

AMERICANS FOR TAX REFORM, ANDREW GINS

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

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Submitter Information

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The file attached contains comments on R-1887, R-1888, and R-1889 from Americans for Tax Reform



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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 (OCC Docket ID OCC-2026-0265, RIN 1557-AF52; Board Docket No. 1887, RIN 7100-AH20; FDIC RIN 3064-AF29)

Regulatory Capital Rules: Regulatory Capital and Standardized Approach for Risk-weighted Assets (OCC Docket ID OCC-2026-0034, RIN 1557-AF49; Board Docket No. R-1888, RIN 7100-AH21; FDIC RIN 3064-AG23)

GSIB-Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (Docket No. 1889, RIN 7100-AH22)

I. Introduction

Americans for Tax Reform appreciates the opportunity to comment on the three major proposals released by the agencies concerning bank capital requirements. As the agencies move to implement the Basel III endgame framework, it is imperative that regulators take care to ensure that bank regulation does not expose taxpayers to greater risk nor harm by disincentivizing lending,

constricting access to credit, or limiting market intermediation. **The newly released proposal(s) are a marked improvement from the proposal(s) released in 2023.** The revisions were necessary to address concerns surrounding “gold-plating” or excessive capital requirements that went far beyond the original Basel III endgame framework. The Fed projected the proposal would raise Common Equity Tier 1 (CET1) capital requirements by 16 percent for affected banks.¹ The new proposal restores risk sensitivity to the measurement of capital, abandons several features that would have raised the cost of credit, and accounts for structural economic changes in its methodologies that have taken place since Basel III was first implemented. **Certain provisions are identified in the following sections for improvement and further revision to avoid disincentivizing capital allocation in a manner that could be deleterious to consumers, homebuyers, borrowers, and businesses.**

II. The Limits of Capital Regulation

Before commenting on specifics, it is worth stating what capital regulation can and cannot accomplish. Capital is a buffer against loss, and a well-capitalized institution is more resilient than a thinly capitalized one. But capital adequacy has never rendered any bank to be failure-proof, and the recent history of bank failures cautions against treating ever-higher capital requirement as a substitute for proper risk management practices that prevents failures.

The collapse of Silicon Valley Bank (“SVB”) in March of 2023 illustrates the point. SVB did not fail because it had taken outsized credit risk or because its capital ratios were deficient under the standards then in force. The bulk of its balance sheet consisted of treasuries and agency mortgage-backed securities (MBS). SVB failed because it funded long-duration, fixed-rate securities with a concentrated base of uninsured deposits and removed hedges on interest-rate risk, so that when interest rates rose, the market value of its portfolio fell substantially, precipitating a deposit run that led the bank to fail.

The Federal Reserve’s own post-mortem report found that SVB managed interest-rate risk for short-run profit, removed hedges, and adjusted its internal assumptions to make the risk appear smaller. This is a failure of management, not a shortfall of regulatory capital. Critically, supervisors saw the problem and did not act. The Federal Reserve’s review concluded that examiners did not fully appreciate the bank’s vulnerabilities and, where they did identify them, did not

move quickly or forcefully enough to compel correction. By the time the bank failed it had accumulated 31 open supervisory findings, roughly triple the number at peer institutions, and examiners had flagged weaknesses in its interest-rate-risk management in examinations dating to 2020 without issuing formal findings until 2022.¹ Had supervisors enforced the standards already on the books, SVB might well remain in operation today. The lesson is one of humility rather than maximalism. The fact that well-capitalized banks can fail is not an argument for limitless capital. It serves as a reminder that no capital rule, however stringent, can render a market system foolproof. The Federal Reserve framed its own task in precisely those terms, calling for “humility” in assessing what went wrong.

III. The New Proposal Is an Improvement Over the 2023 Proposal

Agencies now estimate that the expanded risk-based approach (“ERBA”) would reduce the common equity tier 1 requirements of Category I and II bank holding companies by roughly 1.2 percent and by about 4.8 percent in combination with the related stress-testing and GSIB-surcharge proposals with a larger reduction for their depository institution subsidiaries.² The Standardized Approach Proposal similarly reduces common equity tier 1 and tier 1 requirements, by approximately 4.8 and 5.3 percent, for the institutions it covers.³ Lower required capital, achieved alongside better risk measurement, is the appropriate balance. The aggregate effect of the proposal lends itself to better risk sensitivity without potentially constraining lending or other financial activities.

Because equity funding is more expensive than deposits, banks recover the cost of additional capital through wider lending spreads, higher fees, and reduced market-making. Empirical work finds that an increase in funding costs by as little as 20 basis points can render an intermediary uncompetitive.⁴ By lowering required capital, the Proposal relieves some of that pressure on the price and availability of credit.

The Proposal is also right to eliminate the “dual-stack” calculation requirement that forces banks to calculate capital under both the standardized and advanced

¹ <https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf>

² <https://www.govinfo.gov/content/pkg/FR-2026-03-27/pdf/2026-05960.pdf>

³ <https://www.govinfo.gov/content/pkg/FR-2026-03-27/pdf/2026-05959.pdf>

⁴ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1708173

approaches and comply with the more stringent result.⁵ This will reduce both internal compliance costs and the opacity of the current regime. The proposal also declines to adopt the Basel “output floor,” which would have capped the benefit of internal model usage at 72.5 percent of standardized risk-weighted assets⁶, and it preserves the use of internal models for market risk calculation, demonstrating that firms understand their own trading exposures better than a uniform formula. And it recalibrates risk weights according to genuine risk drivers, producing a framework the agencies describe as a risk-sensitive, transparent, stand-alone requirement.

One element runs against the general preference for risk-sensitive, firm-specific measurement: for credit, counterparty, and operational risk, the ERBA is standardized and does not permit internal models, which the advanced approaches allowed. Operational risk stems from idiosyncratic events such as fraud, conduct fines, IT failures, and litigation costs, not deliberate risk-taking to generate returns.⁷ Since operational risk is not a deliberately cyclical, return-seeking exposure, it is hard to see how a standardized capital-based charge could fully capture operational risks or how favoring a standardized model over internal models could help better predict operational risk losses.

IV. Revised Asset Class Risk Weights

The proposal would apply a risk weight of 65% to corporate exposures identified as investment grade based on a bank’s internal ratings system.⁸ Under the previous proposal, a bank was only eligible for investment grade corporate exposure treatment if the company had publicly traded securities on a public securities exchange. The agencies included this provision in 2023 despite the fact the U.K. and E.U. declined to add this criterion in determining investment grade risk weight eligibility.⁹ In addition, the general corporate weight under the standardized approach would fall from 100 to 95 percent for Category III and IV

⁵ <https://www.govinfo.gov/content/pkg/FR-2026-03-27/pdf/2026-05959.pdf>

⁶ *ibid.*

⁷ <https://www.hbs.edu/behavioral-finance-and-financial-stability/Documents/2016-06%20Rethinking%20Operational%20Risk%20Capital%20Requirements.pdf>

⁸ <https://www.federalregister.gov/documents/2026/03/27/2026-05959/regulatory-capital-rule-category-i-and-ii-banking-organizations-banking-organizations-with>

⁹ <https://www.gibsondunn.com/federal-banking-agencies-issue-basel-iii-endgame-package-of-reforms/>

banks.¹⁰ The agencies' approach is a welcome change as preserving the internal-ratings approach ensures that creditworthy private and small-business borrowers are not disadvantaged on the basis of listing status alone.

The adoption of granular, loan-to-value-based risk weight bands for real estate exposures, residential and commercial, represents substantial improvement in measuring risk sensitivity.¹¹ Since the loan-to-value ratio of loans decline over the course of the life of the loan as borrowers pay principal and interest, the loan becomes less risky over time, enabling banks to benefit from more accurate capital treatment that is reflective of true risk. The new proposal's risk-weight buckets will range from 20% to 70% based on the loan-to-value ratio and the dependency on cash flows. This will replace current capital treatment rules which treat real-estate under blanket risk-weights; residential mortgages, for example, incur a 50% risk weight under current capital treatment rules.¹² The Proposal also omits the residential-mortgage surcharges of the 2023 Proposal, which set U.S. weights above the Basel standard without supporting evidence. Empirical analysis estimated that those surcharges would have added roughly \$33 a month to a \$200,000 high-loan-to-value mortgage and would have fallen most heavily on low-income borrowers.¹³

With regards to the agencies' request for comment on the recognition of whether and how private mortgage insurance (PMI) should play a role in determining the risk weight of residential mortgages, the agencies should factor in PMI recognition in risk-weighting. In the rule's current form, the LTV ratio is computed without any adjustment for PMI.¹⁴ The agencies should provide explicit recognition of PMI in its final rule. PMI is a private-sector mechanism that transfers a defined portion of mortgage credit risk from the lender to a

¹⁰ <https://www.federalregister.gov/documents/2026/03/27/2026-05960/regulatory-capital-rules-regulatory-capital-and-standardized-approach-for-risk-weighted-assets>

¹¹ <https://www.federalregister.gov/documents/2026/03/27/2026-05960/regulatory-capital-rules-regulatory-capital-and-standardized-approach-for-risk-weighted-assets>

¹² <https://www.mvalaw.com/investigations-and-regulatory-advice/capital-recalibration-overview-of-the-2026-basel-iii-revised-standardized-approach-and-gsib-surcharge-proposals>

¹³ <https://www.urban.org/sites/default/files/2023-09/Bank%20Capital%20Notice%20of%20Proposed%20Rulemaking.pdf>

¹⁴ <https://www.federalregister.gov/documents/2026/03/27/2026-05959/regulatory-capital-rule-category-i-and-ii-banking-organizations-banking-organizations-with>

regulated insurer.¹⁵ For high LTV loans, the insured layer helps reduce the lender's loss in the case of a default, so capital treatment that disregards PMI overstates the lender's risk exposure.

Recognizing PMI, whether by reducing the effective loan-to-value used to assign the weight or by treating the coverage as eligible credit risk mitigation, would align capital with retained risk and lower the capital and pricing burden on the loans that lower-wealth households most depend on. The households at stake are neither few nor marginal.

Private mortgage insurance enabled more than 800,000 low-down-payment borrowers to purchase homes in 2024.¹⁶ For a typical prospective buyer, accumulating a 20 percent down payment can take on the order of 27 years, roughly three times as long as saving the 5 percent down payment commonly paired with PMI.¹⁷ A risk weight that neglects the benefit of PMI overstates risk and raises the cost of insured high-loan-to-value lending, hurting first-time and low-income buyers.

Eliminating the threshold-based deduction of mortgage servicing assets ("MSAs") from CET1, for all banking organizations and including those using the community bank leverage ratio framework also represents an improvement from the 2023 proposal. The prior deduction penalized banks for holding servicing rights and helped push mortgage servicing into the nonbank sector. This was a prime example of how government intervention distorts capital allocation and fuels consumer migration to other segments of the market. Carrying forward a 250 percent risk weight, however, continues to overstate the risk of high-quality servicing assets, which can serve as a natural hedge against interest-rate risk. MSAs tend to increase in value as interest rates rise. This is because homeowners are less likely to refinance their mortgages, thereby mitigating prepayment risk. MSAs can offer a natural interest rate hedge against other rate-sensitive securities on a bank's balance sheet.¹⁸ The final rule should adopt a lower risk weight that is far less punitive or at least recognizes the

¹⁵ <https://www.equifax.com/personal/education/loans/articles/-/learn/what-is-private-mortgage-insurance/>

¹⁶ <https://www.usmi.org/press-release-new-report-800000-low-down-payment-borrowers-purchased-homes-in-2024-with-private-mortgage-insurance/>

¹⁷ *ibid.*

¹⁸ <https://nationalmortgageprofessional.com/news/when-it-comes-msrs-hold-tight>

countercyclical function of MSAs on a balance sheet, helping to dampen, instead of amplifying volatile interest-rate driven swings in fixed-income portfolio valuations.

V. Counterparty Credit Risk Treatment & the Treasury Market

The proposal's retention of the 1.4 multiplier factor for netting set exposure in within the Standardized Approach for Counterparty Credit risk (SA-CCR) framework is fundamentally miscalibrated for the U.S. Treasury and repo markets and should be eased.¹⁹ The alpha factor mechanically inflates a banking organization's measured exposure by 40 percent before any risk weight is applied. The factor of 1.0 for commercial end-users is a welcome change from the 2023 proposal, considering the effects an inflated CCR exposure multiplier could have on industries heavily reliant on derivate contracts such as agriculture and airlines.

The agencies have not sufficiently released enough reasoning for the multiplier being set at 1.4 for non-commercial end users. No empirical data or analysis was given for setting this multiplier or establishing a 40 percent markup would be commensurate with realistic CCR. One could argue that the alpha factor multiplier could be set 1.1 or 1.2 without any additional justification. Since the 1.4 figure is the result of pure conjecture, the agencies should work to revise the multiplier seeking to align it better with actual risk, which is already conceptually captured in the derivative netting set that accounts for replacement cost and potential future exposure.

One concern in particular that arises from this provision is the effects it will have on treasury market intermediation. Federal Reserve research finds that when dealer balance-sheet utilization is high, Treasury market liquidity becomes "much worse than predicted by yield volatility alone,"²⁰ providing evidence that intermediation constraints produce dysfunction of the kind in March 2020 when liquidity dried up. Relatedly, the Federal Reserve Bank of Boston found that temporarily relaxing the supplementary leverage ratio in 2020 freed balance-sheet capacity and eased Treasury market strains.²¹

¹⁹ <https://www.federalregister.gov/d/2026-05959/p-515>

²⁰ https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr1070.pdf

²¹ <https://www.bostonfed.org/publications/current-policy-perspectives/2025/relaxing-dealers-risk-constraints-can-make-treasury-market-liquid.aspx>

Imposing a blunt 40 percent surcharge on heavily collateralized, low-risk Treasury repo intermediation raises the marginal cost of market-making, forcing trading desks to widen bid/ask spreads and shrink inventory, thereby eroding liquidity in a crucial market the Treasury on for government financing.

A capital regime that taxes the intermediation of this issuance courts higher financing costs for taxpayers and potentially threatens the stability of the treasury market. Agencies should recalibrate the SA-CCR methodology at a minimum by reducing the alpha factor toward 1.0 for centrally cleared Treasury and repo transactions, consistent with quantitative analysis showing such a change would lower exposure at default by roughly 5 percent and risk-weighted assets by roughly 8 percent without materially weakening prudential coverage.²²

VI. The GSIB Surcharge and Method 2 Revision

The agencies' revision to the GSIB surcharge calculation methodology under Method 2 is a welcome change that corrects for structural changes in the economy that have artificially inflated GSIB surcharge scores. As the agencies note, to correct for significant divergence from Method 1 surcharge scores since 2020, the agencies will apply a one-time downward revision by a factor of 1.2 to certain coefficients and index them to nominal GDP growth thereafter.²³

Indexing the surcharge framework to economic growth so that it no longer rises simply because nominal balance sheets expand makes the surcharge less punitive and more sensitive to actual systemic exposure. Indexing coefficients to nominal GDP growth gives a better sense of how systemically prominent an institution is over inflation, since nominal GDP growth tends to grow faster than inflation and systemic presence can be conceptually viewed as how much of a share of total activity an institution is responsible for, thus allowing for balance sheets to expand without being penalized for background economic growth.

Additionally, risk sensitivity is better accounted for through the use of finer increments of 10 basis points over the current 50 basis point increment

²² <https://www.isda.org/a/B3kME/SA-CCR-NPR-Response-Letter-Addendum.pdf>

²³ <https://www.federalregister.gov/documents/2026/03/27/2026-05961/regulatory-capital-rule-regulation-q-risk-based-capital-surcharges-for-global-systemically-important>

surcharges, this will help attenuate the cliff effects of wide surcharge increments and better tailor surcharges to be commensurate with risk.²⁴

Concerns still remain with the retention of the U.S.-specific Method 2 surcharge. Method 2 was intentionally adopted to be stricter than the Basel endorsed Method 1 surcharge formula but substitutes a short-term wholesale funding indicator for the Method 1 substitutability indicator, and the applicable surcharge is the higher of the two. Since dependency on short-term wholesale funding differs from bank to bank, it is not conceivable how the surcharge can be applied without necessarily favoring and disfavoring certain banks based on their chosen product line or source of funding. Short-term wholesale funding helps “to finance liquid, near risk-free arbitrage positions”²⁵, contrary to regulators’ belief that wholesale funding funds illiquid and risky assets, rendering it a proxy for systemic risk.

Additionally, Method 2 by design is meant to exceed Method 1’s surcharge score, and it imposes on U.S. global banks a surcharge that typically exceeds what they would be charged under E.U. Basel rules.²⁶

A surcharge calibrated above the global baseline raises the cost of capital for institutions that intermediate the largest share of credit and market liquidity, leading to these costs to eventually be passed on to borrowers and investors and with no demonstrable benefit or increase in safety and soundness. The agencies should, at a minimum, constrain Method 2 so that it does not gold-plate the surcharge.

Even with coefficient indexing, retaining Method 2 perpetuates a surcharge bias above the international baseline. The agencies should not punish the largest banks for simply being large. If the agencies intend on adopting the Basel framework, they should not add additional rules that could harm U.S. financial sector competitiveness with other jurisdictions.

Conclusion

²⁴ *ibid.*

²⁵ <https://www.federalreserve.gov/econres/feds/files/2021032pap.pdf>

²⁶ <https://www.bis.org/bcbs/gsib/cutoff.htm>

ATR commends the agencies for correcting the worst instincts of the 2023 effort: its instinct to pile capital without analysis or justification, largely to the disadvantage of the U.S. financial sector without demonstrating any benefit in safety and soundness. As a result of the agencies' changes, the net effects of the new proposal are estimated to lower capital requirements for banks with assets exceeding \$100 billion.²⁷

By better calibrating for risk sensitivity, abandoning the risk-weight output floor and the dual-stack calculations for capital requirements, the agencies have moved the framework closer to one in which capital tracks genuine risk while removing burdensome overregulation.

With that said, concerns still linger regarding certain provisions such as the arbitrary 250% risk weight for MSAs, lack of recognition for PMI in mortgage risk-weighting and the continued usage of the Method 2 GSIB surcharge, even with indexing reform and coefficient adjustments. The Method 2 surcharge persists as a uniquely American penalty levied above the global baseline that punishes the U.S. financial sector for its success rather than any demonstrated systemic risk.

Left unaddressed, these issues will manifest as a tax on the financial services sector that borrowers, businesses, and taxpayers ultimately bear. The agencies should reject setting unnecessarily high capital requirements and surcharge gold-plating in the final rule.

ATR appreciates the opportunity to comment on these three proposed rulemakings. If you have any questions or require additional information, please contact Andrew Gins at agins@atr.org.

Sincerely,

Americans for Tax Reform

²⁷ <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/board-memo-basel-gsib-standardized-approach-20260319.pdf>