohorts of firms. As it relates to American Express, we believe they do not.

The U.S. economy has grown steadily in terms of nominal GDP since 2019, and in that time has also seen a sustained period of inflation in excess of the Federal Open Market Committee's longer term inflation target. Over the same period, without changing our business model or making any transformative acquisitions, the business success of American Express has produced steady organic growth across the enterprise and in our international business. However, notwithstanding that our business model and risk profile have remained consistent, American Express has now crossed through two categories – moving from Category IV to Category II – in less than 24 months, as a result of crossing two distinct thresholds, perfectly illustrating the predictable flaw of fixed dollar-based thresholds.[7]

[6] 91 Fed. Reg. at 14957.

[7] American Express entered Category III in 2024 as a result of exceeding $250 billion in total assets. We currently have approximately $308 billion in total assets. In 2026, American Express transitioned into Category II as a result of exceeding $75 billion in cross-jurisdictional activity.

Our view continues to be that a firm whose overall size and business lines grow roughly in line with the broader economy is unlikely to have a substantively increased systemic risk profile that would warrant shifting that firm to a heightened level of capital, liquidity and other prudential requirements and expectations. Unfortunately, the fixed dollar-based thresholds that form the basis of the tailoring framework have held steady and now no longer properly differentiate among firms.

Accordingly, although technically distinct from the subject matter of the Proposals, in order to ensure the Proposals are and remain calibrated correctly, we strongly recommend the Agencies prioritize updating all tailoring thresholds to reflect economic growth (in nominal GDP) since 2019 and adopt an automatic mechanism to index those thresholds periodically going forward.

## III. Credit Risk – Off Balance Sheet

### a. The 10 Percent Credit Conversion Factor Continues to Overstate Risk and Should be Lowered

Just as was the case in 2023, the proposed 10 percent CCF for unconditionally cancelable commitments such as credit cards misunderstands credit risk, is seemingly arbitrary, and in practice could have a detrimental effect on the availability of credit.

There has historically not been a need for a CCF for the unused portions of unconditionally cancelable card lines because card lines themselves are the more appropriate tool for credit risk management. In practice, the most creditworthy borrowers tend to have the highest available credit lines and lowest relative utilization rates. Under the ERBA framework, however, banks would effectively be punished for offering higher credit lines to their most creditworthy borrowers, particularly if those borrowers prudently choose not to routinely utilize a significant portion of their available credit. Because an issuer's capital charge would be based on the unused portions of committed lines, the issuers may understandably reduce lines where appropriate, including for borrowers who are demonstrably less risky (and thus have higher lines). Any reduction in access to credit lines or lower credit limits could correspondingly increase credit utilization rates for consumers and small businesses, thus potentially leading to lower credit scores. In turn, lower credit scores could adversely affect the ability to access any kind of additional future financing, including mortgages, auto loans, or student loans.

American Express agrees with the Agencies that issuers of credit should be required to hold an appropriate amount of capital to deal with credit risk. However, that capital should be commensurate with the actual risk.

CCFs are meant to account for the potential future risk that some amount of off-balance sheet exposure will come onto the balance sheet and require capital support, and one would reasonably expect that factor to be carefully calibrated given the capital cost of a CCF. Here, the Proposals do not appear to offer any rigorous, analytical, data-driven justification for proposing to add billions of dollars in risk-weighted assets to capital calculations through the application of a CCF, other than vague references to reputational or relationship considerations and an assumed willingness of banks "to support the viability of obligors to which the banking organization has significant ongoing exposure, even when obligors are under economic stress."[8] These matters seem far better suited to be addressed through the supervisory process than the imposition of a significant capital charge.

Even more notably the Basel III Proposal seems to offer no justification at all for selecting 10 percent beyond a stated desire for "nonzero credit conversion factors"[9] and what appears to be a resultant rote application of the (itself underexplained) 10 percent CCF created in the 2017 Basel framework standard.

Rather than increase the resiliency of American Express or the stability or competitiveness of the U.S. financial system, if not reconsidered, the unnecessary and excessive capital charges contemplated for unconditionally cancelable commitments could have a detrimental effect on responsible credit risk management and, potentially, the cost and availability of credit. We would respectfully suggest that the appropriate CCF for unconditionally cancelable commitments should remain set at zero. If it is necessary to assign a "nonzero" CCF, the CCF should be substantially reduced.

At a minimum, the Agencies should consider assigning a lower CCF of no more than 5 percent to (i) accounts that satisfy the "transactor" definition and (ii) low utilization accounts (accounts with average utilization of less than 50 percent of the limit each month over the prior 12 months) to align with the lower on-balance sheet risk treatment of those accounts. As reflected in the proposed 45 percent risk weight for "transactors," accounts that exhibit transactor behavior generally present low credit risk because these customers treat their accounts as a payment instrument and liquidity management tool rather than a source of revolving credit. Exposure to these customers generally relates to the timing of the payment cycle, and they are unlikely to convert undrawn amounts into on-balance sheet exposure in times of stress. Similarly, low utilization accounts are generally stable and do not commonly show significant increases in utilization in times of stress.

Recent industry data indicate that the overall drawdown rate[10] as a percentage of unused credit line, which may serve as a proxy for a more appropriate CCF, is <u>0.51 percent</u> for accounts with utilization up to 50 percent. This low utilization segment represents approximately <u>*95 percent of unused credit lines*</u> and exhibits materially stronger credit quality, with an average FICO score of 770, compared with 649 for the remaining high-utilization segment. [11]

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8 91 Fed. Reg. at 14978.

9 *Id.*

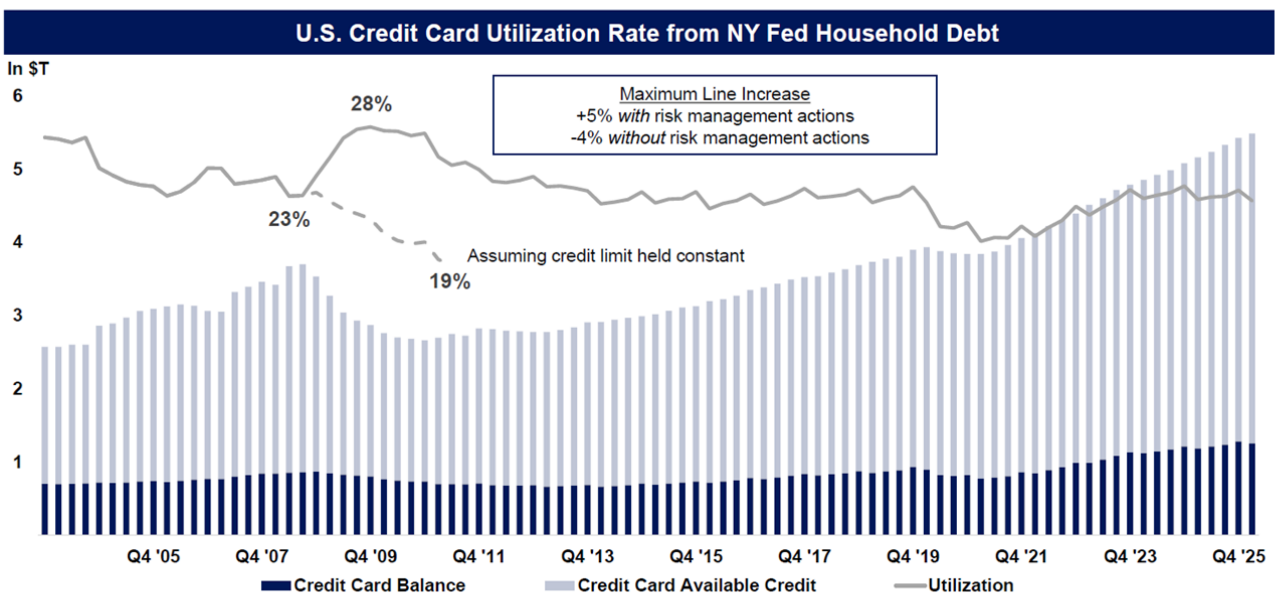
10 We use "drawdown rate" here to refer to the percentage of total industry unused limit from draw downs on accounts that reached 120+ days past due or entered write-off status over a 24-month period. Utilization percentage is defined at the starting month.

11 Industry data cited here are derived from a third-party commercial data source made available to American Express subject to contractual restrictions that prohibit disclosure of the provider's identity, underlying dataset, or proprietary methodology without the provider's prior written consent. The data are presented in aggregated

| Utilization Rate (%) | ≤ 50% | >50% | Total |
|---|---|---|---|
| Avg. FICO | 770 | 649 | 738 |
| Drawdown (%) | 0.51% | 9.19% | 0.83% |
| % of Total Undrawn Lines | ~95% | ~5% | 100% |

Although the higher risk high-utilization segment shows a drawdown rate of 9.19 percent, that segment represents only *5 percent* of unused lines. As proposed, applying a uniform 10% CCF across the entire population would ignore critical differences in risk profile across customer types and would thus result in a substantially over-calibrated capital charge for low-utilization, high-credit-quality accounts.

Similarly, a review of data on card balances and credit limits from the Federal Reserve Bank of New York's Quarterly Report on Household Debt and Credit from 2003 through 2025 – a period that includes both the 2008-09 Financial Crisis and the COVID-19 pandemic – demonstrates that utilization rates have been broadly stable over time, while card balances have actually decreased during periods of stress.[12] As reflected in the figure below, although there was some increase in utilization *rates* during the financial crisis, that increase in utilization was driven by a meaningful reduction in available credit *limits*; card balances also *decreased* during the same period. Accordingly, had credit limits been held constant during that period, utilization would also have meaningfully declined.




and summarized form. Upon request, and subject to applicable confidentiality protections and any required third-party consent, American Express would be prepared to provide agency staff with additional information regarding the source, methodology, coverage, and limitations of the data

[12] See https://www.newyorkfed.org/microeconomics/hhdc.

As history demonstrates, rather than triggering customers to ramp up spending and pull off-balance sheet exposure onto the balance sheet in the form of lending, significant macroeconomic stress events are more likely to cause customers to reduce spending and look to pay down existing balances, while banks continue to prudently manage card lines. Thus, we would suggest that historical data counsels against the need for *any* CCF and would certainly fail to support a 10 percent CCF for the unused portions of card lines.

### b. The Charge Proxy Methodology Should be Eliminated or Simplified

As in 2023, the Basel III Proposal would deviate from the Basel Committee standards to introduce a proxy methodology to estimate an off-balance sheet "exposure" for NPSL Products (the "Proxy Methodology"). We recommend that the Agencies eliminate the Proxy Methodology. If retained, we believe it should be revised and simplified in any final rule. American Express has a broad portfolio and long history of offering NPSL Products and is uniquely positioned to comment on issues impacting these products.

Fundamentally, the concept of an unused portion of a committed credit line simply does not translate to traditional NPSL Products. Traditional NPSL Products (i) do not offer, communicate, or imply a contractual commitment to extend a certain amount of credit to the customer; (ii) are not managed to any internal or uncommunicated credit line; and (iii) most importantly, approve transactions individually on a transaction-by-transaction basis based on real-time credit decisions, which we call point-of-sale or dynamic authorization.

NPSL Products function more like payment tools than traditional credit facilities: they do not obligate issuers to provide customers a committed line of credit (as clearly demonstrated by the Agencies' attempt to define a proxy), nor do they offer assurance that the next transaction will be authorized. There is no formal credit line, nor are these products managed with a "shadow" or informal credit line – each transaction is separately underwritten at the time of the transaction and approved or denied based upon a variety of non-limit-based factors including our internal credit model and the card member's current balance and spending pattern. In practice, charge card transactions can be and are routinely disrupted and declined as a result of this dynamic authorization. Accordingly, the concept of holding a potentially significant amount of capital against "off-balance sheet exposure" for traditional NPSL Products is misguided.

We believe that the credit risk associated with NPSL Products should continue to be addressed through prudent credit risk management using existing tools and recommend that the Agencies eliminate the proposed Proxy Methodology for NPSL Products.

Although we believe that the proper outcome would be to eliminate the Proxy Methodology, if the Agencies retain a Proxy Methodology, then we recommend it be revised to be operationally simpler. As proposed, the Proxy Methodology would require a 24-month daily lookback to identify the "highest drawn amount." We recommend the Agencies replace the proposed 24-month daily lookback with a simpler approach of using a 1.5x multiplier of current month-end balance to arrive at a proxy "limit." We believe a proposed 1.5x multiplier would be operationally straightforward to implement while retaining the intent of the proposed Proxy Methodology.

If the Agencies do retain the proposed 24-month lookback, we would recommend that the Agencies clarify that the relevant metric would be the highest drawn month-end amount. The language in the proposal is somewhat ambiguous as to the timing for measurement and we would suggest that the highest month-end amount would generally capture the data the Agencies are seeking while also creating needed clarity and improving the ease of implementation by aligning with the timing for regulatory and other reporting.

Finally, we note that the Basel III Proposal specifically asks whether the Agencies should consider the existence of a "pay over time" threshold in assigning a proxy "limit" to an NPSL Product. We strongly believe the answer to that question is they should not. Pay over time thresholds are functionally distinct from commitments, do not satisfy the U.S. GAAP definition of a "commitment," and should not be conflated with card "lines."

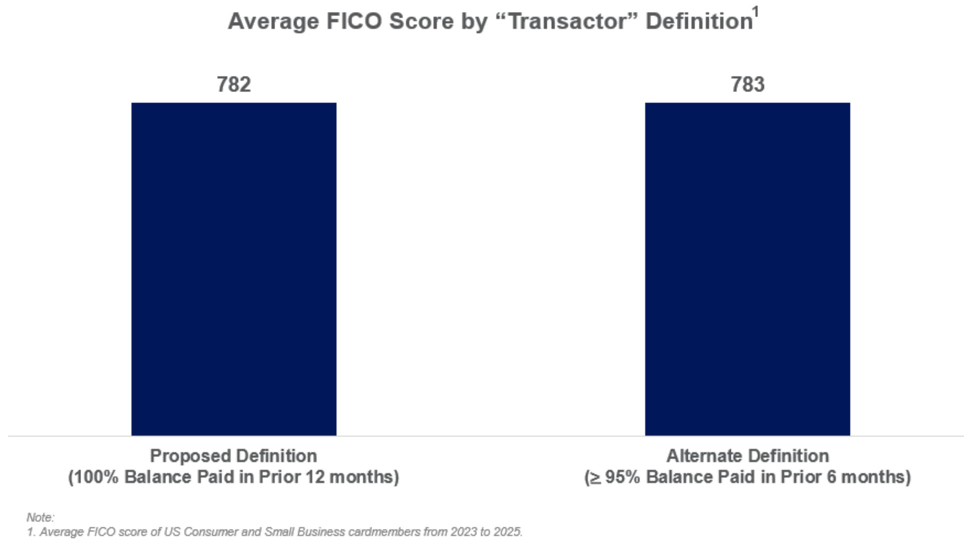
At American Express, pay over time is simply an account functionality that allows card members some flexibility in deciding how to pay for certain purchases. It is a cap on the amount that a card member may revolve, not a spend or credit limit. Importantly, the existence of the pay over time functionality on an NPSL Product does not change the underlying credit decisioning process for that product – a dynamically authorized NPSL Product will still be subject to point-of-sale authorization and transactions can still be declined accordingly. The ability to pay over time only applies once a purchase *has been authorized*; it does not change that process or suggest a particular transaction will necessarily be permitted. Transactions above the threshold might be approved, and transactions below the threshold may be declined.

Rather than a credit limit or committed line, it is more proper to think of the pay over time functionality as a personal financial management tool to offer card members more flexibility to pay for purchases they have already made. Eligible card members may use pay over time if they choose, but broadly treating a pay over time threshold as a credit limit or commitment would mischaracterize the nature of pay over time, create an inconsistency with U.S. GAAP principles, and significantly overcapitalize low utilization NPSL accounts simply because they offer a pay over time functionality. If the Agencies insist on establishing a Proxy Methodology for NPSL Products, we would suggest that the simple 1.5x multiplier described above would be the most conceptually sound approach.

### c. The Definition of "Transactor" can be Adjusted to Provide Greater Flexibility without Increasing Credit Risk

We appreciate the decision of the Agencies to eliminate the gold plating of retail risk weights that was present in the 2023 Proposal and to return to the 45 percent and 75 percent risk weights for transactors and non-transactors respectively. However, we continue to recommend the Agencies revise the definition of transactor to refer to an account that has been 95 percent paid in full at each scheduled repayment date for the prior six months ("95/6"). We appreciate that the Basel III Proposal is intended to improve granularity and risk sensitivity within retail exposures, but we believe that the proposed definition of transactor could be refined so that it more accurately identifies transactor behavior without unnecessarily excluding low credit risk transactors who may not satisfy the strict standard of 100 percent paid in full each month for the trailing 12 months ("100/12").

The Proposed Rules define a transactor in relevant part as "a regulatory retail exposure that is a credit facility where the balance has been repaid in full at each scheduled repayment date for the previous 12 months."[13] However, as shown in the figure below, based upon our internal data, customers who satisfy the 95/6 definition of "transactor" are largely indistinguishable in terms of FICO score from customers that would meet the 100/12 definition of "transactor."




While the customer base is largely indistinguishable, the 95/6 definition provides greater flexibility within the portfolio to accommodate, for example, human errors in submitting payments where the customer otherwise exhibits transactor behavior but periodically carries an immaterial balance or inadvertently submits less than the full payment.

Accordingly, we recommend the Agencies adopt the 95/6 definition of "transactor" in the final rules to allow banking organizations to deploy a commonly used and well-understood definition of transactor without (i) understating credit risk; or (ii) penalizing inadvertent customer errors when paying bills.

## IV. The Operational Risk Framework Should be Modified to Adopt the Simple Asset-Based Approach

We recognize and greatly appreciate that the Basel III Proposal corrects many of the significant deficiencies present in the 2023 Proposal's approach to operational risk capital. In particular, the Basel III Proposal's netting of income and expenses in calculating the non-interest component is a critical improvement to enhance consistency between the interest and non-

[13] 91 Fed. Reg. at 14974.

interest components, and to avoid unintended or inconsistent outcomes given the range of acceptable accounting practices across banking organizations.

However, although it is substantially improved, the overall operational risk framework continues to rest on the overly simplistic and tenuously defended conceptual premise that businesses that generate fee revenue inherently present greater operational risk than businesses that generate interest income. For example, the Basel III Proposal reproduces the internal inconsistency of the 2023 Proposal in capping the contribution of interest income because "operational risk is unlikely to increase proportionally to increases in net interest margin," while leaving the non-interest component uncapped because "organizations with higher overall business volume are larger and more complex, which is likely to result in more operational risk exposure."[14] Although it is certainly true that some businesses that generate fee revenue are higher risk or more complex than some businesses that generate interest income, it is far from absolute.

As we described in our comment letter to the 2023 Proposal, American Express has a simple business model, primarily offering non-complex lending and payments products such as consumer, small business, and corporate credit and charge cards. However, although simple, our business model is also relatively unique, and as a result, fee revenue has historically represented a significant proportion of American Express revenue. Notwithstanding that these fees (*e.g.*, card member annual fees, transaction fees, etc.) are inextricably connected to traditional, non-complex card products and payment services, the Basel III Proposal would continue to treat them as higher risk than the same lending and payment products they support.

In addition, we note that the Basel III Proposal itself appears to wrestle with its apparent inability to differentiate among fee-based business models when assigning operational risk capital. Specifically, the proposal would carve out certain business lines – investment management, investment services, and non-lending treasury services – for unique individual treatment under the operational risk framework on the basis that "industry experts have argued" that these services "pose low operational risk," and the Agencies thus having reviewed certain supporting data.[15] Although the proposal would go so far as to uniquely carve out those services, it would go no farther, essentially concluding that trying to further differentiate among business lines would be too complex and could introduce inconsistency.[16] Unfortunately, carving out three specific business lines for individual treatment only highlights the essential shortcomings of the operational risk framework.

Overall, we would suggest that the operational risk framework as proposed, and specifically the broad-based and overly punitive treatment of fee-driven businesses, reflects the fundamental weakness in using sources of revenue as a proxy for operational risk. Rather than perpetuate the flaws of the 2023 Proposal (and the 2017 Basel framework), we recommend the Agencies adopt the simple alternative "balance sheet" or "asset-based" approach described in the

14 91 Fed. Reg. at 15009, 15011.

15 *Id*. at 15011.

16 *Id*. at 15012.

Basel III Proposal.[17] Similar to capping the contribution of interest income, using the asset-based approach as a ceiling for operational risk-weighted assets would be a reasonable and prudent step to prevent overly punitive and non-risk-driven outcomes for firms with inherently higher fee revenue margin in their business model and whose revenue composition is more heavily weighted towards fee revenues.

Although it would represent a deviation from the 2017 Basel framework, the Basel Committee itself noted the weakness of the operational risk framework in recognizing that the operational risk component would "result[] in capital requirements that are too conservative relative to the operational risk faced by [fee-generating] banks."[18] We believe incorporating the asset-based approach would eliminate that flaw while being both simple to implement across different types of firms and different business models, and sensitive enough to reflect historical operational losses.

## V. Market Risk: Make the $5 Billion Threshold Generally Applicable or Retain a $1 Billion Threshold for Category I and II Firms

The Basel III Proposal would subject all Category I and II banking organizations to the market risk capital rules, along with any other firm with aggregate trading assets and trading liabilities of $5 billion or more.[19] Because the value of applying the market risk capital rules is inextricably linked to engaging in activities that generate market risk, we believe that the Agencies should retain an activity threshold irrespective of a firm's tailoring category.

For the reasons explained in the proposal materials we would support the use of a simple, generally applicable $5 billion threshold for <u>all</u> firms to be subject to the market risk capital rules. Further, if the Agencies feel it is appropriate to apply a lower threshold to Category I and II firms, they could reasonably keep the current $1 billion threshold for Categories I and II. However, we <u>do not</u> believe it would be appropriate to eliminate the activity threshold altogether for Category I and II firms.

The market risk capital rules are a technically complex and costly set of rules developed for organizations with significant trading and capital markets operations. In recognition of this intent, the scope of the rules was historically limited to organizations with $1 billion in combined trading assets and liabilities, and those whose combined trading assets and liabilities equal 10 percent or more of total assets.[20] Further, in recognition of the passage of time since the $1

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[17] *See* 91 Fed. Reg. at 15014.

[18] Basel Comm. on Banking Supervision, Consultative Document: Standardised Measurement Approach for operational risk, ¶ 16(d), at 4 (2016), *available at* https://www.bis.org/bcbs/publ/d355.pdf.

[19] 91 Fed. Reg. at 15017.

[20] 12 C.F.R. § 217.201(b).

billion threshold was established, the Basel III Proposal would raise the dollar-based threshold to $5 billion in combined trading assets and liabilities.[21]

Notwithstanding the updated threshold, the Basel III Proposal would also assume that no activity threshold is necessary for Category I and II banking organizations – instead presuming these firms by default have significant trading operations warranting application of the market risk capital rules. As applied to American Express, however, this is demonstrably incorrect – American Express currently reports zero dollars in combined trading assets and liabilities.[22]

Although American Express has crossed into Category II, we simply do not engage in the type of activity that should trigger application of the market risk capital rules. Requiring firms like us with de minimis or immaterial trading operations to build systems, establish processes and layers of governance, incur costs, and dedicate resources to implement these rules would divert resources from more productive uses, introduce unneeded complexity, and create operational costs and burdens well in excess of any potential risk mitigation benefit. Instead, to help ensure these rules remain appropriately targeted to the trading and capital markets risks they are intended to address, we recommend the Agencies simply make the $5 billion trading assets and liabilities threshold generally applicable across banking organizations or at least retain the current $1 billion activity threshold for Category I and II banking organizations.

## VI. Definition of Capital: In Finalizing ERBA the Agencies Should Eliminate the 10 Percent DTA Deduction Threshold and Apply the 25 Percent Threshold to All Firms

As the Agencies are aware, under the current regulatory capital framework, Category III and IV banking organizations are required to deduct the amount of unrealizable deferred tax assets ("DTAs") exceeding 25 percent of common equity tier 1 ("CET1") capital from regulatory capital. Further, under the framework applicable to Category I and II banking organizations, those organizations are required to deduct DTAs exceeding 10 percent of CET1 capital.[23] The Basel III Proposal would provide that a Category III or IV firm (or other smaller firm) that opts into ERBA would likewise become subject to the 10 percent DTA deduction threshold applicable to Category I and II firms.[24] Thus, upon opting in to ERBA, these firms would forfeit the 25 percent simplified deduction framework in exchange for the more restrictive 10 percent threshold.

We would recommend that the Agencies eliminate the more stringent 10 percent DTA deduction threshold and simply apply the 25 percent threshold to all firms.

First, broadly applying the 25 percent threshold is consistent with the Agencies' stated goal of promoting traditional lending activities within the banking sector. The Basel III Proposal emphasizes the importance of ensuring that the capital framework does not inadvertently drive

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[21] 91 Fed. Reg. at 15017.

[22] March 31, 2026, Form FR Y-9C, Schedule HC-D.

[23] 12 C.F.R. §§ 217.22(d)(1)(ii), 217.22(d)(2)(i)(A).

[24] 91 Fed. Reg. at 14962.

core banking activities toward less-regulated non-bank entities.[25] As an example of this principle, the proposal would eliminate mortgage servicing assets ("MSAs") as a threshold deduction item to remove the "strong disincentive " for firms to engage in mortgage origination and servicing.[26] The same principle should apply to DTAs generated by traditional lending activities. Since most banking organizations engage in a significant amount of traditional lending activities – and DTAs are a natural byproduct of those lending activities – imposing a more restrictive deduction framework on a subset of those firms, especially when DTAs can arise from a range of different business models and lending activities, may inadvertently discourage the very credit provision the industry seeks to support.

Second, the 10 percent DTA deduction threshold has become increasingly outdated and overly conservative. For example, these thresholds were calibrated many years before the adoption of the CECL standard. Under CECL, firms are required to front-load credit loss estimates, which has led to a significant increase in allowances for credit losses at some firms. Those firms – particularly firms with significant consumer financing businesses – therefore would face significantly higher DTAs today than when the thresholds were established.

At American Express, our business model routinely generates a significant amount of timing difference DTAs, representing reserves not yet deducted – such as Membership Rewards liabilities – which are recognized as expenses for financial accounting purposes but are not yet deductible for tax purposes. Our focus on customer engagement through our Membership Rewards program generates a meaningful percentage (~50%) of our timing difference DTAs. These DTAs are not generated from credit losses or write-offs, but instead are card member engagement-driven DTAs reflecting the strength of our business model. Given that our business generates a meaningful amount of timing difference DTAs, we believe it is critical that the capital framework not penalize or disincentivize these activities and should be able to be applied broadly and fairly to different business models

Although the agencies are concerned with the ability of firms to realize DTAs against future taxable income under adverse financial conditions, the capital rules are premised upon banks as going concerns. In this context, the concern that future taxable income would not exist such that DTAs could not be used or realized is misplaced. DTAs on a firm's balance sheet are also already subject to a "more-likely-than-not" realization standard under GAAP, with DTAs below that standard to be charged off via a valuation allowance. Accordingly, any deduction of the DTAs from regulatory capital is already conservative and further expanding the scope of deductions through a more stringent 10 percent DTA deduction threshold is unwarranted and in practice is often overly punitive.

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[25] 91 Fed. Reg.at 15391 ("[T]he proposal may slow or partially reverse the migration of lending activity from the banking sector to the nonbank sector, which has implications for financial stability. Nonbanks are typically less regulated and not subject to the same comprehensive prudential regulations and supervision as banks.").

[26] 91 Fed. Reg. at 14956.

## VII. Conclusion

We greatly appreciate the work of the Agencies in developing the Proposals and appreciate the opportunity to comment. For the reasons described above we generally support the Proposals, and we respectfully recommend that the Agencies take the targeted steps outlined above to improve the Proposals with the overall goal of enhancing the sensitivity and ensuring the appropriate application of the U.S. risk-based capital framework.

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Thank you for considering our comment letter. We appreciate the opportunity to share our views with the Agencies and would be happy to discuss any of them further at your convenience. If we may be of further assistance, please contact me at 212-640-3061 or kerri.s.bernstein@aexp.com.

Sincerely,

Kerri Bernstein
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