

# United States Senate

WASHINGTON, DC 20510

January 17, 2024

The Honorable Jerome H. Powell  
Chairman  
Board of Governors of the Federal Reserve  
System  
20th Street and Constitution Avenue NW  
Washington, D.C. 20551

Mr. Michael J. Hsu  
Acting Comptroller  
Office of the Comptroller of the Currency  
400 7th Street SW  
Washington, D.C. 20219

The Honorable Martin J. Gruenberg  
Chairman  
Federal Deposit Insurance Corporation  
550 17th Street NW  
Washington, D.C. 20429

Dear Chairman Powell, Chairman Gruenberg, and Acting Comptroller Hsu:

We are writing to express our significant concerns regarding the proposed rule by three Federal banking agencies (the Board of Governors of the Federal Reserve System (“Federal Reserve”), the Federal Deposit Insurance Corporation (“FDIC”) and the Office of the Comptroller of the Currency (“OCC”)) requiring the issuance of long-term debt (LTD) by certain financial institutions.<sup>1</sup>

First, we believe that the proposed rule contradicts the statutory requirements of the *Economic Growth, Regulatory Relief, and Consumer Protection Act* (S. 2155), which requires tailored application of enhanced prudential standards (EPS) for firms subject to those requirements, including Category III and IV banking organizations. The statute provides that if the Federal Reserve applies EPS for these firms, then it “shall... differentiate amongst companies on an individual basis or by category,” in prescribing such prudential standards.<sup>2</sup> Moreover, to apply EPS, such as a LTD requirement for banks with between \$100-250 billion in assets, the federal banking agencies are required to make a formal determination that the proposed application is appropriate to prevent or mitigate risks to U.S. financial stability, or to promote safety and

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<sup>1</sup> <https://www.federalregister.gov/documents/2023/09/19/2023-19265/long-term-debt-requirements-for-large-bank-holding-companies-certain-intermediate-holding-companies>

<sup>2</sup> <https://www.congress.gov/115/plaws/publ174/PLAW-115publ174.pdf> - Title IV, Sec. 401(b)(1). Chair Powell recognized in testimony before Congress that the Federal Reserve must tailor any final LTD requirements. See *The Federal Reserve's Semi-Annual Monetary Policy Report: Hearing Before the H. Comm. on Fin. Servs.*, 118th Cong. (Mar. 8, 2023) (testimony of Chair Powell in response to a question regarding a potential LTD requirement for Category II through IV banking organizations) (“We believe strongly and always have in tailoring to address the different size and risk characteristics of financial institutions and certainly nothing like that for the regionals. They won’t have anything like what the very large, most systemically important banks have in terms of overall regulation . . . We’re required by the law now and we’re doing this [tailoring]. Dodd-Frank actually required us, suggested that we should tailor, and then S. 2155 required it. And anything that we do will reflect appropriate tailoring.”).

soundness of the bank.<sup>3</sup> To date, no differentiation has been proposed and no public determination has been made, contrary to the statutory requirements.

Further, the proposal unduly burdens certain U.S. banks by requiring Category II-IV banking organizations to hold long-term debt at both the parent holding company and insured depository institution bank level. In contrast, Category I banking organizations need to issue from the parent company only. This inclusion of a separate bank-level requirement places a meaningful incremental requirement on smaller banks that is not applied to U.S. Global Systemically Important Banks (G-SIBs). Additionally, the proposal's requirement that Category II-IV banks issue LTD at 6% of risk-weighted assets establishes a capital refill construct wholly inappropriate for these institutions. The capital refill construct was designed for U.S. G-SIBs to avoid regulatorily-driven divestitures and to ensure critical subsidiaries continue to operate in the event of the holding company's insolvency or bankruptcy. Category II-IV institutions are different, as they can be resolved through other means, including by being acquired [in whole or in part] by a healthier bank. For these reasons, any final rule should be properly calibrated consistent with the S. 2155 statutory tailoring mandate.<sup>4</sup>

Second, the cost of the LTD proposal to covered banking organizations, particularly for Category IV banking organizations, would be significant. The agencies use two alternative approaches to analyze the costs of the proposal: the "incremental shortfall approach" and the "zero-baseline approach." Under the incremental shortfall approach, the agencies estimate that the affected banks would need to issue approximately \$70 billion of long-term debt during a three-year phase-in period. For Category II and III banking organizations, the estimated aggregate total shortfall is approximately \$20 billion. For Category IV banking organizations, the estimated aggregate total shortfall is approximately \$50 billion. Already substantial, this estimate provides an incomplete evaluation, as it does not adequately reflect the amount of LTD these institutions will have to issue due to changes made by the Basel III endgame proposal and, more generally, may not reflect the total shortfall accurately.<sup>5</sup>

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<sup>3</sup> <https://www.congress.gov/115/plaws/publ174/PLAW-115publ174.pdf> - Title IV, Sec. 401(a)(1)(C)(i)(II)

<sup>4</sup> Federal Reserve Governors expressed concerns that the proposal's lack of tailoring did not comply with the statute. See, e.g., Statement by Governor Michelle W. Bowman on the Proposed Long-term Debt Requirements and Proposed Guidance for Resolution Plan Submissions of Domestic Triennial Full Filers (Aug. 29, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20230829.htm#:> ("...collapsing Categories II, III, and IV into a single prudential category may call into question whether the Federal Reserve is complying with the statutory requirements to tailor prudential requirements for large firms..."); Statement by Governor Christopher J. Waller on the Long-Term Debt Requirement Proposal (Aug. 29, 2023), <https://www.federalreserve.gov/newsevents/pressreleases/waller-statement-20230829.htm> ("I am concerned that our regulatory framework for large banks is moving in a direction that does not tailor requirements in a manner consistent with the spirit of the Dodd-Frank Act, as amended by Congress in 2018).

<sup>5</sup> The Bank Policy Institute (BPI) estimates that the actual LTD shortfall under the LTD proposal requirements would be \$186.6 billion (\$83 billion for Category II and III banking organizations and \$103.6 billion for Category IV banking organizations), or 2.7 times the Agencies' estimate under the incremental shortfall approach. See Haelim Anderson, Francisco Covas, and Felipe Rosa, *The Long-Term Debt Proposal and Bank Profitability* (Dec. 7, 2023), available at <https://bpi.com/the-long-term-debt-proposal-and-bank-profitability/>.

The LTD proposal's stringent requirements would inevitably increase costs for Category II-IV banking organizations at a competitive disadvantage relative to U.S. G-SIBs, ultimately reducing covered banks' ability to lend and resulting in higher costs to consumers and businesses. In fact, research suggests the total bank funding costs for Category II-IV banks would reach \$4.9 billion, three times the proposal's estimated costs of \$1.6 billion.<sup>6</sup> Given that these institutions are critical sources of credit to consumers, small- and medium-sized businesses, and municipalities, the agencies should first perform an accurate cost-benefit analysis before finalizing the proposal.

Third, a study of the combined impacts of other concurrent rulemakings, including the Basel III endgame proposal, is also absent from the proposal<sup>7</sup>. In the preamble to the LTD proposal, the agencies state that if adopted as proposed, the Basel III endgame changes would "lead mechanically to increased requirements for LTD under the LTD proposal." While we continue to believe the Basel III endgame proposal should be withdrawn and rewritten, your agencies should delay further interrelated rulemakings until the capital impacts can be calculated after the proposal is finalized. The LTD proposal also understates the amount of long-term debt required for covered banks, because the risk-weighted assets used are not calculated based on the increased risk-weighted assets resulting from the new Basel III proposal. Further, banking organizations do not yet know how the upcoming additional changes to liquidity risk management and resolution planning will interact with the long-term debt requirements. We urge your agencies to conduct, and publicly release for comment, a comprehensive economic impact and cost-benefit analysis of the LTD proposal in conjunction with the Basel III endgame proposal and other expected rulemakings before pursuing a LTD requirement for Category II-IV banks.

Finally, under the current proposal, banks would have three years to comply with the LTD requirements after its adoption. The proposed implementation schedule would cause many banking organizations to enter the debt market simultaneously, which may materially increase borrowing costs by flooding the market. The LTD proposal acknowledges the "risk that efforts by [banks] to issue a large volume of LTD over a limited period could strain the market capacity to absorb the full amount of such issuance if issuance volume exceeds debt market appetite for LTD instruments." However, the proposal does not quantify the potential costs of insufficient market capacity, nor does it consider the potential effect of a nearly 25% increase in annual LTD on investor demand, pricing, or credit spreads; or the high-interest rate environment's impact on the cost of LTD.

Accordingly, we strongly encourage you to reconsider the long-term debt proposed rule and conduct a more comprehensive economic impact and cost-benefit analysis to address the aforementioned concerns. Any final rule should properly calibrate the requirements to the specific size and risk of the financial institution and consider the impacts to covered banks' ability to provide credit to consumers and small businesses. At a minimum, your agencies

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<sup>6</sup> <https://bpi.com/the-long-term-debt-proposal-and-bank-profitability/>

<sup>7</sup> <https://www.federalregister.gov/documents/2023/09/18/2023-19200/regulatory-capital-rule-large-banking-organizations-and-banking-organizations-with-significant>

should delay the LTD proposal's finalization until there is a full understanding of the implications that would result from the Basel III endgame proposal and the cumulative impact of other concurrent agency rulemakings.

Thank you for your attention to this important matter.

Sincerely,



Katie Boyd Britt  
United States Senator



Tim Scott  
Ranking Member



Mike Crapo  
United States Senator



M. Michael Rounds  
United States Senator



Thom Tillis  
United States Senator



John Kennedy  
United States Senator



Bill Hagerty  
United States Senator



Cynthia Lummis  
United States Senator



Kevin Cramer  
United States Senator



Steve Daines  
United States Senator