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Enhanced Prudential Regulation of Large Banks

December 15, 2023

Congressional Research Service
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R47876

CRS REPORT
Prepared for Members and
Committees of Congress

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SUMMARY

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December 15, 2023

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Enhanced Prudential Regulation of Large Banks

The 2007-2009 financial crisis highlighted the problem of "too big to fail" financial institutions—the concept that the failure of large financial firms could trigger financial instability, which in several cases prompted extraordinary federal assistance to prevent their failure. One pillar of the 2010 Dodd-Frank Act's (P.L. 111-203) response to addressing financial stability and ending too big to fail was the creation of an enhanced prudential regulatory regime for large banks. (The act also envisions the regulation of systemically important nonbank financial firms under this regime, but that part of the regime is effectively defunct.)

Under this regime, the Federal Reserve (Fed) is required to apply a number of safety and soundness requirements to large banks that are more stringent than those applied to smaller banks. These requirements are intended to mitigate systemic risk posed by large banks:

- **Stress tests and capital planning** ensure that banks hold enough capital to survive a crisis.
- **Living wills** provide plans to safely wind down failing banks.
- **Liquidity requirements** ensure that banks are sufficiently liquid if they lose access to funding markets.
- **Counterparty limits** restrict a bank's exposure to counterparty default.
- **Risk management** requires banks to have chief risk officers and publicly traded banks to have risk committees on their boards.
- **Financial stability** requirements provide for regulatory interventions that can be taken only if a bank poses a threat to financial stability.
- **Capital requirements** under Basel III, an international agreement, require large banks to hold more capital than other banks do to potentially absorb unforeseen losses.

The Dodd-Frank Act automatically subjected all bank holding companies (BHCs) and foreign banks with more than $50 billion in assets to enhanced prudential regulation (EPR). In 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) created a more "tiered" and "tailored" EPR regime for banks. It exempted banks with assets between $50 billion and $100 billion from enhanced regulation. The Fed was given discretion to apply most individual EPR provisions to banks with between $100 billion and $250 billion in assets on a case-by-case basis if it would promote financial stability or the institutions' safety and soundness and subsequently exempted them from several EPR requirements. The eight domestic banks that have been designated as Global-Systemically Important Banks (G-SIBs) and banks with more than $250 billion in assets or $75 billion in cross-jurisdictional activity remain subject to all Dodd-Frank EPR requirements. In addition, the Fed has applied some EPR requirements on a progressively tiered basis to foreign banks with over $50 billion in U.S. assets and $250 billion in global assets.

In the view of the banking regulators at the time and the supporters of P.L. 115-174, these changes better tailored EPR to match the risks posed by large banks. Opponents have been concerned that the additional systemic and prudential risks posed by these changes outweigh the benefits to society, believing that the benefits of reduced regulatory burden would mainly accrue to the affected banks. This debate was revived by the failure of three large banks in 2023, which resulted in emergency government intervention to prevent financial instability and considerable losses for the Federal Deposit Insurance Corporation.

Since then, there has been a new emphasis on applying new proposals to all banks with more than $100 billion in assets (including those that are not BHCs). This is in contrast to changes after the enactment of P.L. 115-174, when regulators were focused on rolling back requirements for banks in the $50 billion to $250 billion asset range. The one failed bank that was subject to EPR, Silicon Valley Bank, had not yet been phased into most EPR requirements when it failed because of its recent rapid growth. The other two failed banks were not subject to EPR because they were not BHCs.

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Introduction

A financial firm is said to be "too big to fail" (TBTF) if its disorderly failure would cause contagion or widespread disruptions in financial markets and result in economic distress that the government would feel compelled to prevent, perhaps by "bailing out" the firm. Such *systemically important* firms are a source of *systemic risk*—the potential for widespread disruption to the financial system, as occurred in 2008 when the securities firm Lehman Brothers failed.[1]

Although TBTF has been a perennial policy issue, it was highlighted by the collapse or near-collapse of several large financial firms in 2008. Many of the large firms were nonbank financial firms, but a few were depository institutions.[2] To avert the imminent failures of Wachovia and Washington Mutual, the Federal Deposit Insurance Corporation (FDIC) arranged for them to be acquired by other banks without government financial assistance. Citigroup and Bank of America received extraordinary assistance through the Troubled Asset Relief Program (TARP) and government guarantees on selected assets they owned.[3] In many of these cases, policymakers explained their reasoning for government intervention on the grounds that the firms were systemically important, although the government had no explicit policy to rescue TBTF firms beforehand.

Policymakers have debated the best approach to tackling TBTF since then. A new enhanced prudential regulation (EPR) regime for large banks administered by the Federal Reserve (Fed) was created in the post-crisis Dodd-Frank Wall Street Reform and Consumer Protection Act (hereinafter, the Dodd-Frank Act; P.L. 111-203). In 2018, the Economic Growth, Regulatory Relief, and Consumer Protection Act (sometimes referred to by its bill number S. 2155, referred to hereinafter as P.L. 115-174), a regulatory relief bill, made changes to EPR, including raising the asset threshold for EPR. Since 2010, regulators have continually tweaked large bank regulations and Congress has debated legislative changes. TBTF banks were brought back into the spotlight in the spring of 2023 when three banks with over $100 billion in assets—Silicon Valley Bank (SVB), Signature Bank, and First Republic—failed, leading regulators to use their emergency authority to prevent financial instability and a projected tens of billions in losses to the FDIC Deposit Insurance Fund.

This report begins with a description of what institutions are subject to EPR and what requirements make up EPR. It then discusses several recent proposed rules applying to large banks.

[1] For an introduction, see CRS In Focus IF10700, *Introduction to Financial Services: Systemic Risk*, by Marc Labonte.

[2] Broadly speaking, only three types of financial charters allow financial institutions to accept insured deposits—banks, savings associations (often called "thrifts"), and credit unions. Banks operating in the United States can be U.S.-based or be headquartered in a foreign country. Depository institutions are regulated much differently than are other types of financial institutions.

[3] The government also created broadly based programs to provide liquidity and capital to solvent banks of all sizes during the financial crisis to restore confidence in the banking system. For more information, see CRS Report R43413, *Costs of Government Interventions in Response to the Financial Crisis: A Retrospective*, by Baird Webel and Marc Labonte.

Legislative History

The Dodd-Frank Act

Before the financial crisis, banks were generally subject to the same prudential regulatory regime irrespective of their size, with some ad hoc tailoring of specific requirements. In response to the crisis, the Dodd-Frank Act, a comprehensive financial regulatory reform, was enacted in 2010.[4] Among its stated purposes are "to promote the financial stability of the United States…, [and] to end 'too big to fail,' to protect the American taxpayer by ending bailouts."[5] The Dodd-Frank Act took a multifaceted approach to addressing TBTF issues. This report focuses on one pillar of that approach—the Fed's EPR regime for large banks.[6]

Title I, Subtitle C, of the Dodd-Frank Act (as originally enacted) automatically subjected all bank holding companies (BHCs)[7] and foreign banks operating in the United States with more than $50 billion in assets[8] to the EPR regime administered by the Fed.[9] (Nonbank financial firms designated as by the Financial Stability Oversight Council [FSOC] are also subject to EPR, but there are currently no such designated firms—see the text box.[10]) EPR standards must be more stringent than those applied to banks with less than $50 billion in assets. Dodd-Frank allowed the Fed to tailor EPR requirements based on the riskiness, complexity, or size of the bank.[11] The EPR regime also applies to foreign banking organizations operating in the United States that meet the EPR asset threshold based on *global* assets.[12] The Dodd-Frank Act required the Fed to establish the following EPR standards:

- Capital requirements, which must include those that take into account off-balance-sheet exposures and an emergency leverage limit;
- Liquidity requirements;
- Risk management requirements;
- Resolution plans;

[4] For an overview, see CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, coordinated by Baird Webel. For more information on systemic risk provisions, see CRS Report R41384, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Systemic Risk and the Federal Reserve*, by Marc Labonte.

[5] 124 Stat. 1376.

[6] For an overview of the TBTF issue and other policy approaches to mitigating it, see CRS Report R42150, *Systemically Important or "Too Big to Fail" Financial Institutions*, by Marc Labonte.

[7] A BHC structure is used any time a company owns multiple banks, but the BHC structure also allows for a large, complex financial firm with depository banks to operate multiple subsidiaries in different financial sectors—these types of BHCs are sometimes called financial holding companies.

[8] The Financial Stability Oversight Council may recommend that this threshold be raised. It was not raised prior to the enactment of P.L. 115-174.

[9] In setting standards for foreign banks, Title I requires the Fed to take into account the extent that they face comparable regulation in their home countries and give due regard to equal competition.

[10] For more information, see CRS Report R45052, *Financial Stability Oversight Council (FSOC): Structure and Activities*, by Marc Labonte.

[11] Before P.L. 115-174, the Fed's rules had also tailored some of the EPR requirements for banks with more than $50 billion in assets so that more stringent regulatory or compliance requirements were applied to banks with more than $250 billion in assets or Global-Systemically Important Banks, depending on the requirement.

[12] Section 102 of the Dodd-Frank Act specifies that foreign banks that are treated as BHCs for purposes of the Bank Holding Company Act of 1956, pursuant to Section 8(a) of the International Banking Act of 1978, are considered BHCs for application of EPR if they have more than $50 billion in global assets.

- Credit exposure reports;[13]
- Concentration limits on counterparty credit exposure; and
- Stress tests.

The Fed was also given the discretion to impose any other requirements it deemed appropriate, including contingent capital requirements, enhanced public disclosures, and short-term debt limits. The section below entitled "What Requirements Must Large Banks Comply with Under Enhanced Regulation?" describes how the Fed has implemented these requirements (including subsequent amendments to the original law).

If a bank does not have a BHC structure, it is not subject to enhanced regulation.[14] Most large banks have a holding company structure, but there are three exceptions worth noting. One is Zions Bank, which converted its corporate structure from a BHC to a standalone bank in 2018, reportedly in order to no longer be subject to EPR.[15] Under Title I of the Dodd-Frank Act's "Hotel California" provision, BHCs that participated in TARP and are subject to EPR cannot escape EPR by debanking (i.e., divesting of their depository businesses) unless permitted to by FSOC.[16] FSOC found that "there is not a significant risk that Zions could pose a threat to U.S. financial stability" and permitted it to withdraw from EPR.[17] The other exceptions are Signature Bank and First Republic, which failed in 2023. Signature's failure at the same time as SVB set off a bank run that resulted in the FDIC and Fed using their emergency authority to prevent financial instability.

EPR for Nonbanks

Five large investment "banks" that operated in securities markets and did not have depository subsidiaries (and therefore were not BHCs) were among the largest, most interconnected U.S. financial firms and were at the center of events during the financial crisis. All five are today part of BHCs (and subject to EPR) or no longer exist. Goldman Sachs and Morgan Stanley were granted BHC charters in 2008, whereas the others failed (Lehman Brothers) or were acquired by BHCs (Merrill Lynch and Bear Stearns). Economists and policymakers disagree about whether any remaining large nonbank financial firms pose systemic risk—the rationale for EPR. Numerous other large financial firms operating in the United States—such as credit unions, insurance companies, government-sponsored enterprises, asset managers, and nonbank lenders—are not BHCs and therefore are not automatically subject to EPR. However, the Dodd-Frank Act gave FSOC the authority to designate any nonbank financial firm for EPR, known popularly as systemically important financial institution (SIFI) designation, if its failure or activities could pose a risk to financial stability. Designated SIFIs are then subject to the Fed's EPR regime, which can be tailored to consider their business models. Since the bill became law, FSOC designated three insurers (AIG, MetLife, and Prudential Financial) and one nonbank lender (GE Capital). MetLife's designation was

[13] P.L. 115-174 changed this mandatory requirement to a discretionary one. The Fed has not implemented credit exposure reports to date.

[14] A key difference between banks and BHCs is what types of activities they can engage in, which affects their complexity. Banks are somewhat more limited in the types of activities they can engage in than the nonbank subsidiaries of BHCs that have been approved to be financial holding companies. Banks can engage in activities that are incidental or closely related to the business of banking. Financial holding companies (through their nonbank subsidiaries) can engage in activities that are financial in nature, incidental to a financial activity, or complementary to a financial activity. In practice, there are multiple activities that are permitted for both banks and BHCs under these definitions. Both banks and BHCs are permitted to have multiple subsidiaries.

[15] Christina Rexrode, "Zions to Challenge Its 'Big Bank' Label," *Wall Street Journal*, November 20, 2017, https://www.wsj.com/articles/zions-plans-to-challenge-its-big-bank-label-1511128273 (subscription required).

[16] The popular name of the provision comes from a 1976 song by The Eagles, an American rock band, with the lyric "You can check out any time you like, but you can never leave."

[17] FSOC, "Financial Stability Oversight Council Announces Final Decision to Grant Petition from ZB, N.A.," press release, September 12, 2018, https://home.treasury.gov/news/press-releases/sm478.

subsequently invalidated by a court decision,[18] which the Trump Administration declined to appeal, and FSOC later rescinded the other three designations.[19] In some cases, these former SIFIs had substantially altered or shrunk their operations between designation and de-designation. The Fed had not finalized any rules imposing EPR requirements on the SIFIs before they were de-designated.

P.L. 115-174

In 2018, P.L. 115-174 was enacted to provide regulatory relief to financial firms, including large banks. Section 401 of P.L. 115-174 eliminated most EPR requirements for banks with assets between $50 billion and $100 billion. Global-Systemically Important Banks (G-SIBs) and banks that have more than $250 billion in assets automatically remained subject to all EPR requirements, as modified by the act. P.L. 115-174 made the tailoring of EPR mandatory to reflect differences among BHCs and gave the Fed discretion to apply most individual EPR provisions to banks with between $100 billion and $250 billion in assets on a case-by-case basis only if it would promote financial stability or the institution's safety and soundness, taking into consideration its riskiness and characteristics. P.L. 115-174 raised the EPR threshold for global assets but did not introduce a threshold for U.S. assets of foreign banks. It clarified that the act did not affect the Fed's rule on intermediate holding companies (IHCs) for foreign banks with more than $100 billion in global assets or limit the Fed's authority to subject those banks to EPR.

P.L. 115-174 also made changes to specific enhanced prudential requirements. Section 401:

- gave regulators the discretion to reduce the number of scenarios used in stress tests,
- gave regulators the discretion to reduce the frequency of Fed-run stress tests for banks with $100 billion to $250 billion and company-run stress tests,
- increased the asset thresholds for mandatory company-run stress tests from $10 billion to $250 billion and for a mandatory risk committee at publicly traded banks from $10 billion to $50 billion, and
- made the implementation of credit exposure report requirements discretionary for the Fed instead of mandatory. (To date, the Fed has not finalized a rule implementing credit exposure reports.)[20]

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[18] *MetLife vs. Financial Stability Oversight Council*, 15-0045 (RMC) (U.S. District Court for the District of Columbia 2016), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2015cv0045-105.

[19] Designations and de-designations are available at https://www.treasury.gov/initiatives/fsoc/designations/Pages/default.aspx.

[20] For details on these provisions, see the section below entitled "What Requirements Must Large Banks Comply with Under Enhanced Regulation?" In addition, Section 402 of the act reduced capital required under the supplementary leverage ratio (SLR) for custody banks subject to the SLR.

Size Thresholds Outside of EPR

Prior to the enactment of P.L. 115-174, U.S. regulators described the prudential regulatory regime applying to all banks as tiered regulation, meaning that increasingly stringent regulatory requirements are applied as metrics (such as a bank's size) increase. These different tiers have been applied on an ad hoc basis: In some cases, statute requires a given regulation to be applied at a certain size; in some cases, regulators have discretion to apply a regulation at a certain size; and in other cases, regulators must apply a regulation to all banks. In addition to $100 billion and $250 billion, notable thresholds found in bank regulation are $1 billion, $3 billion, $5 billion, and $10 billion.

The Dodd-Frank Act includes other bank regulations with size thresholds. For example, by statute, only banks with more than $10 billion in assets are subject to the Durbin Amendment,[21] which caps debit interchange fees, and supervision by the Consumer Financial Protection Bureau for consumer compliance. Pursuant to the Dodd-Frank Act, executive compensation rules for financial firms apply only to firms with more than $1 billion in assets, with more stringent requirements for firms with more than $50 billion and $250 billion proposed by regulation.

P.L. 115-174 created or increased several other asset thresholds used in bank regulation outside of EPR. For example, it exempted banks from the Volcker Rule if they had less than $10 billion in assets and trading assets and liabilities less than 5% of total assets.[22] It created a new Community Bank Leverage Ratio for banks with less than $10 billion in assets that wish to opt out of compliance with Basel III capital rules. It also created or increased small bank exemptions or tailoring for holding mortgages, call reporting requirements, thrift regulation, holding company capital requirements, and frequency of bank exams.[23]

For more information, see CRS Report R46779, *Over the Line: Asset Thresholds in Bank Regulation*, by Marc Labonte and David W. Perkins.

The 2019 EPR Rules Implementing P.L. 115-174

In 2019, the Fed implemented changes included in P.L. 115-174 through rulemaking that placed large banks in one of four categories based on their size and complexity and imposed progressively more stringent requirements upon them.[24] In addition, Basel III (a nonbinding international agreement that U.S. banking regulators implemented through rulemaking after the financial crisis) included several capital requirements that apply only to large banks. Both the Dodd-Frank requirements and the Basel III requirements are based on these categories, and some requirements are derived from both. The rule also extended EPR for the first time to large savings and loan (thrift) holding companies that are not predominantly engaged in insurance or nonfinancial activities.[25]

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[21] For more information, see CRS Report R41913, *Regulation of Debit Interchange Fees*, by Darryl E. Getter.

[22] For more information, see CRS In Focus IF10923, *Financial Reform: Overview of the Volcker Rule*, by Rena S. Miller.

[23] For more information, see CRS Report R45073, *Economic Growth, Regulatory Relief, and Consumer Protection Act (P.L. 115-174) and Selected Policy Issues*, coordinated by David W. Perkins.

[24] Federal Reserve, "Federal Reserve Board Finalizes Rules That Tailor Its Regulations for Domestic and Foreign Banks to More Closely Match Their Risk Profiles," press release, October 10, 2019, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20191010a.htm; Federal Reserve, "Federal Reserve Board Issues Final Rule Modifying the Annual Assessment Fees for Its Supervision and Regulation of Large Financial Companies," press release, November 19, 2020, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20201119a.htm; Federal Reserve, FDIC, Office of the Comptroller of the Currency, "Agencies Issue Final Rule to Strengthen Resilience of Large Banks," press release, October 20, 2020, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20201020b.htm; Federal Reserve, FDIC, "Agencies Finalize Changes to Resolution Plan Requirements; Keeps Requirements for Largest Firms and Reduces Requirements for Smaller Firms," press release, October 28, 2019, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20191028b.htm. For a summary of the rule, see Federal Reserve, "Requirements for Domestic and Foreign Banking Organizations," https://www.federalreserve.gov/aboutthefed/boardmeetings/files/tailoring-rule-visual-20191010.pdf.

[25] Similar to BHCs, thrift holding companies (THCs), also called savings and loan holding companies, have (continued...)

The Fed provides an up-to-date list of banks by category semi-annually in its *Supervision and Regulation Report*.[26] Category I banks are subject to the most stringent requirements, and Category IV banks are subject to the least. The categories are defined as follows:

- Since 2015, the Fed has annually designated the most systemically important banks as U.S. G-SIBs based on their cross-jurisdictional activity, size, interconnectedness, substitutability, and complexity.[27] As a result, the eight U.S. banks designated as G-SIBs since inception are not the eight largest U.S. banks—they are the six largest and two others (State Street and Bank of New York Mellon) that are not among the 10 largest but rank highly on several measures related to the other four factors listed above. The eight U.S. G-SIBs are classified as **Category I banks** and are subject to the most stringent regulations and supervisory scrutiny of any group of banks.[28]
- Banks with over $700 billion in assets that are not Category I banks are classified as **Category II banks**. Banks with between $100 billion and $700 billion in assets that have over $75 billion in cross-jurisdictional (overseas) activity are also classified as Category II banks. Since 2019, there has been one U.S. Category II bank (Northern Trust) that qualifies because of its cross-jurisdictional activities. It is well below the $700 billion assets threshold.
- Banks with over $250 billion in assets that are not Category I or II banks are classified as **Category III banks**. Banks with between $100 billion and $250 billion in assets that pose more systemic risk—because they have over $75 billion in nonbank assets, short-term wholesale funding, or off-balance-sheet exposure—are also classified as Category III banks.
- Banks with between $100 billion and $250 billion in assets that do not meet the criteria of Categories I, II, or III are classified as **Category IV banks**.

As permitted under P.L. 115-174, EPR applies to foreign banks with over $100 billion in worldwide assets, but the implementing rule defers to home country regulation for most requirements when the foreign bank has less than $100 billion in U.S. assets.[29] Foreign banks with over $50 billion in U.S. nonbranch assets are required to form IHCs for their U.S. activities.[30] Most requirements are applied to the U.S. IHC, but a few apply to all U.S. operations, including U.S. branches and agencies. Most requirements are not applied to their foreign

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subsidiaries that accept deposits and make loans and can also have nonbank subsidiaries. Although Dodd-Frank also made the Fed the primary regulator of THCs, the EPR statute does not mention THCs.

[26] Available at https://www.federalreserve.gov/publications/supervision-and-regulation-report.htm.

[27] 12 C.F.R. 217 Subpart H. The Fed bases the designation on a bank's Method 1 score, a numerical formula using various metrics to represent the five factors listed above. The Fed's designation process parallels the international one. Since 2011, the Financial Stability Board, an international forum that coordinates the work of national financial authorities and international standard-setting bodies, has annually designated G-SIBs around the world. See Financial Stability Board, "Policy Measures to Address Systemically Important Financial Institutions," November 4, 2011, http://www.financialstabilityboard.org/publications/r_111104bb.pdf. The board's methodology for designating G-SIBs was formulated by the Basel Committee on Banking Supervision. See Basel Committee on Banking Supervision, *Global Systemically Important Banks: Assessment Methodology and the Additional Loss Absorbency Requirement*, November 2011, http://www.bis.org/publ/bcbs207.pdf.

[28] Although some foreign G-SIBs have U.S. operations, none is considered a domestic G-SIB for purposes of EPR.

[29] Living wills are the main exception. Foreign banks with over $250 billion in global assets and a small U.S. presence must file streamlined versions of the living will every three years. See Federal Reserve, "Presentation Materials for Resolution Plan Requirements for Foreign and Domestic Banking Organizations," Figure A, April 2019, https://www.federalreserve.gov/aboutthefed/boardmeetings/files/resolution-plans-visuals-20190408.pdf.

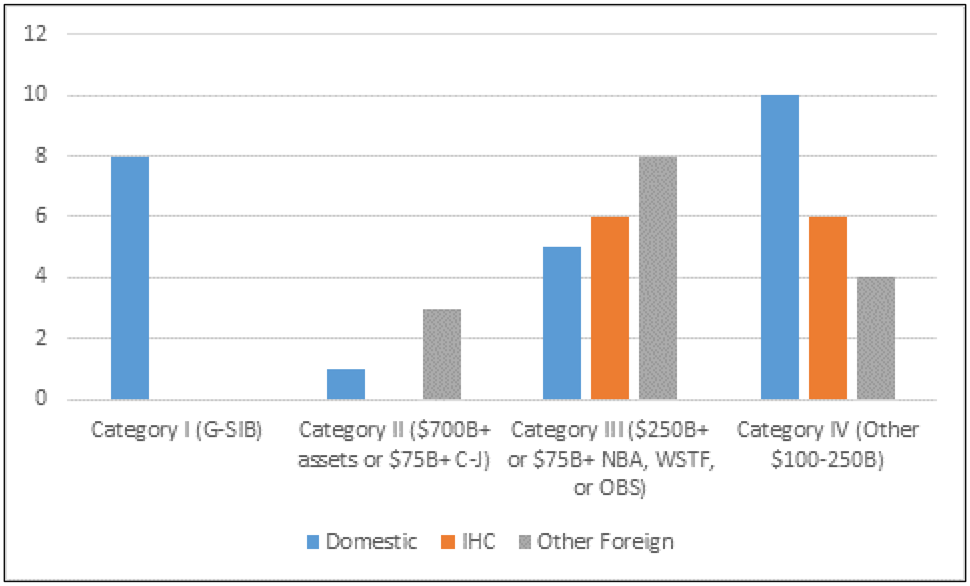
[30] IHCs with between $50 billion and $100 billion in assets must comply with risk management requirements.

activities. The IHCs or U.S. operations of foreign banks are placed in the same Categories II-IV, based on their U.S. assets, with requirements for each category similar to those applied to U.S. banks. Several of the parent foreign banks are G-SIBs internationally, but none of their IHCs is a Category I bank in the United States. Generally, the rule aims for consistency in the regulation of U.S. activities between foreign and domestic banks.[31]

Figure 1 shows the number of U.S. BHCs subject to EPR by category.

Figure 1. Banks Subject to EPR

End of Year 2022



Source: Federal Reserve, *Supervision and Regulation Report*, May 2023, Table A.1.

Note: Domestic = U.S. BHC; IHC = international holding company; C-J = cross-jurisdictional activity; NBA = nonbank assets; WSTF = weighted wholesale short-term funding; OBS = off-balance-sheet exposure. See text for details.

The Fed had already tailored some EPR requirements before the enactment of P.L. 115-174, but under this rule, the Fed chose to exempt Category III and IV banks from some EPR requirements and subject them to less stringent versions of other requirements. Hereinafter, the report will refer to BHCs, thrift holding companies (THCs), and foreign banking operations meeting the criteria described above as *banks subject to EPR*, unless otherwise noted.

What Requirements Must Large Banks Comply with Under Enhanced Regulation?

All BHCs are subject to long-standing prudential (safety and soundness) regulation conducted by the Fed. The novelty in the Dodd-Frank Act was to create a group of specific prudential

[31] Federal Reserve, "Prudential Standards for Large Foreign Bank Operations," April 8, 2019, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190408a.htm. An exception is living will requirements, where foreign banks face a less stringent requirement based on their global assets.

requirements that apply only to large banks.[32] The Fed has promulgated regulations implementing EPR (based on recommendations, if any, made by FSOC) and supervises firms subject to the regime. Many requirements are applied to both the BHC on a consolidated basis and its banking subsidiaries. The latter are administered in some cases by the primary federal regulator, which could be the Fed, the Office of the Comptroller of the Currency (OCC), or the FDIC, depending on the bank's charter type. The cost to the Fed of administering the regime is financed through assessments on firms subject to the regime.

The Dodd-Frank regime is referred to as *enhanced* or heightened because it applies higher or more stringent standards to large banks than it applies to smaller banks. It is a *prudential* regime because the regulations are intended to contribute toward the safety and soundness of the banks subject to the regime. Some EPR provisions are intended to reduce the likelihood that a bank will experience financial difficulties, while others are intended to help regulators cope with a failing bank. Several of these provisions directly address problems or regulatory shortcomings that arose during the financial crisis.

Some of the requirements related to capital and liquidity overlap with parts of the Basel III international agreement. The EPR requirements that the Fed has implemented pursuant to Title I of the Dodd-Frank Act as amended (which will be referred to hereinafter as Title I) and Basel III are summarized in **Table 1** and described in more detail in the following sections.[33] Subsequent to initial implementation, numerous regulatory changes over the years have tailored the individual provisions discussed in this section. This report does not provide a comprehensive catalog of all those subsequent changes but presents the regulations as they are implemented as of the report date and notes selected, significant changes.

Table 1. Current EPR Requirements for Banks

Requirement	Currently Applies to	Originally Applied to	Agency Issuing	Original Effective Date
Company-run stress tests	Category I-II and their IDIs (annual)	$50B+ BHCs (semi-annual)	Fed	2012
	Category III and their IDIs (biennial) other $250B+ IDIs (biennial)	$10B+ BHCs and IDIs (annual)	Fed/FDIC/OCC	
Supervisory stress tests	Category I-III (annual) Category IV (biennial)	$50B+ BHCs (annual)	Fed	2012 (supersedes earlier stress tests)
Risk management	$50B+ BHCs	$10B+ BHCs (risk committee) $50B+ BHCs (chief risk officer)	Fed	2014
Capital plan	Category I-IV (annual)	$50B+ BHCs (annual)	Fed	2011

[32] The $50 billion threshold is also used in a few other requirements unrelated to EPR. For example, in the Dodd-Frank Act, it is used for two provisions related to swaps regulation and assessments to fund various activities.

[33] This section does not cover the Title I discretionary requirements that the Fed has not implemented to date. The Fed may institute contingent capital requirements, short-term debt limits, and enhanced public disclosures. Title I also grants the Fed the authority to implement "such other prudential standards as [the Fed] determines appropriate."

Requirement	Currently Applies to	Originally Applied to	Agency Issuing	Original Effective Date
Living wills	Category I (biennial) Category II-III (triennial) FBOs $250B+ global assets not categorized (reduced, triennial) $50B+ IDIs (triennial) (moratorium since 2018 for <$100B)	$50B+ BHCs (annual) $50B+ IDIs (annual)	Fed/FDIC	2011 2012
Liquidity stress test (firm-run), reporting, and risk management	Category I-III (monthly stress test) Category I, Category II, Category III w/ $75B+ wstf (daily reporting) Category III <$75B wstf, Category IV (monthly reporting) Category IV (quarterly stress test)	$50B+ BHCs (monthly stress test)	Fed	2014
Liquidity Coverage Ratio	Category I, Category II, Category III w/ $75B+ wstf (most stringent) and their $10B+ IDIs Category III w/ <$75B wstf (more stringent) and their $10B+ IDIs Category IV w/ $50B+ wstf (least stringent) and their $10B+ IDIs would apply to $250B bank w/o BHC, but none currently	Banks w/ $250B+ assets or $10B+ foreign exposure (more stringent) and their $10B+ IDIs $50B-$250B BHCs (less stringent) and their $10B+ IDIs	Fed/OCC/FDIC	2015
Net stable funding ratio	Category I, Category II, Category III w/ $75B+ wstf (most stringent) and their $10B+ IDIs Category III w/ <$75B wstf (more stringent) and their $10B+ IDIs Category IV w/ $50B+ wstf (least stringent) and their $10B+ IDIs would apply to $250B bank w/o BHC, but none currently	n/a	Fed/OCC/FDIC	2021
Single counterparty credit limit	Category I (more stringent) Category II and III (less stringent)	U.S. G-SIBs (more stringent) $250B+ BHCs and $50B+ IHCs (less stringent)	Fed	2018
Emergency provisions	$250B+ BHCs	$50B+ BHCs	n/a	n/a

Requirement	Currently Applies to	Originally Applied to	Agency Issuing	Original Effective Date
Subject to assessments for:	Category I-III (OFR) Category I-III (EPR higher), Category IV (EPR lower) $50B+ BHCs (OLA)	$50B+ BHCs (OFR, EPR, OLA)	Treasury (OFR); Fed (EPR); FDIC (OLA)	2012 (OFR); 2013 (EPR); n/a (OLA)
Simplified capital treatment of certain assets	Banks that are not advanced approaches banks	n/a	Fed/OCC/FDIC	2019
Stress capital buffer	Category I-IV	n/a	Fed	2020
Supplementary leverage ratio	Category I and their IDIs (eSLR); IDIs w/ $700B+ assets or $10Tr+ custody assets Category II and III and their IDIs (SLR)	$700B+ assets or $10Tr+ custody assets (eSLR) Advanced approaches banks (SLR)	Fed/OCC/FDIC	2014 (SLR), 2018 (eSLR)
Advanced approaches	Category I-II and their IDIs (mandatory)	Banks/BHCs w/ $250B+ assets or $10B+ foreign exposure and their IDIs	Fed/OCC/FDIC	2008
AOCI included in capital	Category I-II and their IDIs (mandatory)	Advanced approaches banks (mandatory)	Fed/OCC/FDIC	2014
Countercyclical capital buffer	Category I-III and their IDIs	Advanced approaches banks	Fed/OCC/FDIC	2014
Total loss absorbency capacity	Category I, IHCs of foreign G-SIBs	U.S. G-SIBs, IHCs of foreign G-SIBs	Fed	2017
G-SIB capital surcharge	Category I	U.S. G-SIBs	Fed	2015

Source: CRS analysis of *Federal Register* and *Code of Federal Regulations*.

Notes: See text for details of requirements and categories. Requirements applicable to BHCs are also applicable to the U.S. operations or IHCs of foreign banking organizations. Application of provisions to nonbank SIFIs is beyond the scope of this table. The table does not include the application of provisions under proposed rules that have not been finalized. eSLR = enhanced Supplementary Leverage Ratio, G-SIB = Global-Systemically Important Bank, AOCI = accumulated and other comprehensive income, OFR = Office of Financial Research, EPR = enhanced prudential regulation, OLA = Orderly Liquidation Authority, IHC = intermediate holding company, WSTF = wholesale short-term funding. Categories are defined in **Figure 1**.

Stress Tests, Capital Planning, and the Stress Capital Buffer

Stress tests and capital planning are two enhanced requirements that have been implemented together. Banks are subject to company-run stress tests, where the bank projects losses and capital levels under a severely adverse scenario provided by the Fed, and Fed-run stress tests, where the Fed makes those projections based on data it receives from the bank. Fed-run stress tests and capital planning requirements provide the Fed with an assessment of whether large banks have enough capital to withstand another crisis as simulated using a specific adverse scenario developed by the Fed. Following the enactment of P.L. 115-174, the Fed implemented tiered requirements:

- Category I-IV banks must submit annual capital plans;

- Category I and II banks are subject to annual company-run stress tests, Category III banks must perform company-run stress tests every other year, and Category IV banks are exempt from company-run stress tests;
- Category I-III banks are subject to Fed-run stress tests every year, and Category IV banks are subject every other year.[34]

Stress tests attempt to project the losses that banks would suffer under a hypothetical deterioration in economic and financial conditions to determine whether banks would remain solvent in a future crisis. Unlike general capital requirements that are based on current asset values, stress tests incorporate an adverse scenario that focuses on projected asset values based on specific areas of concern each year. For example, the 2017 adverse scenario was "characterized by a severe global recession that is accompanied by a period of heightened stress in corporate loan markets and commercial real estate markets."[35] Stress test requirements were initially implemented through final rules in 2012, effective beginning in 2013.[36] These superseded an earlier type of stress test the Fed introduced during the financial crisis before the enactment of the Dodd-Frank Act.

The final rule for capital planning was implemented in 2011.[37] Category I-IV banks must submit capital plans to the Fed annually. The capital plan must include a projection of the expected uses and sources of capital, including planned debt or equity issuance and dividend payments. The plan must demonstrate that the bank will remain in compliance with capital requirements under the stress tests.

Originally, the Fed could reject a bank's capital plan, in which case the bank could not make any capital distributions, such as stock buybacks or dividend payments, until a revised capital plan was resubmitted and approved by the Fed. Each year, the Fed had required some banks to revise their capital plans or objected to them on qualitative or quantitative grounds or due to other weaknesses in their processes.[38]

Over the years, regulators and Congress have taken steps to reduce the regulatory burden of stress tests. To the extent that stress tests effectively reduce the probability of a large bank failure, these steps may have also increased the risk of failure during a crisis. In 2017, the Fed removed qualitative requirements from the capital planning process for banks with less than $250 billion in assets that are not complex.[39] In addition to reducing the number of firms subject to stress testing, P.L. 115-174 also reduced the number of stress test scenarios and the frequency of company-run stress tests from semi-annually to periodically. The Fed also reduced the frequency of Fed-run

[34] These changes were implemented in the 2019 tailoring rule and in a 2021 rule. See Federal Reserve, "Federal Reserve Board Finalizes a Rule That Updates the Board's Capital Planning Requirements to Be Consistent with Other Board Rules That Were Recently Modified," press release, January 19, 2021, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20210119a.htm.

[35] Federal Reserve, *Dodd-Frank Act Stress Test 2017*, June 2017, p. 5, https://www.federalreserve.gov/publications/files/2017-dfast-methodology-results-20170622.pdf.

[36] Federal Reserve, "Annual Company-Run Stress Test Requirements," 77 *Federal Register* 62396, October 12, 2012, https://www.gpo.gov/fdsys/pkg/FR-2012-10-12/pdf/2012-24988.pdf; and Federal Reserve, "Supervisory and Company-Run Stress Test Requirements," 77 *Federal Register* 62378, October 12, 2012, https://www.gpo.gov/fdsys/pkg/FR-2012-10-12/pdf/2012-24987.pdf.

[37] Federal Reserve, "Capital Plans," 76 *Federal Register* 74631, December 1, 2011, https://www.federalreserve.gov/reportforms/formsreview/RegY13_20111201_ffr.pdf. For more information, see Federal Reserve, *Capital Planning at Large Bank Holding Companies*, August 2013, https://www.federalreserve.gov/bankinforeg/bcreg20130819a1.pdf.

[38] Yearly results are available at https://www.federalreserve.gov/supervisionreg/ccar-by-year.htm.

[39] Federal Reserve, "Amendments to the Capital Plan and Stress Test Rules," 81 *Federal Register* 9308, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20170130a.htm.

stress tests for banks with between $100 billion and $250 billion to every other year in 2019.[40] Also in 2019, the Fed made changes to the stress test process to increase its transparency.[41] Previously, the Fed could "fail" a bank's plan on quantitative or qualitative grounds. Between 2017 and 2019, the qualitative pass/fail was phased out on the grounds that banks' capital plans had improved over the years. (The Fed can still object if a G-SIB's capital planning methodologies and practices are not reasonable.)[42] The quantitative pass/fail was eliminated in 2020 by the introduction of the stress capital buffer, with which Category I-IV banks must comply.

Stress Capital Buffer

Title I required enhanced capital requirements for banks subject to EPR. Outside of Basel III (described below in the "Basel III Capital Requirements" section), enhanced capital requirements were primarily implemented through, in its current iteration, the stress capital buffer.

Under previous capital planning requirements, large banks were also required to hold enough capital to remain above the minimum amount required under the various requirements after their stress test losses, planned capital distributions (such as nine quarters of dividends and share buybacks), and projected balance sheet growth (because an increase in assets requires a proportional increase in capital). This created some overlap and redundancy with the capital requirements that all banks face. As noted by the Fed, before 2020, banks with more than $100 billion in assets had to simultaneously comply with 18 capital requirements, and G-SIBs had to simultaneously comply with 24 different capital requirements, each addressing a separate but related risk.[43]

To try to minimize what it perceived as redundancy among these various measures, the Fed finalized a rule in 2020 to combine elements of the stress tests and the Basel III requirements into a new stress capital buffer.[44] Under the final rule, Category I-IV banks have to simultaneously comply with eight capital requirements, and G-SIBs have to simultaneously comply with 14 capital requirements. The final rule accomplished this by eliminating five requirements tied to the "adverse" scenario in the stress tests, which the Fed was allowed to do under P.L. 115-174, and by combining four requirements tied to the "severely adverse" stress tests with four Basel III capital requirements.

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[40] Banks subject to stress tests every other year use those results to determine their capital requirements for two years. Federal Reserve, "Federal Reserve Board Releases Scenarios for 2019 Comprehensive Capital Analysis and Review (CCAR) and Dodd-Frank Act Stress Test Exercises," press release, February 5, 2019, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190205b.htm.

[41] Federal Reserve, "Federal Reserve Board Finalizes Set of Changes That Will Increase the Transparency of Its Stress Testing Program for Nation's Largest and Most Complex Banks," press release, February 5, 2019, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20190205a.htm.

[42] Federal Reserve, "Amendments to the Capital Plan and Stress Test Rules," 81 *Federal Register* 9308; Federal Reserve, "Stress Tests," https://www.federalreserve.gov/supervisionreg/stress-tests-capital-planning.htm.

[43] The 24 capital requirements can be grouped into a few major categories, and all requirements within each category are based on similar definitions and calculations. In that sense, having a large number of capital requirements does not create as great of a compliance burden as the number suggests. Rather, the economic burden associated with a large number of requirements stems from the fact that banks change their behavior to comply with the binding requirement, and multiple requirements make it more likely that the binding requirement could periodically shift and banks would adjust their behavior to take that possibility into account.

[44] Federal Reserve, "Federal Reserve Board Approves Rule to Simplify Its Capital Rules for Large Banks, Preserving the Strong Capital Requirements Already in Place," press release, March 4, 2020, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200304a.htm.

Previously, large banks were required to hold *capital conservation buffers* equal to 2.5% of their *risk weighted assets* (RWA) to avoid limitations on capital distributions.[45] The final rule replaced these separate requirements with a combined *stress capital buffer* (SCB) that requires banks to hold enough capital to cover stress test losses and four quarters of dividends or 2.5% of RWA, whichever is larger (see **Figure 2**). The former is less restrictive than what banks previously faced if their projected capital levels fell below the minimum under stress test requirements.[46] Capital requirements would also be lowered for banks that had previously faced binding *leverage ratio* constraints based on stress test results. Because the SCB eliminates the leverage ratio from stress tests, the Fed argues that the leverage ratio appropriately reverts to being more of a backstop than a binding constraint.[47]

As noted above, the Fed could previously reject a bank's capital plan on quantitative grounds if it was not consistent with the bank remaining well capitalized under the stress test. Instead of a pass/fail process, the stress capital buffer requires the bank to continuously maintain its buffer or be subject to restrictions.

Because the Fed decided that banks would no longer have to hold capital to account for capital distributions (other than dividends) or balance sheet growth, the SCB reduces capital requirements relative to previous stress tests for non-G-SIBs. However, whether the SCB would be a lower capital requirement than the previous stress test requirements—and the risk-weighted Basel III requirements it is replacing—depends on the size of its losses under the stress tests. If losses are less than 2.5%, then a bank is required to hold the same amount of capital (2.5%) under the SCB as it did previously under the capital conservation buffer. If they are more than 2.5%, then a bank is required to hold less capital under the SCB than previously under the stress tests because the SCB includes fewer factors that require additional capital.[48] For G-SIBs, there is an additional consideration—the SCB is higher if stress tests were previously the binding constraint, because the SCB includes the *G-SIB surcharge* and the stress tests did not.

[45] The capital conservation buffer remains unchanged for smaller banks that have not elected to comply with the Community Bank Leverage Ratio. For more information, see CRS Report R47447, *Bank Capital Requirements: A Primer and Policy Issues*, by Andrew P. Scott and Marc Labonte.

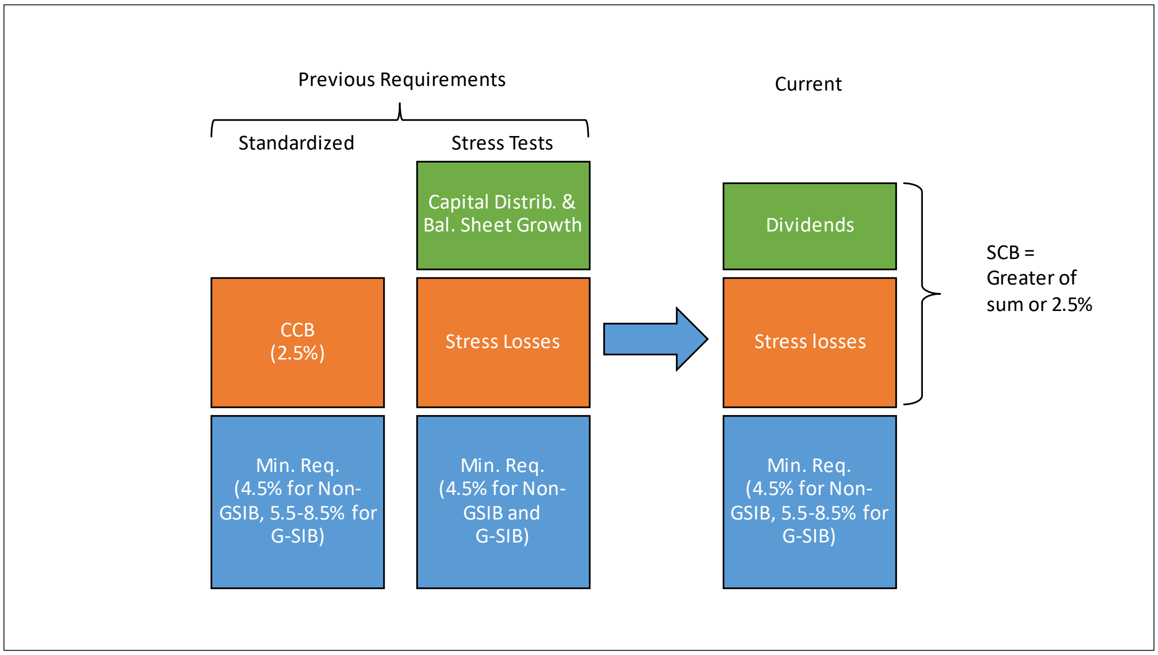
[46] The Fed has provided three justifications for making these requirements less stringent. First, the Fed argues that because capital distributions would automatically face restrictions if banks' capital fell below their SCBs, it would no longer be necessary for firms to hold enough capital to meet all planned capital distributions. However, restrictions are phased in gradually and distributions are not entirely forbidden unless a bank has depleted all but 0.625% of its SCB. Second, the Fed argues for removing stock repurchases from capital planning on the grounds that only dividends are likely to be continued as planned in a period of financial stress. Finally, the Fed argues that its previous assumption that balance sheets continue to grow in a stressed environment was an unreasonable one—although the COVID crisis that began one month after the SCB rule was finalized demonstrated that bank balance sheets can grow significantly during crises. Federal Reserve, "Proposed Rule Regarding the Stress Buffer Requirements," staff memorandum, April 5, 2018, pp. 11-13, https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20180410a1.pdf.

[47] The proposed rule would have also required banks to comply with a stress leverage buffer based on the leverage ratio. The final rule omitted it, in part, to make the leverage ratio more of a backstop. Federal Reserve, "Draft Final Rule Regarding the Stress Capital Buffer," staff memorandum, February 19, 2020, https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20200304a1.pdf.

[48] If a G-SIB's stress test losses exceeded 2.5%, it would be required to hold less capital only if the sum of the bank's capital distributions and projected balance sheet growth were greater than the sum of the bank's G-SIB surcharge and dividends.

Figure 2. Risk-Weighted Capital Requirements for Large Banks, 2023

Common Equity Tier 1



Source: CRS.

Notes: CCB = capital conservation buffer, SCB = stress capital buffer, GSIB = Global-Systemically Important Bank.

At the time the rule was finalized, the Fed calculated what would have happened if the SCB had been in place in recent years. It found that the SCB would have reduced required capital for large banks that are not G-SIBs (because the stress test is currently the binding constraint) by between $5 billion and $53 billion and would have required G-SIBs to hold between $6 billion less and $84 billion more capital (because the G-SIB surcharge is being added to the SCB). Overall, capital requirements would have increased by an average of $11 billion in those years.[49]

Resolution Plans ("Living Wills")

Policymakers claimed that one reason they intervened to prevent large financial firms from failing during the financial crisis was because the opacity and complexity of these firms made it too difficult to wind them down quickly and safely through bankruptcy. The Dodd-Frank Act required BHCs subject to EPR to periodically submit resolution plans (popularly known as "living wills") to the Fed, FSOC, and FDIC that explain how they can safely enter bankruptcy in the event of their failures. The living wills requirement was implemented through a final rule in 2011, and it became fully effective at the end of 2013.[50] The final rule required resolution plans to include details of the firm's ownership, structure, assets, and obligations; information on how the firm's depository subsidiaries are protected from risks posed by its nonbank subsidiaries; and information on the firm's cross-guarantees, counterparties, and processes for determining to whom collateral has been pledged.

[49] Federal Reserve, "Draft Final Rule Regarding the Stress Capital Buffer."

[50] Federal Reserve and FDIC, "Resolution Plans Required," 76 *Federal Register* 67323, https://www.gpo.gov/fdsys/pkg/FR-2011-11-01/pdf/2011-27377.pdf.

Initially, all banks with over $50 billion in assets were required to submit living wills annually. Following the implementation of P.L. 115-174, G-SIBs are required to submit living wills once every two years, alternating between full and targeted plans. Category II and III banks are required to submit living wills once every three years, alternating between full and targeted plans. Foreign banks with over $250 billion in global assets that are not Category I, II, or III banks on the basis of their U.S. operations are required to submit reduced living wills on a three-year cycle. Category IV banks are exempted from living will requirements.[51] In addition, not pursuant to the Dodd-Frank Act, the FDIC requires resolution plans for insured depository institutions (IDIs) with $50 billion or more in assets for purposes of facilitating a potential FDIC resolution, a threshold it maintained after the enactment of P.L. 115-174.[52]

In the 2011 final rule, the regulators highlighted that the resolution plans would help them understand the firms' structure and complexity as well as their resolution processes and strategies, including cross-border issues for banks operating internationally. The resolution plan is required to explain how the firm could be resolved under the bankruptcy code[53]—as opposed to being liquidated by the FDIC under the Orderly Liquidation Authority (OLA) created by Title II of the Dodd-Frank Act.[54] (Failing IDIs are subject to FDIC resolution, but their parent holding companies are subject to bankruptcy or OLA.) The plan is required to explain how the firm can be wound down in a stressed environment in a "rapidly and orderly" fashion without receiving "extraordinary support" from the government (as some firms received during the crisis) or without disrupting financial stability. To do so, the plan must include information on core business lines, funding and capital, critical operations, legal entities, information systems, and operating jurisdictions.

Resolution plans are divided into a short public part that is disclosed and a private part that contains confidential information. Some banks have submitted resolution plans containing tens of thousands of pages. If regulators find that a plan is incomplete, deficient, or not credible, they may require the firm to revise and resubmit. If the firm cannot resubmit an adequate plan, regulators have the authority to take remedial steps against it: increasing its capital and liquidity requirements, restricting its growth or activities, or ultimately taking it into resolution. Since the process began in 2013, multiple firms' plans have been found insufficient, including all 11 that were submitted and subsequently resubmitted in the first wave. In 2016, Wells Fargo became the first bank to be sanctioned for failing to submit an adequate living will.[55]

The Fed and FDIC issued proposed guidance in 2023 that elaborated on what non-G-SIB banks should include in their resolution plans.[56]

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[51] Federal Reserve Board and FDIC, "Agencies Finalize Changes to Resolution Plan Requirements; Keeps Requirements for Largest Firms and Reduces Requirements for Smaller Firms," joint press release, October 28, 2019, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20191028b.htm.

[52] 12 C.F.R. §360.10. The FDIC proposed its resolution planning requirements before the enactment of the Dodd-Frank Act.

[53] For some entities, such as insurance subsidiaries, other resolution regimes apply besides the bankruptcy code.

[54] OLA was intended to administratively resolve a firm whose failure posed systemic risk as an alternative to the bankruptcy process. For more information, see CRS In Focus IF10716, *Orderly Liquidation Authority*, by David W. Perkins and Raj Gnanarajah.

[55] For more information, see CRS Legal Sidebar WSLG1730, *Wells Fargo Sanctioned for Deficient "Living Will"*, by David H. Carpenter.

[56] Federal Reserve and FDIC, "Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers," 88 *Federal Register* 64626, 64641, September 19, 2023, https://www.federalregister.gov/documents/2023/09/19/2023-19267/guidance-for-resolution-plan-submissions-of-domestic-triennial-full-filers.

Liquidity Requirements

For banks, *liquidity* refers to a bank's ability to meet cash flow needs and readily convert assets into cash. Banks are vulnerable to liquidity crises because of the liquidity mismatch between illiquid loans and deposits that can be withdrawn on demand. Although all banks are regulated for liquidity adequacy, the Dodd-Frank Act required more stringent liquidity requirements for banks subject to EPR. These liquidity requirements have been implemented through three rules: (1) a 2014 final rule implementing firm-run liquidity stress tests and other internal requirements, (2) a 2014 final rule implementing the Fed-run *liquidity coverage ratio* (LCR), and (3) a 2021 final rule implementing the Fed-run *net stable funding ratio* (NSFR).[57]

Category I and II banks must comply with the full LCR and NSFR and daily liquidity reporting. Category I-III banks are also subject to monthly internal liquidity stress tests and liquidity risk management standards. Category III banks are also subject to a less stringent version of the LCR, the NSFR, and monthly liquidity reporting requirements unless their wholesale short-term funding exceeds $75 billion, in which case they are subject to the more stringent requirements. Category IV banks with over $50 billion in short-term wholesale funding are required to meet a number of liquidity requirements. They must comply with a reduced LCR and NSFR. All other Category IV banks are exempted from the LCR and NSFR. All Category IV banks are required to conduct quarterly company-run liquidity stress tests.

The final rule implementing firm-run liquidity standards was issued in 2014, effective January 2015 for U.S. banks and July 2016 for foreign banks.[58] The rule requires a bank subject to EPR to establish a liquidity risk management framework involving the bank's management and board, conduct a monthly internal liquidity stress test, and maintain a buffer of *high-quality liquid assets* (HQLA).

The final rule implementing the LCR was issued in 2014.[59] The LCR came into effect at the beginning of 2015 and was fully phased in at the beginning of 2017. The LCR requires banks subject to EPR to hold enough HQLA to match net cash outflows over a 30-day period in a hypothetical scenario of market stress where creditors are withdrawing funds.[60] An asset can qualify as an HQLA if it has lower risk, has a high likelihood of remaining liquid during a crisis, is actively traded in secondary markets, is not subject to excessive price volatility, can be easily valued, and is accepted by the Fed as collateral for loans. Different types of assets are relatively more or less liquid, and there is disagreement on what the cutoff point should be to qualify as an HQLA under the LCR. In the LCR, eligible assets are assigned to one of three categories ranging from most to least liquid. Assets assigned to the most liquid category are given more credit toward meeting the requirement, and assets in the least liquid category are given less credit.[61]

[57] OCC, Federal Reserve, and FDIC, "Net Stable Funding Ratio: Liquidity Risk Measurement Standards and Disclosure Requirements," 86 *Federal Register* 9120, February 11, 2021, https://www.govinfo.gov/content/pkg/FR-2021-02-11/pdf/2020-26546.pdf.

[58] Federal Reserve, "Enhanced Prudential Standards," 79 *Federal Register* 17240, March 27, 2014, https://www.gpo.gov/fdsys/pkg/FR-2014-03-27/pdf/2014-05699.pdf.

[59] OCC, Federal Reserve, and FDIC, "Liquidity Coverage Ratio," 79 *Federal Register* 61440, October 10, 2014, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20140903a.htm.

[60] The main difference between the liquidity stress tests and the LCR is that the former are company-run and therefore specifically tailored for each company, whereas the latter is Fed-run and standardized across companies.

[61] Section 403 of P.L. 115-174 required regulators to place municipal bonds in a more liquid category so that banks could get more credit under the LCR for holding them.

The rule implementing the NSFR was finalized in 2021 after the Fed's 2019 tailoring rule was issued.[62] The rule requires banks to have a minimum amount of stable funding backing their assets over a one-year horizon. Different types of funding and assets receive different weights based on their stability and liquidity, respectively, under a stressed scenario. The rule defines funding as stable based on how likely it is to be available in a stressed environment and classifies assets by type, counterparty, and time to maturity. Assets that do not qualify as HQLAs under the LCR require the most backing by stable funding under the NSFR. Long-term equity gets the most credit under the NSFR, insured retail deposits get the next most, and other types of deposits and long-term borrowing get less credit. Borrowing from other financial institutions, derivatives, and certain brokered deposits cannot be used to meet the rule.

Single Counterparty Exposure Limits

One source of systemic risk associated with TBTF comes from "spillover effects." When a large firm fails, it imposes losses on its counterparties. If large enough, the losses could be debilitating to the counterparties, thus causing stress to spread to other institutions and further threaten financial stability. Title I of Dodd-Frank requires banks subject to EPR to limit their exposure to unaffiliated counterparties on an individual counterparty basis and to periodically report on their credit exposures to counterparties. Counterparty exposure limits remain mandatory, but P.L. 115-174 placed credit exposure reports at the Fed's discretion. In 2011, the Fed proposed rules to implement these provisions with other EPR requirements, but they were not included in subsequent final rules.[63] The 2011 credit exposure reporting proposal would have required banks to regularly report on the nature and extent of their credit exposures to significant counterparties. In 2018, the Fed finalized a reproposed rule to implement a single counterparty credit limit (SCCL),[64] effective in 2020. To date, the counterparty exposure reporting requirement has not been reproposed.[65] Following the Fed's 2019 rule implementing P.L. 115-174, Category I banks are subject to a more stringent version of the SCCL, and Category II and III banks are subject to a less stringent version. Category IV banks are not subject to the SCCL. Category I-IV foreign banks with over $250 billion in global assets are required to meet the single-counterparty credit limit, but it is imposed in their home countries. A Category I-III IHC is also subject to the U.S. SCCL.

Counterparty exposure for all banks was subject to regulation before the crisis but did not cover certain off-balance-sheet exposures or holding-company-level exposures.[66] The SCCL is tailored to have increasingly stringent requirements as asset size increases. For Category II and III banks, net counterparty credit exposure is limited to 25% of the bank's capital. For G-SIBs, counterparty exposure to another G-SIB or a nonbank SIFI is limited to 15% of the G-SIB's capital, and exposure to any other counterparty is limited to 25% of its capital.

[62] OCC, Federal Reserve, and FDIC, "Net Stable Funding Ratio."

[63] Federal Reserve, "Enhanced Prudential Standards and Early Remediation Requirements," 77 *Federal Register* 594, January 5, 2012, , https://www.gpo.gov/fdsys/pkg/FR-2012-01-05/pdf/2011-33364.pdf; and Federal Reserve and FDIC, "Resolution Plans and Credit Exposure Reports Required," 76 *Federal Register* 22648, April 22, 2011, https://www.gpo.gov/fdsys/pkg/FR-2011-04-22/pdf/2011-9357.pdf.

[64] Federal Reserve, "Single Counterparty Credit Limits," 83 *Federal Register* 38460, August 6, 2018, https://www.govinfo.gov/content/pkg/FR-2018-08-06/pdf/2018-16133.pdf. The rule also implements the Basel III Large Exposures Standard.

[65] The proposed SCCL rule states that future rulemaking implementing the credit exposure reports will be "informed" by the SCCL framework.

[66] Federal Reserve, "Single Counterparty Credit Limits," 81 *Federal Register* 14328, March 16, 2016, https://www.gpo.gov/fdsys/pkg/FR-2016-03-16/pdf/2016-05386.pdf.

Risk Management Requirements

The Dodd-Frank Act required publicly traded banks with at least $10 billion in assets, which P.L. 115-174 raised to at least $50 billion in assets, to form risk committees on their boards of directors that include at least one risk management expert responsible for oversight of the banks' risk management—one of the only EPR requirements that still applies to banks with under $100 billion in assets.[67] Title I also requires the Fed to develop overall risk management requirements for banks with more than $50 billion in assets. The Fed issued the final rule implementing this provision in 2014, effective in January 2015 for domestic banks and July 2016 for foreign banks.[68] The rule requires the risk committee to be led by an independent director. The rule requires banks with more than $50 billion in assets to employ chief risk officers responsible for risk management, which the rule implementing P.L. 115-174 left unchanged.

Provisions Triggered in Response to Financial Stability Concerns

The Dodd-Frank Act provided several powers for—depending on the provision—FSOC, the Fed, or the FDIC to use when the respective entity believes that a bank with more than $50 billion in assets or designated nonbank SIFI poses a threat to financial stability. Unless otherwise noted, P.L. 115-174 raises the threshold at which the powers can be applied to banks with $250 billion in assets, with no discretion to apply them to banks between $100 billion and $250 billion in assets. As such, the Fed has applied them to Category I-III banks only. Unlike the enhanced regulation requirements described earlier in this section, financial stability provisions generally do not require any ongoing compliance and would be triggered only when a perceived threat to financial stability has arisen—and none of these provisions has been triggered to date.

Some of the following powers are similar to powers that bank regulators already have over all banks, but they are new powers over nonbank SIFIs. To varying degrees, they also expand regulatory authority over banks (or extend authority from bank subsidiaries to BHCs) with more than $250 billion in assets vis-à-vis smaller banks.

- **FSOC reporting requirements.** To determine whether a bank with more than $250 billion in assets poses a threat to financial stability, FSOC may require the bank to submit certified reports. However, FSOC may make information requests only if publicly available information is not available.
- **Mitigation of grave threats to financial stability.** When at least two-thirds of FSOC members find that a bank with more than $250 billion in assets poses a grave threat to financial stability, the Fed may limit the firm's mergers and acquisitions, restrict specific products it offers, and terminate or limit specific activities. If none of those steps eliminates the threat, the Fed may require the firm to divest assets. The firm may request a Fed hearing to contest the Fed's actions. To date, this provision has not been triggered, and FSOC has never identified any bank as posing a grave threat.
- **Acquisitions.** Title I broadens the requirement for banks with more than $250 billion in assets to provide the Fed with prior notice of a U.S. nonbank acquisition that exceeds $10 billion in assets and 5% of the acquisition's voting shares, subject to various statutory exemptions. The Fed is required to consider whether the acquisition would pose risks to financial stability or the economy.

[67] The board of directors of a publicly traded company oversees the company's management on behalf of shareholders.

[68] Federal Reserve, "Enhanced Prudential Standards."

- **Emergency 15-to-1 debt-to-equity ratio.** For banks with more than $250 billion in assets, with Fed discretion to apply to banks with between $100 billion and $250 billion in assets, Title I creates an emergency limit of 15-to-1 on the bank's ratio of liabilities to equity capital (sometimes referred to as a *leverage ratio*).[69] The Fed issued a final rule implementing this provision in 2014, effective June 2014 for domestic banks and July 2016 for foreign banks.[70] The ratio is applied only if a bank receives written warning from FSOC that it poses a "grave threat to U.S. financial stability" and ceases to apply when the bank no longer poses a grave threat. To date, this provision has not been triggered.
- **Early remediation requirements.** Early remediation is the principle that financial problems at banks should be addressed early before they become more serious. Title I requires the Fed to "establish a series of specific remedial actions" to reduce the probability that a bank with more than $250 billion in assets experiencing financial distress will fail. This establishes a requirement for BHCs similar in spirit to the prompt corrective action requirements that apply to insured depository subsidiaries. Unlike prompt corrective action, early remediation requirements are not based solely on capital adequacy. As the financial condition of a firm deteriorates, statute requires the steps taken under early remediation to become more stringent. The Fed issued a proposed rule in 2011 to implement this provision that to date has not been finalized.[71]
- **Expanded FDIC examination and enforcement powers.** Title I expands the FDIC's examination and enforcement powers over certain large banks. To determine whether an orderly liquidation under Title II of the Dodd-Frank Act is necessary, the FDIC is granted authority to examine the condition of BHCs and foreign banks subject to EPR with more than $250 billion in assets. Title I also grants the FDIC enforcement powers over BHCs or THCs that pose a risk to the Deposit Insurance Fund.

Basel III Capital Requirements

Capital requirements are intended to ensure that a bank has enough capital backing its assets to absorb any unexpected losses on those assets without failing. Title I required enhanced capital requirements for banks subject to EPR. Outside of capital planning and stress tests, Title I was generally not prescriptive about what form those requirements should take.[72] Parallel to the Dodd-Frank Act, Basel III reformed bank regulation after the financial crisis. U.S. bank regulators implemented this nonbinding international agreement through rulemaking.[73] Overall capital requirements were revamped through Basel III, including higher requirements for large banks,

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[69] Unlike the leverage ratio found in Basel III, this emergency ratio is based on liabilities instead of assets. It is calculated as total liabilities relative to total equity capital minus goodwill. This ratio is inverted compared with the leverage ratio—that is, capital is in the numerator rather than the denominator.

[70] Federal Reserve, "Enhanced Prudential Standards."

[71] Federal Reserve, "Enhanced Prudential Standards and Early Remediation Requirements."

[72] Section 165(k) of the Dodd-Frank Act as amended requires the Fed to take off-balance-sheet exposures into account in capital requirements for any bank subject to EPR. The SLR is consistent with this requirement.

[73] Many provisions of the Basel III Accord were adopted in rulemaking in July 2013. The 2013 final rule does not include the capital surcharge for G-SIBs. Information on Basel III implementation is available at http://federalreserve.gov/bankinforeg/basel/USImplementation.htm.

discussed in this section. Basel III did not include enhanced capital requirements at the original $50 billion threshold, but it did include more stringent capital requirements for the largest banks.

These capital requirements determine how the largest banks must fund all of their activities on a day-to-day basis. In that sense, these requirements arguably have a larger ongoing impact on banks' marginal costs of providing credit and other services than most of the Title I provisions discussed in the last section that impose only compliance costs on banks.[74] For more information, see CRS Report R47447, *Bank Capital Requirements: A Primer and Policy Issues*, by Andrew P. Scott and Marc Labonte.

The following Basel III capital requirements apply only to large banks.

Advanced Approaches

Since Basel II (the previous iteration of the international accord), large, complex banks have been required to use *advanced approaches*—more technical, complex procedures—to determine capital requirements for more sophisticated financial activities. Before 2019, advanced approaches were required for institutions that had consolidated total assets equal to $250 billion or more or consolidated total on-balance-sheet foreign exposures equal to $10 billion or more. In the 2019 tiering rule, the Fed changed this so that only Category I and II banks are required to use advanced approaches. Other banks may still elect to use advanced approaches.[75]

Before the enactment of P.L. 115-174, many large bank capital requirements applied only to advanced approaches banks, but the 2019 rule based those requirements on Category I-IV instead. There are other examples of cases where advanced approaches banks follow more complicated methodology to comply with capital rules than those used by smaller banks. For example, another rule in 2019 simplified the capital treatment of certain assets, such as mortgage servicing assets and deferred tax assets, to reduce regulatory burden. Advanced approaches banks were not allowed to use this simplified capital treatment.[76] As another example, the rule implementing Basel III required unrealized gains and losses on *available for sale* (AFS) securities—as well as certain other items included in *accumulated other comprehensive income* (AOCI)—to count toward capital requirements for advanced approaches banks. Other banks were given a one-time opportunity to opt out of this requirement.

Supplementary Leverage Ratio

Basel III introduced a *supplementary leverage ratio* (SLR) for large banks. G-SIBs, Category II and III banks, and any other bank that elects to be an advanced approaches bank must meet a 3% SLR at the holding company level and at the depository subsidiary level to be considered adequately capitalized. In addition, G-SIBs must also meet an *enhanced SLR* (eSLR) of 5% at the holding company level (specifically, G-SIBs must meet a 2% buffer on top of the 3% SLR

[74] *Regulatory compliance costs* refers to resources and manpower directly expended on ensuring that a bank is complying with regulation.

[75] Some additional specific treatments under capital rules apply to those banks that have elected to be advanced approaches banks. For simplicity, those additional capital requirements are not noted in the summary tables throughout this report.

[76] OCC, Federal Reserve, and FDIC, "Regulatory Capital Rule: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996," 84 *Federal Register* 35234, July 22, 2019, https://www.govinfo.gov/content/pkg/FR-2019-07-22/pdf/2019-15131.pdf.

requirement) to avoid restrictions on discretionary bonuses and capital distributions and 6% at the depository subsidiary level to be considered well capitalized.[77]

The leverage ratio and SLR use tier 1 capital in the numerator and include unweighted assets in the denominator.[78] The difference is that the SLR also includes off-balance-sheet exposures in the denominator. Thus, the numerator is the same, but the denominator is larger.[79] The SLR is intended to ensure that the bank is adequately safeguarded against off-balance-sheet losses that are not captured in the leverage ratio. Unanticipated losses related to opaque off-balance-sheet exposures exacerbated uncertainty about banks' solvency during the 2007-2009 financial crisis. According to the regulators, there is less need to subject small banks to the SLR because small banks on average have fewer off-balance-sheet exposures.

Although the basic principle of leverage ratios is to treat all assets equally, policymakers have debated whether certain assets should be exempted. Section 402 of P.L. 115-174 allowed for custody banks—defined by the legislation as banks predominantly engaged in custody, safekeeping, and asset servicing activities—to no longer hold capital against funds deposited at certain central banks[80] to meet the SLR up to an amount equal to customer deposits linked to fiduciary, custodial, and safekeeping accounts.[81] All other banks would continue to be required to hold capital against central bank deposits. According to the implementing rule, the Bank of New York Mellon, Northern Trust, and State Street were the only banks that qualified for this exemption at the time.[82]

In response to the rapid increase in safe assets on bank balance sheets during the pandemic, the banking regulators provided temporary SLR relief by excluding Treasury securities and balances held at the Fed from the denominator.[83] That relief expired at the end of March 2021, although bank balance sheets still remain larger than before the pandemic.

G-SIB Capital Surcharges

In the United States, the Fed bases a G-SIB's surcharge on the score generated using two formulas (called method 1 and method 2) to measure an institution's *systemic importance*—the likelihood that distress at or failure of the institution could destabilize the global financial

[77] OCC, Federal Reserve, and FDIC, "Regulatory Capital Rules," 79 *Federal Register* 24528, May 1, 2014, https://www.gpo.gov/fdsys/pkg/FR-2014-05-01/pdf/2014-09367.pdf. However, the OCC applies the eSLR to national banks with over $700 billion in assets or $10 trillion in custody assets. The OCC is proposing to apply the eSLR to subsidiaries of G-SIBs instead, aligning it with the Fed's methodology, in the Basel III Endgame proposal.

[78] These concepts are described in CRS Report R47447, *Bank Capital Requirements: A Primer and Policy Issues*, by Andrew P. Scott and Marc Labonte.

[79] Because of the larger denominator, regulators estimated that an SLR of 3% is equivalent to a leverage ratio of 4.3%, on average. Thus, the 3% SLR requires affected banks to hold more capital on average than the 4% leverage ratio does.

[80] The central banks that currently qualify for this exemption include all countries belonging to the Organization for Economic Cooperation and Development (OECD) except Mexico and Turkey. For a list, see OECD, *Country Risk Classifications of the Participants to the Arrangement on Officially Supported Export Credits*, January 26, 2018, http://www.oecd.org/trade/xcred/cre-crc-current-english.pdf.

[81] For more information, see CRS In Focus IF10812, *Financial Reform: Custody Banks and the Supplementary Leverage Ratio*, by Rena S. Miller.

[82] Federal Reserve, FDIC, and OCC, "Agencies Finalize Changes to Supplementary Leverage Ratio as Required by Economic Growth, Regulatory Relief, and Consumer Protection Act," press release, November 19, 2019, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20191119a.htm.

[83] Federal Reserve , FDIC, and OCC, "Regulators Temporarily Change the Supplementary Leverage Ratio to Increase Banking Organizations' Ability to Support Credit to Households and Businesses in Light of the Coronavirus Response," press release, May 15, 2020, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20200515a.htm.

system.[84] A detailed examination of how the scores are calculated and what qualifies a bank as a G-SIB is beyond the scope of this report. What is pertinent is that the size of the institution constitutes one of 12 indicators measured under method 1 and one of nine indicators in method 2.[85]

Basel III also required G-SIBs to hold relatively more capital for their risk-weighted requirements than other banks in the form of a common equity surcharge of at least 1% to "reflect the greater risks that they pose to the financial system."[86] In July 2015, the Fed issued a final rule that began phasing in this capital surcharge in 2016.[87] Each G-SIB is assigned a surcharge whose size is based on these formulas. Under the rule, the capital surcharge can be between 1% and 4.5%. The Fed stated that under its rule, most G-SIBs would face a higher capital surcharge than required by Basel III. For 2023, the surcharge varied between 1% and 4%.[88]

If capital levels fall below the surcharge, G-SIBs face certain limitations on shareholder payouts and bonus payments.[89]

Countercyclical Capital Buffer (CCYB)

The banking regulators also issued a final rule implementing a Basel III CCYB, which now applies to Category I, II, and III banks. The CCYB requires these banks to hold more capital than other banks do when regulators believe that financial conditions make the risk of losses abnormally high. In normal times, the CCYB is to be set at zero, but in high-risk circumstances, it could be set as high as 2.5%.[90] In practice, it has always been set at zero since inception.

Total Loss Absorbing Capacity

The Fed issued a 2017 final rule implementing a *total loss absorbing capacity* (TLAC) requirement for U.S. G-SIBs and U.S. operations of foreign G-SIBs effective at the beginning of 2019.[91] The rule requires U.S. G-SIBs to hold TLAC equal to at least 18% of RWA and 7.5% of unweighted assets (including off-balance-sheet exposures) at the holding company level. TLAC is

[84] Federal Reserve, "Regulatory Capital Rules: Implementation of Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Final Rule," 80 *Federal Register* 49082, August 14, 2015, https://www.gpo.gov/fdsys/pkg/FR-2015-08-14/pdf/2015-18702.pdf.

[85] The first scoring method closely adheres to the standards agreed to in Basel III. The second method is based on the Basel III system but includes certain changes made by the Fed that place more emphasis on the banks' funding sources. Both scoring methods include indicators of interconnectedness, complexity, and cross-jurisdictional activity. Method 1 also measures substitutability—how easily an institution's client servicing or infrastructure support could be picked up by another institution—and method 2 measures an institution's use of certain funding markets. The Fed's G-SIB scoring uses bank exposures as the size indicator rather than assets, although the asset-size indicator is more commonly used in most U.S. bank regulation thresholds.

[86] Bank for International Settlements, *Basel III Summary Table*, http://www.bis.org/bcbs/basel3/b3summarytable.pdf.

[87] Federal Reserve, "Risk-Based Capital Guidelines: Implementation of Capital Requirements for Global Systemically Important Bank Holding Companies," 80 *Federal Register* 49082, August 14, 2015, https://www.federalreserve.gov/newsevents/press/bcreg/20150720a.htm.

[88] Federal Reserve, *Large Bank Capital Requirements*, July 2023, https://www.federalreserve.gov/publications/files/large-bank-capital-requirements-20230727.pdf.

[89] Federal Reserve, "Regulatory Capital Rules."

[90] Federal Reserve, "Regulatory Capital Rules: The Federal Reserve Board's Framework for Implementing the U.S. Basel III Countercyclical Capital Buffer," 81 *Federal Register* 63682, September 16, 2016, https://www.federalreserve.gov/newsevents/press/bcreg/20160908b.htm.

[91] 12 C.F.R. Chapter II, Subchapter A, Part 252. Federal Reserve, "Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies," 82 *Federal Register* 8266, January 24, 2017, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20161215a.htm.

composed of tier 1 capital and a minimum amount of long-term debt (equal to the greater of 4.5% of unweighted assets including off-balance-sheet exposures or 6% plus the G-SIB surcharge of RWA) issued by the holding company.[92] In addition, G-SIBs would be subject to a TLAC buffer. If TLAC fell below the buffer level, the G-SIB would face restrictions on capital distributions and discretionary bonuses.

Tier 1 capital held to meet other capital requirements counts toward the TLAC requirement up to the eligible limit. However, TLAC requires banks to hold capital and eligible long-term debt (LTD) at the holding company level.[93]

TLAC is intended to make these equity and debt holders absorb losses by writing off existing equity and converting debt to equity in the event of the firm's insolvency, a process referred to as bank "bail ins." This furthers the policy goal of avoiding taxpayer bailouts of large financial firms. In 2020, to reduce systemic risk from interconnectedness, a final rule discouraged Category I and II banks from investing in the TLAC of U.S. or foreign G-SIBs.[94]

Supervision

Although this report is focused on regulatory requirements, bank supervision also plays an important role in safety and soundness. Although heightened supervisory standards are not required by statute, the Fed has also implemented them for large banking organizations with over $100 billion—aligned in 2019 with the Category IV threshold—that it regulates, including all BHCs.[95] The most stringent supervisory standards are currently applied only to U.S. G-SIBs through the Large Institution Supervision Coordinating Committee. The Fed has two goals in this framework: to reduce the probability of a large bank failing and to reduce the effects on financial stability in the event of its failure.[96] Heightened supervision includes continuous monitoring and coordinated horizontal reviews.

Assessments

By law, regulators levy assessments on banks to fund specific activities or their overall budgets, depending on the assessment. The Dodd-Frank Act imposes various assessments on banks with more than $50 billion in assets. P.L. 115-174 raised the threshold for some of these assessments. As amended, fees are assessed on:

- BHCs with more than $250 billion in assets and designated SIFIs to fund the Office of Financial Research.

[92] These concepts are described in CRS Report R47447, *Bank Capital Requirements: A Primer and Policy Issues*, by Andrew P. Scott and Marc Labonte.

[93] Capital required by TLAC is not in addition to capital required under standard capital requirements, and standard capital requirements are the same or higher than TLAC. However, TLAC capital must be issued by the holding company, whereas banks must meet standard capital requirements at both the depository subsidiary level and the holding company level. Some banks might have to hold more capital to meet both of these requirements simultaneously.

[94] Federal Reserve Board, FDIC, and OCC, "Agencies Finalize Rule to Reduce the Impact of Large Bank Failures," joint press release, October 20, 2020, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20201020a.htm.

[95] Federal Reserve Board, "SR 12-17 / CA 12-14: Consolidated Supervision Framework for Large Financial Institutions," December 17, 2012, https://www.federalreserve.gov/supervisionreg/srletters/sr1217.htm.

[96] Federal Reserve, "Large Financial Institutions," https://www.federalreserve.gov/supervisionreg/large-financial-institutions.htm.

- BHCs and THCs with assets over $100 billion and designated SIFIs to fund the cost of administering EPR. Assessments on BHCs and THCs with $100 billion to $250 billion in assets must reflect the tailoring of EPR.
- BHCs with assets over $50 billion and designated SIFIs to repay any uncompensated costs borne by the government in the event of a liquidation under the OLA.[97] This assessment is imposed only after a liquidation occurs, which has not happened to date.

Role of EPR in 2023 Bank Failures

It is difficult to evaluate how well prudential regulatory requirements work in practice until a bank comes under stress. After experiencing no U.S. bank failures in 2021 and 2022 and no large banks experiencing financial stress since the financial crisis, the spring of 2023 witnessed the second (First Republic), third (SVB), and fifth (Signature) largest failures in history (as measured by asset size in nominal dollars).[98] Combined, these failures are expected to ultimately impose tens of billions of dollars of losses on the FDIC. To avoid a broader run on the banking system, the FDIC invoked its rarely used systemic risk exception to guarantee all uninsured depositors at two of the banks.[99] Members of Congress debated whether P.L. 115-174 and the Fed's implementing rule in 2019 contributed to SVB's failure.[100] The answer to that question depends on whether this was a failure of regulation (inadequate safety and soundness rules), supervision (faulty application of existing rules by supervisors), or both. EPR sets regulatory standards but not supervisory standards. At the same time, many of the most important regulatory and supervisory standards applied to large banks are not the product of EPR—they apply to all banks.

Although each had over $100 billion in assets at the time of failure, Signature Bank and First Republic were not structured as BHCs, so they were not subject to most EPR requirements per Title I of the Dodd-Frank Act as originally enacted, and their primary regulator was the FDIC. SVB was the first bank subject to EPR to fail since the Dodd-Frank Act was implemented. The Fed was the primary regulator of SVB and its holding company, SVB Financial Group. In April 2023, the Fed issued a report on the causes of SVB's failure.[101] (All figures cited in this section are from that report unless otherwise noted.) SVB surpassed $50 billion in assets in 2017, $100 billion in 2020, and $200 billion in 2021. Due to its rapid growth, SVB Financial Group became a Category IV BHC in June 2021 and had begun to be supervised under the Fed's Large Banking Organizations framework in February 2021.[102]

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[97] If assessments on those institutions and the resolved firms' creditors are inadequate to recover the costs of liquidation, there is the potential to levy assessments on other financial firms with assets over $50 billion.

[98] CRS analysis of data from FDIC, "BankFind Suite," https://banks.data.fdic.gov/. In addition, the failure of Credit Suisse, a foreign G-SIB, was avoided through a Swiss-government-assisted takeover by UBS in the spring of 2023.

[99] See CRS In Focus IF12378, *Bank Failures: The FDIC's Systemic Risk Exception*, by Marc Labonte.

[100] See, for example, U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Examining the Failures of Silicon Valley Bank and Signature Bank*, 118th Cong., 1st sess., May 16, 2023; U.S. Congress, House Committee on Financial Services, *The Federal Regulators' Response to Recent Bank Failures*, 118th Cong., 1st sess., March 29, 2023.

[101] Federal Reserve, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank*, April 2023, https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf.

[102] According to the Fed's SVB report, the Fed granted SVB an extension to comply with EPR requirements after it surpassed $50 billion in assets, so SVB was not subject to EPR before the Fed's 2019 rule was finalized, which exempted SVB from most of the rule because it had less than $100 billion in assets at that time. See Federal Reserve, "Large Financial Institutions."

According to the Fed's inspector general, SVB failed because it

> was vulnerable to the business cycles of its customer base—concentrated in science and tech—with a high share of uninsured deposits and large, irregular cash flows. SVB also invested a large portion of deposits in securities with long-term maturities, and experienced significant unrealized losses on those securities as interest rates rose. Further, the bank's management and board of directors failed to manage the risks of its rapid, unchecked growth and concentrations.[103]

Concerns that unrealized losses on securities holdings would result in SVB becoming undercapitalized if uninsured depositors withdrew their funds became a self-fulfilling prophecy. SVB experienced $40 billion in deposit withdrawals a day after it announced that it would sell securities at a $1.8 billion loss and raise more capital.[104]

Proponents of P.L. 115-174 argued that banks with under $250 billion in assets were less likely to pose systemic risk or posed less systemic risk than did banks above $250 billion and therefore did not need to be subject to the same level of regulatory stringency. The failures of SVB and Signature triggered fears of a general bank run—the classic example of a systemic event that EPR is intended to prevent—that led the FDIC, in consultation with the Fed and Treasury Secretary, to invoke the systemic risk exception in order to guarantee uninsured depositors.[105] In this case, the systemic risk arguably stemmed from contagion—the risk that bank runs would spread to other banks—not interconnectedness. EPR was intended to make bailouts less likely. In this case, uninsured depositors were bailed out, but creditors, shareholders, and the banks themselves were not directly bailed out. In the case of Signature, the Dodd-Frank Act's original premise that large financial firms that posed systemic risk were either BHCs or would be designated as SIFIs by FSOC and subject to EPR did not prove to be the case.

SVB's safety and soundness problems had been mounting for some time before its sudden collapse, but Fed supervisors did not effectively respond to address them. Two issues with EPR and SVB revolve around how the Fed implemented P.L. 115-174.

First, that act required the Fed to tailor EPR requirements and gave the Fed discretion on whether to apply individual requirements to banks with between $100 billion and $250 billion in assets.[106] The act did not require the Fed to lower EPR standards on Category IV banks, but in Fed Vice Chair Michael Barr's opinion, the Fed shifted its regulatory and supervisory policies in response to P.L. 115-174 and "internal policy choices" in a way that "impeded effective supervision."[107] According to the Fed's inspector general, "A Board official stated that the message the Board took from [P.L. 115-174] becoming law in 2018 was to reduce the regulatory and supervisory burden."[108] In implementing P.L. 115-174, the Fed chose to exempt Category IV banks from many EPR requirements or apply less stringent standards to them. It also aligned its tiered supervision with the thresholds set out in P.L. 115-174.

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[103] Federal Reserve, Office of Inspector General, "Material Loss Review of Silicon Valley Bank," September 25, 2023, https://oig.federalreserve.gov/reports/board-material-loss-review-silicon-valley-bank-sep2023.htm.

[104] Federal Reserve, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank*.

[105] Department of the Treasury, Federal Reserve, and FDIC, "Joint Statement by Treasury, Federal Reserve, and FDIC," joint press release, March 12, 2023, https://www.federalreserve.gov/newsevents/pressreleases/monetary20230312b.htm.

[106] As noted above, the Fed had never applied many of the Basel III large bank capital requirements to banks with under $250 billion in assets or other measures of complexity.

[107] Federal Reserve, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank*.

[108] Federal Reserve, Office of Inspector General, "Material Loss Review of Silicon Valley Bank."

Second, when banks crossed the $100 billion threshold to be eligible for EPR, the Fed chose to phase in EPR standards and heightened supervision slowly. This played a critical role in the regulation of SVB because of its rapid growth.[109] As a result, SVB was "subject to a less stringent set of [EPR standards] when it reached the $100 billion threshold than would have applied before 2019."[110] This also meant that SVB was not added to the Large Banking Organizations supervisory group for longer, "which delayed application of heightened supervisory expectations to the firm by at least three years."[111] Although SVB crossed the $100 billion threshold in June 2021, because of phase-ins, most EPR requirements did not apply to it until its problems were already mounting. It was not subject to capital planning until April 2022, firm liquidity requirements until July 2022, and resolution planning until December 2022. It would not have been subject to the 70% LCR and NSFR until October 2023,[112] stress testing until June 2024, and the stress capital buffer until October 2024.

EPR covers a relatively narrow set of issues, and some argue that the problems that contributed to the failure of SVB were more likely to have been caught by general regulatory and supervisory standards applying to all banks rather than EPR. If so, SVB's failure might be attributable to supervisory inadequacies rather than lack of appropriate regulatory standards. The Fed's SVB report details multiple examples of SVB's specific problems that Fed supervisors "did not fully appreciate the extent of" or "did not take sufficient steps to ensure that SVB fixed," in the words of Vice Chair Barr.[113] On the other hand, there are specific EPR requirements to test the adequacy of a bank's capital and liquidity, but those tests did not turn out to be well targeted to SVB's specific problems. A closer look at the specific EPR requirements provides some insight into the potential role of EPR and P.L. 115-174 in SVB's failure.

Under the Fed's rule implementing P.L. 115-174, Category IV BHCs were exempted from **company-run stress tests**. In **Fed-run stress tests**, the Fed projects what would happen to a number of economic and financial variables under a severely adverse outcome and projects bank losses under that outcome. The Fed's 2019 rule reduced the frequency of Fed-run stress tests from annual to biannual for Category IV BHCs. After P.L. 115-174 the Fed reduced the number of stress test scenarios it used. Under the 2022 severely adverse scenario, interest rates on Treasury securities were assumed to fall and be very low. Part of SVB's losses stemmed from rising Treasury rates (i.e., interest rate risk). The Fed's report posits that, had SVB been subject to firm-run stress tests, it might have picked up on interest rate risks, although the report also criticizes SVB's risk management deficiencies at length.

The proximate cause of SVB's failure was the large and sudden withdrawal of deposits (i.e., liquidity risk). EPR requires liquidity standards to help ensure that banks do not fail because of cash flow problems. BHCs are subject to three groups of **liquidity requirements** under EPR: (1) the LCR to ensure sufficient liquid assets that can be sold in a crisis, (2) the NSFR to ensure that banks have access to sufficient stable funding in a crisis, and (3) internal firm requirements. In the

[109] Rapid growth itself has been identified as a leading predictor of bank failure by the FDIC's inspector general and the Government Accountability Office (GAO) but did not precipitate supervisory scrutiny by the Fed. See FDIC, Office of Inspector General, *Comprehensive Study on the Impact of the Failure of Insured Depository Institutions*, January 2013, Table 6, https://www.fdicoig.gov/sites/default/files/reports/2022-08/13-002EV.pdf; GAO, *Financial Institutions: Causes and Consequences of Recent Bank Failures*, GAO-13-71, January 3, 2013, https://www.gao.gov/products/gao-13-71.

[110] Federal Reserve, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank*.

[111] Federal Reserve, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank*.

[112] As a Category IV bank, it was subject to the LCR and NSFR in October 2023 only because its short-term funding exceeded $50 billion beginning in December 2022.

[113] Federal Reserve, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank*.

2019 rule, the Fed no longer required Category IV BHCs to meet (a less stringent version of) the LCR unless they had "$50 billion or more in average weighted short-term wholesale funding" and imposed less stringent internal liquidity requirements on them. The NSFR was not finalized until 2020, and Category IV BHCs were exempted unless they had $50 billion or more in wholesale funding. (Category IV bank subsidiaries are also exempt from the LCR and NSFR.) Had SVB been subject to these post–P.L. 115-174 requirements before its failure, the Fed estimates that it would have met the 70% LCR and NSFR requirements and capital requirements. Had SVB been subject to the pre–P.L. 115-174 Dodd-Frank requirements before its failure, it would have had a $14 billion shortfall in February 2023 under the LCR but would have been in compliance with the NSFR.

As defined, neither the LCR nor the NSFR was necessarily geared to catching the sort of problems experienced by SVB. Some of the assets and liabilities that posed problems for SVB Financial would have been treated relatively favorably under the LCR and NSFR. For example, Treasury securities receive the most favorable treatment under the LCR—the LCR is not concerned with whether the market value of a BHC's Treasury securities has fallen. Likewise, most types of deposits receive a 90% or 95% weighting under the NSFR—the NSFR was more concerned with bank overexposure to short-term wholesale funding (debt). More liquid assets are required to be held against uninsured deposits than insured deposits under the LCR, but the LCR assumes a slower rate of uninsured deposit withdrawal than SVB experienced.[114]

Concentration risk is addressed under EPR by the SCCL requirement. The Fed's SCCL rule, which was finalized after the enactment of P.L. 115-174, exempted Category IV BHCs. This requirement addresses only excessive exposure to a single counterparty, such as a single business, not excessive exposure to a single industry, as was the case with SVB's exposure to the tech industry. The Fed did not identify concentration to a single counterparty as an issue in SVB's failure.

Risk management is the only Dodd-Frank EPR requirement that applies to banks with $50 billion or more in assets under P.L. 115-174. Despite being subject to this requirement, SVB did not have a permanent chief risk officer in place from April 2022 to January 2023.

Category IV banks have not been subject to **resolution planning** requirements since the Fed's implementation of P.L. 115-174. SVB submitted its first FDIC IDI resolution plan in December 2022, based on 2021 data. According to FDIC Chair Martin Gruenberg, "While Silicon Valley Bank and First Republic had been required to file resolution plans which provided basic information that was useful, far more robust plans would have been helpful in dealing with the failure of these institutions. Signature Bank failed before it would have been required to file its first resolution plan in June."[115] He argues that proposed changes to IDI resolution plans discussed below would have assisted with a smoother resolution.

Interest rate risk could potentially have been captured earlier by a Basel III large bank requirement (as opposed to a Dodd-Frank EPR requirement) to recognize unrealized losses on securities. Under the Fed's rule implementing P.L. 115-174, banks and BHCs that were not Category I or II banks could opt out of AOCI requirements (discussed below in the "AOCI and Unrealized Capital Losses" section), which SVB did. Among other things, AOCI requires covered banks to include unrealized gains and losses on AFS securities in net income. The Fed reports that under the pre–P.L. 115-174 framework, SVB would have been subject to AOCI as of the second

[114] Pat Parkinson, "What to Do About Uninsured Deposits?," Bank Policy Institute, October 5, 2023, https://bpi.com/what-to-do-about-uninsured-deposits/.

[115] FDIC Chairman Martin J. Gruenberg, "The Resolution of Large Regional Banks—Lessons Learned," speech, August 14, 2023, https://www.fdic.gov/news/speeches/2023/spaug1423.html.

quarter of 2020 because it had more than $10 billion in foreign exposure, making it an advanced approaches bank. Had it recognized unrealized capital losses, it would have reduced SVB's capital under advanced approaches by $1.9 billion at the end of 2022, but SVB would have remained well capitalized after this loss even if advanced approaches had been its binding requirement.[116] Further, most of SVB's unrealized losses were associated with held to maturity assets, which do not have to be recognized in capital under AOCI, as will be discussed below.

Proposed Changes to Large Bank Regulation

Since the large bank failures of 2023, the banking regulators have newly emphasized applying proposals to all banks with more than $100 billion in assets (including those that are not structured as BHCs) despite the requirement in P.L. 115-174 for regulations to be imposed only on banks with between $100 billion and $250 billion in assets on a case-by-case basis and only if it would promote financial stability or the institution's safety and soundness, taking into consideration its riskiness and characteristics. This is in contrast to the period after the enactment of P.L. 115-174, when regulators were focused on rolling back requirements for banks in the $50 billion to $250 billion asset range. In addition to the large bank failures, one justification for the new approach is that several Category III and IV banks (popularly called "regional banks") have grown significantly through mergers and organic expansion in recent years, increasing their systemic importance. Critics believe that the new proposals—and some aspects of the existing rules—are not tailored enough to reflect differences in banks. Critics also believe that complex, overlapping rules have in some cases led to unintended consequences.

Currently, the bank regulators have several proposed rules outstanding that would modify EPR:

- In 2018, the Fed and the OCC proposed a rule to incorporate the G-SIB surcharge into the enhanced SLR for G-SIBs. It has not been finalized.
- The Fed's new vice chair for supervision, Michael Barr, conducted a "holistic capital review" from 2022 to 2023, which resulted in several recommended changes (proposed rules).
- The federal banking regulators issued a joint proposal to implement the "Basel III Endgame" in July 2023:
    - In that proposal, the regulators proposed requiring banks with over $100 billion in assets to recognize unrealized capital gains and losses on certain securities in their capital.
    - Also in that proposal, the regulators proposed making Category IV banks subject to the CCYB and SLR.
- On the same day, in a separate proposal, the Fed proposed changing how the G-SIB surcharge is calculated.
- In August 2023, the banking regulators proposed subjecting all banks with $100 billion or more in assets to LTD requirements and clean holding company requirements.
- In August 2023 the FDIC proposed to revise its resolution planning requirements for IDIs.

[116] The Fed did not determine whether advanced approaches would have been its binding requirement under this counterfactual. If it had not been, then recognizing unrealized losses would have had no effect on its required capital levels.

This section summarizes these proposed rules and their projected effects. The scope of this section is limited to proposed rulemakings.

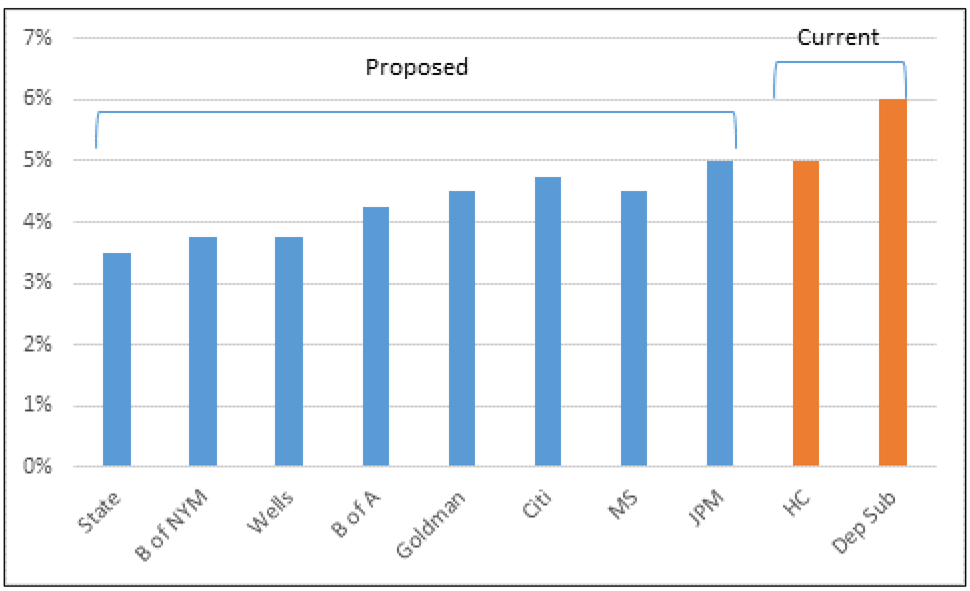
Incorporating the G-SIB Surcharge into the eSLR and TLAC

As noted in the "Basel III Capital Requirements" section, G-SIBs must currently comply with a higher SLR than do other banks with $250 billion in assets. For G-SIBs, the current eSLR is set at 5% at the holding company level and 6% for the depository subsidiary to be considered well capitalized.

In April 2018, the Fed and the OCC proposed a rule to modify the eSLR for G-SIBs.[117] Instead of 5% and 6%, respectively, the eSLR would now be set for each G-SIB at 3% plus half of its G-SIB surcharge for both the holding company and the depository subsidiary. In this way, the amount of capital required to be held by G-SIBs would depend on their systemic importance. Because each G-SIB has a surcharge that is between 1% and 4%, the proposed rule would reduce capital requirements under the eSLR for each G-SIB to between 3.5% and 5%, respectively, depending on the bank. (At the holding company level, only JPMorgan Chase's eSLR would remain at 5%. For its depository subsidiary it would decline from 6% to 5%.) **Figure 3** compares the current SLR requirement for G-SIBs to the anticipated SLR requirement for each G-SIB if the proposed rule were finalized.

Figure 3. SLR Requirement for G-SIBs, Current and Under Proposed Rule

Anticipated in 2019



Source: CRS calculations based on OCC, Federal Reserve, *Regulatory Capital Rules*, 83 Federal Register 17317, April 19, 2018; and Federal Reserve, *Large Bank Capital Requirements*, July 2023.

Notes: For each G-SIB, the proposed SLR is equal to 3% plus half of the G-SIB surcharge. State = State Street, B of NYM = Bank of New York Mellon, Wells = Wells Fargo, B of A = Bank of America, Goldman = Goldman Sachs, Citi = Citigroup, MS = Morgan Stanley, JPM = JP Morgan Chase, HC = holding company, Dep Sub = depository subsidiary.

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[117] OCC, Federal Reserve, "Regulatory Capital Rules," 83 *Federal Register* 17317, April 19, 2018, https://www.govinfo.gov/content/pkg/FR-2018-04-19/pdf/2018-08066.pdf.

Whether this reduces how much capital the G-SIBs are required to hold depends on whether the SLR is the binding capital ratio. The Fed reported that in 2017, the SLR was the binding ratio for each G-SIB's bank subsidiary. Thus, the proposed rule would have reduced how much capital each G-SIB had to hold at the subsidiary level by $121 billion in total. The effect on the overall BHC would have been much smaller. At the holding company level, the proposed rule would have reduced required capital by $400 million in total.[118]

What Is a "Binding" Capital Requirement?

When banks face multiple capital requirements, the minimum amount of capital that they are required to hold is determined by whichever capital requirement is the "binding" one. Conceptually, whichever of the 14 different capital requirements that G-SIBs must currently comply with requires the most capital becomes the only one that determines the bank's overall required capital (because all of the others require less capital than that one).[119] The binding requirement will vary from bank to bank depending on the types of capital and assets it holds. Typically, a bank aims to hold enough capital to always stay comfortably above whatever amount is required by the binding ratio.

Three of the proposals discussed in this report involve changes to specific capital requirements. Reducing or combining individual capital requirements does not necessarily mean that large banks would have to hold less capital. That depends on three factors:

(1) Which capital requirement is currently binding?

(2) Which capital requirement would become binding under the proposal?

(3) Does the proposal also make changes to the newly binding capital requirement that would increase or reduce the amount of capital that banks must hold?

Proposals to change capital requirements would reduce how much capital a bank is required to hold overall if the proposal reduces the amount of capital required under the capital requirement that is binding under the proposal. By contrast, if a proposal reduces a requirement that is not binding before or after the change, it would not change how much capital a bank is required to hold.

The Fed argues that it is undesirable for the SLR to be the binding capital requirement because it is intended to act as a backstop if risk-weighted requirements fail. If the SLR is the binding ratio, banks have more incentive to hold riskier assets. To avoid having the SLR be the binding ratio, banking regulators could raise risk-weighted capital requirements or reduce the SLR, as is proposed. The Fed estimates that under the proposal, the SLR would still be the binding ratio for three G-SIBs.

The proposed rule would make similar changes to G-SIBs' TLAC requirement. Currently, G-SIBs must meet a 9.5% leverage buffer under TLAC. Under the proposed rule, G-SIBs would be required to meet a leverage buffer equal to 7.5% plus half of their G-SIB surcharge. Because all G-SIBs currently have a surcharge below 4%, this would reduce their TLAC requirement. The proposed rule would also make a similar change to the TLAC LTD requirement for G-SIBs.

It is unclear if the Fed still intends to finalize this proposal.

Holistic Capital Review

In 2022, Fed Vice Chair Barr announced a "holistic review of capital standards" for large banks.[120] One motivation for the review was to evaluate whether policy goals are still achieved given the interaction of multiple large bank capital requirements. In a speech in July 2023, he

[118] Federal Reserve, "Proposed Rule Regarding the Stress Buffer Requirements," p. 6.

[119] In reality, because the current 18-24 capital requirements are all variants of a few core concepts, the "binding" requirement will also likely determine the amount of capital needed within that group of requirements.

[120] Vice Chair for Supervision Michael S. Barr, "Why Bank Capital Matters," speech at the American Enterprise Institute, December 1, 2022, https://www.federalreserve.gov/newsevents/speech/barr20221201a.htm.

announced the outcome of that review, which resulted in recommendations for a series of future rulemakings.[121] Barr is not recommending fundamental changes in large bank capital requirements and announced that several requirements would not be changed at all. He highlighted implementation of the Basel III Endgame as "an important aspect of my proposals."

Basel III Endgame

On July 27, 2023, the OCC, FDIC, and Fed jointly issued a proposed rule that would implement a last round of Basel III capital requirement reforms, sometimes colloquially referred to as the Basel III Endgame.[122] Some of the more technical details of Basel III were not filled in until the intergovernmental Basel Committee on Bank Supervision issued the final major set of Basel III standards in December 2017. Many of the details in the 2017 proposal were in response to problems that arose during the financial crisis. While the Basel III Endgame predates the 2023 large bank failures, regulators have pointed to the failures—all three failed banks had over $100 billion in assets—as a rationale for applying most elements of the rule to banks with over $100 billion in assets.

Under the Fed's 2019 EPR rule, only Category I and II banks, and any other bank that voluntarily opts in, are subject to advanced approaches. The 2023 proposal would replace advanced approaches with a new *expanded risk-based approach* and extend those requirements to Category III and IV banks and other banking organizations that are not subject to EPR. The proposed rule applies to BHCs, IDIs (which include commercial banks and savings associations), savings and loan holding companies that are not substantially engaged in insurance, and foreign banking organizations with over $100 billion in assets. As of the date of the proposal, the total number of affected institutions are 25 U.S. BHCs, 12 IHCs of foreign banks, and 62 IDIs (including IDIs of holding companies with over $100 billion in assets).[123]

In the United States, advanced approaches banks calculate their requirement in two general ways: a standardized approach applicable to all banks and a specialized "advanced approach" that allows the banks to model many of their own risks. Although internal models can potentially be gamed (i.e., designed to allow the bank to hold less capital rather than accurately measure risk), they can also potentially model risk more sophisticatedly and be more tailored to a bank's unique risk profile. Following the Basel III Endgame, the proposed rule would reduce the use of internal models through a new second standardized approach called the expanded risk-based approach. Other banks with over $100 billion in assets would be required to calculate RWA under two approaches for the first time. Industry has criticized this dual approach to capital requirements as unduly burdensome.[124]

According to the proposal, its purpose is to improve the consistency of capital requirements across banks, better match capital requirements to risk, and reduce their complexity (for Category

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[121] Vice Chair for Supervision Michael S. Barr, "Holistic Capital Review," speech at the Bipartisan Policy Center, July 10, 2023, https://www.federalreserve.gov/newsevents/speech/barr20230710a.htm.

[122] The proposal was published in the *Federal Register* on September 18, 2023. OCC, Federal Reserve, and FDIC, "Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity," 88 *Federal Register* 64028, September 18, 2023, https://www.govinfo.gov/content/pkg/FR-2023-09-18/pdf/2023-19200.pdf.

[123] A current list of large depository holding companies is available at https://www.ffiec.gov/npw/Institution/TopHoldings. A current list of large commercial banks is available at https://www.federalreserve.gov/releases/lbr/current/default.htm.

[124] Securities Industry and Financial Markets Association, "Understanding the Proposed Changes to the US Capital Framework," August 28, 2023, https://www.sifma.org/resources/news/understanding-the-proposed-changes-to-the-us-capital-framework/.

I and II banks—for other banks with over $100 billion in assets, complexity would be increased, as they would face a new set of requirements). Despite the goal of reducing complexity, both the internal models and their proposed replacements are highly complex and technical.

The regulators state that they expect the benefits of the proposal to outweigh the risks, because "better alignment between capital requirements and risk-taking helps to ensure that banks internalize the risk of their operations." Concerns about how specific changes to risk weights affect specific asset classes have also been raised, along with a few other criticisms. First, critics claim that the proposal (and existing requirements) has "gold plated" Basel provisions, such as risk weighting for residential mortgages, making them more stringent than the Basel Committee agreements. Second, critics argue that the proposal is largely not tailored to reflect differences in risk and complexity among large banks. Although P.L. 115-174 requires that EPR requirements made under that section to be tailored, the Endgame proposal is generally the same for all banks over $100 billion in assets.[125] Third, critics claim that regulators have not provided the public with enough information on the basis for the specific details of the requirements.

Finally, the proposal has been criticized because, according to the regulators, required capital levels would increase "modestly" for lending activities and "substantially" for trading requirements. Although the rule would not increase the required capital ratios, it would increase the amount of capital that banks would have to hold because it would increase their RWA (i.e., the denominator of risk-weighted ratios). The regulators estimate that the proposal's effect on RWA would increase the average amount of Common Equity Tier 1 (CET1) capital that large banks are required to hold by 16% (19% for Category I and II banks, 6% for Category III and IV domestic banks, and 14% for IHCs).[126] (Similarly, the increase in RWA would increase TLAC requirements.) If the regulators had wanted to have a neutral effect on overall capital requirements, they could have reduced the ratios that banks faced to offset the increase in RWA.

For more information, see CRS Report R47855, *Bank Capital Requirements: Basel III Endgame*, by Marc Labonte and Andrew P. Scott.

Extending Coverage of SLR and CCYB

Under the Endgame proposal, Category IV banks would become subject to the CCYB and the SLR. Currently, Category I-III banks are subject to the CCYB. Category II and III banks must meet a 3% SLR, and Category I banks must meet a higher SLR. The regulators stated that this will "bring further alignment" of large bank capital requirements and strengthen large bank resiliency. The proposal does not address the fact that the CCYB has never been used since inception nor whether many Category IV banks have significant off-balance-sheet exposures that would make the SLR relevant.

AOCI and Unrealized Capital Losses

As part of the Basel III Endgame proposal, all banks with over $100 billion in assets would have to include most parts of AOCI in CET1 capital. This change would align capital rules with the treatment of AOCI under generally accepted accounting principles. One component of AOCI to be included is unrealized capital gains and losses on AFS debt securities (e.g., corporate and

[125] In addition, the proposal's market risk provisions would apply to banks with $100 billion or more in total assets and banks with $5 billion or more of trading assets plus trading liabilities (increased from $1 billion or more under current regulation) or trading liabilities equal to 10% or more of total assets (unchanged from current regulation).

[126] The regulators included only Category I-IV banking organizations in this analysis, as not all entities are subject to parts of the rule.

government bonds).[127] Doing so would have the effect of increasing a bank's capital levels when it had unrealized capital gains and reducing them when it had losses.

Changes to AOCI have been proposed before.[128] In 2012, the original Basel III proposal would have applied this requirement to all banks (and BHCs). The regulators argued that "unrealized losses could materially affect a banking organization's capital position … and associated risks should therefore be reflected in its capital ratios."[129]

Facing criticism from banks that this treatment would cause capital levels to be too volatile, the version of the rule finalized in 2013 applied the requirement only to advanced approaches banks—at the time, banks with at least $250 billion in assets or $10 billion in on-balance-sheet foreign exposure. All other banks could permanently opt out of this requirement. Doing so is sometimes referred to as the "AOCI filter."[130] In its 2019 regulation implementing P.L. 115-174, the Fed reduced the number of banks required to follow advanced approaches (and hence the AOCI requirement) to Category I and II banks.[131]

The 2023 proposal would extend the AOCI requirement to any U.S. bank, BHC, or IHC with over $100 billion in assets. As with earlier reforms, the treatment of *trading* and *held-to-maturity* (HTM) securities would not change. The regulators estimate that the inclusion of AOCI in capital for large banks would increase average capital in the long run based on 2015 to 2022 data, as summarized in **Table 2**. In any given year, the effect would be larger if banks have unrealized losses and smaller if banks have unrealized gains.

Table 2. Estimated Impact of Proposed AOCI Inclusion on Capital

Long-Run Average Increase

	CET1 RW	Leverage
Category III domestic	4.6%	3.8%
Category III IHC	13.2%	9.7%
Category IV	2.6%	2.5%

Source: OCC, Federal Reserve, and FDIC, *Regulatory Capital Rule: Amendments Applicable To Large Banking Organizations And To Banking Organizations With Significant Trading Activity*, https://www.govinfo.gov/content/pkg/FR-2023-09-18/pdf/2023-19200.pdf.

As seen in **Figure 4**, recognizing unrealized gains and losses would lead to higher capital in some years and lower in others for banks overall, but unrealized losses have increased rapidly beginning in 2022, equaling $232 billion on AFS securities and $284 billion on HTM securities in the first quarter of 2023. This compares to $4 billion in realized losses in the first quarter.

[127] Banks classify the debt securities they invest in as either *trading*, AFS, or *held to maturity* depending on how likely the bank is to sell a security over a particular time frame. For AFS, a bank does not have current plans to sell but recognizes a possibility of selling before the security matures.

[128] Basel Committee on Bank Supervision, *Basel III: Finalising Post-Crisis Reforms*, December 2017, https://www.bis.org/bcbs/publ/d424.pdf.

[129] Federal Reserve, "Federal Reserve Board Invites Comment on Three Proposed Rules Intended to Help Ensure Banks Maintain Strong Capital Positions," press release, June 7, 2012, https://www.federalreserve.gov/newsevents/pressreleases/bcreg20120607a.htm.

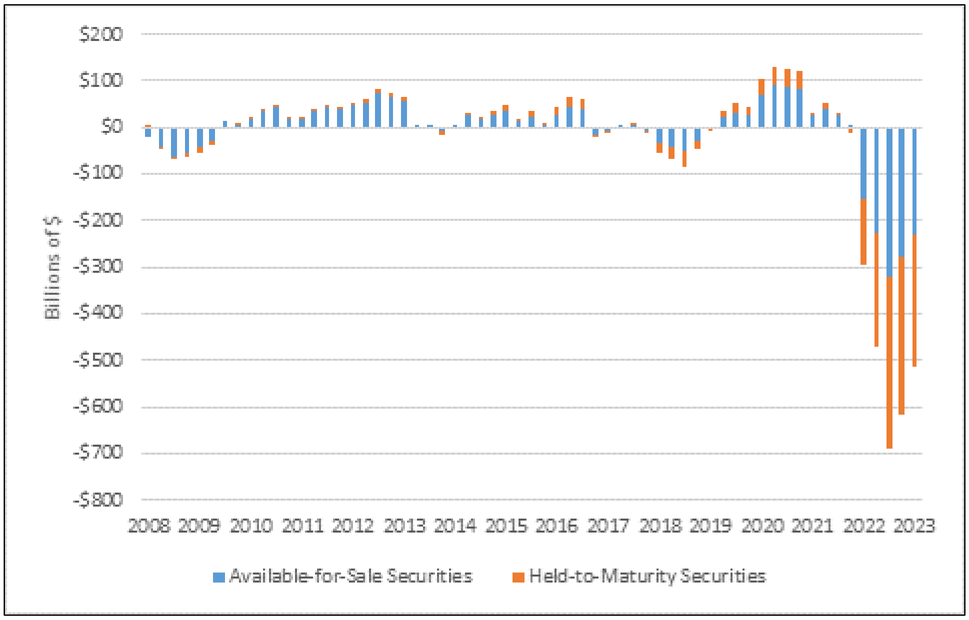
[130] OCC and Federal Reserve, "Regulatory Capital Rules," 78 *Federal Register* 62018, October 11, 2013, https://www.gpo.gov/fdsys/pkg/FR-2013-10-11/pdf/2013-21653.pdf.

[131] Federal Reserve, "Federal Reserve Board Finalizes Rules That Tailor Its Regulations for Domestic and Foreign Banks to More Closely Match Their Risk Profiles."

The proposal only partially addresses the current problem for two reasons. First, it does not apply to unrealized losses on HTM securities (the rationale being the bank does not intend to sell those securities), which account for over half of banks' unrealized losses. Second, it does not apply to banks with less than $100 billion in assets, whereas banks of all sizes have experienced unrealized losses. According to the FDIC, community banks had unrealized losses of $59.2 billion in the first quarter of 2023, and their securities holdings (22% of total assets) are comparable to other banks (24%).[132]

Figure 4. Unrealized Gains and Losses on Securities Held by FDIC-Insured Depository Institutions

2008:Q1-2023:Q1



Source: FDIC.

Losses on securities played a major role in SVB's failure, as discussed above. At the end of 2022, SVB had $1.9 billion in unrealized AFS losses that would have been recognized as capital under AOCI, although most of SVB's securities were classified as HTM and so would not have been affected by the proposal.[133] SVB had over $100 billion in assets and would have been subject to this proposal.[134] The Fed also reports that SVB would have had to start complying with the AOCI requirement in 2021 as an advanced approach bank had the 2019 tailoring rule not limited the AOCI requirement to Category I and II banks.[135]

[132] See *FDIC Quarterly*, vol. 17, no. 2, p. 22, https://www.fdic.gov/analysis/quarterly-banking-profile/qbp/2023mar/qbp.pdf#page=22. For more information, see CRS Insight IN12231, *Banks' Unrealized Losses, Part 1: New Treatment in the "Basel III Endgame" Proposal*, by Marc Labonte.

[133] To a lesser extent, unrealized losses on securities also played a role in the failures of Signature and First Republic. See FDIC, *FDIC's Supervision of Signature Bank*, April 28, 2023, p. 16, https://www.fdic.gov/news/press-releases/2023/pr23033a.pdf; and Rachel Louise Ensign and Ben Eisen, "First Republic Bank Is Seized, Sold to JPMorgan in Second-Largest U.S. Bank Failure," *Wall Street Journal*, May 1, 2023, https://www.wsj.com/articles/first-republic-bank-is-seized-sold-to-jpmorgan-in-second-largest-u-s-bank-failure-5cec723.

[134] For more information, see CRS Insight IN12232, *Banks' Unrealized Losses, Part 2: Comparing to SVB*, by Marc Labonte.

[135] Federal Reserve, *Review of the Federal Reserve's Supervision and Regulation of Silicon Valley Bank*.

G-SIB Surcharge Proposal

The Fed issued a proposed rulemaking in July 2023 that would revise the calculation of the capital surcharge for G-SIBs (Category I banks).[136] The proposal would take effect two calendar quarters after the rule is finalized. A bank's G-SIB surcharge is levied in increments of 0.5 percentage points based on the output of a numerical formula based on its size, interconnectedness, substitutability, complexity, and cross-jurisdictional activity.

The Fed's proposed rule would change the surcharge formula in several ways.[137] First, it would (depending on the factor) use average daily or month-end data over the course of the year instead of the current practice of using year-end values, which provides banks the incentive for balance sheet "window dressing" on that date to lower their surcharges. Second, the proposal would change the surcharge from increments of 0.5 percentage points to 0.1 to reduce "cliff effects," where banks tend to cluster just beneath scores that would increase their surcharges by 0.5 percentage points. Third, the Fed is seeking comment on whether the surcharge should be updated more quickly when the formula yields a different score. Currently, the updated surcharge is applied on January 1, one full year after the formula calls for an increased surcharge. Fourth, the proposal would clarify that if a bank's score rises and then falls before the higher surcharge is implemented, the subsequent lower score would supersede it. Fifth, the proposal would modify how various inputs into the score are measured, including by adding derivative exposures to the measure of cross-jurisdictional activity. Sixth, the proposal would subject foreign banks to the same reporting as domestic banks, whereas currently foreign banks have streamlined reporting requirements.

The Fed expects the proposal to "modestly increase the … capital surcharges of GSIBs, with minimal effect on their cost of capital and real economic activity." It estimates that the average surcharge would increase by 0.13 percentage points and required capital would increase by $13 billion. The Fed believes the benefits of the proposal—increased financial stability via better alignment of G-SIB surcharges with the systemic risk posed by the G-SIB—would outweigh the costs. The Fed also estimates that one G-SIB would face a higher TLAC requirement because of the change in its G-SIB score.

Some of the metrics used to calculate the G-SIB surcharge are also used to classify banks into other EPR categories. Because of the proposed change to the definition of *cross-jurisdictional activity*, the Fed estimates that seven domestic banks and two IHCs that are currently Category III or IV banks would become Category II banks subject to more stringent regulatory requirements. Any bank with over $100 billion in total assets and $75 billion in cross-jurisdictional activity is automatically designated as a Category II bank.

Long-Term Debt Proposal

In August 2023, the banking regulators issued a joint proposed rule to subject all banks with $100 billion or more in assets to LTD requirements and clean holding company requirements comparable to those that G-SIBs face under TLAC.[138] For example, eligible long-term debt would

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[136] The proposal was published in the *Federal Register* in September 2023. Federal Reserve, "Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y-15)," 88 *Federal Register* 60385, September 1, 2023, https://www.govinfo.gov/content/pkg/FR-2023-09-01/pdf/2023-16896.pdf.

[137] The Basel III Endgame proposal also notes that some of its changes would affect a bank's G-SIB score.

[138] OCC, Federal Reserve, and FDIC, "Long-Term Debt Requirements for Large Bank Holding Companies, Certain (continued...)

be unsecured, not guaranteed or enhanced, and have “plain vanilla” features. As discussed above, LTD requirements are meant to make it easier to “bail in” a failing bank by converting bonds issued by the bank to equity, reducing the chance that it will be “bailed out” by the government. Clean holding company requirements limit the types of liabilities and financial contracts that a holding company can hold or enter into, respectively, in order to ensure that it can be wound down easily if it failed.

If a bank is not too big to fail or could be easily resolved through the FDIC’s traditional resolution process, LTD requirements are of limited utility in facilitating resolution. The regulators argue that these reforms are needed because the failure of a bank with over $100 billion in assets is more likely to pose systemic risk and impose losses on the FDIC’s Deposit Insurance Fund. Although Category III and IV banks are not as complex or systemically important as G-SIBs are, several Category III and IV banks (popularly called “regional banks”) have grown significantly through mergers and organic growth in recent years, increasing their systemic importance. The FDIC used its systemic risk exception to least cost resolution to restore financial stability in the resolution of SVB and Signature—both of which had over $100 billion in assets—in the spring of 2023.

Large banks would be required to hold LTD equal to the greater of 6% of RWA, 3.5% of total assets, and 2.5% of total leverage exposure (for banks subject to the SLR), and holding companies would be banned from issuing external short-term debt. The proposal would also extend LTD requirements to IDIs with over $100 billion in assets unless they are G-SIB subsidiaries. For these IDIs, the purpose of LTD would be to facilitate FDIC resolutions, as opposed to the single point of entry in bankruptcy or OLA for BHCs that TLAC was originally intended to facilitate. To avoid interconnectedness, capital requirements would discourage banks from holding LTD issued by other banks.

Under the proposal, the requirements would be phased in over three years. The regulators estimate that banks would need to issue $70 billion in new LTD (equivalent to 27% of the requirement) to meet the requirement and could reduce large banks’ net interest margins by between 0.05 and 0.1 percentage points.[139] The proposal is tailored in the sense that it is less stringent than current TLAC requirements for G-SIBs but places largely the same requirements on all banks with over $100 billion in assets that are not G-SIBs.

Regulators argue that the proposal would facilitate orderly resolutions and reduce the cost of bank failures to the FDIC’s Deposit Insurance Fund, notably because the LTD requirement would apply to both BHCs and IDIs (whereas existing requirements apply only at the holding company level). Regulators argue that LTD would reduce the risk of runs by providing for a more stable source of funding. Higher capital requirements would arguably better accomplish both of these goals, albeit at a higher price to the banks. Typically, capital—not debt requirements—is the basis of safety and soundness regulation because only capital can be written down in the event of losses. In this case, the regulators are focused on the potential benefits that LTD would provide after an institution has failed:

> Expanding the FDIC’s range of options for resolving a failed IDI to potentially include the use of a bridge depository institution that can assume all deposits on a least-cost basis can

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Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions,” 88 *Federal Register* 64524, September 19, 2023, https://www.govinfo.gov/content/pkg/FR-2023-09-19/pdf/2023-19265.pdf. The proposal also makes technical changes to the TLAC rule. For a comparison, see Davis Polk, “Comparison of the Long-Term Debt Proposal to the Existing TLAC Rule,” September 5, 2023, https://www.davispolk.com/sites/default/files/2023-09/comparison-of-LTD-proposal-and-TLAC-rule.pdf.

[139] These estimates are independent of the Basel Endgame proposal, which would further increase LTD requirements by increasing RWA.

> significantly improve the prospect of an orderly resolution. When an IDI fails quickly, a bridge depository institution might afford the FDIC additional time to find an acquirer for the IDI's assets and deposits. Transfer of deposits and assets to a bridge depository institution may also give the FDIC additional time to execute a variety of resolution strategies, such as selling the IDI in pieces over time or effectuating a spin-off of all or parts of the IDI's operations or business lines. LTD can therefore reduce costs to the DIF and expand the available resolution options if a bank fails…. The availability of LTD resources would also potentially support resolution strategies that involve a recapitalized bridge depository institution exiting from resolution on an independent basis as a newly-chartered IDI that would have new ownership.[140]

Acting Comptroller Michael Hsu suggested that by increasing resolution options, requirements like this proposal could avoid a situation where a failing regional bank would have to be bought by "one of the four megabanks."[141] For example, JPMorgan Chase purchased First Republic's assets and deposits when the FDIC took First Republic into receivership in the spring of 2023.

Some argue that problems with resolving large banks stem from agency risk aversion rather than a lack of tools. The FDIC, according to this perspective, could have resolved Signature and SVB at least cost to the taxpayer in multiple ways had it been willing to impose losses on uninsured depositors, but it did not want to risk causing financial instability. (And if it was correct in this assessment, then the choice not to impose losses on uninsured depositors could be characterized as a choice based on assessment of these factors rather than risk aversion. The resolution did expose debtholders to potential losses.) If the problem is risk aversion, LTD requirements might not make a difference—the FDIC might still decide that imposing losses on LTD holders of a large bank would lead to financial instability, or it might still be unwilling to impose losses on uninsured depositors in the presence of LTD requirements. The FDIC declined to use OLA to resolve SVB, even though the proposal is intended to facilitate OLA.[142]

FDIC's Resolution Proposal

As noted above, the FDIC requires IDIs with over $50 billion in assets to file resolution plans—unlike the Fed, which eliminated resolution planning requirements for banks that are not Category I-III banks pursuant to P.L. 115-174. However, the FDIC has imposed a moratorium on new submissions for banks with less than $100 billion in assets since 2018.[143] In 2021, the FDIC reduced the frequency of IDI resolution plans for banks with more than $100 billion in assets from annual to triennial. In 2023, the FDIC proposed a rule to revise its resolution planning requirements for IDIs.[144] (It is not a joint rule with the Fed, and the Fed's requirements for BHCs and foreign banks are not affected by this proposal.)

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140 OCC, Federal Reserve, and FDIC, "Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions."

141 Acting Comptroller of the Currency Michael J. Hsu, "Bank Mergers and Industry Resiliency," speech, May 9, 2022, https://www.occ.gov/news-issuances/speeches/2022/pub-speech-2022-49.pdf.

142 It would be speculative to guess whether the FDIC might have used OLA to resolve SVB if the proposed rule had been in place at the time of its failure.

143 The 2018 moratorium was for all banks with over $50 billion in assets and was imposed pending the finalization of new guidance. In 2021, the FDIC lifted the moratorium for banks with over $100 billion in assets. See FDIC, "FDIC Announces Lifting IDI Plan Moratorium," January 19, 2021 https://www.fdic.gov/resources/resolutions/resolution-authority/idi-statement-01-19-2021.pdf.

144 FDIC, "Resolution Plans Required for Insured Depository Institutions with $100 Billion or More in Total Assets; Informational Filings Required for Insured Depository Institutions with at Least $50 Billion but Less Than $100 Billion in Total Assets," 88 *Federal Register* 64579, September 19, 2023, https://www.govinfo.gov/content/pkg/FR-2023-09-19/pdf/2023-19266.pdf.

The proposal would create two sets of resolution planning requirements—a tailored set for IDIs with $50 billion to $100 billion in assets (which the FDIC refers to as an "informational filing" rather than a resolution plan) and a set for IDIs with over $100 billion in assets. If finalized, it would end the moratorium on resolution planning for banks with between $50 billion and $100 billion in assets. It would modify the frequency of submissions to every other year with an information submission required in off years—less frequent than the original rule but more frequent than the triennial cycle in place since 2021. The proposal would also add an explicit enforcement mechanism for failure to submit a credible plan.

The FDIC states that the proposal would formalize much of the agency feedback that has been given to banks in previous years.[145] The FDIC describes the proposal as incorporating lessons learned from previous rounds of resolution planning and resolution problems raised in the 2023 bank failures and providing tailoring for smaller institutions. According to FDIC Chairman Gruenberg, the inability to use the standard "over the weekend" purchase and assumption method to resolve large banks in 2023 means that the FDIC needs more information from banks on alternatives in resolution plans.[146]

In his vote against the proposal, FDIC Director Jonathan McKernan questioned whether the FDIC had sufficient statutory authority to make all of the proposed changes.[147] As noted above, the proposal is not pursuant to the Dodd-Frank Act's resolution plan authority—the FDIC is relying on broader authority for its resolution planning requirements. In his vote against the proposal, FDIC Vice Chair Travis Hill points out that, according to the FDIC's estimates, the informational filings for smaller institutions under the proposal would require more hours of regulatory compliance than for larger banks' resolution plans under current practices. He also criticized the increased frequency of filing requirements (relative to practices since 2021) given the FDIC was previously unable to give banks timely feedback on their plans.[148]

Conclusion

From 2010 until 2023, no large bank experienced safety and soundness difficulties, suggesting that EPR was either successful or untested. That changed with the large bank failures of 2023. Those failures have led to the first major re-evaluation of the EPR regime among policymakers since P.L. 115-174 was enacted in 2018.

Banking inherently involves risk, and a system with a zero probability of failure is arguably both impossible and undesirable. Nevertheless, the incipient run on the broader banking system and use of emergency assistance by regulators to prevent it when SVB and Signature failed—although those banks were not perceived as being particularly systemically important—points to the outsized economic costs imposed by large bank failures.

EPR is relatively narrow in scope, limited to a few provisions that addressed key problems that arose in the financial crisis. The problems that arose in 2023 arguably did not match well to those provisions. Congress and the regulators could consider whether EPR should be expanded to

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145 For a summary of the proposal, see Davis Polk, "FDIC's Proposed Revamp of the IDI Resolution Planning Rule," September 5, 2023, https://www.davispolk.com/sites/default/files/2023-09/IDI-resolution-planning-rule-deck.pdf.

146 FDIC Chairman Martin J. Gruenberg, "Statement on Notice of Proposed Rulemaking on Resolution Plans for Insured Depository Institutions," August 29, 2023, https://www.fdic.gov/news/speeches/2023/spaug2923b.html.

147 FDIC Director Jonathan McKernan, "Statement on the Proposed Resolution Submission Requirements for Certain Insured Depository Institutions," August 29, 2023, https://www.fdic.gov/news/speeches/2023/spaug2923f.html.

148 FDIC Vice Chair Travis Hill, "Statement on the Proposed Amendments to the IDI Resolution Planning Rule," August 29, 2023, https://www.fdic.gov/news/speeches/2023/spaug2923k.html.

address a broader array of prudential issues. Alternatively, the 2023 failures could be viewed as demonstrating that EPR offers a false sense of security and that regulation is unlikely to effectively contain systemic risk.

Appropriately tailoring regulation to risk has been a focus of policy debate since Dodd-Frank was enacted given the significant differences in size, complexity, and business between, say, Category I and Category IV banks. The 2023 failures raise the issue of whether the rollback in requirements following the enactment of P.L. 115-174 means that appropriate EPR requirements are no longer well aligned with banks that pose systemic risk. To date, regulatory initiatives have focused on applying new proposals and some existing provisions to more banks, in most cases those with over $100 billion in assets. As two of the three banks that failed in 2023 were not BHCs and were therefore not subject to EPR, Congress and the regulators might consider whether exempting banks without holding companies from EPR still achieves policy goals.

The 2023 failures demonstrate that bank failures do not follow a predictable script, meaning supervisors need to be nimble and responsive to stave off problems. EPR is a regulatory approach to addressing TBTF, but the 2023 failures again raised the question of whether large banks are "too big to regulate" effectively. If supervision is ineffective, then regulatory requirements are unlikely to be effective. Congress and the regulators may also consider whether supervisory reforms are needed to ensure that large banks are subject to effective supervision. To date, Congress has deferred to regulators on structuring and managing large bank supervision.

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Acknowledgments

This report uses material that has appeared in other CRS reports, including with co-authors. The author would like to thank Graham Tufts, research assistant, for research assistance.

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