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Proposal and Comment Information

Title: Regulatory Capital Rules: Regulatory Capital and Standardized Approach for Risk-weighted Assets, R-1888

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Please see attached

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Via Electronic Mail

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Docket Nos. OCC-2026-0265, OCC-2026-0034

Ms. Jennifer M. Jones
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Federal Deposit Insurance Corporation
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Washington, DC 20429
RIN 3064-AF29, 3064-AG23

Benjamin W. McDonough
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
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Docket Nos. 1887, 1888
RIN 7100-AH20, 7100-AH21

Re: Regulatory Capital Rules: 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

Dear Messrs. & Mmes.:

We write to draw your attention to serious legal deficiencies in the agencies' proposals to weaken the United States' bank capital framework. We are concerned that these regulatory rollbacks, which we believe to be bad policy, also appear to be unlawful. As detailed below, the proposals likely violate the Dodd-Frank Act's Collins Amendment and several other statutory mandates. Inexplicably, the agencies' proposals do not even attempt to address these serious legal issues. We urge the agencies to withdraw the proposals or, at a minimum, articulate reasoned legal justifications in a re-proposal that both explains how the proposals comport with the Collins Amendment and other relevant statutory provisions and affords public commenters a meaningful opportunity to respond.

The Collins Amendment—section 171 of the Dodd-Frank Act—was a centerpiece of Congress' response to the 2008 crisis. It serves two complementary purposes: (1) requiring the nation's largest financial institutions to satisfy minimum capital standards at least as stringent as those applicable to smaller depository institutions, and (2) preventing regulators from setting capital requirements weaker than those that were in place in the lead-up to the crisis.[1] The provision was sponsored by Senator Susan Collins (R-Maine) and championed by Sheila Bair, who was appointed FDIC Chair by President George W. Bush. Chairman Bair called section 171 a "critical

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, § 171, 124 Stat. 1376, 1435-36 (codified at 12 U.S.C. § 5371).

element to ensure that U.S. financial institutions hold sufficient capital to absorb losses during future periods of financial stress."[2] The Senate adopted the Collins Amendment by unanimous consent, demonstrating the provision's broad, bipartisan support.[3]

Astoundingly, although the current proposals plainly implicate the Collins Amendment, the agencies ignore it entirely. The proposals offer no analysis whatsoever of *whether*—much less *how*—they comply with section 171. At the same time, the agencies' own economic analysis suggests that the proposals would, in fact, violate the Collins Amendment. The agencies' calculations indicate that global systemically important banks' (GSIBs) risk-weighted assets would be *lower* under the proposed expanded risk-based approach (ERBA) applicable to Category I and II banking organizations than under the standardized approach applicable to smaller banks.[4] This result directly conflicts with the Collins Amendment, which provides that large banks' capital requirements "shall not be less than the generally applicable" risk-based capital requirements.[5] The proposals may also violate the Collins Amendment's separate mandate that capital requirements not be "quantitatively lower" than those that were in place on the date of Dodd-Frank's enactment—but again, the agencies have not provided the economic analysis necessary to evaluate the proposals against the 2010 statutory floor.[6]

To be clear, it is difficult for outside observers to fully assess the validity of these obvious concerns because the agencies fail to explain their legal reasoning. This omission is especially galling given the insistence of critics of the 2023 proposals to strengthen the bank capital framework—including Federal Reserve Vice Chair for Supervision (VCS) Michelle Bowman—that the agencies must "show their work" when issuing significant rules.[7] In this case, the agencies have either failed to do the requisite work to assess whether their proposals comply with the Collins Amendment, or they are refusing to "show their work" by not disclosing their legal analysis.

These apparent violations of the Collins Amendment are not the proposals' only legal defects. The proposals also appear to be inconsistent with the Dodd-Frank Act requirement that capital standards be more stringent for large bank holding companies (BHCs) than for firms that do not present similar financial stability risks.[8] The proposals are further compromised by major procedural irregularities. According to public reporting, the Federal Reserve has helped coordinate the banking sector's commenting strategy to ensure swift finalization of the proposals—conduct that raises serious questions under the Administrative Procedure Act (APA) and the Board's own policy on *ex parte* contacts during informal rulemaking.[9] It also casts doubt on whether the

[2] 156 CONG. REC. S3460 (daily ed. May 10, 2010).
[3] *See* 156 CONG. REC. S3705 (daily ed. May 13, 2010).
[4] *See* 91 Fed. Reg. 14,952, 15,127 (Mar. 27, 2026).
[5] 12 U.S.C. § 5371(b)(2).
[6] *Id.*
[7] Michelle W. Bowman, Member, Bd. of Governors of the Fed. Rsrv. Sys., Remarks at the 2023 Community Banking Research Conference: The Role of Research, Data, and Analysis in Banking Reforms 3 (Oct. 4, 2023), https://www.federalreserve.gov/newsevents/speech/files/bowman20231004a.pdf.
[8] 12 U.S.C. § 5365(a)(1).
[9] *See* Katanga Johnson, *Fed's Bowman Cautions Wall Street CEOs Against Capital Gripes*, BLOOMBERG (Apr. 23, 2026), https://www.bloomberg.com/news/articles/2026-04-23/fed-s-bowman-cautions-wall-street-ceos-against-capital-gripes; Pete Schroeder & Michelle Price, *US Fed Has Told Big Banks Not to Push Back Aggressively on New Capital Rules*, REUTERS (Apr. 17, 2026), https://www.reuters.com/world/us-fed-has-told-big-banks-not-push-back-aggressively-new-capital-rules-2026-04-17/.

agencies are conducting the rulemaking process in a manner that allows for, and reflects, the full range of public input.

In light of these apparent legal infirmities, any final rule will be legally suspect. And because these issues turn on questions of statutory interpretation, *Loper Bright* deprives the agencies of any judicial deference for their reading of the relevant statutes.[10] To ensure compliance with the laws adopted by Congress, the agencies therefore must either withdraw the proposals or re-propose them with the legal analysis the public is entitled to receive, accompanied by a meaningful opportunity to respond to that analysis.

1. The Agencies' Failure to Address the Collins Amendment Deprives the Public of a Meaningful Opportunity to Comment in Violation of the Administrative Procedure Act.

By failing to address the Collins Amendment, the agencies have deprived the public of a meaningful opportunity to comment on their legal reasoning in violation of the APA. As the D.C. Circuit has explained, "[a]n agency proposing informal rulemaking has an obligation to make its views known to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible."[11] In prior rulemakings implicating the Collins Amendment, the agencies have consistently provided substantive legal analysis explaining how their proposed rules comply with section 171. Here, by contrast, the agencies have offered no such analysis—and indeed, no acknowledgement that section 171 even exists. The agencies must therefore withdraw the proposals or reissue them with a legal analysis that affords the public a meaningful opportunity to evaluate and respond to the agencies' reasoning.

The Collins Amendment constrains the agencies' discretion to establish minimum risk-based capital requirements in two ways. First, it provides that minimum risk-based capital requirements for insured depository institutions (IDIs) and their holding companies "shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that [an] agency may require."[12] Second, it mandates that those requirements shall not be "quantitatively lower than the generally applicable risk-based capital requirements that were in effect for [IDIs] as of July 21, 2010."[13] In each case, "generally applicable risk-based capital requirements" refers to the risk-based capital requirements applicable to IDIs under the agencies' prompt corrective action (PCA) regulations.[14] In plain terms, section 171 establishes two floors: (1) the minimum risk-based capital requirements the agencies set for large banks and BHCs cannot be less than those applicable to smaller banks, and (2) minimum risk-based capital requirements cannot be lower than those in effect in 2010.

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[10] Loper Bright Enters. v. Raimondo, 603 U.S. 369, 394 (2024) ("courts must exercise independent judgment in determining the meaning of statutory provisions").

[11] Home Box Off., Inc. v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977).

[12] 12 U.S.C. § 5371(b)(2).

[13] *Id.*

[14] *Id.* § 5371(a)(2)(A); *see also Finding the Right Capital Regulations for Insurers: Hearing Before the Subcomm. on Fin. Insts. & Consumer Prot., Sen. Comm. on Banking, Hous. & Urb. Affs.,* 113th Cong. 5 (2014) (statement of Sen. Collins) ("Section 171 directs the Federal Reserve to establish minimum consolidated capital standards *with reference to the FDIC's Prompt Corrective Action regulations*.") (emphasis added).

The proposals would fundamentally alter the U.S. bank capital framework in ways that implicate both Collins Amendment provisions. Under the current capital framework, large BHCs must calculate their risk-based capital ratios under both the standardized and advanced approaches and use the lower of the two ratios.[15] This "dual-stack" requirement operationalizes the Collins Amendment's mandate that large BHCs' risk-based capital requirements cannot fall below the generally applicable risk-based capital requirements—i.e., the standardized approach. The proposals would eliminate the dual-stack requirement and instead require Category I and II firms to calculate their risk-based capital ratios under the ERBA alone.[16] All other banking organizations would use the new standardized approach by default, with the choice to opt-in to the ERBA.[17]

The agencies' proposed overhaul of the capital framework raises a litany of questions about compliance with the Collins Amendment that the proposals inexplicably ignore. Under the new framework, which rules constitute the "generally applicable risk-based capital requirements" that serve as the floor for all other risk-based capital requirements? Do the ERBA rules applicable to Category I and II firms comply with section 171's mandate that large BHCs' capital requirements be "not … less than" the generally applicable risk-based capital requirements? Are the proposed ERBA and standardized rules "not quantitatively lower than" the generally applicable risk-based capital requirements that were in effect for IDIs on July 21, 2010? The agencies did not deign to address any of these issues.

The proposals' silence on the Collins Amendment stands in stark contrast to prior capital rulemakings in which the agencies have consistently addressed section 171 at the proposal stage. The agencies expressly discussed the Collins Amendment's legal constraints when they proposed to implement the initial Basel III reforms in 2012, explaining that the standardized approach would be the "generally applicable" capital requirements for purposes of section 171 "because they would be the capital requirements for [IDIs] under section 38 of the Federal Deposit Insurance Act, without regard to asset size or foreign financial exposure."[18] The Board likewise addressed section 171 in its 2012 proposal to require large foreign banking organizations to form U.S. intermediate holding companies.[19] More recently, the agencies expressly acknowledged the Collins Amendment's constraints on their discretion when they proposed to relax the supplementary leverage ratio in 2025.[20] Only in cases where the Collins Amendment was clearly not implicated—such as when the agencies proposed to strengthen the capital framework in July 2023—have the agencies omitted discussion of section 171 from proposed capital rules. Members of the Board of

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[15] 12 C.F.R. § 217.10(d).
[16] 91 Fed. Reg. 14,952, 14,956 (Mar. 27, 2026).
[17] 91 Fed. Reg. 15,332, 15,334 (Mar. 27, 2026). Qualifying community banking organizations would continue to be eligible to opt into the community bank leverage ratio as an alternative to risk-based capital requirements.
[18] 77 Fed. Reg. 52,888, 52,892 (Aug. 30, 2012). The final rule stated that "the minimum capital requirements … as determined using the standardized capital ratio calculations … which apply to all banking organizations, establish the 'generally applicable' capital requirements under section 171 of the Dodd-Frank Act." 78 Fed. Reg. 62,018, 62,021 (Oct. 11, 2013).
[19] 77 Fed. Reg. 76,628, 76,640 (Dec. 28, 2012) ("[T]he Board has considered section 171 of the Dodd-Frank Act, which requires top-tier U.S. bank holding company subsidiaries of foreign banking organizations that relied on SR Letter 01-01 to meet U.S. capital standards that are not less than the standards generally applicable to U.S. depository institutions beginning in July, 2015.").
[20] 90 Fed. Reg. 30,780, 30,785 n.29 (July 10, 2025) ("For about half of depository institution subsidiaries of GSIBs, the tier 1 leverage ratio requirement would continue to exceed the risk-based requirement. *Changing the tier 1 leverage requirement would implicate section 171 of the Dodd-Frank Act*.") (emphasis added).

Governors have also stated, through informal communications with Congress and the public, that the Collins Amendment is a binding provision that has constrained the Board from taking a range of supervisory and regulatory actions, including granting temporary accommodation during unusual and exigent circumstances or tailoring its capital frameworks to institutions with unique business models.[21]

Against this background, the legal position underlying the present proposals appears to be that the agencies can invent entirely new capital frameworks and unilaterally deem them to be the "generally applicable" standard. Again, it is difficult to know if this reading is entirely accurate because the proposal does not so much as mention the Collins Amendment. This new interpretation nonetheless appears to conflict with the agencies' prior interpretations of section 171 as a clear constraint on their discretionary authority. That the agencies fail to even acknowledge the Collins Amendment, let alone explain this novel interpretation, deprives the public of a meaningful opportunity to comment in violation of the APA. At a minimum, the agencies must repropose with a clear discussion of how the proposed reforms comply with section 171 so that the public can meaningfully engage with the agencies' legal reasoning.

This is particularly important because—whatever the agencies are doing (or *think* they are doing) here—they appear to be departing from their prior practice of treating the standardized approach as the "generally applicable" risk-based capital requirements for purposes of section 171. Instead, an agency should "display awareness that it is changing position . . . [and] show that there are good reasons for the new policy[.]"[22] As the Supreme Court has explained, "[a]n agency may not … depart from a prior policy *sub silentio* or simply disregard rules that are still on the books."[23] To be sure, the "mere fact that an agency interpretation contradicts a prior agency position is not fatal."[24] By offering no analysis of section 171 in the proposals, however, the proposals likely violate the "presumption … against changes in current policy that are not justified by the rulemaking record."[25] Indeed, the Supreme Court has been explicit that an agency's "[s]udden and unexplained change . . . may be 'arbitrary, capricious [or] an abuse of discretion[.]'"[26]

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[21] *See* Letter from Randal K. Quarles, Vice Chair for Supervision, Bd. of Governors of the Fed. Rsrv. Sys. to Sen. Mike Crapo, Chairman, Comm. on Banking, Hous., & Urb. Affs. 3 (Apr. 22, 2020), https://www.banking.senate.gov/imo/media/doc/Fed%20Response%20to%20Crapo%204.8.20%20Letter.pdf (requesting that "Congress should consider modifying section 171 of the Dodd-Frank Act ('the Collins Amendment') to allow regulators to provide flexibility under Tier 1 leverage requirements" due to "complications [the Collins Amendment] presents in tailoring a capital regime to a diverse financial sector and to changing risks in the financial system over time."); *see also* Jerome Powell, Chair, Bd. of Governors of the Fed. Rsrv. Sys., Remarks at Chair Powell's Press Conference 28 (July 29, 2020), https://www.federalreserve.gov/mediacenter/files/FOMCpresconf20200729.pdf (stating that a statutory exemption from the Collins Amendment's leverage requirement "would give us the ability to allow banks to grow their balance sheet, and in doing so to serve their customers better…"); *see also* 160 CONG. REC. S2472 (daily ed. Apr. 29, 2014) (statement of Sen. Collins) ("While the Federal Reserve has acknowledged the important distinctions between insurance and banking, it has repeatedly suggested that it lacks authority to take those distinctions into account when implementing the consolidated capital standards required by Section 171.").

[22] FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009).

[23] *Id.*

[24] Smiley v. Citibank, N.A., 517 U.S. 735, 742 (1996).

[25] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 42 (1983) (emphasis in original).

[26] Smiley v. Citibank, N.A., 517 U.S. at 742 (citing 5 U.S.C. § 706(2)(A)).

2. The Proposals Violate the Collins Amendment's First Prong (Capital Requirements May Not Be Less Than the Generally Applicable Risk-Based Capital Requirements).

Since the agencies inexplicably failed to address the Collins Amendment, we must rely on third-party commentary to divine how—or if—the proposals comply with section 171. A defense of the proposals' legality, articulated by Sullivan & Cromwell LLP, argues that they comply with the Collins Amendment's first prong because any bank *may* opt-in to the ERBA and, accordingly, the ERBA itself becomes the "generally applicable" risk-based capital requirement that serves as a floor.[27] This argument is deeply flawed. The most straightforward reading of the proposals and section 171 is that the standardized approach remains a generally applicable requirement and that capital requirements for the largest banks cannot fall below the standardized floor.

a. The Collins Amendment's Purpose Requires Retaining the Standardized Approach as a Floor.

The context in which Congress enacted the Collins Amendment confirms that the standardized approach—as the most broadly applicable risk-based capital framework—must serve as a floor for large banks' risk-based capital requirements. Senator Collins introduced section 171 in direct response to a regulatory regime that had permitted the largest BHCs to operate under capital standards less stringent than those applicable to smaller banks. As Senator Collins explained on the Senate floor, under pre-2010 law, "regulators can allow larger financial institutions to follow capital standards that are actually less stringent than those that are applied to smaller depository institutions. That makes no sense whatsoever . . . ."[28] Section 171, she explained, would "tighten the standards that would apply to larger financial institutions by requiring them to meet, at a minimum, the standards that already apply to small banks."[29] By adopting section 171, Congress made clear that large banks must be subject to capital requirements at least as stringent as those that apply broadly across the banking system—which means retaining the standardized approach as a floor for any other risk-based capital requirements.

The theory that the ERBA supplants the standardized approach as the "generally applicable" capital rules because any bank may opt-in is too clever by half. The proper interpretation of the term "generally" in this context is that it means, "[u]niversally; with few or no exceptions; [or] with respect to (almost) every individual or case."[30] A standard that applies to the largest banking organizations, but which smaller banks have the option to use to the extent feasible or desirable is

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[27] *See* SULLIVAN & CROMWELL, BANK REGULATORY CAPITAL: BASEL III, GSIB SURCHARGE AND REVISED STANDARDIZED APPROACH PROPOSALS (Mar. 26, 2026), https://www.sullcrom.com/insights/memo/2026/March/Banking-Agencies-Release-Basel-III-GSIB-Surcharge-Revised-Standardized-Approach-Proposals ("The aspect of the Basel III Proposal permitting any banking organization … to elect to adopt ERBA appears to be designed to … satisfy this requirement in the Collins Amendment because the generally applicable risk-based capital requirements would include both ERBA and the revised standardized approach… [G]iven the discretion institutions would have, the generally applicable risk-based capital requirements in effect would be the lower of ERBA and the revised standardized approach, such that ERBA, as applied to Category I and Category II institutions, would not be lower than the Collins Amendment 'floor.'").

[28] 156 CONG. REC. S3616 (daily ed. May 12, 2010).

[29] 156 CONG. REC. S3459 (daily ed. May 10, 2010).

[30] *Generally*, OXFORD ENGLISH DICTIONARY (Oxford U. Press, Dec. 2025), https://www.oed.com/dictionary/generally_adv (last visited May 21, 2026).

hardly a "general" standard "universally" applicable to *all* banking institutions. Even under an alternative and more permissive interpretation that the term "generally" connotes a standard that applies "[w]ith respect to the majority of individuals or cases; for the most part; [or] widely, extensively," the ERBA is not a "general" standard.[31] The ERBA applies to Category I and II banking organizations, meaning the nine most systemically important banking organizations. That is hardly a "wide" or "extensive" standard that applies to the "majority" of banking organizations. The reading embodied in the proposals, as articulated by Sullivan & Cromwell, takes both the plain meaning of these terms, as well as the clear purpose and structure of the Collins Amendment, and turns them on their heads.

Merely making the ERBA available for smaller banks to opt-in does not change matters because, as a practical matter, smaller banks will not opt-in to the ERBA—as the agencies themselves readily admit. In their Regulatory Flexibility Act analysis, the agencies concede that they "do not expect a substantial number of small entities to use the proposed [ERBA]."[32] The agencies explain that smaller banking organizations "have simpler business models with risk management and reporting systems designed for their size and activities" and that, were they to opt-in to the ERBA, they "may be required to set up, operate, maintain, and keep records on more granular systems that would not likely yield benefits that would warrant the additional costs to these small entities."[33] Accordingly, the agencies conclude that small banking organizations "are most likely to choose as their required capital framework either (1) the … revised standardized approach or (2) the recently proposed revised [Community Bank Leverage Ratio], as these two frameworks are better suited to the size and complexity of small entities than is the proposed [ERBA]."[34]

The agencies' own analysis thus confirms that virtually all smaller banks subject to risk-based capital requirements will continue to apply the standardized approach, regardless of any theoretical opt-in. The standardized approach will therefore remain the most broadly applicable risk-based capital framework in the U.S. banking system—what most reasonable and objective observers would consider to be the "generally applicable" requirement. Reading section 171 to instead permit the largest banks to escape the risk-based capital framework that virtually all other banks will continue to apply would defeat the Collins Amendment's central purpose.

b. The Collins Amendment's Text Confirms That the Standardized Approach Must Remain a Floor.

Section 171's text strongly supports the conclusion that the standardized approach must remain a floor for large banks' capital requirements. The plain language of the Collins Amendment indicates that there may be *multiple* generally applicable risk-based capital requirements that each serve as a floor. Thus, even if the Sullivan & Cromwell theory is correct that the ERBA qualifies as **a** generally applicable risk-based requirement because any bank may opt-in, section 171's text

[31] *Id.*
[32] 91 Fed. Reg. 14,952, 15,153 (Mar. 27, 2026).
[33] *Id.*
[34] *Id.*

requires that the standardized approach **also** be treated as a generally applicable risk-based requirement serving as a floor.

To appreciate how section 171 contemplates multiple generally applicable risk-based capital requirements, it is instructive to compare section 171's leverage provisions. As with the risk-based capital provisions, the Collins Amendment requires the agencies to "establish minimum leverage capital requirements" that are not "less than the generally applicable leverage capital requirements, which shall serve as a floor … nor quantitatively lower than the generally applicable leverage capital requirements that were in effect for [IDIs]" as of July 21, 2010.[35] Section 171(a)(1) defines "generally applicable leverage capital requirements" as "the minimum ratios of tier 1 capital to average total assets, as established by the appropriate Federal banking agencies to apply to [IDIs]" under the PCA regulations "regardless of total consolidated asset size or foreign financial exposure."[36] A bank trade group has previously argued that this language permits the agencies to set the tier 1 leverage ratio at 3% because the minimum tier 1 leverage ratio applicable to IDIs as of July 21, 2010 was 3% for IDIs with a composite 1 CAMELS rating, even though all other IDIs were subject to a 4% tier 1 leverage ratio requirement.[37]

Section 171's risk-based capital provisions contain a critical difference from the leverage provision: they omit the word "minimum." Section 171(a)(2)(A) defines "generally applicable risk-based capital requirements" as "the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to [IDIs]" under the PCA regulations "regardless of total consolidated asset size or foreign financial exposure."[38] The two definitions are otherwise identical: same agencies, same reference to the PCA framework, same "regardless of size or exposure" language. The only material difference is that section 171 defines the generally applicable leverage requirements as the "minimum" ratios under the PCA regulations, while it defines the generally applicable risk-based requirements simply as the "risk-based capital requirements" under those same regulations—with no minimum modifier.

This omission is crucial. The term "generally applicable risk-based capital requirements" refers to **all** risk-based capital requirements established under the PCA regulations. This distinction defeats the Sullivan & Cromwell theory. Even if the ERBA qualifies as **a** generally applicable risk-based requirement since any bank may opt-in—a reading that we think is plainly wrong for reasons discussed above—the standardized approach, which would continue to apply broadly under the PCA regulations, also remains a generally applicable risk-based capital requirement. Section 171's

[35] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, § 171(b)(1), 124 Stat. 1376, 1435-36 (codified at 12 U.S.C. § 5371(b)(1)).
[36] *Id.* § 171(a)(1)(A) (codified at 12 U.S.C. § 5371(a)(1)(A)) (emphasis added).
[37] *See* Letter from Sarah Flowers, Senior Vice President, Bank Pol'y Inst., to Bd. of Governors of the Fed. Rsrv. Sys. 5 (Aug. 26, 2025), https://bpi.com/wp-content/uploads/2025/08/BPI-eSLR-Letter.pdf ("Under the plain language of the text of the Collins Amendment, the Agencies may lower the tier 1 leverage ratio from 4% to 3% in compliance with the not 'quantitatively lower' requirement because the minimum tier 1 leverage ratio applicable to IDIs as of July 21, 2010, regardless of the IDI's total consolidated assets or financial exposure, was 3%.").
[38] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, § 171(a)(2)(A), 124 Stat. 1376, 1435-36 (codified at 12 U.S.C. § 5371(a)(2)(A)).

text therefore requires that the standardized approach serve as a floor for large banks' capital requirements.

c. Minor Changes to the ERBA Will Not Cure the Proposals' Legal Defects. Section 171 Requires a Dual-Stack Approach.

Section 171 requires the agencies to retain the standardized approach as a binding constraint on Category I and II banking organizations' capital requirements. Minor calibration changes—such as adjusting ERBA risk-weights to ensure that the ERBA produces higher risk-weighted assets than the standardized approach at the moment of finalization—will not cure the proposals' legal defects. Section 171 requires more than a point-in-time comparison: it requires the agencies to retain a dual-stack approach in which Category I and II banking organizations calculate their capital ratios under both the ERBA and the standardized approach and apply the framework that produces the lower ratios.

The agencies' economic analysis confirms that the proposals violate section 171 based on a point-in-time comparison, since the ERBA would be less stringent for U.S. GSIBs than a dual-stack approach incorporating the proposed standardized approach as a floor. The agencies calculate that the GSIBs would have reported $7.768 trillion of risk-weighted assets under the ERBA based on data from the second quarter of 2025.[39] The GSIBs would have reported more risk-weighted assets—$7.776 trillion—and thus lower risk-based capital ratios under a dual-stack calculation using the proposed standardized approach as a floor.[40] According to the agencies' own figures, then, the GSIBs' capital requirements under the ERBA would be less stringent than those applicable to other banks under the standardized approach—a point-in-time violation of the Collins Amendment.

The agencies might attempt to cure this defect by making small adjustments in the final rule so that the single-stack ERBA produces a temporary risk-weighted assets calculation for the GSIBs that is at least as high as under a dual stack approach. Such a remedy would be legally inadequate. Even if the agencies finalized a rule under which a single-stack ERBA and a dual-stack with a standardized floor produced equivalent risk-weighted assets at a single point in time, section 171 still requires Category I and II banking organizations to conduct a dual-stack calculation on an ongoing basis. This dual-stack approach is necessary to prevent regulatory arbitrage. Without the standardized floor as a binding constraint, Category I and II banking organizations could optimize their balance sheets to reduce their ERBA-derived risk-weighted assets below what they would have been under the standardized approach. This is precisely the dynamic the Collins Amendment was enacted to prevent: a regulatory regime in which the largest banks could, over time, secure more favorable capital treatment than smaller banks. That is why section 171 requires the agencies to retain the standardized approach as a floor within a dual-stack framework—regardless of what

[39] *See* 91 Fed. Reg. 14,952, 15,127 (Mar. 27, 2026).
[40] *See id.*

a snapshot comparison between the ERBA and standardized approach shows at a given point in time.

3. The Agencies Fail to Demonstrate Compliance with the Collins Amendment's Second Prong (Capital Requirements May Not Be "Quantitatively Lower Than" Those in Effect on July 21, 2010).

The agencies have also failed to demonstrate compliance with section 171's second requirement: risk-based capital rules may not be "quantitatively lower than" the generally applicable risk-based capital requirements that were in effect for IDIs on July 21, 2010.[41] This is a serious concern. Although reforms enacted following Dodd-Frank meaningfully strengthened minimum risk-based capital requirements, the current proposals would cut minimum risk-based capital requirements by between 8 and 10 percent for some banking organizations.[42] Moreover, the proposals substantially reduce risk weights for certain asset classes—in some cases below the risk weights in effect leading up to and during the 2008 financial crisis.[43] These facts raise doubts about whether the proposals comply with section 171's requirement that capital standards not be quantitatively lower than those in effect for IDIs when Congress passed Dodd-Frank. Again, the agencies must "show their work" by demonstrating that the proposals satisfy that requirement. Unfortunately, they have not even attempted to do so.

4. Even if the Proposals Were Lawful, Eliminating the Dual Stack Is Bad Policy.

Even if the proposals complied with the Collins Amendment, the agencies should not adopt them because eliminating the dual-stack requirement is bad policy. The agencies contend that moving to a single-stack ERBA will simplify the U.S. capital framework. They insist, without supporting analysis, that "[r]edundant or unnecessarily complex requirements, such as multiple risk-based capital frameworks applying to the same banking organization, add costs that outweigh any incremental benefits presented by such an approach."[44] Comptroller of the Currency Jonathan Gould unironically argued that the change is necessary because "[o]verly complex or unintuitive regulatory frameworks frustrate accountability to elected officials"—apparently forgetting that elected officials in Congress required the dual-stack approach when they voted, on a bipartisan basis, to enact Dodd-Frank.[45]

We share the agencies' goal of simplifying the bank regulatory framework, including risk-based capital and leverage requirements. But exempting Category I and II banking organizations from a

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[41] 12 U.S.C. § 5371(b)(2).
[42] *See* 91 Fed. Reg. 15,332, 15,374 (Mar. 27, 2026).
[43] For example, the standardized proposal would set the risk-weight for residential mortgages with less than a 90% loan-to-value ratio at a maximum of 45%, and some residential mortgages would receive a risk-weight as low as 25%. *See* 91 Fed. Reg. 15,332, 15,340 (Mar. 27, 2026). By contrast, qualifying residential mortgages received at least 50% risk weight under the standardized approach in effect in 2010. *See* 12 C.F.R. pt. 208, app. A § III.C.3 (2010). Other assets—including certain corporate and retail exposures—would also receive lower risk weights under the proposed standardized approach than under the framework in effect on July 21, 2010.
[44] 91 Fed. Reg. 14,952, 14,955 (Mar. 27, 2026).
[45] Press Release, Off. of Comptroller of the Currency, Comptroller Gould Statement on Notice of Proposed Rulemakings to Modernize Regulatory Capital Framework (Mar. 19, 2026), https://www.occ.gov/news-issuances/news-releases/2026/nr-occ-2026-17.html.

dual-stack framework is unwarranted—even if it were lawful. The notion that calculating capital under the standardized approach is too complicated for such firms is implausible on its face. The GSIBs to which the ERBA would apply account for more than $15 trillion in total combined assets.[46] These institutions are not so resource-constrained that they cannot apply the same standardized approach that small community banks use to calculate their risk-based capital. Whatever marginal benefit Category I and II firms might derive from operating under the ERBA alone is far outweighed by the risk that, freed from the standardized floor, they will "manage the hell out of [their] RWA,"[47] repositioning their balance sheets to drive capital below the levels the standardized approach would require.

The dual-stack approach is a critical financial stability safeguard that the agencies should retain, even if it were not also a statutory requirement. If the agencies are genuinely committed to simplification, there are ample alternatives that would both simplify the regulatory framework and enhance financial stability—including a stronger leverage ratio requirement, meaningful activities restrictions, bank size limits, or other structural reforms. The agencies should pursue regulatory simplifications that strengthen the banking system rather than weaken it.

The proposal also violates a second goal of section 171 to ensure large banks are not able to gain a competitive advantage over smaller banks by using internal models and other techniques to game capital requirements. In addition to possessing greater technical resources enabling them to manage their risk-weighted assets, large banks benefit from a market perception of implicit government support that allows them to operate with less capital than their smaller competitors. The agencies have acknowledged that this dynamic is "unfair to smaller companies, damaging to fair competition, and tends to artificially encourage further consolidation and concentration in the financial system."[48] The requirements established by section 171 seek to mitigate these incentives, helping to level the competitive playing field between large and small banks.[49] By imposing a capital framework that subjects large banks to a less stringent risk-weighting regime, the proposals violate these principles of competitive equity.

5. The Proposals Are Inconsistent with the Dodd-Frank Act's Enhanced Prudential Standards Framework.

The proposals' legal shortcomings do not end with the Collins Amendment. The proposals are also inconsistent with Dodd-Frank's enhanced prudential standards framework and tailoring mandate. Section 165 of Dodd-Frank—as amended by the Economic Growth, Regulatory Relief, and

[46] *See* 91 Fed. Reg., at 14,913.
[47] Tom Braithwaite, *Inside Business: Banks Turn to Financial Alchemy in Search for Capital*, FIN. TIMES (Dec. 12, 2011), https://www.ft.com/content/3c9e7822-202d-11e1-9878-00144feabdc0 (quoting JPMorgan Chase CEO Jamie Dimon).
[48] Off. of the Comptroller of the Currency, Bd. of Governors of the Fed. Rsrv. Sys. & Fed. Deposit Ins. Corp., Regulatory Capital Rules: Regulatory Capital, Enhanced Supplementary Leverage Ratio Standards for Certain Bank Holding Companies and Their Subsidiary Insured Depository Institutions, 78 Fed. Reg. 51,101, 51,103 (Aug. 20, 2013).
[49] *See* 156 CONG. REC. S3459 (daily ed. May 10, 2010) (statement of Senator Collins) (stating that it "makes no sense that capital and risk standards for our Nation's largest financial institutions are more lenient than those that apply to small depository banks," and that "[i]ncreasing capital requirements as firms grow provides a disincentive to their becoming too big to fail in the first place…").

Consumer Protection Act of 2018—requires the Board to establish prudential standards for BHCs with $250 billion or more in assets that "are more stringent than the standards and requirements applicable to … [BHCs] that do not present similar risks to the financial stability of the United States."[50] The proposals fail to satisfy that requirement.

As discussed above, the proposals would impose minimum capital standards for GSIBs that are *less* stringent than the standards applicable to BHCs that present less systemic risk.[51] This conclusion is bolstered by the fact that the proposals would permit smaller banking organizations to opt-in to the ERBA. Importantly, evaluating the stringency of capital requirements requires evaluation of both the total applicable ratio as well as the risk weightings applicable to the denominator of that ratio. The ERBA's deregulatory benefits flow through risk-weightings that are more permissive than the standardized approach.[52] That the agencies would offer the ERBA as an option for smaller banks demonstrates that the agencies themselves contemplate that the ERBA may produce more favorable capital outcomes than the standardized approach in at least some circumstances, driven specifically by permissive risk-weighting schemes applicable to certain activities.

The fact that there are multiple capital standards for banks subject to section 165, including buffers and surcharges, does not remedy this problem. Section 165 suggests that *any* requirement applicable to BHCs with more than $250 billion in assets must not be less stringent than the corresponding requirement that is applicable to banking organizations not subject to section 165. As the drafters of section 165 said at the time, this provision requires regulators to "take stronger actions with respect to constraining risk-taking by the largest firms."[53] Section 165 prohibits an ERBA framework designed for Category I and II banking organizations that is less stringent—factoring both the overall ratio and the component risk weights—than the standardized approach broadly applicable to smaller banking organizations. It even prevents the agencies from implementing capital standards that are more permissive than the community bank leverage ratio (CBLR).

Again, the proposal fails to explain how the ERBA is more stringent than either the standardized approach or the CBLR. Like the failure to conduct a thorough and transparent analysis of the Collins Amendment, it is not clear whether this oversight is the result of a lack of consideration

[50] 12 U.S.C. § 5365(a)(1).
[51] *See supra* notes 39-40 (noting that GSIBs would report lower risk-weighted assets under the ERBA than under the standardized approach based on data from the second quarter of 2025).
[52] For example, the proposed ERBA assigns residential mortgage exposures a risk weight 5 percentage points lower in every loan-to-value (LTV) category than the proposed standardized approach. It likewise assigns lower risk weights for higher-quality exposures within the corporate, commercial real estate, and retail asset classes.
[53] Cheyenne Hopkins, *'New' Powers in Reg Reform Feel Familiar*, AM. BANKER (Apr. 6, 2010), https://www.americanbanker.com/news/new-powers-in-reg-reform-feel-familiar (quoting Treasury Assistant Secretary for Financial Institutions Michael Barr).

or a failure on the part of the agencies to "show their work." If the agencies believe that the proposals do not violate these requirements, they should explain why not.

6. The Federal Reserve's Reported Coordination of Banks' Commenting Strategy Raises Serious Questions Under the APA and the Board's Own Policies.

Beyond the substantive legal defects discussed above, the Federal Reserve's reported *ex parte* contacts with the banking sector raise serious questions about compliance with the APA and the Board's own stated policies. As the D.C. Circuit has explained, "[o]nce a notice of proposed rulemaking has been issued … any agency official or employee who is or may reasonably be expected to be involved in the decisional process … should refuse to discuss matters relating to the disposition of [the] rulemaking proceeding with any interested private party."[54] Yet, far from refusing such contacts, Federal Reserve officials appear to have sought them out—reportedly for the purpose of coordinating the banking sector's commenting strategy on the proposals.

Multiple news outlets have reported that VCS Bowman met with bank representatives in early April 2026 to coordinate their commenting strategy on the proposals and thereby expedite finalization. According to *Bloomberg*, VCS Bowman "told Wall Street leaders to support [the] capital plans" and "stop asking for carve outs."[55] *Reuters* similarly reported that "Bowman and other Fed officials have communicated in meetings with bank executives in recent weeks that they have worked hard to address bank complaints and do not expect the industry to reprise the aggressive tactics they deployed when fighting the 2023 proposals."[56] Bowman and other officials reportedly "conveyed that industry comments … should be limited."[57]

If these reports are accurate, this conduct raises serious legal concerns. As an initial matter, discouraging public comment violates one of the foundational values of administrative process, codified in the APA, that agencies and the public alike benefit from robust input and debate regarding the benefits and costs of proposed rules.[58] These requirements and principles apply whether the agencies might want to hear such input or not. Indeed, they may be even more important when there is a critical mass of negative feedback. As VCS Bowman argued when opposing the agencies' 2023 proposal, critical input is essential to a thorough and well-reasoned

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[54] Home Box Off., Inc. v. FCC, 567 F.2d 9, 57 (D.C. Cir. 1977).
[55] Johnson, *supra* note 9.
[56] Schroeder & Price, *supra* note 9.
[57] *Id.*
[58] *See* 5 U.S.C. § 553(c) (requiring that agencies "shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation."); *see also* William N. Eskridge, Jr. & John Ferejohn, *The APA as a Super-Statute: Deep Compromise and Judicial Review of Notice-And-Comment Rulemaking*, 98 NOTRE DAME L. REV. 1893, 1914 (2023) (according to the legislative history of the APA, public rulemaking "give[s] agency officials the benefit of the 'viewpoints and experience of labor, industry, and others who may be affected by the rules' and … put[s] the regulated community, courts, and the agency's own staff a clear 'guide for the conduct of their affairs'..." (quoting S. REP. NO. 76-442 (1939)).

policymaking process.[59] In a democracy, policymakers involved in the rulemaking process have no business discouraging public input that is inconvenient or contrary to their views.

Further, the reported effort to coordinate the industry's commenting strategy casts doubt upon the Board's impartiality in the rulemaking process.[60] It also raises questions under APA caselaw and the Board's own policy on *ex parte* contacts, both of which require timely disclosure of *ex parte* communications during the rulemaking process so that interested parties may comment.[61] To date, the Board has not disclosed any *ex parte* contacts related to the proposed rulemakings involving VCS Bowman.[62] In the interest of transparency, it should remedy these deficiencies immediately. Regardless of whether or not it does so, this undisclosed, backroom coordination compounds the substantive legal defects discussed above and reinforces the case for withdrawing and rethinking the proposals.

For the reasons discussed above, we urge the agencies to withdraw the proposals or, at a minimum, re-propose them with the complete legal analysis the APA requires, including a reasoned explanation of how the proposals comply with the Collins Amendment, the Dodd-Frank Act's enhanced prudential standards framework, and the other statutory requirements discussed in this letter.

Sincerely,

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[59] *See* Michelle Bowman, Member, Bd. of Governors of the Fed. Rsrv. Sys., *Perspectives on U.S. Monetary Policy and Bank Capital Reform* 16, Remarks at Policy Exch. (June 25, 2024), https://www.federalreserve.gov/newsevents/speech/files/bowman20240625a.pdf (arguing that a "careful review of the comments submitted … would result in a better proposal that includes changes to address not only these concerns, but also many other concerns raised by the public.").
[60] Ass'n of Nat'l Advertisers v. FTC, 627 F.2d 1151, 1174 (D.C. Cir. 1979) (asserting that the public has "a right to a fair and open proceeding; that right includes access to an impartial decisionmaker").
[61] Home Box Off., Inc. v. FCC, 567 F.2d 9, 57 (D.C. Cir. 1977) ("If ex parte contacts nonetheless occur … a summary of any oral communication must be placed in the public file established for each rulemaking docket immediately after the communication is received so that interested parties may comment thereon."); *Communications with the Public*, Bd. of Governors of the Fed. Rsrv. Sys., https://www.federalreserve.gov/regreform/communications-with-public.htm ("To help ensure the process is conducted in a fair, open, and transparent manner, Federal Reserve staff will develop a written summary of communications with the public on any matter subject to proposed rulemaking….").
[62] *See Communications with the Public: Systemic Designations, Enhanced Prudential Standards, and Banking Supervision and Regulation*, Bd. of Governors of the Fed. Rsrv. Sys., https://www.federalreserve.gov/regreform/reform-systemic.htm.