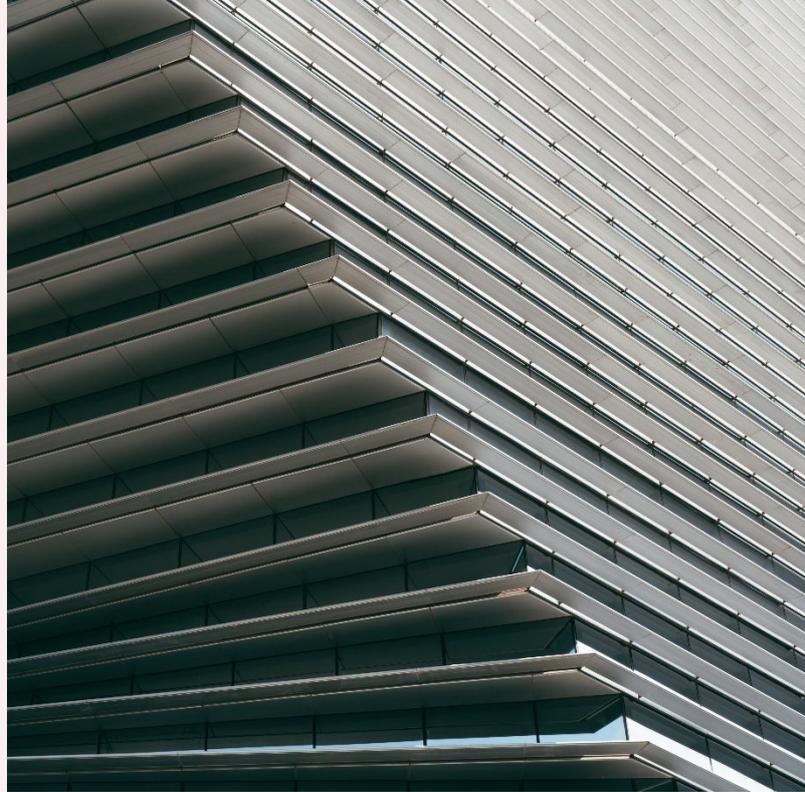


## Déjà Vu all over again? Impact of re-proposed US Basel III Regulatory capital rules on significant risk transfer (SRT) and credit risk transfer (CRT) transactions

March 20, 2026



On March 19, 2026, the US federal banking regulators issued several notices of proposed rulemakings (the "**NPRs**") implementing the final Basel III capital standards, otherwise known as the "Basel Endgame".<sup>1</sup> The NPRs collectively represent a "do-over" of the original "Basel Endgame" proposal that was issued in July of 2023 (the "**Original NPR**"), which would have had profound effects on the ability of large banks to execute credit risk transfer ("**CRT**") (also known as significant risk transfer) trades for capital management purposes.

Below, we summarize key aspects of the NPRs that are of particular relevance to the US CRT market and highlight areas where they differ from the Original NPR. We anticipate that today's developments will be of welcome news to most bank issuers, investors and other market participants in US CRT trades, though significant unresolved points remain outstanding.

### Key issues

- 1 Background
- 2 Revisions to the Securitization Framework
- 3 Other Changes Relevant to CRT Trades
- 4 Contacts

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<sup>1</sup> Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Federal Reserve Board), and Federal Deposit Insurance Corporation (FDIC), *Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations with Significant Trading Activity, and Optional Adoption for Other Banking Organizations* (March 19, 2026), <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/npr-expanded-risk-based-proposal-20260319.pdf>; OCC, Federal Reserve Board, FDIC, *Regulatory Capital Rules: Regulatory Capital and Standardized Approach for Risk-weighted Assets* (March 19, 2026), <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/npr-standardized-approach-20260319.pdf>.

The Federal Reserve Board issued a separate proposed rulemaking revising the risk-based surcharges for US global systemically important bank holding companies (GSIBs). See Federal Reserve Board, *Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies; Systemic Risk Report (FR Y-15)*, <https://www.federalreserve.gov/aboutthefed/boardmeetings/files/npr-gsib-20260319.pdf>.

## Background

A CRT trade is a transaction in which a bank purchases tranching credit protection on a portfolio of assets (e.g., loans) via a guarantee or credit default swap (i.e., a synthetic transfer of risk), as opposed to selling the assets outright (i.e., a cash securitization). By entering into a CRT trade, a bank can reduce its risk of loss as the underlying assets default and consequently recognize a reduction in the risk-weighted assets ("**RWAs**") against which it is required to hold capital. US banks, bank holding companies and intermediate holding companies of foreign banking organizations ("**US Banks**") have increasingly turned to CRT trades as a non-dilutive capital optimization and risk management tool, and much of the impact of CRT trades can be traced directly to their treatment under the US regulatory capital framework.

The Original NPR introduced a more granular, expanded standardized approach known as the "expanded risk-based approach" ("**ERBA**"), which would have significantly impacted the viability of CRT trades for US Bank issuers. The ERBA would have replaced the existing, models-based "advanced approaches" and applied only to the largest US Banks with \$100 billion or more in assets<sup>2</sup>, while banks under the \$100 billion threshold would have remained subject to the pre-existing rules.

The NPRs harmonize these approaches in several ways: (i) the revised ERBA will now only apply to the very largest, most systemically significant US banks (Category I and Category II banks)<sup>3</sup>, (ii) banks that are *not* automatically subject to the ERBA may nevertheless opt into the ERBA, and (iii) the standardized approach now incorporates some aspects, but not all, of the ERBA. In particular, the changes to the credit risk mitigation and securitization frameworks are broadly consistent across both the revised standardized approach and ERBA.

Comments on the NPRs are due by June 18<sup>th</sup>, 2026.

## Revisions to the Securitization Framework

### *SSFA Becomes the SEC-SA*

Under the NPRs, the existing Simplified Supervisory Formula Approach (SSFA) used to calculate the risk-weights of securitization exposures under the "standardized approach" (a relic of the Basel II Accord) will be replaced by a new Securitization Standardized Approach (SEC-SA). The revised SEC-SA largely tracks what was proposed in the Original NPR, with one profound shift – the supervisory calibration parameter  $p$  (the "**p factor**"), which functions as a flat capital surcharge on all securitization exposures, will remain at the current 0.5 (50% surcharge), as opposed to the 1.0 (100% surcharge) that was proposed in the Original NPR.

Currently, most CRT trades executed by US Banks provide first-loss credit protection against portfolios of performing assets *other than* residential mortgages at a tranche thickness equal to 0-12.5% of the reference portfolio (i.e., \$12,500,000 of protection against a reference portfolio of \$100,000,000). Under the current SSFA, a US Bank that has executed a compliant CRT trade may treat un-securitized exposures attracting RWAs

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<sup>2</sup> Under the Original NPR, impacted banks would have been required to calculate their RWAs under both the existing "standardized approach" and ERBA and apply the higher of the two (i.e., the "dual stack" requirement).

<sup>3</sup> Category I standards apply to US GSIBS and their bank subsidiaries, while Category II standards apply to banking organizations with at least \$700 billion in total consolidated assets or at least \$75 billion in cross-jurisdictional activity and their bank subsidiaries.

of 100% as *senior securitization* exposures attracting RWAs of 20% by transferring the first 0-12.5% of tranching credit risk to a third party.

All else being equal, a shift in the  $p$  factor to 1.0 under the SEC-SA would have (i) increased the RWAs on the retained senior tranche for existing deals to 65% and (ii) increased the thickness of the first-loss tranche necessary to achieve the same RWA benefit on future deals to 0-23%. That would have had a significantly negative effect on US CRT issuance by reducing the capital benefits of existing trades and making future trades, in some cases, prohibitively expensive for banks. The issue is particularly pronounced in the United States as the SEC-SA is the *only* option for risk-weighting securitization exposures under the standardized approach or ERBA, as opposed to the diversity of modeled approaches and "simple, transparent and standardized" (STS) frameworks available in other jurisdictions. By retaining a  $p$  factor of 0.5, however, these concerns appear largely to be resolved.

Additionally, consistent with both the Original NPR and Basel III framework, the risk-weight floor under the proposed SEC-SA will move from the current 20% under the existing SSFA to 15% (and 100% for resecuritizations). These changes, combined with revised base risk weights for various credit exposures under the standardized approach and ERBA, may lead to more diversity in the thickness of first-loss tranche sizes depending on the issuing bank and the asset class.

#### *Recognition of Bank-Issued Credit-Linked Notes and other "Prepaid Credit Protection Arrangements" as Credit Risk Mitigants*

The NPRs recognize a new credit risk mitigation technique in the form of "prepaid credit protection arrangements" ("**PCPA**"), in which a bank receives an initial amount in cash from a protection provider that the bank is required to repay, *less* any losses that the bank incurs due to credit events on the protected exposures. The criteria for recognizing a PCPA as an eligible credit risk mitigant (an "**Eligible PCPA**") combines elements of unfunded credit risk mitigants – eligible guarantees and eligible credit derivatives – with funded credit risk mitigants secured by "financial collateral."

The introduction of the PCPA resolves a technical conundrum in the SRT / CRT market for credit-linked instruments directly issued by banks, such as credit-linked notes ("**CLNs**"). As highlighted by the Federal Reserve Board in a series of FAQs in 2023, bank-issued CLNs do not qualify as "synthetic securitizations" for two reasons:<sup>4</sup>

*"First, a synthetic securitization must include a guarantee or credit derivative, and, in the case of a credit derivative, the derivative must be executed under standard industry credit derivative documentation. Directly issued credit-linked notes frequently reference, but are not executed under, standard industry credit derivative documentation. Second, the operational criteria for the simplified supervisory formula approach (SSFA) require use of a recognized credit risk mitigant, such as collateral. The cash purchase consideration for directly issued*

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<sup>4</sup> Federal Reserve Board, *Frequently Asked Questions about Regulation Q* (Sep. 28, 2023), <https://www.federalreserve.gov/supervisionreg/legalinterpretations/reg-q-frequently-asked-questions.htm>.

*credit-linked notes is property owned by the note issuer, not property in which the note issuer has a collateral interest.*"<sup>5</sup>

Banks seeking to have directly-issued CLNs recognized as "synthetic securitizations" have therefore had to make formal requests for the Federal Reserve Board to exercise its "reservation of authority" ("**ROA Approvals**"), a process that can introduce significant timing uncertainty to deals. To date, ROA Approvals have typically been accompanied by quantitative limits that restrict the broad-based use of directly-issued CLNs.<sup>6</sup> The US market has therefore pivoted to greater reliance on CRT trades structured as (i) bilateral credit derivatives between banks and investors and (ii) deals in which the CLN issuance has been outsourced to intermediary special-purpose vehicles ("**SPVs**").

If the PCPA is implemented in its current form, we anticipate seeing a revival in the use of bank-issued CLNs in the United States, consistent with the growing use of CLNs observed in other countries.<sup>7</sup> To qualify as an Eligible PCPA, a PCPA would need to satisfy a number of eligibility criteria, including that (i) the amount and timing of payments are incorporated into the PCPA and can only be changed as a result of a breach by the bank, and (ii) the bank be allowed to reduce the outstanding principal balance upon a failure to pay or occurrence of other credit events (which are not specified) on the reference assets.

#### *Recognition of "Regulatory" and "Tax" Calls*

Under the existing rules, a US Bank is prohibited from unwinding an SRT / CRT trade early *unless* doing so as part of an "eligible clean-up call", in which 10% or less of the principal amount of the reference assets – after factoring in amortizations, reductions and losses – remain outstanding. Most options to early terminate a CRT trade, including options to unwind following a pre-determined date (i.e., a "time" call) or upon a change in the bank's regulatory capital, accounting or other position in respect of the CRT trade, had previously been treated as impermissible "call" options. Such features were eventually phased out of US deals.

Under the NPRs, however, the definition of an "eligible clean-up call" has been expanded to include early "call" options that can be exercised upon (i) a regulatory event that significantly changes the RWAs corresponding to the securitization exposures (i.e., a "regulatory" call), or (2) a tax event that significantly changes the tax treatment of the securitization exposures under tax laws (i.e., a "tax call"). While it is unclear precisely what sorts of events qualify – e.g., would a set of FAQs provided by an agency qualify as a "regulatory event"? – we anticipate that the expanded definition will nevertheless provide more options for banks to exit deals that no longer provide the expected RWA relief or become punitive from a tax standpoint.

#### *Additional Operational Criteria for Synthetic Securitizations*

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<sup>5</sup> Critics of the FAQs have rightfully pointed out that (i) the primary purpose of the credit derivative, whether as a stand-alone instrument or reference instrument (in the case of a bank-issued CLN), is to size the amount of credit losses transferred to investors, and (ii) cash directly in the bank's possession should be superior in all instances to cash over which it has a security interest, despite not satisfying the technical definition of "financial collateral."

<sup>6</sup> See, e.g., Federal Reserve Board, Interpretation Addressed to Morgan Stanley (Sep. 29, 2023), [https://www.federalreserve.gov/supervisionreg/legalinterpretations/bhc\\_changeincontrol20230929.pdf](https://www.federalreserve.gov/supervisionreg/legalinterpretations/bhc_changeincontrol20230929.pdf).

<sup>7</sup> Compared to CLNs issued by SPVs, CLNs issued by banks are comparatively simpler as they address various regulatory considerations ranging from state insurance requirements, the Volcker Rule, CFTC swaps regulations, etc., and are easier to establish from a documentation and structural standpoint.

Consistent with the Original NPR, the NPRs also introduce three new operational criteria for synthetic securitizations:

- A prohibition on "early amortization" provisions if any of the underlying exposures include a revolving line of credit, which is a restriction that currently exists for traditional securitizations but not synthetics;
- A prohibition on "synthetic excess spread", which refers to any contractual provision in which losses are absorbed by the bank prior to any of the tranches in the securitization; and
- A requirement for the minimum payment threshold for the credit risk mitigant (e.g., minimum transfer amount under an ISDA) to be consistent with market practice.

In our experience, early amortization and synthetic excess spread features have been largely absent from deals in the US CRT market and the new operational criteria are not expected to have a material impact.

#### *Look-through Approach for Senior Securitization Exposures*

As with the Original NPR, the NPRs introduce a new "look-through approach" for the senior-most tranche of a securitization that is not a resecuritization exposure. Under this approach, a US Bank can risk-weight the retained senior tranche on a CRT trade by reference to the weighted average risk weight of the underlying exposures, thereby disregarding the SEC-SA.<sup>8</sup>

The "look-through approach" may be helpful in the rare situations in which the underlying reference portfolio of a CRT trade has experienced enough defaults such that the RWAs of the retained senior tranche are *worse* under the SEC-SA than if they had not been securitized.

#### **Other Changes Relevant to CRT Trades**

In addition to the changes to the securitization standard discussed above, the NPRs would revise the credit risk mitigation framework for collateralized transactions in two important ways. First, the NPRs would replace the requirement that the financial collateral be subject to a "collateral agreement" for the life of the exposure with more simplified conditions, including the right of the bank to promptly enforce its rights over the collateral upon an event of default. Secondly, to align the treatment of collateralized transactions with unfunded credit risk mitigants (i.e., eligible guarantees and eligible credit derivatives), the credit risk mitigation framework will permit maturity and currency mismatches, subject to the application of haircuts. We anticipate these changes will resolve some legal and structural challenges experienced under the existing regulations.

Lastly, the changes to the general credit risk weights under the ERBA and, to a lesser extent, the standardized approach will undoubtedly impact the economics of CRT trades over certain asset classes. For example, the reduction in the credit risk weights for certain corporate exposures under the standardized approach (from 100% to 95%) and the ERBA (as low as 65% for investment-grade obligors) may lead to thinner first-loss tranches in respect of CRT trades on such asset classes.

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<sup>8</sup> The general principle is that the credit risk of senior securitization exposures can never be worse than the underlying exposures, as the non-senior / junior tranches mitigate the credit risk of the overall portfolio.

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