January 16, 2024

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

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

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

RE: Comments on Notice of Proposed Rulemaking Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and Banking Organizations with Significant Trading Activity (Docket ID OCC–2023–0008 (Office of the Comptroller of the Currency); Docket No. R–1813 (Federal Reserve System); and RIN 3064–AF29 (Federal Deposit Insurance Corporation)

Ladies and Gentlemen:

New York Life Insurance Company and its subsidiaries ("NYL") appreciate the opportunity to comment on the above-referenced notice of proposed rulemaking (the "NPR"). We recognize the substantial effort devoted to the NPR by the OCC, Federal Reserve System, and FDIC (together, the "Agencies").

In its current form, the NPR's proposed approach to the risk weighting of corporate exposures based on credit risk—specifically, those contained in Section II.C.2.h(i)—is unduly narrow. This approach would harm banks' ability to access high quality bank-owned life insurance ("BOLI") products that help them effectively manage their employee benefit expenses.

The NPR would risk weight corporate exposures to investment-grade mutual life insurers more than 50% higher than comparable corporate exposures to investment-grade publicly traded life insurers (i.e., 100% vs. 65%).[1] This methodology would make BOLI products from high quality mutual life insurers less desirable in the marketplace.[2] In doing so, it would weaken the incentive for banks to mitigate credit and systemic risks by seeking out the highest quality BOLI providers.

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[1] *See* Notice of Proposed Rulemaking, 88 Fed. Reg. 64028, 64053-54 (Sept. 18, 2023).

[2] Under current rules, there is no distinction between mutual and publicly-traded life insurers. BOLI is treated as a corporate exposure with a 100% risk weighting, regardless of the life insurer's ownership structure.

There is no data to support the assertion that publicly traded stock insurers are inherently more creditworthy than mutual companies. To the contrary, mutual life insurers like NYL maintain the highest possible credit ratings in the life insurance industry.[3] For example, NYL currently has a AAA credit rating from Fitch, higher than the rating Fitch has assigned to the U.S. federal government.[4]

We respectfully ask that the NPR be revised so that corporate exposures to mutual life insurers receive a risk weighting of no higher than 65%--an approach that should be accorded to the investment-grade corporate exposures of all life insurers regardless of corporate ownership structure. More broadly, in finalizing the rulemaking, we encourage the Agencies to provide an incentive for banks to favor BOLI providers that differentiate themselves by demonstrating the highest credit quality.

I. Overview

Section II.C.2.h(i) of the NPR inappropriately limits banks' ability to access high quality BOLI products by creating a significant disadvantage for products provided by mutual insurance companies. Specifically, the NPR states that: "a banking organization would assign a 65 percent risk weight to a corporate exposure that is an exposure to a company that is investment grade, and that has a publicly traded security outstanding or that is controlled by a company that has a publicly traded security outstanding." The NPR further provides that: "a banking organization would assign a 100 percent risk to all other corporate exposures" with certain enumerated exceptions, as this weighting would reflect "the relative risk of such corporate exposures, as the repayment methods for these exposures pose greater risks than those of publicly-traded corporate exposures that are deemed investment grade." [5]

The corporate obligations of BOLI insurers would be considered "corporate exposures" under the NPR.[6] These exposures derive from the insurer's contractual obligation to pay death benefits upon the death of the insured and the cash surrender value upon the surrender of the policy. However, the NPR contemplates a bifurcated structure for the risk weightings for exposures to BOLI insurers. All things being equal, the investment grade obligations of insurers <u>without</u> publicly traded securities would be accorded a higher risk weighting (100%) than those <u>with</u> publicly traded securities (65%).[7]

Because mutual insurers like NYL do not issue publicly traded securities, these insurers would be deemed by the NPR to "pose greater risks than those of publicly-traded corporate exposures that are deemed investment grade."[8] Consequently, BOLI policies issued by NYL—and all mutual insurers—would be accorded higher risk weightings than BOLI policies issued by publicly-traded insurers.

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[3] Individual independent rating agency commentary about NYL as of 11/17/2023: A.M. Best (A++), Fitch (AAA), Moody's Investors Service (Aaa), Standard & Poor's (AA+).

[4] Rating Action Commentary, *Fitch Downgrades the United States' Long-Term Ratings to 'AA+' from 'AAA"; Outlook Stable*, Fitch Ratings (Aug. 2023).

[5] Notice of Proposed Rulemaking, 88 Fed. Reg. 64028, 64054 (Sept. 18, 2023).

[6] *See id* at 64053.

[7] *See id* at 64054.

[8] *See id.*

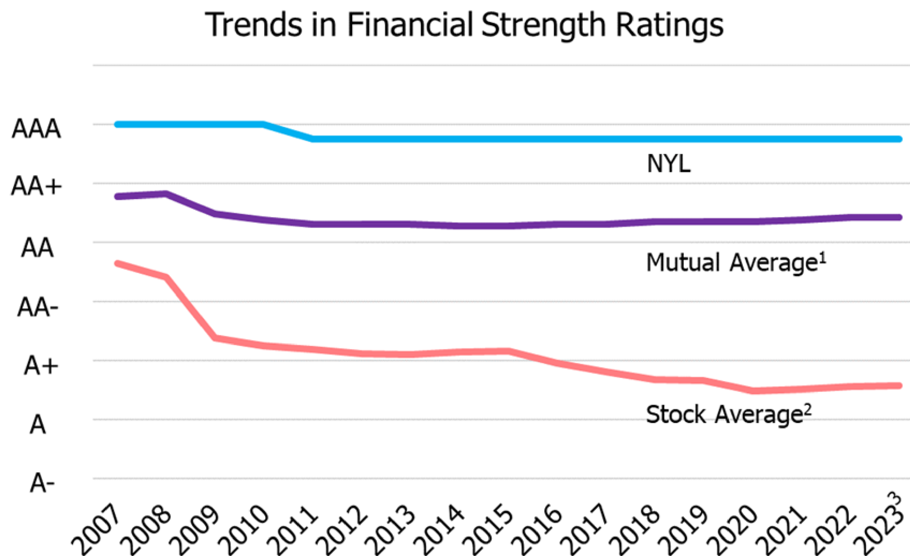
If adopted in its current form, this bifurcation in the NPR's risk-weighting scheme would have several counterintuitive and damaging effects on the BOLI market that would detract from, rather than promote, the capital adequacy of banks that purchase BOLI products.

II. About NYL and Mutuality

New York Life Insurance Company, founded in 1845, is the nation's largest mutual life insurance company.[9] As a mutual, the company has no stockholders. The company's interests are aligned with those of its policyholders, who are its only constituency. NYL provides life insurance, annuity, long-term care, disability, and investment products to consumers across the country. For the last 30 years, NYL also has been a leading issuer in the BOLI market.

NYL's financial strength, reflected in its high ratings, ensures that it can honor the long-term guarantees embedded in its insurance products. Policyholders know that the guaranteed products they purchase from NYL are backed by the company's financial strength and 178-year history of keeping its promises.

Mutuality is a leading cause of NYL's financial strength. Throughout the life insurance industry, the highest possible credit ratings have been awarded to mutual life insurers like NYL. The stronger financial position of mutual companies is evident when comparing the financial ratings of mutual and stock insurers:



Sources: Year-end ratings for S&P, Fitch, Moody's, A.M. Best, NYL Analysis
[1] Mutual includes Guardian, MassMutual, Nationwide, Northwestern Mutual, Pacific Life, TIAA, and State Farm
[2] Stock includes AIG, Ameriprise, Genworth, The Hartford, Lincoln National, John Hancock, MetLife, Principal, Prudential Financial, Voya, Allianz, Transamerica, AXA, and Jackson National
[3] Represents ratings as of 9/30/2023

[9] Based on revenue as reported by "*Fortune 500 ranked within Industries, Insurance: Life, Health (Mutual)*," Fortune magazine 6/5/2023.

We encourage the Agencies to account for the consistently superior financial strength of mutual companies as they finalize the NPR. At a minimum, the final version of the NPR should remove the counterproductive incentive in the current proposal for banks to disfavor mutual companies. More broadly, the final design of the NPR should provide a healthy incentive for banks to select the strongest BOLI issuers in the marketplace. Doing so would promote financial stability and the prudent management of credit risk.

The mutual form ingrains a focus on the long-term financial strength of the company. By reducing market pressures to maximize earnings and growth over the time horizons demanded by shareholders, mutuality enhances our ability to be patient. Mutuality also keeps our focus on keeping promises to policyholders. In these ways, mutuality positions us optimally to offer products—like BOLI products—that require us to set aside large amounts of capital under insurance laws at the time of policy issue. Without outside pressure, a mutual company like NYL experiences less volatility, can thrive on steady returns without chasing growth, and can retain capital to enhance its financial strength. In effect, by following the mutual model, NYL prioritizes permanence and security over short-term growth.

NYL's BOLI offerings help banks manage their employee benefit expenses and achieve their financial goals within the construct of mutuality. Because of its mutuality, NYL can take the long view and focus on the long-term interests of policy owners—including banks—as opposed to shareholders. With over $20 billion in BOLI assets in-force, NYL's thirty years of experience in, and demonstrated commitment to, the BOLI market has led to relationships with over 1,700 banks who rely on NYL's financial strength to back the long-term promises made to BOLI policy owners.

Mutual life insurers – like all life insurers – are highly regulated at the state level to ensure they are financially strong and able to fulfill their long-term promises to policyowners.[10] For example, US life insurers are subject to strong solvency regulations, including limitations on the type and concentration of invested assets; conservative risk-based capital and reserving requirements focused on early intervention in times of distress; review of filed derivative use plans; prior approval of intercompany transactions; extensive annual and quarterly financial reports that measure insurer financial strength; statutory accounting requirements that are more conservative than generally accepted accounting principles; and constant and ongoing supervision and examination.

Finally, this comprehensive and pro-active regulatory approach has met the challenging developments of recent years, including the COVID-19 pandemic and interest rate volatility. Most recently, the regional banking crisis of Spring 2023 did not adversely affect life insurer liquidity or balance sheets. This regulatory regime, by promoting solvency and creating a high degree of transparency, confirms the industry's long-held experience that life insurers—including highly-rated mutual life insurers—are a source of strength for bank and non-bank policyowners in times of financial stress.

[10] John S. Pruitt, *Insurance and Reinsurance in the United States* (Jan. 2023).

III. Impact of the NPR on the Prospective Structure of the BOLI Market

BOLI benefits banks in a myriad of ways. It allows them to have tax advantaged investment, provides a source of non-interest income, enables valuable benefits to bank employees, and offers risk management and diversification. Disrupting the BOLI market would ultimately hurt banks.

Since 2012, banks have purchased approximately $45.6 billion in General Account, Separate Account, and Hybrid BOLI policies. Of this total, $26.2 billion—or 58%—were sold by mutual insurers.[11] As such, as written, the NPR would have a transformative, negative impact on the BOLI market. By placing mutual insurers at a competitive disadvantage—making their products more costly to purchase and hold to maturity—the NPR could drive these insurers from the market. Without their presence, the BOLI market could experience lasting disruptions and potentially lose, or at least disrupt, the 58% of the market currently sold by mutual insurers. For example, either the remaining insurers may not have the capacity to meet existing levels of demand for BOLI sales, or demand may decline as banks seek to avoid placing business among fewer, less highly-rated life insurers. Consequently, as far as the BOLI market is concerned, the NPR, by encouraging the exit of mutual insurers, could undermine rather than advance the Agencies' broader goal to strengthen the capital adequacy of regulated banks. The resulting impact to mutual insurers—and the broader BOLI market—does not seem to have been the Agencies' intended result.

IV. Adverse Impact of the NPR on Banks Holding Legacy BOLI Policies from Mutual Insurers

The proposed risk weighting of corporate exposures set forth in the NPR would establish standards affecting how banks design their BOLI programs in the future. But it may also lead to adverse outcomes for banks that have already put into place General Account and Hybrid BOLI programs based on earlier guidance—i.e., the Interagency Statement on the Purchase and Risk Management of Life Insurance from 2004.[12] Among other things, the guidance advises banks to consider two key factors bearing on the credit quality of insurers providing BOLI coverage—liquidity and credit risk.[13]

On liquidity, the guidance notes that, because BOLI products are illiquid, banks should "ensure that the institution has the long-term financial flexibility to hold the asset in accordance with its expected use."[14] Banks are encouraged to hold BOLI policies for the long term as the tax benefits of the policy would only be fully realized by holding the policy for its full term and therefore, early surrenders "may compromise the success of the BOLI plan."[15] However, to execute this strategy, banks need to analyze a separate, but related risk—*i.e.*, the credit risk posed by the BOLI insurer. The 2004 guidance notes that the "credit quality of the insurance company

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[11] *See* IBIS Associates. Stage 2 BOLI Survey Results: 2022 Year-End Comprehensive Market Summary (May 2023).

[12] *See Interagency Statement on the Purchase and Risk Management of Life Insurance*, Federal Deposit Insurance Corporation (December 7, 2004). Learn more: https://www.fdic.gov/news/financial-institution-letters/2004/fil12704a.pdf.

[13] *Id.* at 11, 15.

[14] *Id.* at 11.

[15] *Id.*

and duration of the contract are key variables" to consider in designing a BOLI program.[16] Because the insurer's credit risk consists of the insurer's contractual obligation to pay death benefits and cash surrender value, the guidance advised that, "[b]efore purchasing BOLI, an institution should conduct an independent financial analysis of the insurance company and continue to monitor its condition on an ongoing basis. The institution's credit risk management function should participate in the review and approval of insurance carriers."[17] The 2004 guidance appropriately accorded no importance to whether an insurer "has a publicly traded security outstanding or that is controlled by a company that has a publicly traded security outstanding."

Based on the 2004 guidance, many banks may have reasonably chosen to address the liquidity and credit risks inherent to their BOLI programs by focusing on the credit quality of the insurance provider—giving preference to life insurers with the highest financial strength ratings and a demonstrated commitment to the BOLI market. As noted above, a majority of BOLI policies in recent years have been purchased from mutual insurers like NYL, as they are among the most highly rated insurers.

The impact of these decisions will be significantly changed by the adoption of the NPR. Banks who relied on prior guidance to design BOLI programs meant to reduce credit risk will be holding legacy BOLI programs with retrospectively higher risk weightings due to the NPR. In addition, the NPR may also increase liquidity risks by inadvertently encouraging banks to surrender BOLI policies with higher (and more burdensome) risk weightings—leading to the very surrender activity prior to maturity that regulators had previously noted was harmful. In so doing, the surrenders would subject these banks to tax liabilities (including taxes on earnings and additional tax penalties for early surrender), surrender charges, and potentially other penalties.

V. Proposed Revisions to the NPR on Risk Weighting Corporate Exposures from Mutual Insurers

As noted above, the NPR proposes a two-pronged test for corporate exposures assigned a 65 percent risk weight: the corporate exposure must be "both (1) an exposure to a company that is investment grade, and (2) where that company, or a parent that controls that company, has publicly traded securities outstanding."[18] Although the adoption of the second prong is inconsistent with the implementation of Basel III Endgame in the United Kingdom and European Union, these two factors would, in the view of the Agencies, allow banking organizations "to identify exposures to obligors of sufficient creditworthiness to be eligible for a reduced risk weight."[19] Because, as an obligor, mutual insurers satisfy the first, but not the second prong, their exposures are deemed by the NPR as posing "greater risks that those of publicly-traded corporate exposures that are deemed investment grade."[20]

There is ample evidence that mutual insurers are investment grade obligors. As noted above, "The definition of investment grade…[requires] the entity or reference entity have adequate

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[16] *Id.* at 15.
[17] *Id.*
[18] Notice of Proposed Rulemaking, 88 Fed. Reg.64028, 64054 (Sept. 18, 2023).
[19] *Id.*
[20] *Id.*

capacity to meet financial commitments, which means that the risk of its default is low and the full and timely repayment of principal and interest is expected."[21] Corporate obligors are generally considered to be investment grade if they receive a rating of BBB- or above by A.M. Best or Baa or above by Moody's.[22]

Measures of capacity to meet a life insurer's financial commitments already exist—whether they be publicly traded or mutual life insurers—Financial Strength Ratings ("FSRs"). FSRs are an independent, market-based means that are intended to measure a life insurer's ability to meet its obligations[23]—in this case, the ability to pay BOLI death benefits or cash surrender value proceeds when they become due. FSRs are offered by several independent agencies—A.M. Best, Standard & Poor's, Fitch, and Moody's. A.M. Best states that their FSRs are "an independent opinion of an insurer's financial strength and its ability to meet its insurance policy and contract obligations."[24] Hence, in their assessment of the risk of default and the timely repayment of their obligations, rating agencies have generally provided mutual insurers with financial strength ratings at the higher end of investment grade. Indeed, NYL has received financial strength ratings of A++ from A.M. Best--the highest investment grade rating that can be issued. There is no doubt that mutual insurers, like a significant proportion of publicly-traded insurers, are generally considered to be investment grade obligors.

In the NPR, the Agencies ask whether the "enhanced transparency and market discipline" of publicly-traded life insurers give them an advantage over mutuals that cannot be replaced by other means or alternative criteria.

While NYL agrees that SEC disclosure does provide banks with transparency into the operations and financial stability of publicly-traded insurers, there are publicly available databases that provide comprehensive and consistent financial disclosure about both publicly-traded and mutual insurers. For example, like all life insurers, mutual insurers are subject to extensive financial reporting that is available to the public through the NAIC.[25] This reporting includes key annual and quarterly statement data for the last ten years that not only provide insight into the financial stability of mutual insurers but allow that data to be compared against industry peers. In effect, the data available through the NAIC provides the very type of "alternative criteria" responsive to Question 38 that the Agencies can "consider to identify corporate exposures that would warrant a risk weight of 65%."[26]

In the alternative, although mutual insurers do not offer publicly traded securities, they regularly offer unregistered securities to qualified institutional buyers in reliance on Rule 144 and Regulation S under the Securities Act of 1933—including Surplus Notes and certain other Debt Issuance Programs. Such offerings require mutual insurers to provide sophisticated investors with critical and ongoing information on the operations, capitalization and risks relating to the

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[21] *Id.*
[22] S. Rep. No. 109-326 (2006).
[23] *Rating Agency Perspectives on Insurance Company Capital*, SOA Research Institute, 6, 28 (Aug. 2023).
[24] A.M Best Frequently Asked Questions About the Rating Process, p.1. Learn more: https://www.ambest.com/ratings/process/ratingsfaq.pdf
[25] *See, e.g.*, Guide to Compliance with State Audit Requirements, National Association of Insurance Commissioners 4, 168 (2022). Learn more: https://content.naic.org/sites/default/files/publication-gca-zu-guide-compliance-requirements.pdf.
[26] Notice of Proposed Rulemaking, 88 Fed. Reg. 64028, 64054 (Sept. 18, 2023).

mutual insurer as issuer of the notes—information that establishes "enhanced transparency and market discipline" like that provided by investment-grade companies that have publicly traded securities.

In addition, the NPR suggests a second means by which the investment grade obligations of mutual insurers could be accorded a risk weighting no higher than 65%—*i.e.*, that these entities are "highly regulated."[27] Mutual insurers are companies that are "highly regulated" by state insurance regulators. For example, the Separate Accounts that underlie Separate Account and Hybrid BOLI policies of mutual insurers are subject to regulatory scrutiny at inception and at key subsequent points, including when investment objectives and/or investment guidelines of BOLI separate account portfolios are amended. In addition, the general account of mutual insurers is subject to significant investment restrictions and are actively regulated for solvency through measures of Risk-Based Capital whose purpose, in the view of the Society of Actuaries, is to "aim to set capital requirements in accordance with the amount of risk insurance companies take and to ensure that companies hold sufficient capital to meet their financial claims."[28]

The active regulation by state insurance regulators of the separate and general accounts of mutual life insurers—a regulatory structure that also applies to publicly-traded insurers as well—provides the Agencies with additional assurance that the corporate exposures of mutual life insurers are less risky than those from corporate entities without such regulation, and hence, should be accorded a risk weighting of no higher than 65 percent— an approach that should be accorded to the investment-grade corporate exposures of all life insurers regardless of corporate ownership structure.

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Thank you for reviewing our comments. If you have any questions or need additional information regarding this submission, please do not hesitate to contact us.

Sincerely,

Michael McDonnell
Senior Vice President & General Counsel

[27] *Id.*
[28] Jinjing Wang, *Solvency Regulations of Insurance Companies*, Society of Actuaries (Aug. 2021), https://www.soa.org/sections/education-research/educ-research-newsletter/2021/august/ehn-2021-08-wang/.