

Submitted via Regulations.gov and Electronic Mail

January 16, 2024

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219

Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Mr. James P. Sheesley
Assistant Executive Secretary
Attention: Comments/Legal OES (RIN 3064-AF29)
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Comments on “Large Banking Organizations and Banking Organizations with Significant Trading Activity” (OCC Docket Number OCC-2023-0008 (RIN 1557-1557-AE78); Board Docket No. R-1813 (RIN 7100-AG64); FDIC RIN 3064-AF29)

To Whom It May Concern:

On behalf of The ERISA Industry Committee (“ERIC”), thank you for the opportunity to submit comments on the proposed rule entitled “*Large Banking Organizations and Banking Organizations with Significant Trading Activity*” (“Proposed Rule” or “Proposal”), published in the *Federal Register* on September 18, 2023, by the Office of the Comptroller of the Currency, the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, “the agencies”).¹ The Proposed Rule colloquially is referred to as the “Basel III Endgame Proposal.” **ERIC recommends withdrawing the rule or limiting the negative consequences for private sector pension plans.**

¹ 88 Fed. Reg. 64028 (Sept. 18, 2023).

By way of background, ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans. ERIC member companies offer benefits to tens of millions of employees and their families, located in every state, city, and Congressional district.

Many ERIC member companies offer defined benefit pension plans in accordance with the provisions of the *Employee Retirement Income Security Act* (“ERISA”) as amended, the *Internal Revenue Code*, and other federal laws and regulations. Due to size and complexity, many of these plans engage with the banking sector in transactions to promote growth and mitigate risk for the workers and retirees that participate in these plans.

We write to express concerns about the potential effect of the Proposal on pension funds. The Proposed Rule is intended to overhaul the capital framework for large banks, often resulting in meaningful increases in capital requirements. These new requirements could well increase costs and harm a variety of market participants, including ERISA-covered retirement plans.

Pension plans use a variety of transactions, including derivatives and securities lending, to manage cash flows and risk and generate returns. Under the Proposal, certain banks’ investment grade “corporate exposures” would receive a preferential risk weighting for purposes of calculating capital requirements, provided that the derivative counterparty (or its parent) is publicly traded. Pension funds that do not have publicly listed securities would be ineligible for this preference. That would make pension funds a less desirable counterparty for otherwise beneficial transactions than other potential counterparties.

The agencies seem to understand the dilemma that this rule could create. For example, the agencies ask:

Question 39: For what reasons, if any, should the agencies consider applying a lower risk weight than 100 percent to exposures to companies that are not publicly traded but are companies that are “highly regulated?” What, if any, criteria should the agencies consider to identify companies that are “highly regulated?” Alternatively, what are the advantages and disadvantages of assigning lower risk weights to highly regulated entities (such as open-ended mutual funds, mutual insurance companies, pension funds, or registered investment companies)?²

In our view, a qualified retirement plan subject to ERISA and the Internal Revenue Code should receive equally favorable treatment to publicly traded entities. The public trading requirement is irrelevant in this context as a method of risk evaluation. If transparency is the justification for this preferential treatment offered to publicly traded companies, pension plans satisfy that policy objective due to the extensive disclosures required under ERISA. Additionally,

² *Id.* at 64054.

pension funds are subject to governance and funding rules under ERISA and the Internal Revenue Code. In all, these are highly regulated entities that are not inherently more risky or less creditworthy merely due to lack of public trading.

This treatment mandated by the Proposed Rule could result in increased costs and lower returns for pension funds, ultimately harming plan participants. Additionally, the rules could shrink the market as banks could decide to stop engaging in transactions that do not receive preferential treatment. Moreover, a plan's asset management may be less diversified and riskier than it would be if the plan's fiduciaries had ready access to these transactions, again to the detriment of plan participants.

The effects of the Proposal specifically on retirement plans are uncertain but potentially meaningful for the millions of workers and retirees in pension plans. The private sector defined benefit system has \$3.71 trillion in assets, and the public sector another \$9.47 trillion, according to a Congressional Research Service analysis of Federal Reserve data.³ Despite the potential implications, the economic analysis contained in the Proposed Rule contains no detailed analysis about the potential consequences for retirement plan participants.⁴ This is unacceptable. Without detailed and sophisticated regulatory analysis, the public lacks the information it needs to evaluate the potential effects on the retirement system. Once an analysis is published, the comment period should be reopened.

With so much at stake, the agencies should review the rule and conduct an extensive analysis of the potential effects on retirement savers and the employers that sponsor retirement plans. The rule should be modified to reflect the reality that ERISA-covered pension funds are highly regulated entities deserving of lower risk-weighting. Please contact us if we can be of assistance as you consider changes.

Respectfully Submitted,

Andy Banducci

³ Congressional Research Service, "U.S. Retirement Assets: Data in Brief," *available at* <https://crsreports.congress.gov/product/pdf/R/R47699> (Sept. 20, 2023).

⁴ *See id.* at 64167-64171.