ASSURED GUARANTY INC., JORGE A. GANA

Proposal and Comment Information

Title: Regulatory Capital Rule: Category I and II Banking Organizations, Banking Organizations with Significant Trading Activity, and Optional Adoption for Other Banking Organizations, R-1887

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Submitter Information

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Organization Type: Company

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Please see attached comment letter on behalf of Assured Guaranty Inc.

June 18, 2026

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Docket ID OCC-2026-0265; RIN 1557-AF52
Docket ID OCC-2026-0034; RIN 1557-AF49

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Docket No. 1887; RIN 7100-AH20
Docket No. R-1888; RIN 7100-AH21

Re: Basel III Endgame Reproposal: Regulatory Capital Rules

Category I and II Banking Organizations, Banking Organizations With Significant Trading Activity, and Optional Adoption for Other Banking Organizations, 91 Fed. Reg. 14952 (Mar. 27, 2026) (the "**ERBA NPR**")

Regulatory Capital and Standardized Approach for Risk-Weighted Assets, 91 Fed. Reg. 15332 (Mar. 27, 2026) (the "**Standardized Approach NPR**")

Assured Guaranty Inc. appreciates the opportunity to provide the Office of the Comptroller of the Currency (the "**OCC**"), the Board of Governors of the Federal Reserve System (the "**FRB**"), and the Federal Deposit Insurance Corporation (the "**FDIC**" and together with the OCC and the FRB, the "**Agencies**") with its comments on the ERBA NPR and the Standardized Approach NPR (together, the "**Reproposal**").

Introduction

Assured Guaranty Inc. ("**Assured Guaranty**") is a financial guaranty insurer located in New York and domiciled in Maryland.[1] We are the leading provider of municipal bond insurance in the United States, providing financial guaranty insurance and reinsurance on public finance, infrastructure, and structured finance obligations throughout the nation.[2]

Assured Guaranty has been regulated by the Maryland Insurance Administration since 1987. We are licensed to write financial guaranty insurance and reinsurance in 50 U.S. states, the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands. Assured Guaranty is subject to the insurance laws of Maryland, New York, and other jurisdictions where it is licensed to do insurance business.

As we explain in Part I of this letter, Assured Guaranty operates in an insurance market that has changed substantially in the years since the financial crisis. State insurance regulators, the National Association of Insurance Commissioners (the "**NAIC**"), and the rating agencies have undertaken numerous reforms to address the underwriting concentrations and capital deficiencies that existed in the past. The business models, financial condition, and regulatory environment of the insurance companies currently engaged in the business of providing credit protection bear little resemblance to those that existed at the time of the 2008-era financial guaranty insurer failures.

Throughout this evolution in the market, Assured Guaranty has continued to provide unconditional guarantees of timely payment of scheduled principal and interest when due on municipal, public infrastructure and structured financings. Roughly 50,000 state and local governments and other authorities in the United States rely on municipal bonds to finance essential local services, and 2025 saw a record $582 billion in municipal issuance.[3] By guaranteeing the timely payment of debt service on municipal bonds, Assured Guaranty enables issuers, many of which are too small to access capital markets efficiently on their own credit, to obtain cost-effective financing. Our insurance helps municipalities fund essential public projects and services. As of March 31, 2026, Assured Guaranty insures approximately $280 billion of U.S. public finance credits, having insured over $1 trillion of such obligations since beginning operations more than forty years ago.[4] We estimate that our financial guarantees have produced approximately $8 billion in cost savings for U.S. municipal issuers over that period.

The thousands of community and regional banks in the United States face challenges that are very similar to those faced by U.S. municipalities. Just as the cost and availability of credit is a

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[1] Assured Guaranty is an indirect wholly owned operating subsidiary of Assured Guaranty Ltd. ("**AGL**"). AGL is a Bermuda-based holding company that provides, through its wholly owned operating subsidiaries, credit protection products to the U.S. and non-U.S. public finance (including infrastructure) and structured finance markets. AGL also participates in the asset management business through a subsidiary's ownership interest in Sound Point Capital Management, LP, and certain of its investment affiliates, and in the annuity reinsurance business through Assured Life Reinsurance Ltd. AGL's common shares are listed on the NYSE under the symbol "AGO."

[2] Effective August 1, 2024, Assured Guaranty's U.S. affiliate Assured Guaranty Municipal Corp. merged into Assured Guaranty, consolidating two insurance companies and producing a larger, more diversified insured portfolio supported by a larger capital base and greater claims-paying resources.

[3] *See* Municipal Securities Rulemaking Board, *Municipal Market Facts*, available at: https://www.msrb.org/sites/default/files/2022-09/MSRB-Muni-Facts.pdf.

[4] This historical figure includes policies written by predecessors of Assured Guaranty.

constraint on the capacity of municipalities to borrow, the cost and availability of credit protection is a constraint on the capacity of banks to lend.[5] That constraint will become more pressing under the Reproposal, a central objective of which is to bring lending back into the regulated banking sector[6] and slow or partially reverse the migration of lending activity to the private credit market.[7]

For this objective to succeed, community and regional banks, which account for the bulk of FDIC-insured institutions, must have access to practical and cost-effective credit risk mitigants. While the risk-based capital rules[8] (the "**Capital Rules**") allow a bank to recognize the risk-mitigating effects of "eligible guarantees," "eligible credit derivatives," and "financial collateral" for risk-based capital purposes, these tools are not well designed for community and regional banks, as we explain in Part III.

The Reproposal would revise and expand the credit risk mitigation framework by codifying recognition of bank-issued credit-linked notes, a form of credit risk mitigant used by the largest banks with permission from the applicable Agency on a case-by-case basis. However, the Reproposal does little to expand access to the credit risk mitigation framework for the thousands of smaller banks on whom the success of the Reproposal's objective – bringing lending back into the regulated banking sector – depends.

An expanded credit risk mitigation framework would support the safety and soundness of banks as they expand their share of the direct lending market. It would also make those loans more affordable to consumers and businesses. Credit protection from a regulated insurer lowers a bank's funding costs by mitigating its risk exposure and reducing the bank's required capital against the covered loan. This reduction in funding costs flows through to borrowers in the form of more competitive pricing and broader availability of credit. Indeed, Assured Guaranty and its affiliates currently provide credit protection to banks in the E.U., the U.K. and Australia, benefitting both the banks and the real economy in those jurisdictions.[9]

The Reproposal contains a number of significant changes to the credit risk mitigation framework, including the definition of "eligible guarantor," and invites public comment on many aspects of

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[5] This constraint is exacerbated by the limited access that most U.S. banks have to the capital markets. Of the more than 4,000 U.S. banks, only about 200 are listed on a major exchange and therefore able to efficiently issue common stock and preferred stock, the key components of tier 1 capital. It is comparatively difficult for the thousands of smaller U.S. banks to efficiently access the public equity markets.

[6] *See* Statement of Vice Chair for Supervision Michelle W. Bowman on Bank Capital Proposals, Federal Reserve Board (Mar. 19, 2026) (the Reproposal "would reduce incentives for traditional lending activities — like mortgage origination, mortgage servicing, and lending to businesses — to migrate outside of the regulated banking sector"). Similarly, Comptroller Gould has framed the Reproposal as "another important step in . . . restoring banks to their proper role as financial intermediaries." Comptroller Gould Statement on Notice of Proposed Rulemakings to Modernize Regulatory Capital Framework (Mar. 19, 2026). FDIC Chairman Travis Hill has echoed the same theme, observing that the Reproposal is intended to deliver "more lending and a more level regulatory playing field between the largest and smaller institutions." Travis Hill, FDIC Chairman, An Update on Reforms to the Regulatory Toolkit, ABA Washington Summit (Mar. 11, 2026).

[7] *See* Standardized NPR, at p. 15387. *See also* ERBA NPR, at p. 15147.

[8] *See* 12 C.F.R. Part 3 (OCC), Part 217 (FRB), and Part 324 (FDIC).

[9] For example, in 2024, Assured Guaranty (Europe) SA guaranteed interest and principal payments on a €93.7 million loan by Bankinter, S.A., to Metro de Madrid, S.A. The proceeds of loan were used to fund the acquisition of new trains for use in Madrid's underground network. *See* Press Release: Assured Guaranty Guarantees €93.7 Million Loan to Metro de Madrid, S.A. (Jan. 8, 2024).

that framework. While the Reproposal is a constructive first step, we respectfully suggest that more needs to be done to reflect the present-day realities of the market for credit protection insurance and the growing need of banks for such protection.

Background on the Credit Risk Mitigation Framework

The Capital Rules identify "guarantees," "credit derivatives," and "financial collateral" as credit risk mitigants. If certain eligibility criteria are met, a bank is permitted to reduce the amount of risk-based capital it must hold against a loan protected by one of these instruments.

A "**guarantee**" is defined under the Capital Rules as a "financial guarantee, letter of credit, insurance, or other similar financial instrument (other than a credit derivative) that allows one party (beneficiary) to transfer the credit risk of one or more specific exposures (reference exposure) to another party (protection provider)." To be recognized for risk-based capital purposes, the guarantee must be an "**eligible guarantee**," which, among other criteria, is a written, unconditional guarantee of contractual payment giving the bank a direct, timely, and legally enforceable claim against the protection provider, who must itself be an "**eligible guarantor**." See <u>Appendix A</u> for the full definitions of "eligible guarantee," and "eligible guarantor."

Recommendation

Our recommendation is that the Agencies revise clause (1) of the definition of "eligible guarantor" to include a prudentially regulated insurance company engaged predominately in the business of providing credit protection, provided that the applicable Agency has not designated such insurance company as ineligible based on its financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns.[10]

The remainder of this letter is organized around the following comments:

Part I: The credit-protection-insurer exclusion fails to reflect the regulatory, structural, and financial changes in the financial guaranty insurance industry since the financial crisis.

Part II: Most of the entities recognized as "eligible guarantors" have almost no role in providing credit protection to U.S. banks.

[10] Alternatively, the Agencies should revise clause (2) of the definition of "eligible guarantor" to read: "An entity (other than a special purpose entity): (i) That at the time the guarantee is issued or anytime thereafter, has <u>**(or, if the entity is investment grade, is controlled by an entity that has)**</u> issued and outstanding an unsecured debt security without credit enhancement that is investment grade; (ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and (iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer)<u>**, provided that clauses (ii) and (iii) do not apply if the entity is a prudentially regulated insurance company engaged predominately in the business of providing credit protection and the applicable Agency has not designated such insurance company as ineligible based on its financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns**</u>."

Part III: The credit-protection-insurer exclusion disproportionately harms regional and community banks.

Part IV: The credit-protection-insurer exclusion is inconsistent with international standards and puts U.S. banks at a competitive disadvantage.

Part V: The credit-protection-insurer exclusion is inconsistent with the OCC's lending limit rule.

Part VI: The Agencies should adopt a criteria-based, safeguarded approach for recognizing insurance companies engaged predominately in the business of providing credit protection.

I. The credit-protection-insurer exclusion fails to reflect the regulatory, structural, and financial changes in the financial guaranty insurance industry since the financial crisis.

As a prudentially regulated financial guaranty insurer, Assured Guaranty issues written, unconditional guarantees of contractual payments that satisfy every substantive element of an "eligible guarantee." Assured Guaranty is subject to the full prudential framework applicable to U.S. financial guaranty insurers, including statutory minimum capital and surplus requirements, contingency reserves, single- and aggregate-risk limits, investment-quality standards, and ongoing solvency supervision by our domiciliary regulator. Yet we are categorically barred from serving as an "eligible guarantor" under the credit risk mitigation framework solely because we are an insurance company engaged predominately in the business of providing credit protection.

This categorical exclusion fails to recognize the material regulatory, structural, and financial changes since the financial crisis. The state insurance regulators with primary jurisdiction over financial guaranty insurance, the NAIC, and the rating agencies have undertaken substantial post-crisis reforms. Such reforms, including those summarized below, addressed the underwriting concentrations and capital deficiencies that produced the 2008-era monoline insurance failures.

- The New York State Department of Financial Services, which regulates each of the U.S. financial guaranty insurers, issued Circular Letter No. 19, *Best Practices for Financial Guaranty Insurers,* in 2008. That guidance responded directly to the structured-finance and CDS-transformer weaknesses revealed during the financial crisis. It established supervisory expectations designed to strengthen underwriting, liquidity, concentration-risk management, investment-grade portfolio monitoring, capital adequacy, reporting, and targeted supervisory examination. It also established strict limits on the issuance of policies on CDS.[11]

- The NAIC adopted the Risk Management and Own Risk and Solvency Assessment Model Act in 2012 (effective 2015),[12] which requires in-scope insurers (including financial guaranty insurers) and insurance groups to maintain a risk management framework, conduct an own risk and solvency assessment, and file a report with their domiciliary regulators.

- The NAIC subsequently adopted Group Capital Calculation in 2020, an analytical tool that gives regulators better visibility into the risks and capital position of insurance groups.[13]

- Rating agencies that rate financial guaranty insurers (e.g., S&P Global Ratings and Moody's Ratings) substantially overhauled their capital and stress-testing

[11] *See* NY Ins. Dep't. Circular Letter No. 19 (Sept. 22, 2008).
[12] *See* Risk Management and Own Risk and Solvency Assessment Model Act (October 2012).
[13] *See* Group Capital Calculation (adopted 2020).

methodologies for such insurers following the crisis, resulting in higher capital requirements for significant portions of such insurers' guaranteed portfolios.[14]

As a result of these reforms and the evolution of the market, the financial guaranty insurance business model has changed substantially. More than 15 years ago, financial guaranty insurers generally ceased insuring credit default swaps, residential mortgage-backed securities, and collateralized debt obligations. These changes were driven by a combination of post-crisis supervisory guidance (most notably Circular Letter No. 19), evolving rating agency capital methodologies, and the industry's own recognition that these business lines were incompatible with the monoline insurer capital model.

The Reproposal also fails to recognize the claims paying record and current financial position of the prudentially regulated insurance companies currently engaged predominately in the business of providing credit protection.[15] From January 1, 2008, through March 26, 2026, Assured Guaranty and its insurance affiliates paid $15 billion in claims to protect investors' scheduled principal and interest payments,[16] and we continue to maintain ample claims-paying resources:

- At the operating-company level, Assured Guaranty holds approximately $8.365 billion of claims-paying resources as of March 31, 2026, including approximately $4.697 billion of qualified statutory capital (policyholders' surplus and contingency reserve), supporting approximately $211.6 billion of net par outstanding.

- On a consolidated basis, and inclusive of the figures above, AGL, the parent holding company for the group, holds approximately $10.021 billion of claims-paying resources as of March 31, 2026, including approximately $5.445 billion of qualified statutory capital (policyholders' surplus and contingency reserve), supporting approximately $281.5 billion of net par outstanding.

Assured Guaranty is rated AA (stable) by S&P, AA+ (stable) by KBRA, and A1 (stable) by Moody's.

The Reproposal cites, without elaboration, data, or analysis, "concerns about the wrong-way risk of monoline credit insurance,"[17] repeating the conclusory rationale advanced in 2013 (and reaffirmed in 2014) that guarantees issued by credit protection insurers "can exhibit significant wrong-way risk" and that recognizing them would be contrary to the framework's objective of mitigating systemic vulnerability and interconnectedness.[18] We are grateful, however, that the Reproposal invites public comment on the conditions upon which private mortgage insurance,

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[14] *See, e.g.*, S&P Global Ratings: Methodology And Assumptions For Analyzing Bond Insurance Capital Adequacy (July 1, 2019); Moody's Investors Service: Rating Methodology Financial Guarantors (January 20, 2015); Standard & Poor's: Bond Insurance Rating Methodology And Assumptions (August 25, 2011).

[15] In addition to Assured Guaranty, these include Build America Mutual Assurance Company (financial guaranty insurance); MGIC, Radian, Essent, Arch MI, National MI, and Enact (private mortgage insurance); and Allianz Trade, Atradius, Chubb, Coface, and Zurich (trade credit insurance).

[16] After reinsurance, reimbursements and our effective loss mitigation efforts, our net claims paid totaled $6.1 billion.

[17] ERBA NPR, p. 14971; Revised Standardized NPR, p. 15340. The Capital Rules define "wrong-way risk" as "the risk that arises when an exposure to a particular counterparty is positively correlated with the probability of default of such counterparty itself." *See* 12 C.F.R. §§3.2 (OCC), 217.2 (FRB), 324.2 (FDIC) (definition of "wrong-way risk").

[18] 78 Fed. Reg. 62018, 62104 (Oct. 11, 2013); 79 Fed. Reg. 44120, 44121 (Jul. 30, 2014).

another form of monoline credit insurance, could be recognized in determining the risk weight of residential mortgage exposures.[19]

We read that invitation as a recognition that the wrong-way-risk concerns underlying the existing exclusion can be addressed through criteria-based recognition, rather than categorical disqualification. Part VI of this letter recommends a criteria-based, safeguarded approach for recognizing as eligible guarantors insurance companies engaged predominately in the business of providing credit protection.

[19] *See* ERBA NPR, Question 21, at p. 14971; *see also* Standardized Approach NPR, Question 8, at p. 15340.

II. Most of the entities recognized as "eligible guarantors" have almost no role in providing credit protection to U.S. banks.

The definition of "eligible guarantor" recognizes two categories of credit protection provider that capture a wide range of entities, most of which have almost no role in providing credit protection to U.S. banks. The first category consists of *per se* eligible guarantors, a list of enumerated entities that includes:

- any foreign bank;
- any foreign central government and any agency, department, ministry, or central bank of any foreign central government;
- a large number of multilateral lending institutions and regional development banks;[20]
- any U.S. depository institution, bank holding company, savings and loan holding company, or credit union; and
- any qualifying clearing house or similar entity that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts.

The second category is a residual catchall category that admits any regulated or unregulated foreign or domestic entity (i) that, at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade, and (ii) whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees. However, the catchall expressly excludes special purpose entities and "any insurance company engaged predominately in the business of providing credit protection," regardless of the insurance company's financial strength, claims-paying record, and status as a prudentially regulated entity.[21]

We do not challenge the inclusion of any of the enumerated entities, nor the inclusion of a residual catchall category, as a matter of regulatory design. We respectfully submit, however, that the Reproposal's categorical exclusion of credit protection insurers from both tracks of the "eligible

[20] These include the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter–American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member or which the Board determines poses comparable credit risk. *See* 12 C.F.R. §§3.2 (OCC), 217.2 (FRB), 324.2 (FDIC) (definitions of "eligible guarantor" and "multilateral development bank (MDB)").

[21] *See* 12 C.F.R. §§3.2 (OCC), 217.2 (FRB), 324.2 (FDIC) (definition of "eligible guarantor").

guarantor" definition is arbitrary and fails to consider a more tailored alternative for achieving the regulatory objective.[22]

The Reproposal offers no rationale for why the Agencies' wrong-way-risk concern warrants the categorical exclusion of credit protection insurers when other *per se* eligible guarantors may present comparable or greater risks. The "eligible guarantor" definition recognizes (i) a host of foreign and domestic entities that are not necessarily well capitalized or subject to prudential regulation consistent with international norms, despite the systemic risks that may result from U.S. banks' reliance on credit protection provided by such entities, and (ii) U.S. banks and bank holding companies, despite the interconnectedness risks that may arise when U.S. banks provide credit protection to other U.S. banks. Our point is not to challenge the appropriateness of any of the currently listed eligible guarantors, but to challenge the categorical exclusion of the class of prudentially regulated entities whose business is providing credit protection: insurance companies engaged predominately in providing credit protection.

[22]The Administrative Procedure Act requires the Agencies to consider important aspects of the problem before them, including whether a more tailored alternative for achieving the regulatory objective. *See* Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983), at p. 43, 48.

III. The credit-protection-insurer exclusion disproportionately harms regional and community banks.

The Capital Rules currently recognize three forms of credit risk mitigant, and the Reproposal adds a fourth. However, in their present form, these credit risk mitigants are not well designed for the community and regional banks that account for the bulk of FDIC-insured institutions. The table below summarizes each of these recognized credit risk mitigants and the related implementation challenges for community and regional banks.

Recognized credit risk mitigant	**Implementation challenges for community and regional banks**
(1) Eligible guarantee A "guarantee" is a financial guarantee, letter of credit, insurance, or similar financial instrument (other than a credit derivative) that allows the bank to transfer the credit risk of one or more exposures to the credit protection provider. *A guarantee must satisfy various additional eligibility requirements in order to qualify as an "eligible guarantee," including that the credit protection provider must be an "**eligible guarantor**."*	While "guarantee" includes forms of guarantees that are familiar to community and regional banks, the "eligible guarantor" definition excludes the principal commercial source of such guarantees, which are insurance companies engaged predominately in the business of providing credit protection. The "eligible guarantor" definition is limited to (i) entities that generally have no interaction with community and regional banks, (ii) financial institutions that are generally not in the business of providing credit protection to such banks, and (iii) a residual catchall category whose generic criteria (most notably an investment-grade public debt test and a "positive correlation" prohibition) leave material uncertainty as to whether any given credit protection provider qualifies.
(2) Eligible credit derivative A "credit derivative" is a financial contract executed under standard industry credit derivative documentation that allows the bank to transfer the credit risk of one or more exposures to the credit protection provider. *A credit derivative must satisfy various additional eligibility requirements in order to qualify as an "eligible credit derivative," including that the credit protection provider must be an "**eligible guarantor**."*	As with eligible guarantees, the protection provider must be an "eligible guarantor," with the limitations described above. Beyond that gating constraint, credit derivatives present a set of obstacles for community and regional banks that limit their practical use outside the largest institutions: the inherent complexity of credit derivatives, thin counterparty markets, the internal infrastructure required to document and risk-manage ISDA-form derivatives, and the GAAP earnings volatility typically associated with derivative accounting treatment.

(3) Financial collateral[23] **(A)** Guarantee backed by **financial collateral**[24] *Since it is backed by financial collateral, the guarantee need not be an eligible guarantee.* **(B)** Credit derivative backed by **financial collateral**[25] *Since it is backed by financial collateral, the credit derivative need not be an eligible credit derivative.*	To obtain credit protection in this form, the bank or protection provider typically must arrange for a special purpose entity to issue credit-linked notes to capital-markets investors, with the proceeds posted as financial collateral securing the SPE's obligation under a guarantee or credit derivative. The structuring, documentation, marketing, and ongoing administration of such an arrangement require capital-markets infrastructure that most community and regional banks do not maintain and that, for a single transaction, would not be cost-effective to build. Moreover, if a guarantee or swap is characterized as "insurance" or "financial guaranty insurance" under state insurance laws, the SPE could be deemed to be engaged in the unauthorized selling of insurance.
(4) Eligible prepaid credit protection arrangement (*new*) A prepaid credit protection arrangement is a contractual arrangement under which the bank transfers the credit risk of one or more reference exposures to a protection provider where: (1) The protection provider pays an initial principal amount in cash to the bank at the inception of the transaction; and (2) The bank is obligated to repay the initial principal amount to the protection provider on or before the maturity date of the transaction, less any losses that the bank realizes or otherwise recognizes due to nonpayment of all contractual payments due to be paid on the reference exposure or reference exposures by the obligors. *Such an arrangement must satisfy various additional eligibility requirements in order to qualify as an "eligible prepaid credit protection arrangement."*	Bank-issued credit-linked notes (the prototypical "eligible prepaid credit protection arrangement") are most readily structured and placed by the largest banking organizations. In a bank-issued CLN, the bank is the issuer of the note, with investors exposed both to the reference exposures and to the bank's own credit. For a community or regional bank without rated unsecured debt or an established institutional investor base, the bank's credit-spread cost typically makes CLN issuance uneconomic. In addition, unlike the large banks, smaller banks generally lack the established capital markets infrastructure and the credit standing to market unsecured obligations to investors at acceptable cost.

[23] "Financial collateral" is defined as "collateral: **(1)** In the form of: (i) Cash on deposit with the Board-regulated institution (including cash held for the [bank] by a third-party custodian or trustee); (ii) Gold bullion; (iii) Long-term debt securities that are not resecuritization exposures and that are investment grade; (iv) Short-term debt instruments that are not resecuritization exposures and that are investment grade; (v) Equity securities that are publicly traded; (vi) Convertible bonds that are publicly traded; or (vii) Money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and **(2)** In which the [bank] has a perfected, first-priority security interest or, outside of the United States, the legal equivalent thereof, (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP)." *See* 12 C.F.R. §§3.2 (OCC), 217.2 (FRB), 324.2 (FDIC) (definition of "financial collateral").

[24] In this form, financial collateral secures a guarantor's obligation under a guarantee that does not otherwise satisfy the criteria for an "eligible guarantee."

[25] In this form, financial collateral secures a counterparty's obligation under a credit derivative that does not otherwise satisfy the criteria for an "eligible credit derivative."

Financial guaranty insurance from a prudentially regulated insurer would help ensure parity between large and small banks under the credit risk mitigation framework. Such insurance is an unconditional and irrevocable guarantee of scheduled debt payments, provided by a counterparty subject to ongoing state-insurance regulation, available to a community or regional bank on terms it can negotiate bilaterally without building bespoke capital-markets infrastructure. It requires no ISDA documentation, no SPE structure, no credit-linked note issuance, and no investor placement. Financial guaranty insurance unconditionally guarantees the scheduled principal and interest of the underlying obligation when and as it becomes due from the obligor. It is, in form and substance, the kind of unconditional credit protection the eligible guarantee framework was designed to recognize.

Recognizing as eligible guarantors prudentially regulated insurance companies engaged predominately in the business of providing credit protection would extend the practical reach of the credit risk mitigation framework to the very institutions whose direct lending capacity the Reproposal seeks to support. It would do so through counterparties whose financial strength, claims-paying record, and ongoing prudential supervision are at least equal to, and in many respects exceed, those of the entities currently within the "eligible guarantor" definition.

IV. The credit-protection-insurer exclusion is inconsistent with international standards and puts U.S. banks at a competitive disadvantage.

The Reproposal's categorical exclusion of credit protection insurers is inconsistent with the Basel framework and the implementation of that framework in other major jurisdictions. Indeed, the Basel Committee standard expressly contemplates prudentially regulated insurance companies as eligible guarantors, and the European Union, the United Kingdom, Canada, and Australia each recognize prudentially regulated or highly-rated insurers as eligible providers of credit protection. None of those jurisdictions imposes a credit protection insurer carve-out.

- **Basel Committee Standards.** The Basel framework does not exclude insurers engaged predominately in the business of providing credit protection. Indeed, it affirmatively recognizes prudentially regulated financial institutions as eligible guarantors and defines that category to include insurance companies expressly. The Basel Committee standard (CRE22.76) provides that an eligible guarantor includes a "prudentially regulated financial institution,"[26] which it defines as:

  > a legal entity supervised by a regulator that imposes prudential requirements consistent with international norms or a legal entity (parent company or subsidiary) included in a consolidated group where any substantial legal entity in the consolidated group is supervised by a regulator that imposes prudential requirements consistent with international norms. These include, but are not limited to, ***prudentially regulated insurance companies***, broker/dealers, thrifts and futures commission merchants, and qualifying central counterparties as defined in CRE54.[27]

- **European Union.** The EU implements the eligible protection provider framework through Article 201 of the Capital Requirements Regulation, which lists the eligible providers of credit protection.[28] Article 201(1) was amended in 2024 to add a dedicated category, "regulated financial sector entities."[29] That term is defined to mean a financial sector entity subject to prudential supervisory requirements,[30] and "financial sector entity," in turn, is defined to include insurance and reinsurance companies.[31] The EU has no credit-protection-insurer carve-out.

- **United Kingdom**. The UK implements the eligible protection provider framework through the PRA Rulebook's Credit Risk Mitigation (CRR) Part, which lists the eligible providers

[26] *See* Basel Committee on Banking Supervision, *Standardised Approach: Credit Risk Mitigation*, CRE22.76(1) (01 Jan. 2023).
[27] *Id*., fn. 11 (emphasis added).
[28] *See* Regulation (EU) No 575/2013, art. 201(1).
[29] *See* Regulation (EU) 2024/1623 (CRR3), art. 1, point (115).
[30] *See* Regulation (EU) No 575/2013, arts. 201(1), 142(1), pt. (4)(b) (recognizing as an eligible "regulated financial sector entity" an entity that "is subject to prudential requirements" consistent with EU norms).
[31] *See* Regulation (EU) No 575/2013, art. 4(1)(27).

of credit protection.[32] That list includes central governments and central banks, regional governments and local authorities, multilateral development banks, public sector entities, institutions, certain financial institutions treated as institutions, central counterparties, and "other corporate entities" that hold an external credit rating.[33] A prudentially regulated insurer with an external credit rating qualifies as an "other corporate entity." The UK has no credit-protection-insurer carve-out.

- **Canada.** Canada implements the framework through its Capital Adequacy Requirements (CAR) Guideline, Chapter 4 of which governs eligible guarantors under the standardized approach.[34] The CAR Guideline reproduces the Basel CRE22.76 formulation almost verbatim, recognizing protection from sovereigns, public sector entities, multilateral development banks, banks, securities firms, and other prudentially regulated financial institutions, and expressly defining that category to include "prudentially regulated insurance companies."[35] Canada has no credit-protection-insurer carve-out.

- **Australia.** Australia implements the eligible protection provider framework through the Australian Prudential Regulation Authority's Prudential Standard APS 112 (Capital Adequacy: Standardised Approach to Credit Risk).[36] The list of eligible guarantors and credit protection providers includes sovereigns, banks, and "other entities that are externally rated," where the protection provider has a lower risk weight than the counterparty. Australia has no credit-protection-insurer carve-out.

The Basel definition, and international implementations thereof, turn on prudential regulation or external rating, not categorical inclusion or exclusion based on an insurer's business model. The Agencies have not offered any data or rationale (beyond conclusory assertions of "wrong-way risk") to support their policy choice to categorically exclude all insurance companies engaged predominately in the business of providing credit protection.

The U.S. divergence from international standards and the Reproposal's shortcomings under the Administrative Procedure Act are not mere technical concerns. Because the Agencies deny recognition that the Basel framework and other peer jurisdictions afford, U.S. banking organizations are foreclosed from an efficient form of credit risk mitigation available to their foreign competitors. As the Bank Policy Institute and the American Bankers Association noted in their comment letter on the original Basel III Endgame Proposal, "the eligible guarantor requirement would restrict the ability of banks to recognize the credit risk mitigation benefits of guarantees and other risk-mitigating transactions with insurance and reinsurance companies, in

[32] *See* PRA Rulebook: CRR Firms: (CRR) Instrument 2026 (PRA 2026/1), Annex F (Credit Risk Mitigation (CRR) Part), art. 201(1) (effective 1 Jan. 2027); *see also* Assimilated UK CRR, Regulation (EU) No 575/2013, art. 201 (currently in force).
[33] *See* PRA Rulebook: CRR Firms: (CRR) Instrument 2026 (PRA 2026/1), Annex F (Credit Risk Mitigation (CRR) Part), art. 201(1)(g) (effective 1 Jan. 2027) (recognizing "other corporate entities … where those other corporate entities have a credit assessment by an ECAI" (*i.e.*, an external credit rating from a recognized rating agency)).
[34] *See* Office of the Superintendent of Financial Institutions (OSFI), Capital Adequacy Requirements (CAR) Guideline (2026), ch. 4.
[35] *Id*., ch. 4, para. 268 and fn. 95.
[36] *See* Attachment I (Guarantees) and Attachment J (Credit derivatives).

particular as compared to foreign banks that are subject to capital rules that have no such restriction."[37]

This competitive advantage is particularly acute for smaller U.S. banks, which compete not only with larger U.S. banks, but with foreign banks that face no comparable constraint in their home jurisdictions. The Reproposal does not address that consequence. By choosing to preserve the disqualification of credit protection insurers as eligible guarantors while simultaneously expanding the credit risk mitigation framework in ways that benefit the largest banking organizations, the Reproposal narrows the framework's practical availability for smaller banks. That choice frustrates several of the Agencies' own stated objectives, including bringing lending back into the regulated banking sector, maintaining consistency with the international framework, and preserving the international competitiveness of all U.S. banks, not only the largest ones.

[37] See joint letter of the Bank Policy Institute and American Bankers Association (January 16, 2024), at p. 121.

V. The credit-protection-insurer exclusion is inconsistent with the OCC's lending limit rule.

The exclusion of credit protection insurers is inconsistent not only with international standards, but with the OCC's treatment of state-supervised insurance companies in a closely related credit-risk-mitigation context. The OCC's lending limit rule, 12 C.F.R. Part 32, generally prohibits a national bank's loans and extensions of credit to one borrower from exceeding 15% of the bank's capital and surplus.[38] The rule provides, however, that the portion of a loan covered by credit protection purchased from an "eligible protection provider" does not constitute a "loan or extension of credit" at all, and therefore does not count toward the lending limit.[39]

The "eligible protection provider" definition uses an enumerated list that substantially overlaps with the "eligible guarantor" definition, but adds, without qualification, "[a]n insurance company that is subject to the supervision of a State insurance regulator."[40] The OCC imposes no separate credit-protection-insurer carve-out.

The Agencies have offered no explanation for why credit protection from a state-supervised insurer is sufficiently reliable, in the OCC's judgment, to remove an exposure from a national bank's lending limit entirely, yet categorically insufficient to receive any recognition under the capital rules administered by that same agency. This rulemaking presents an opportunity for the Agencies to eliminate the discrepancy whereby the same category of provider yields opposite results in two adjacent rules.

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[38] See 12 C.F.R. §32.3(a).

[39] *See* §32.2(q)(2)(vii). The portion of the loan or extension of credit so excluded is capped at 10% of the bank's capital and surplus.

[40] *See* 12 C.F.R. §32.2(o)(9).

VI. The Agencies should adopt a criteria-based, safeguarded approach for recognizing insurance companies engaged predominately in the business of providing credit protection.

The Agencies should revise clause (1) of the definition of "eligible guarantor" to include:

> **A prudentially regulated insurance company engaged predominately in the business of providing credit protection, provided that the applicable Agency has not designated such insurance company as ineligible due to its financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns.[41]**

Our proposal would align the U.S. rule with the Basel framework and its implementations in the EU, the UK, and Canada, as well as with the OCC's lending limit rule. Our proposal is also consistent with the criteria-based approach already used by the Capital Rules to determine whether a "central counterparty"[42] is a "qualifying central counterparty" and thus a *per se* eligible guarantor.[43] The definition of "qualifying central counterparty" permits the applicable Agency to disqualify a particular central counterparty on the same prudential grounds we propose for credit protection insurers: financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns.[44]

These safeguards go above and beyond those that apply to nearly all other types of "eligible guarantors." Specifically, with the exception of qualifying central counterparties, the list of *per se* eligible guarantors does not impose any condition based on the entity's financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns. Moreover, the

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[41] Alternatively, the Agencies should revise clause (2) of the definition of "eligible guarantor" to read: "An entity (other than a special purpose entity): (i) That at the time the guarantee is issued or anytime thereafter, has **(or, if the entity is investment grade, is controlled by an entity that has)** issued and outstanding an unsecured debt security without credit enhancement that is investment grade; (ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and (iii) That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer)**, provided that clauses (ii) and (iii) do not apply if the entity is a prudentially regulated insurance company engaged predominately in the business of providing credit protection and the applicable Agency has not designated such insurance company as ineligible based on its financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns**." With respect to clause (i), we agree with and adopt the recommendation of the International Association of Credit Portfolio Managers (IACPM) and the International Trade and Forfaiting Association (ITFA) that the outstanding investment grade debt security requirement should be modified to include operating subsidiaries that act as direct guarantors, where those subsidiaries are themselves investment grade. Credit protection is frequently provided by an operating subsidiary that does not itself issue debt, with the result that the requirement goes unmet at the level of the direct guarantor even where that subsidiary is itself of investment grade credit quality.

[42] A "central counterparty" is "a counterparty (for example, a clearing house) that facilitates trades between counterparties in one or more financial markets by either guaranteeing trades or novating contracts." *See* 12 C.F.R. §§3.2 (OCC), 217.2 (FRB), 324.2 (FDIC) (definition of "central counterparty").

[43] *See* 12 C.F.R. §§3.2 (OCC), 217.2 (FRB), 324.2 (FDIC) (clause (1) of the definition of "eligible guarantor").

[44] The definition of "qualifying central counterparty (QCCP)" excludes any central counterparty "determined by the [applicable Agency] not to be a QCCP due to its financial condition, risk profile, failure to meet supervisory risk management standards, or other weaknesses or supervisory concerns that are inconsistent with the risk weight assigned to qualifying central counterparties under [the provisions for calculating risk-weighted assets for cleared transactions]." *See* 12 C.F.R. §§3.2 (OCC), 217.2 (FRB), 324.2 (FDIC) (definition of "qualifying central counterparty (QCCP)," clause (2)(iii)).

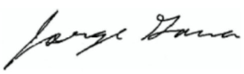
catchall category of "eligible guarantor" does not impose any condition that the entity be subject to prudential regulation.

Our proposal would impose all of the above conditions. It does so not to facilitate admission of providers whose role in credit protection is currently nonexistent or tangential, but simply to admit precisely the entities most capable of, and specialized in, issuing the types of unconditional guarantees described in the definition of "eligible guarantee": prudentially regulated insurance companies that are engaged predominately in the business of providing credit protection and that are financially sound and in good supervisory standing.

Conclusion

We appreciate the opportunity to respond to the Reproposal. If you have any questions or would like additional information, please contact the undersigned at JGana@agltd.com.

Yours sincerely,



Jorge A. Gana
Chief Risk Officer
Assured Guaranty Ltd.,
on behalf of Assured Guaranty Inc.

Definitions of "Guarantee," "Eligible Guarantee," and "Eligible Guarantor"

"**Guarantee**" means a financial guarantee, letter of credit, insurance, or other similar financial instrument (other than a credit derivative) that allows one party (beneficiary) to transfer the credit risk of one or more specific exposures (reference exposure) to another party (protection provider).[45]
"**Eligible guarantee**" means a guarantee that: (1) Is written; (2) Is either: (i) Unconditional, or (ii) A contingent obligation of the U.S. government or its agencies, the enforceability of which is dependent upon some affirmative action on the part of the beneficiary of the guarantee or a third party (for example, meeting servicing requirements); (3) Covers all or a pro rata portion of all contractual payments of the obligated party on the reference exposure; (4) Gives the beneficiary a direct claim against the protection provider; (5) Is not unilaterally cancelable by the protection provider for reasons other than the breach of the contract by the beneficiary; (6) Except for a guarantee by a sovereign, is legally enforceable against the protection provider in a jurisdiction where the protection provider has sufficient assets against which a judgment may be attached and enforced; (7) Requires the protection provider to make payment to the beneficiary on the occurrence of a default (as defined in the guarantee) of the obligated party on the reference exposure in a timely manner without the beneficiary first having to take legal actions to pursue the obligor for payment; (8) Does not increase the beneficiary's cost of credit protection on the guarantee in response to deterioration in the credit quality of the reference exposure; (9) Is not provided by an affiliate of the [banking organization], unless the affiliate is an insured depository institution, foreign bank, securities broker or dealer, or insurance company that:

[45] *See* 12 C.F.R. §§3.2 (OCC), 217.2 (FRB), 324.2 (FDIC) (definition of "guarantee").

(i) Does not control the [banking organization]; and

(ii) Is subject to consolidated supervision and regulation comparable to that imposed on depository institutions, U.S. securities broker-dealers, or U.S. insurance companies (as the case may be); and

(10) [For purposes of §§__.141 through ___.145 and subpart D of this part,] is provided by an **eligible guarantor**.[46]

"**Eligible guarantor**" means:

(1) A sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, Federal Agricultural Mortgage Corporation (Farmer Mac), the European Stability Mechanism, the European Financial Stability Facility, a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty; or

(2) An entity (other than a special purpose entity):

(i) That at the time the guarantee is issued or anytime thereafter, has issued and outstanding an unsecured debt security without credit enhancement that is investment grade;

(ii) Whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees; and

(iii) **That is not an insurance company engaged predominately in the business of providing credit protection (such as a monoline bond insurer or re-insurer)**.[47]

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[46] *See* 12 C.F.R. §§3.2 (OCC), 217.2 (FRB), 324.2 (FDIC) (definition of "eligible guarantee") (emphasis added). The Reproposal would amend clause (10) to delete the existing limitation that restricts the eligible-guarantor requirement to guarantees provided under 12 C.F.R. §§___.141–145 (the securitization framework under the advanced approaches) and subpart D (risk-weighted assets under the standardized approach), thus extending the requirement to all eligible guarantees across the credit risk mitigation framework.

[47] *See* 12 C.F.R. §§3.2 (OCC), 217.2 (FRB), 324.2 (FDIC) (definition of "eligible guarantor") (emphasis added).