



Benjamin W. McDonough

Secretary

Board of Governors of the Federal Reserve System

20th Street & Constitution Avenue NW

Washington, DC 20551

RE: Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations with Significant Trading Activity, and Optional Adoption for Other Banking Organizations [FRB Docket No. 1887, RIN 7100-AH20];

and

Regulatory Capital Rule (Regulation Q): Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y-15) [FRB Docket No. 1889, RIN 7100-AH22]

Dear Mr. McDonough,

On behalf of the Competitive Enterprise Institute, I am pleased to comment to the Board of Governors of the Federal Reserve System (hereinafter “the Fed”) on the proposed regulatory capital frameworks for Category I and II banking organizations and for global systemically important banks (GSIBs).¹

¹ I would like to acknowledge the invaluable assistance in preparing these comments of CEI Research Associate Luigi Bilibio.

Both proposals are significant improvements over the Basel III Endgame Framework proposed by the Fed in 2023. That regulatory framework would have significantly shrunk lending and financing activity to the point where it would have harmed, rather than enhanced, financial stability. These proposals, by contrast, recognize the diversity and innovation of U.S. banks and do not try to impose one-size-fits-all rules. However, the GSIB proposal still needs to be improved to allow these banks to fulfill their potential in financing important projects and advancing U.S. competitiveness.

CEI is a Washington-based free-market public policy organization, founded in 1984, that studies the effects of regulations on job growth and economic well-being. CEI also pursues public-interest litigation on behalf of consumers and small businesses to ensure that federal agencies follow the requirements of the underlying laws and, when applicable, the Administrative Procedure Act, and to ensure that agencies act within the constraints of the U.S. Constitution. Our mission is to advance the freedom to prosper for American consumers, entrepreneurs, and investors striving for a better life for themselves and their families. These comments are thus submitted to reflect concern about the effects of these regulatory frameworks on the well-being of U.S. consumers and businesses as well as the safety and soundness of our banking system.

The oft-unseen effects of capital rules:

Capital regulation for financial institutions such as banks and insurers can seem like a highly technical, unexciting topic. Its effects, however, can be life-altering. As I recently argued in a *Washington Post* op-ed, Europe's Solvency II insurance capital regulation framework was likely a significant factor in insurers dropping coverage for ships in the Strait of Hormuz days before Iran declared the Strait was closed, and likely worsened the crisis once it began.²

Reviewing the effects of capital regulation in this situation, Chicago-based investment strategist Jim Bianco commented that although Solvency II was “expressly designed to prevent a financial crisis within the insurance industry by imposing rigorous capital standards ... by compelling insurers to withdraw from the very coverage they exist to provide — war-risk and political-risk protection — these rules could be triggering a far broader economic crisis.”³ There are many other instances in which, in the big picture,

² John Berlau, “A simple step by Europe could loosen Iran’s grip on the Strait of Hormuz,” *Washington Post*, May 15, 2026, <https://www.washingtonpost.com/opinions/2026/05/15/strait-hormuz-standoff-europe-insurance-rules-empower-iran/>

³ Jim Bianco, X.com post, March 3, 2026, <https://x.com/biancoresearch/status/2028990053146341630>

overly restrictive capital regulation – for banks, insurers and other financial institutions -- may cause far greater harm than it was designed to prevent.

Migration and intensification of risk from capital rules

The main rationale of subjecting banks to capital rules has been to minimize risk to taxpayers and the economy of cascading bank failures. Yet if capital rules squeeze banks too hard, risk can migrate and become even more hazardous. There have been concerns expressed about lack of transparency in the market for “private credit” outside the banking system. Overly restrictive capital rules are likely a component of this risk.

As Fed Governor Michelle Bowman – now also Vice Chair for Supervision – noted as early as 2023, “Rising bank capital requirements may exacerbate the competitive dynamics that result in advantages to non-bank competitors and push additional financial activity out of the regulated banking system.” She added that “driving activity out of the banks into the shadow banking system does not make the financial system safer, it simply makes banks less competitive, and increases economic and financial stability risks.”⁴

Other financial regulators share Governor’s Bowman’s views that restrictive capital rules are a significant cause of the expansion in private credit. Comptroller of the Currency Jonathan Gould stated recently that private credit has grown in part due to “overregulation of the traditional banking system,” and that easing capital rules will “mitigate the demand that has underpinned the growth of private credit.”⁵

Then there are also calls for government subsidies that arise when capital rules constrict banks from financing important projects for the well-being of U.S. consumers as well as U.S competitiveness and national security. In recent debates about reauthorizing the Export-Import (Ex-Im) Bank in which limited-government advocates made a strong push to phase out the government entity, supporters of the bank made the argument that the Ex-Im was needed as banks couldn’t make loans for big projects such as nuclear power plants due to the constraints of the Basel III capital rules then in effect.

⁴ Michelle Bowman, “Responsive and Responsible Bank Regulation and Supervision,” Speech at Salzburg Global Seminar on Global Turbulence and Financial Resilience, June 25, 2023, <https://www.federalreserve.gov/newsevents/speech/bowman20230625a.htm>

⁵ Katanga Johnson, “Regulator Says Eased Bank Rule to Curb Private Credit Demand,” Bloomberg News, January 3, 2026.

The Nuclear Energy Institute, an advocacy and research group for nuclear power, wrote that Ex-Im was needed because “[Basel III capital reserve requirements](#) prevent them [commercial banks] from allocating billions of dollars in tier one capital for as many years as necessary to finance a nuclear power plant.”⁶ Financial policy expert Norbert Michel, now Director of the Cato Institute's Center for Monetary and Financial Alternatives, responded incredulously in *Forbes*: “Let that logic really sink in. We need the federal government to subsidize more loans because federal regulations make it too expensive to make loans.”⁷

Yet the capital rules stood and Ex-Im – perhaps due in part to the argument about the effects of the capital rules – survived the defunding debate. Today, the Ex-Im and other government agencies subsidizing loans continue to pose the risk to taxpayers of government favoritism to well-connected firms and trendy causes and a lack of incentive to monitor loans and financing for safety and soundness. In 2011, for instance, the Ex-Im approved a loan guarantee for a solar farm in Belgium to use panels from the [infamous](#) Solyndra solar energy equipment manufacturer, even as it was well known the company was teetering. Solyndra would file for bankruptcy two months later.⁸ By contrast, many banks with expertise and proven track records at monitoring lending are prevented from expanding credit for worthy projects from homebuilding to energy.

Stepping away from constricting capital rules

Both proposals take positive steps away from one-size-fits-all overcautious capital rules that have governed U.S. banks for more than a decade. They recognize that banks may specialize in serving different types of customers, and allow for different methods for these banks to comply with capital rules. For instance, both proposals expand the type of collateral banks may obtain for a loan, with the proposal for Category I and II banks stating that “other acceptable collateral would mean any collateral in which the banking organization has a perfected security interest that has a quantifiable value and is accepted by the banking organization in accordance with safe and sound lending practices.”

⁶ Ted Jones, “What Heritage Gets Wrong About Nuclear Energy and Ex-Im Bank,” NEI Nuclear Notes, June 10, 2015, <https://neinuclearnotes.blogspot.com/2015/06/what-heritage-gets-wrong-about-nuclear.html>.

⁷ Norbert Michel, “Basel III Does Not Justify The Export-Import Bank,” *Forbes*, June 15, 2015, <https://www.forbes.com/sites/norbertmichel/2015/06/15/basel-iii-does-not-justify-the-export-import-bank/>.

⁸ Timothy P. Carney, “Export-Import Bank’s Solyndra Subsidy Reeks of Politicized Financing,” *Washington Examiner*, June 3, 2015, <https://www.aei.org/articles/export-import-banks-solyndra-subsidy-reeks-of-politicized-financing/>.

Another positive step is the decoupling of these rules away from the international Basel III capital standards when they do not align with U.S. interests. The proposal for Category I and II banks states clearly that “departures from international standards are appropriate and desirable in light of domestic requirements or considerations, or where U.S. regulators simply believe different standards are more appropriate.”

GSIB surcharge still too high

The GSIB proposal, however, still needs to lower the capital surcharge for very large financial institutions designated by financial regulators as “global systemically important banks.” JPMorganChase CEO Jamie Dimon recently noted in a letter to shareholders that even though the surcharge is slightly lowered under this proposal, “with a surcharge of approximately 5.0%, JPMorganChase will have to hold as much as 50% more capital across the vast majority of loans to U.S. consumers and businesses when compared with a large non-GSIB bank for the same set of loans.”⁹

Even for large banks that can better handle compliance costs, overly restrictive capital rules put the U.S. economy at a disadvantage. Large banks are the ones that can most likely fund large-scale projects, such as the aforementioned nuclear power plants and activity related to infrastructure and defense. The rules also put U.S. banks at a disadvantage to large foreign banks that may not have such constricting capital rules. Finally, capital surcharges this high may discourage expansion at growing U.S. banks, for fear they will be designated a GSIB and face a massive hike in required capital. Therefore, the Fed should lower further or eliminate the GSIB surcharge.

Conclusion: Move forward with positive steps in proposals

Overall, the proposals take many positive steps for a banking system that is both safe and capable of meeting the needs of the dynamic U.S. economy. The Fed should move forward with these steps and improve the GSIB proposal by lowering the surcharge.

Thank you for this opportunity to present the views of the Competitive Enterprise Institute. If you should have any questions or comments, please contact me by phone, (202) 331-2272, or email, john.berlau@cei.org.

⁹ Jamie Dimon, 2026 letter to shareholders of JPMorganChase, p. 23, <https://www.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/investor-relations/documents/ceo-letter-to-shareholders-2025.pdf>.

