January 3, 2024

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

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

Mr. James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

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 Independent Community Bankers of America ("ICBA")[1] appreciates the opportunity to comment on the proposed rule titled "Long-Term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions" ("Proposal"). The agencies are issuing the Proposal to expand the existing requirement that certain large global systemically

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[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding nearly $5.9 trillion in assets, over $4.9 trillion in deposits, and more than $3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

important banking organizations maintain minimum levels of long-term debt that could be used by regulators to stabilize a failed financial institution in a resolution proceeding.

Under the Proposal, category II, III, and IV financial institutions would join category I entities in the long-term debt stabilization framework, with the scope generally capturing banking organizations with total consolidated assets of $100 billion or more. Required long-term debt would need to be able to absorb losses at a high enough level to protect the FDIC's Deposit Insurance Fund (the "DIF") and allow regulators to pursue an orderly and cost-effective resolution of the failed institution. The agencies believe that the presence of this new loss absorbing long-term debt will have the additional benefit of making these institutions less likely to see the rapid and immediate deposit runs that occurred at Silicon Valley Bank and Signature Bank last March when deposits suddenly left those banks.

The proposal would improve the resolvability of large banks because the long-term debt would be available to absorb losses in the event of a large bank failure and provide the FDIC with a broader range of options for resolving large banks. By requiring these institutions to have an additional layer of loss absorption that would be subordinate to the claims of depositors and unsecured creditors, the proposal would also reduce the costs to the DIF by reducing the risk of loss to depositors.

ICBA fully supports the Proposal which is based on the fundamental premise that private capital should be used whenever possible to protect large institutions, their depositors, and taxpayers in the event that a large banking institution becomes insolvent. As regulators have recently seen, information on the safety and soundness of large banking organizations can move at impressive speeds causing a troubled institution to lose core deposits immediately with the click of a couple of buttons. Gone are the days when bank management possessed the ability to develop a liquidity plan to combat insolvency over extended periods of time as negative conditions materialized. ICBA believes that requiring additional levels of long-term debt for large banks will help protect community banks from the consequences of large-scale bank failures. The issuance of the Proposal confirms ICBA's claim that many of the large banking institutions in the United States are too-big-to-fail banks that have the ability to bring pain and suffering to the domestic and global capital markets, U.S. consumers and small businesses, and the resiliency of the overall economy.

The Proposal

The Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation are proposing that banking organizations with total consolidated assets of $100 billion and above issue and maintain long-term debt at minimum amounts. By requiring these large banking organizations to manage balances of long-term debt obligations, the agencies are aiming to improve the probability that a large bank can be resolved in an orderly and cost-effective manner at minimal cost to the DIF. The agencies are also hopeful that the requirement to issue long-term debt will institute some market discipline into these covered banking organizations. This proposal would be an expansion of existing rules requiring certain long-term debt instruments to be issued externally and maintained by global systemically important banking organizations to absorb losses in a resolution proceeding.

Banking organizations subject to the proposed rule would be required to maintain outstanding long-term debt balances equal to the greater of (1) 6% of the entity's total risk-weighted assets, (2) 3.5% of the entity's average total consolidated assets, or (3) 2.5% of the entity's total leverage exposure if the entity is subject to the supplementary leverage ratio. These levels are designed to ensure that the banking organization would have sufficient going-concern capital to meet the required minimum leverage capital requirements and common equity tier 1 risk-based capital requirements plus the capital conservation buffer in the event that a bridge depository institution needed to be capitalized. Eligible long-term debt would need to meet the following characteristics:

-subordinate to depositors and general unsecured claims;
-represent paid in and issued directly by the issuer to the external party;
-issued only by the identified covered entity;
-unsecured and not guaranteed by the issuer, its subsidiary, or an affiliate;
-must exclude structured notes or instruments that have principal protection features;
-have a maturity of greater than one year from the date of issuance;
-have a 50% haircut for any debt issued with principal due in less than two years;
-contain only "plain vanilla" features that do not interfere with the resolution of the entity or allow credit-sensitive payments; and
-be issued under U.S. law in a minimum denomination of $400,000.

Covered entities under the Proposal would be prohibited from maintaining exposure to rollover risk or other risks that could force the entity to quickly generate cash under stressful financial conditions by not permitting the issuance of debt instruments with an original maturity of less than one year. Compliance with the final rule would be achieved over a period of three years beginning with the effective date of the final rule. Twenty-five percent of the long-term debt requirement would be met after the first year with 50% being met after the second year.

Financial institutions that are covered entities controlled by a parent identified as a covered bank holding company or a covered savings and loan holding company would be required to issue long-term debt internally at the financial institution to the controlling parent organization that consolidates the institution, who would in turn be required to purchase the long-term debt from the financial institution it consolidates. The parent bank holding company or savings and loan holding company would issue offsetting long-term debt externally to nonaffiliates. If a covered financial institution is not a consolidated subsidiary of a covered bank holding company or savings and loan holding company, the covered financial institution would be permitted to issue long-term debt externally to nonaffiliates.

ICBA's Comments

ICBA supports efforts by the banking agencies to increase the resiliency of the domestic banking system by requiring the smooth transition of a failed large financial institution when such an entity become insolvent. **Assigning risk-based regulatory requirements to large banks that pose the greatest systemic risk to the banking system ensures that community banks are less likely to be punished when a larger bank brings instability to otherwise efficient capital markets and traditional banking activities.** This and other actions by the banking agencies to strengthen the viability of the U.S. banking system are being proposed at a time when recent large bank failures have shown the elevated levels of uninsured deposits at large institutions and the ease with which depositors can move funds when they feel that cash is at risk. These risks will only increase as account holders utilize the speed of the internet to stay updated on the financial condition of their depository institution of choice.

ICBA agrees with the banking agencies that the Proposal would improve the resolvability of large banks because the long-term debt can be used to absorb losses and create equity in a resolution proceeding. In particular, because the debt at a covered institution is subordinate to deposits and general unsecured creditors and can be left behind in the receivership of a failed bank, it can absorb losses in the resolution of a covered entity and mitigate the risk that any depositors would take losses in the resolution of the bank. Because the debt absorbs losses before deposits—including the DIF (as subrogee of insured depositors)—a requirement to require all large banks to issue debt would give the FDIC greater flexibility, including to potentially transfer all deposit liabilities (including uninsured deposit liabilities) of a failed bank to an acquirer or to a bridge depository institution in a manner consistent with the least-cost requirement under the Federal Deposit Insurance Act of 1950. The new debt requirement would also expand the range of options available in exit from a bridge depository institution by improving the ability to capitalize and stabilize the bridge, allowing time to restructure or to sell deposits and assets in pieces.

Together with the use of the Single Point of Entry strategy, ICBA believes that the Proposal increases the likelihood that community banks can successfully bid on the assets or liabilities a failed large bank. No longer would it be necessary that the FDIC sell a large, failed bank to a much larger bank over a short period of time. With sufficient lead time, a community bank that does not have the resources to act within say a weekend would have the ability to source a competitive bid for large bank assets and liabilities since community bank management teams would have the opportunity to more thoroughly evaluate risks and opportunities. By using subordinated long-term debt as a source of stabilization capital in the event of large bank insolvency, prudential bank regulators and taxpayers would also benefit since such failures would not deplete the DIF.

Issuance of long-term debt by large bank holding companies would also mean more transparency regarding the financial condition of large banks. Any increased risk-taking activities on the part of bank management would be immediately frowned upon by the credit-sensitive instrument holders causing bond prices to decline, or at a minimum increase the volatility of the bond's price. Likewise, bank managements within the large bank holding companies that successfully keep safety and soundness, liquidity, and quality earnings a focus in their day-to-day operations will be rewarded with strong and stable bond prices, further indicating that the bank is well managed and able to weather any meaningful financial difficulties that could be faced in the broader economy.

Allowing the capital markets to dictate credit quality of large financial organizations through the risk-adjusted assessment of future cash flows is a prudent oversight tool with a built-in mechanism to ensure that these large bank holding companies are not exposing the nation to undue risks. Had the bank managements of the recent high profile failed large banks been forced to navigate their banks using the heightened interest rate risk profile that led to their demise, liability pricing on these subordinated instruments could have indicated a troubling situation much earlier than was observed in the equity markets.

Shifting the resolution of a failed large financial institution from the DIF and the U.S. taxpayer to the private capital markets should be a goal for bank regulators. If the Proposal is enacted, debt holders of large banks will force these institutions to maintain sound, well capitalized, and accountable organizations that are less willing to engage in excessive risk activities that could penalize bond valuations. Additionally, early warning signs of instability in a large banking organization would be displayed by the bond market much sooner than would be observed by equity holders forcing the bank to take early action to correct missteps or raise equity capital. Most importantly, requiring large banking organizations to maintain sufficient levels of long-term debt that are always ready to absorb losses ensures that the banking agencies will be able to resolve a large bank failure in an orderly fashion at minimum costs to the DIF.

ICBA appreciates the opportunity to provide comment on this Proposal and hopes that the banking agencies will consider our observations. If you have any questions or would like additional information, please do not hesitate to contact me at james.kendrick@icba.org.

Sincerely,

/s/

James Kendrick
First Vice President, Accounting & Capital Policy