January 16, 2024

Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218
Washington, DC 20219
Chief Counsel's Office
Attention: Comment Processing
Docket ID OCC-2023-0011

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Ann E. Misback, Secretary
Docket No. R-1815
RIN 7100-AG66

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429
James P. Sheesley, Assistant Executive Secretary
Attention: Comments/Legal OES
RIN 3064-AF86

Re: *Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions*

Dear Sir or Madam,

The Conference of State Bank Supervisors ("CSBS")[1] provides the following comments on the notice of proposed rulemaking ("NPR" or "proposal") issued by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System ("Board"), and the Federal Deposit Insurance Corporation ("FDIC") (collectively, the "federal banking agencies" or "agencies") regarding long-term debt ("LTD") requirements for certain large depository institution holding companies, U.S. intermediate holding companies of foreign banking organizations, and certain insured depository institutions (collectively, "covered firms").[2] The proposal would require covered firms to issue and

[1] CSBS is the nationwide organization of banking and financial regulators from all 50 states, the District of Columbia, and the U.S. territories. State regulators supervise state-chartered banks, as well as nonbank financial services providers such as mortgage companies and money services businesses. Created in 1902, CSBS has for more than a century given state regulators a national forum to coordinate supervision and develop policy, provide training to state banking and financial regulators, and represent its members before Congress and federal financial regulatory agencies.
[2] OCC, Board & FDIC, Notice of Proposed Rulemaking, *Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions*, 88 Fed. Reg. 64524 (September 19, 2023) ("LTD Proposal").

maintain a minimum amount of LTD, which is meant to enhance the resolvability of such firms in the event of failure as well as promote the resiliency of the firms and the broader banking system.

State regulators charter and supervise nearly 3,700, or more than 79%, of all U.S. banks, including several covered firms that would be subject to the proposed LTD requirement. State regulators promote the safety and soundness of these institutions through effective supervision and, therefore, have a critical stake in this proposal's objectives and design.

State regulators recognize the potential benefits of requiring covered firms to maintain a minimum amount of LTD to enhance their resolvability and resiliency. However, there are important aspects of the NPR that warrant revision or clarification, mainly the objective of potentially "recapitalizing" a covered firm in the event of failure, the accompanying need to recalibrate the minimum LTD amount, and the entities within the banking organization required to issue and maintain such debt. State regulators also have concerns with how the LTD proposal will interact with other substantial regulatory revisions that the agencies are currently pursuing.

Our comments on these key themes are:

- State regulators are concerned about the unintended consequences inherent in separately revising multiple, complex, and interconnected regulatory requirements for large banking organizations without a thorough analysis of the impact of each rule on the other and the overall impact of all rules on the financial services sector as a whole.
- State regulators appreciate the challenges of resolving a large bank in an orderly manner and recognize the potential benefits that a properly tailored LTD requirement could provide.
- State regulators recommend that the agencies tailor any minimum amount of LTD based on the resources needed to successfully execute a covered firm's resolution strategy, rather than to execute both a single point of entry ("SPOE") and multiple point of entry ("MPOE") resolution.
    - State regulators contend that the systemic and resolution-related risks posed by covered firms do not necessitate an amount of LTD to fully recapitalize their material entities.
    - State regulators recommend that the agencies calibrate any minimum amount of LTD to successfully execute a covered firm's identified resolution strategy.
    - State regulators recommend that any LTD requirement provide covered firms with flexibility in how they issue and pre-position such LTD based on their agency-approved resolution strategies.

State regulators are concerned about the unintended consequences inherent in separately revising multiple, complex, and interconnected regulatory requirements for large banking organizations without a thorough analysis of the impact of each rule on the other and the overall impact of all rules on the financial services sector as a whole.

The agencies' LTD proposal is undoubtedly a consequential rulemaking in its own right, raising significant, complex policy questions and design choices with implications for the agencies, covered firms, and the broader banking system. However, it is critical to first appreciate that this NPR is but one of several highly impactful, complex, and interconnected regulatory revisions that the agencies are currently pursuing, including, but not limited to, the large bank capital proposal,[3] insured depository institution ("IDI") resolution plan proposal,[4] and proposed Section 165(d) resolution planning guidance for both domestic[5] and foreign firms.[6] Agency principals[7] have also noted the potential for substantive revisions to other key regulatory requirements beyond those already proposed.

Each of these proposals presents its own unique set of complex tradeoffs that require careful analysis and deliberation, by the public and the agencies themselves, to estimate their potential benefits and costs. By proposing these interrelated revisions concurrently, the agencies have compounded the challenges associated with ascertaining their collective outcome, benefits, and costs to an unnecessary, and perhaps unknowable, degree.

For example, the agencies have proposed that covered firms maintain a minimum amount of LTD that will be calculated as a percentage of total risk-weighted assets ("RWA"), total consolidated assets, and total leverage exposure under the Supplementary Leverage Ratio ("SLR"). However, the large bank capital NPR proposes significant revisions to how covered firms would calculate RWA, and it would also bring Category IV banking organizations into scope of the SLR rule. Accordingly, the approximately $70 billion of new LTD that the agencies calculate covered firms would need to issue is likely underestimated.[8] Additionally, if a final large bank capital rule led to meaningfully higher levels of equity capital at covered firms and provided potential resiliency benefits separate and apart from the LTD proposal, then, ultimately, any amount of LTD needed to effectively resolve a large bank in the event of failure could be lower than contemplated under the current proposal.

State regulators are concerned that this discordant approach to rulemaking heightens the risk that regulatory requirements will be misaligned and potentially conflicting. As one example, the Board and FDIC state in their Section 165(d) resolution planning proposal for domestic firms that they "do not prescribe a specific resolution strategy for any covered company, nor do the agencies identify a

---

[3] OCC, Board & FDIC, Proposed Rule, *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity*, 88 Fed. Reg. 64028 (September 18, 2023).
[4] FDIC, Proposed Rule, *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 Fed. Reg. 64579 (September 19, 2023).
[5] Board & FDIC, Proposed Guidance, *Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers*, 88 Fed. Reg. 64626 (September 19, 2023) ("Proposed Domestic Resolution Plan Guidance").
[6] Board & FDIC, Proposed Guidance, *Guidance for Resolution Plan Submissions of Foreign Triennial Full Filers*, 88 Fed. Reg. 64641 (September 19, 2023).
[7] "I will be pursuing further changes to regulation and supervision in response to the recent banking stress, including how we regulate and supervise liquidity, interest rate risk, and incentive compensation, as well as improving the speed, agility, and force of the Federal Reserve's supervision." Barr, Michael S., *Holistic Capital Review* (July 10, 2023). Speech available at: https://www.federalreserve.gov/newsevents/speech/barr20230710a.htm.
[8] More specifically, Category II and III banking organizations would need to issue approximately $20 billion of new LTD, while Category IV banking organizations would need to issue approximately $50 billion.

preferred strategy,"[9] referring here to the SPOE[10] and MPOE[11] resolution strategies. Thus, as the rules and guidance are proposed, Category II and III domestic banking organizations may develop and submit a Section 165(d) resolution plan outlining the most logical and likely path of resolution based on their organizational structure, size, complexity, and business model. However, the LTD proposal is premised, in part, on the need for the agencies to have resolution "optionality," which contemplates a sufficient level of LTD at covered firms for the agencies to execute either an MPOE *or* SPOE resolution. The design and calibration of the LTD proposal, particularly when viewed alongside the IDI and Section 165(d) resolution planning proposals, could lead to a framework in which an SPOE resolution strategy is viewed as the preferred, default, or inevitable expectation for Category II, III, and IV firms.[12] The agencies should avoid this outcome by properly aligning and calibrating both the LTD and various resolution planning proposals.

State regulators recommend that the agencies take a more incremental and intentional approach to rulemaking that appropriately prioritizes and then sequences proposed regulatory changes. To the extent simultaneously proposing revisions to separate rules is the most sensible course of action, state regulators request that the agencies allow stakeholders ample opportunity to evaluate and provide feedback on such proposals. Additionally, proposed regulatory changes must adequately consider and assess potential interconnections and avoid conflicts with other regulatory requirements. Finally, state regulators request that the agencies engage in a more robust pre-rulemaking impact analysis and share with the public the data, assumptions, and justifications underlying the design choices in these significant regulatory proposals.

Regarding the current proposal, state regulators request that the agencies first finalize revisions to large bank capital requirements since the amount of RWA and the SLR will be used to determine a covered firm's LTD requirement. After finalizing a revised large bank capital rule, the agencies should then

---

[9] Proposed Domestic Resolution Plan Guidance, at 64627.

[10] "Under an SPOE strategy, only the top-tier bank holding company would enter into a resolution proceeding; operating subsidiaries would continue on a going-concern basis." FRB Memo, *Joint Board-FDIC proposed guidance for Category II and III banking organizations regarding future resolution plans* (August 15, 2023).

[11] "Under an MPOE strategy, multiple entities within a consolidated organization would enter separate resolution proceedings. For example, many covered entities plan that the parent holding company would file a petition under chapter 11 of the U.S. Bankruptcy Code, and that the FDIC would resolve the IDI subsidiary under the FDI Act." LTD Proposal, n. 31.

[12] "[W]hile the [IDI and Section 165(d)] proposals explicitly state that the agencies do not favor single point of entry (SPOE) over MPOE, most of the provisions are focused on SPOE firms. At the same time, we are also proposing a rule that would require long-term debt to be issued from the holding company at each of these firms. Given that not a single domestic firm in scope has adopted an SPOE strategy, it would be natural to wonder if the agencies intend to push Category II and III firms to an SPOE strategy. After more than a decade into resolution planning, it is worth considering whether the FDIC, as the entity ultimately responsible for determining how a bank will be resolved, along with the Federal Reserve, should decide in a clear and transparent manner whether and when institutions need to adopt an SPOE strategy. Conversely, what the agencies should not do is spend more than a decade approving an MPOE strategy for each of these firms, put out guidance that expressly states the agencies do not have a preferred strategy, and then without warning find the plans not credible because of doubts about the MPOE strategy." Hill, Travis, *Statement by Vice Chairman Travis Hill on the Proposed Guidance for Title I Resolution Plans* (August 29, 2023). Available at: https://www.fdic.gov/news/speeches/2023/spaug2923i.html.

publish an updated economic analysis regarding proposed LTD requirements for covered firms, as well as provide the public with another opportunity to comment before proceeding to a final LTD rule.

State regulators appreciate the challenges of resolving a large bank in an orderly manner and recognize the potential benefits that a properly tailored LTD requirement could provide.

Notwithstanding our reservations about the manner in which the agencies are pursuing major, interconnected regulatory revisions, state regulators appreciate that the failure of a large bank poses unique resolution challenges that must be addressed. Indeed, the "underappreciated risk"[13] posed by the failure of large regional banks was unfortunately realized this spring when the rapid deterioration and subsequent closures of Silicon Valley Bank ("SVB") and Signature Bank[14] sparked significant stress and threatened to spread contagion throughout the banking system. The failures of SVB and Signature Bank triggered numerous immediate challenges, including the acute challenge the FDIC faced in resolving these two institutions once they were placed into receivership. Following a systemic risk determination by the Secretary of the Treasury,[15] the FDIC was able to protect all the deposits of these two institutions, including all uninsured deposits, though at enormous cost to the Deposit Insurance Fund ("DIF").[16]

State regulators believe it is imperative that our resolution tools and frameworks be able to successfully manage the failure of large institutions without resorting to emergency measures. To that end, state regulators recognize that requiring covered firms to issue and maintain a minimum amount of LTD could help facilitate a more orderly and less costly resolution in the event of a failure. LTD would absorb losses after a firm's equity has been depleted, but before insured and uninsured deposits and general unsecured creditors. As such, LTD could provide the FDIC with additional resources, more options, and more time to resolve the failed IDI in an orderly manner. LTD could also promote broader market confidence and limit the potential for bank runs since uninsured depositors would know a new class of bondholders would realize losses before them in the event of failure. Critically, emergency measures like the systemic risk exception would be less likely to be needed to resolve a covered firm in the event of failure.

State regulators recommend that the agencies tailor any minimum amount of LTD based on the resources needed to successfully execute a covered firm's resolution strategy, rather than to execute both an SPOE and MPOE resolution.

---

[13] Gruenberg, Martin J., *An Underappreciated Risk: The Resolution of Large Regional Banks in the United States* (October 16, 2019). Available at: https://www.fdic.gov/news/speeches/2019/spoct1619.html.

[14] At YE 2022, Silicon Valley Bank had $209 billion in assets and Signature Bank had $110 billion in assets.

[15] Treasury, Board & FDIC, *Joint Statement by the Department of the Treasury, Federal Reserve, and FDIC* (March 12, 2023).

[16] The FDIC estimated the cost to the DIF for the failures of SVB and Signature Bank to be $17.8 billion and $0.9 billion, respectively. Of that estimated total cost of $18.7 billion, approximately $16.3 billion was attributable to the cost of covering uninsured deposits as a result of the systemic risk determination. *See* FDIC, Final Rule, *Special Assessment Pursuant to Systemic Risk Determination*, 88 Fed. Reg. 83329 (November 29, 2023).

Currently, federal regulations require only the eight U.S. G-SIB holding companies and the U.S. intermediate holding companies of ("IHCs") of foreign G-SIBs to issue and maintain minimum amounts of LTD, which constitutes a substantial portion of their broader total loss absorbing capacity ("TLAC") requirements.[17] The NPR would effectively extend new minimum LTD requirements to any IDI with $100 billion or more in assets, as well as to any of its holding company or IDI affiliates, which generally corresponds to Category II, III, and IV banking organizations under the Board's tailoring framework.[18]

Critically, the LTD proposal is designed to provide the agencies with "optionality" in resolution, including the option, with higher associated levels of LTD, to resolve a failed covered firm through an SPOE resolution strategy. As noted by the agencies,[19] the majority of covered firms, including all domestic Category II and III banking organizations, have identified and submitted, and the agencies have approved, MPOE resolution strategies under Section 165(d)[20] or IDI[21] resolution planning regimes. Since most of the domestic firms in scope have very few material operating entities outside of their IDI, they have developed MPOE resolution strategies in consultation and coordination with the agencies. These strategies contemplate an FDIC receivership for the failed IDI and bankruptcy proceedings for the holding company. Thus, by requiring sufficient loss absorbing resources to execute an SPOE or MPOE at any covered firm, the agencies are nullifying the choice of covered firms to develop and submit resolution plans, in consultation and coordination with the agencies, that match their risk profile, organizational structures, and most likely resolution scenarios.

State regulators contend that the agencies should revise this policy objective such that a potential LTD requirement is tailored to a covered firm's identified and agency-approved resolution strategy. State regulators maintain that the systemic and resolution-related risks of covered firms do not require the full recapitalization of their material operating entities, and that any minimum LTD requirement should be tailored to facilitate their most likely resolution strategy, which, in virtually all cases for covered firms, is an MPOE. Consequently, the minimum amount of LTD should be calibrated lower than contemplated under an SPOE resolution.

> *State regulators contend that the systemic and resolution-related risks posed by covered firms do not necessitate an amount of LTD to fully recapitalize their material entities.*

State regulators maintain that there is a distinct difference between the financial stability risks posed by the disorderly resolution of G-SIBs compared to Category II, III, and IV banking organizations. A cursory view of the "systemic risk scores" that are used to measure a firm's systemic risk and establish its G-SIB

---

[17] Board, Final Rule, *Total Loss-Absorbing Capacity, Long-Term Debt, and Clean Holding Company Requirements for Systemically Important U.S. Bank Holding Companies and Intermediate Holding Companies of Systemically Important Foreign Banking Organizations,* 82 Fed. Reg. 8266 (January 24, 2017).

[18] Category II, III, and IV domestic holding companies (as well as their IDI subsidiaries); any Category II, III, and IV U.S. IHC of a foreign banking organization; any IDI with $100 billion or more in total assets that is a subsidiary of a U.S. IHC; and any IDI with at least $100 billion in total assets that is not controlled by a holding company.

[19] "All of the specified firms presented an MPOE strategy in their 2021 targeted resolution plan submissions." Proposed Domestic Resolution Plan Guidance, at 64627.

[20] 12 USC § 5365(d).

[21] 12 CFR § 360.10.

capital surcharge percentage, as appropriate,[22] highlights the large divide between G-SIB risks and the risks posed by other large banking organizations. According to year-end 2021 data, Category II, III, and IV domestic banking organizations all had Method 1 systemic risk scores that were well below the Method 1 G-SIB threshold of 130.[23] Indeed, two-thirds of Category IV firms had Method 1 scores in the single digits.[24] Domestic Category II, III, and IV banking organizations also tend to have much lower Method 2 systemic risk scores[25] compared to those of the U.S. G-SIBs. For example, as of year-end 2022, Category IV firms' Method 2 scores were approximately 12.5 – 28.5 times smaller than that of the largest U.S. G-SIB.[26]

The range and number of material operating entities are also dramatically lower for covered firms compared to the more complex G-SIBs. According to the most recent U.S. G-SIBs' Section 165(d) resolution plans, the number of material operating entities within these organizations ranges from 16 to 31.[27] In addition to their material IDI subsidiaries, G-SIBs also have a much greater number of material nonbank entities, including broker-dealers, investment advisors, payment processors, and service providers that could be the source of, or be exposed to, destabilizing financial risks. These G-SIB material nonbank entities may serve critical market functions that, in the event of an organization's disorderly failure, could quickly spread contagion throughout the broader financial system. Therefore, post-crisis reforms have emphasized a quick recapitalization of G-SIB material operating entities to thwart financial contagion.

By contrast, Category II, III, and IV domestic banking organizations lack the same complexity and variety of material operating entities, including nonbank material entities, thus limiting the exposure of the rest of the financial system to systemic risks in the event of their failure. Typically, these institutions have a bank-centric business model, with relatively few material entities beyond the IDI subsidiary and holding company. In fact, of the 16 Category II, III, and IV domestic banking organizations covered under the proposal, 13 of them reported three or fewer material operating entities in their most recent Section

[22] 12 CFR Part 217 Subpart H – Risk-based Capital Surcharge for Global Systemically Important Bank Holding Companies.

[23] 12 CFR § 217.404. Method 1 scores are based on the Basel Committee on Banking Supervision's *G-SIB assessment methodology – score calculation* framework (https://www.bis.org/bcbs/publ/d296.pdf). Method 1 measures a firm's systemic importance based on size, interconnectedness, substitutability, complexity, and cross-jurisdictional activity.

[24] Capital One Financial Corporation, et. al., Comment Letter, *Re: Advanced Notice of Proposed Rulemaking on Resolution-Related Resource Requirements for Large Banking Organizations* (January 23, 2023). Available at: https://www.fdic.gov/resources/regulations/federal-register-publications/2022/2022-resolution-resource-large-banking-3064-af86-c-026.pdf.

[25] 12 CFR § 217.405. Method 2 scores are based on a firm's size, interconnectedness, complexity, and cross-jurisdictional activity, but measures short-term wholesale funding in lieu of substitutability.

[26] Among Method 2 scores at Category IV institutions, Regions Financial had the highest at 68, and Ally Financial had the lowest at 30. By contrast, JPMorgan Chase had a Method 2 score of 855. *See* Office of Financial Research. "OFR Bank Systemic Risk Monitor." U.S. G-SIB Surcharges, refreshed annually. Available at: https://www.financialresearch.gov/bank-systemic-risk-monitor/.

[27] Among U.S. G-SIBS, Citigroup had the highest number of material operating entities at 31, and BNY Mellon had the lowest number at 16.

165(d) or IDI resolution plans.[28] While the failure of these institutions certainly presents risks and challenges, they are confined to far fewer material entities that are unlikely to be central and critical to the ongoing functioning of financial markets.

State regulators recommend that the agencies calibrate any minimum amount of LTD to successfully execute a covered firm's identified resolution strategy.

Despite the differences in the scale of financial stability risks, organizational structure, material entities, and likely resolution scenarios, the agencies have proposed that covered firms maintain a minimum amount of LTD to recapitalize a failed IDI to at least the amount required to be "adequately capitalized" under the agencies' capital regulations. Therefore, each covered firm, at both the IDI and holding company level, would be required to issue and maintain a minimum amount of eligible LTD that is the greater of 6% of its total RWA, 3.5% of its average total consolidated assets, and 2.5% of its total leverage exposure (if subject to the SLR).

However, if a covered firm has adopted and developed an agency-approved MPOE resolution strategy, the amount of debt to successfully execute this type of resolution is naturally lower than would be needed for a full recapitalization of the covered firms' material entities. A lesser amount of loss absorbing LTD could still provide important optionality to the FDIC as it seeks to resolve a covered firm.[29]

State regulators recommend that any LTD requirement provide covered firms with flexibility in how they issue and pre-position such LTD based on their agency-approved resolution strategies.

Under the proposed rule, covered IDIs that are part of a holding company structure would be required to meet minimum LTD requirements at both the holding company and IDI subsidiary (or IDI subsidiaries) level. A holding company would issue debt externally, using the proceeds of its external debt issuance to purchase IDI debt issued internally to the parent. The holding company LTD could provide additional resolution options by being used to recapitalize and establish a new bank.[30]

State regulators recommend that any potential LTD issuance be tailored to a covered entity's identified and agency-approved resolution strategy. Covered firms that have developed and planned for an MPOE resolution could choose to satisfy any LTD requirement by having its IDI issue internal debt to its parent or externally, or by having its holding company issue the debt externally.

---

[28] More specifically, six firms listed just the bank and the parent holding company; three listed the bank, the parent holding company, and one other entity, two listed the bank and one other entity, and two listed the bank as the sole material operating entity.

[29] Resolution options could include transferring the deposits and selling assets to one or more acquirers, including establishing a bridge depository institution from which to stabilize the failed IDI and find acquirers for its business lines and deposits.

[30] "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." LTD Proposal, at 64527.

CSBS

Conclusion

In sum, state regulators recognize the resolution and resiliency benefits of LTD maintained by large banking organizations. However, any LTD requirement should be designed and calibrated to effectively execute the resolution strategy that it has adopted and developed in consultation with the appropriate federal banking agency. Additionally, state regulators are concerned that the agencies risk establishing misaligned and overly complex regulatory requirements by pursuing large-scale changes to interconnected rules in tandem, without thorough analysis or an opportunity for subsequent public comment.

State regulators request that the agencies first finalize revisions to large bank capital requirements since the amount of RWA and the SLR will be used to determine a covered firm's LTD requirement. After finalizing a revised large bank capital rule, the agencies should then publish an updated economic analysis regarding a proposed LTD requirement for covered firms, as well as provide the public with another opportunity to comment before proceeding to a final LTD rule.

Sincerely,

/s/

Karen K. Lawson
Executive Vice President, Policy & Supervision