September 5, 2023

Banking Agencies Propose Long-Term Debt Requirements for "Large" Banks

Proposed Rule Represents Continued Trend Toward Increasing Prudential Requirements for Non-GSIB Banking Organizations with $100 Billion or More in Total Assets

SUMMARY

On August 29, 2023, the Federal Reserve, the FDIC, and the OCC (the "*Agencies*") issued a proposed rule[1] that would require certain depository institution holding companies, certain U.S. intermediate holding companies ("*IHCs*") of foreign banking organizations ("*FBOs*"), and certain insured depository institutions ("*IDIs*") to have minimum levels of outstanding long-term debt ("*LTD*").[2] The Agencies maintain that the requirements would "improve the resolvability of [these banking organizations] because LTD can be used to absorb loss and create equity in resolution."[3] The Agencies further explain that imposing the LTD requirement at the IDI level "would give the FDIC greater flexibility, including the potential to transfer all deposit liabilities (including uninsured deposit liabilities) of a failed IDI to an acquirer or to a bridge depository institution in a manner consistent with the [Federal Deposit Insurance Act's] least-cost requirement."[4]

By proposing to extend the LTD requirements to banking organizations in Categories II through IV of the tailoring framework,[5] the Agencies are continuing to revise the prudential framework for "large" banking organizations to align the prudential standards applicable to non-global systemically important banks ("*GSIBs*") with $100 billion or more in total consolidated assets to those for GSIBs. In this way, the proposed rule is similar to the Agencies' recent proposal to implement the "Basel III Endgame" capital requirements,[6] which proposes to apply the same requirements for calculating regulatory capital and risk-weighted assets ("*RWAs*") to banking organizations in Categories I through IV. In this regard, Federal Reserve Governor Michelle Bowman expressed concern that "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."[7] Similarly, FDIC Vice Chairman Travis Hill noted that the Agencies are "required by law to tailor enhanced prudential standards for large firms."[8] Governor Bowman also argued that failing to tailor the proposed LTD requirements "could result in the need for large firms to grow through acquisition to achieve the necessary economies of scale to comply with increased regulatory requirements."[9] Vice Chairman Hill also questioned whether, for IDI-centric domestic bank holding companies, the LTD requirement should apply only at the IDI level and the IDIs should be permitted to issue their LTD externally or internally.[10] Notwithstanding these concerns, the Federal Reserve and FDIC approved the proposed rule unanimously, and comments are due by November 30, 2023.

Annex 1 provides a chart illustrating the current regulatory capital and related requirements applicable to banking organizations in Categories I through IV versus the requirements that would apply under the proposed rule and the Basel III Endgame proposal.

PROPOSED REQUIREMENTS

A. LTD REQUIREMENT FOR HOLDING COMPANIES AND IDIS

Below is a high-level overview of the proposed LTD requirements for depository institution holding companies, IHCs of FBOs that are not GSIBs, and certain IDIs.

The proposed rule would not apply the LTD requirements to IDIs that are consolidated subsidiaries of U.S. GSIBs because (i) the parent companies of these IDIs are subject to the LTD requirement under the TLAC rule, (ii) U.S. GSIBs are subject to the most stringent capital, liquidity, and other prudential standards in the United States, and (iii) U.S. GSIBs have adopted resolution plans reflecting guidance issued by the Federal Reserve and FDIC that established a capital and liquidity framework for resolution, including requirements "designed to ensure adequate maintenance of loss-absorbing resources either at the parent or at material subsidiaries such that all material subsidiaries, including IDIs, could be recapitalized in the event of resolution under the single point of entry resolution strategies adopted by the U.S. GSIBs."[11]

Proposed Long-Term Debt Requirements			
	Proposed Requirement for Category II, III, and IV Holding Companies **(“*Covered Holding Companies*”)**	**Proposed Requirement for Category II, III, and IV IHCs of Non-GSIB FBOs** ***(“Covered IHCs” and, together with Covered Holding Companies, “Covered Non-IDI Entities”)***	**Proposed Requirement for Certain IDIs of Non-GSIBs** **(“*Covered IDIs*”)**
Scope	• Each Category II, III, and IV U.S. bank holding company (“*BHC*”) and savings and loan holding company (“*SLHC*”)* • Covered Holding Companies must issue eligible external LTD * The proposed rule would not apply to an SLHC with 25 percent or more of its total assets in insurance underwriting subsidiaries (other than assets associated with insurance underwriting for credit), an SLHC with a top-tier holding company that is an insurance underwriting company, or a grandfathered unitary SLHC that derives a majority of its assets or revenues from activities that are not financial in nature under section 4(k) of the Bank Holding Company Act	• Each Category II, III, and IV IHC of an FBO not currently subject to the existing TLAC rule • Resolution Covered IHCs* may issue either eligible external LTD or eligible internal LTD • Nonresolution Covered IHCs must issue eligible internal LTD * A Covered IHC is a Resolution Covered IHC if the certification it provides to the Federal Reserve indicates that the top-tier FBO’s planned resolution strategy involves the Covered IHC or its subsidiaries entering into a resolution, receivership, insolvency, or similar proceeding in the United States	• Each IDI with $100 billion or more in total assets that is not controlled by a parent entity (“*Mandatory Externally Issuing IDI*”) • Each IDI with $100 billion or more in total assets that (i) is a consolidated subsidiary of a company that is not a Covered Non-IDI Entity,[12] a U.S. GSIB, or a foreign GSIB subject to the TLAC rule or (ii) is controlled but not consolidated by another company (“*Permitted Externally Issuing IDI*”) • Each IDI with $100 billion or more in total assets that is a consolidated subsidiary of a Covered Non-IDI Entity <u>or</u> a foreign GSIB IHC (“*Internally Issuing IDI*”) • Each IDI that is affiliated with an IDI in one of the three categories described above[13]

<table>
<tr><th colspan="4">Proposed Long-Term Debt Requirements</th></tr>
<tr><th></th><th>Proposed Requirement for Category II, III, and IV Holding Companies

(“Covered Holding Companies”)</th><th>Proposed Requirement for Category II, III, and IV IHCs of Non-GSIB FBOs

(“Covered IHCs” and, together with Covered Holding Companies, “Covered Non-IDI Entities”)</th><th>Proposed Requirement for Certain IDIs of Non-GSIBs

(“Covered IDIs”)</th></tr>
<tr><td rowspan="2">Eligible External LTD</td><td colspan="3">• Paid in and issued directly by the external issuer
• Unsecured
• Maturity greater than one year from the date of issuance, but principal due in one year or more and less than two years subject to 50% haircut
• “Plain vanilla” features (i.e., no features that the Agencies believe could interfere with a smooth resolution proceeding)
  o Excluded if LTD instruments (i) are structured notes; (ii) have credit-sensitive feature; or (iii) include a contractual provision for conversion into or exchange for equity in the issuer
  o Permissible events of default resulting in acceleration of debt limited to (i) a receivership, insolvency, liquidation, or similar proceeding or (ii) payment defaults following a 30-day grace period
• Issued in minimum denomination of $400,000
• Governed by U.S. law
• Agencies would retain authority, after notice and an opportunity to respond, to order external issuer to exclude from outstanding LTD an otherwise eligible debt security with features that would “significantly impair the ability of such debt security to take losses”</td></tr>
<tr><td colspan="2"></td><td>• Must be contractually subordinated so claim represented by LTD in receivership would be junior to deposit and general unsecured claims (including trade creditors)</td></tr>
<tr><td>Calibration</td><td colspan="3">• LTD in an amount that is the greater of:
  o 6% of RWAs;
  o 3.5% of average total consolidated assets; and
  o 2.5% of total leverage exposure, if a covered firm is subject to supplementary leverage ratio</td></tr>
</table>

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<tr><td rowspan="3">Eligible Internal LTD</td><td rowspan="3"></td><td colspan="2">• Generally the same as eligible external LTD, with two differences:
o Must be issued to and remain held by a company that consolidates the Covered IDI; and
o Would not be subject to the minimum principal denomination requirement</td></tr>
<tr><td>• Required to include a contractual provision approved by the Federal Reserve that provides for immediate conversion or exchange of the instrument into common equity tier 1 capital of the Covered IHC upon issuance by the Federal Reserve of an internal debt conversion order
• Would not include a prohibition against credit-sensitive features</td><td></td></tr>
<tr><td></td><td>• If the Covered IDI is a consolidated subsidiary of a Covered IHC, must be issued to the Covered IHC or a subsidiary of the Covered IHC (i.e., could not be issued directly to a foreign affiliate that controls the IDI)</td></tr>
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<tr><td>Legacy External LTD</td><td colspan="3">Would allow the following categories of legacy external LTD to count toward minimum requirements if issued prior to publication of a final rule in the Federal Register:
Instruments that contain otherwise impermissible acceleration clauses;
Instruments issued with principal denominations that are less than the proposed $400,000 minimum amount; and
In the case of legacy instruments issued externally by a Covered IDI, are not contractually subordinated to general unsecured creditors
Eligible legacy external LTD issued by a subsidiary IDI could also be used to satisfy the requirements applicable to its parent Covered Holding Company or Resolution Covered IHC</td></tr>
<tr><td>Transition Periods</td><td colspan="3">Would provide a three-year transition period for entities that would be subject to the rule when it is finalized, as well as a three-year transition period for entities that become subject to the rule subsequently
Agencies would retain authority to accelerate or extend transition period
Would require Covered Non-IDI Entities and Covered IDIs to meet 25 percent of LTD requirement one year after finalization of the rule, 50 percent after two years, and 100 percent after three years</td></tr>
</table>

B. “CLEAN HOLDING COMPANY” REQUIREMENTS

The proposed rule would also impose “clean holding company” requirements on Covered Non-IDI Entities. Among other things, these requirements, which are similar to those applicable to U.S. GSIBs and IHCs subject to the TLAC rule, would prohibit Covered Non-IDI Entities from having the following categories of outstanding liabilities:

- ***Short-term debt***: Covered Non-IDI Entities would be prohibited from externally issuing debt instruments—both secured and unsecured—with an original maturity of less than one year.
- ***Third-party qualified financial contracts (“QFCs”)***: Covered Holding Companies would be permitted to enter into QFCs only with their subsidiaries, and Covered IHCs would be permitted to enter into QFCs only with their affiliates, with the exception of credit enhancements with respect to QFCs between a Covered Non-IDI Entity’s subsidiary and third parties. This requirement would only apply prospectively to new agreements entered into after the effective date of a final rule. The proposed rule would also exempt certain underwriting agreements, fully paid structured share repurchase agreements, and employee and director compensation agreements from the prohibition on third-party

QFCs for Covered Holding Companies (as discussed below, these exemptions are also being proposed for U.S. GSIBs and IHCs subject to the TLAC rule).

- ***Guarantees subject to cross-defaults*:** Covered Non-IDI Entities would be prohibited from guaranteeing—including by providing credit support for—any liability between a direct or indirect subsidiary and an external counterparty if the Covered Non-IDI Entity's insolvency or entry into resolution proceedings would directly or indirectly provide the subsidiary's counterparty with a default right. This requirement would only apply prospectively to new agreements established after the effective date of a final rule.
- ***Upstream guarantees and offset rights*:** Covered Non-IDI Entities would be prohibited from having outstanding liabilities that are subject to a guarantee from any direct or indirect subsidiary of the holding company.

In addition, the proposed rule would, for a Covered Holding Company, limit the amount of non-contingent liabilities to third parties that (i) are not eligible LTD, common equity tier 1 capital, or additional tier 1 capital and (ii) would rank at either the same priority as or junior to the entity's eligible LTD in the priority scheme of either the U.S. Bankruptcy Code or Title II of the Dodd-Frank Act to 5 percent of the sum of the Covered Holding Company's common equity tier 1 capital (excluding common equity tier 1 minority interest), additional tier 1 capital (excluding tier 1 minority interest), and eligible LTD amount. A Covered Non-IDI Entity would not be subject to this cap if it elects to subordinate all its eligible LTD to other liabilities so that its eligible LTD would represent the most subordinated debt claim in a receivership, insolvency, liquidation, or similar proceedings. With respect to Covered IHCs, the proposed rule would apply the cap differently to Nonresolution Covered IHCs and Resolution Covered IHCs. The cap for Resolution IHCs would apply to unrelated liabilities owed to parent and affiliates, as well as to unaffiliated third parties, whereas the cap for Nonresolution Covered IHCs would not include liabilities owed to foreign affiliates.

C. AMENDMENTS TO CAPITAL DEDUCTION FRAMEWORK

The proposed rule would expand the current deduction framework under the capital rule for U.S. GSIBs (and their subsidiaries) and Category II banking organizations to apply also to eligible external LTD issued by Covered Non-IDI Entities, Mandatory Externally Issuing IDIs, and Permitted Externally Issuing IDIs to meet their minimum LTD requirement. The expanded deduction framework would apply to all legacy external LTD, including externally issued LTD of an Internally Issuing IDI that was issued prior to the date of a final rule.

The proposed rule notes that the Basel III Endgame proposal would subject Categories III and IV banking organizations to the LTD deduction framework and would apply a heightened risk weight to investments in LTD that are not deducted.

D. CHANGES TO EXISTING TLAC RULE

The proposed rule would also amend the TLAC rule to reflect the Federal Reserve's "experience administering the rule" in the following ways, among others:

- ***Haircut for LTD used to meet TLAC requirement***: The proposed rule would allow only 50 percent of the amount of LTD with a maturity of one year or more—but less than two years—to count towards the TLAC requirement, rather than the current 100 percent. The Federal Reserve estimated that TLAC at the 17 banking organizations subject to the TLAC rule would decline by approximately $65 billion (2.7 percent) as a result of the proposed change, but projected that all would "meet or nearly meet" their TLAC requirements under the proposed change.
- ***Treatment of certain transactions for clean holding company requirements***: The proposed rule would amend the Federal Reserve's clean holding company requirements for U.S. GSIBs such that they may enter into certain underwriting agreements, fully paid structured share repurchase agreements, and employee and director compensation agreements. This proposal reflects the Federal Reserve's "experience with agreements that may constitute QFCs and which the [Federal Reserve] believes may not present the risks intended to be addressed by the clean holding company requirements."[14]
- ***Disclosure templates for TLAC holding companies***: The proposed rule would require U.S. GSIBs to make quantitative and qualitative disclosures related to the creditor ranking of their liabilities individually and in the aggregate. Specifically, the proposal would require these banking organizations to identify and quantify liabilities and outstanding equity instruments that have the same or a junior ranking compared to all the eligible LTD, ranked by seniority in the event of resolution and by remaining maturity for instruments that mature. The proposed rule would require that disclosures be made "on a timely basis at least every six months in a direct and prominent manner" either (i) on the GSIB's website or (ii) in more than one public financial report or other public regulatory reports, provided that the GSIB provides a summary table in such report specifically indicating the location(s) of this disclosure. The disclosure would be required to be made publicly available for at least three years.

IMPACT ANALYSIS

The Agencies argue that the proposed rule would increase the amount of loss-absorbing capacity in the event that a Covered IDI fails, "thereby reducing costs to the DIF and increasing the likelihood of least-cost resolutions in which all the deposits are transferred to an acquiring entity."[15] They also emphasize that the "experience in recent bank failures suggests that these benefits could be substantial"[16] and that "if it had been in place and fully-phased-in when these failures occurred, [the proposed rule] would have provided billions of dollars of loss absorbing capacity."[17]

The Agencies also analyzed the costs for the 20 top-tier banking organizations that would become newly subject to the proposed rule—18 covered holding companies, one covered IHC, and one permitted externally issuing IDI—under two approaches.[18] Under one approach, the Agencies assume that Covered Non-IDI Entities and Covered IDIs would, in the absence of the Proposed Rule, choose to maintain no instruments that satisfy the proposed rule's requirements in future periods ("*Zero Baseline Approach*"). Under the second approach, the Agencies assume that the current reported principal amounts of LTD

issuance at Covered Non-IDI Entities and Covered IDIs is a reasonable proxy for the levels of such debt that would be maintained in the absence of the proposed rule's requirements in future periods ("*Incremental Shortfall Approach*"). Both approaches rely on organization-level time series averages for the 4Q2021-3Q2022 period.

- ***Zero Baseline Approach*:** The Agencies estimate that the total principal value of external LTD required of these banking organizations, irrespective of existing LTD, would be approximately $250 billion ($130 billion for Categories II and III Covered Non-IDI Entities and $120 billion for Category IV Covered Non-IDI Entities and Externally Issuing IDIs).[19] Under this approach, the Agencies estimate that pre-tax annual steady-state funding costs would increase by approximately $5.6 billion, which the Agencies estimate would represent an 11-basis-point decline in aggregate net interest margins ("*NIMs*")[20] ($2.7 billion, or 10-basis-point decline in NIMs, for Categories II and III Covered Non-IDI Entities and $2.9 billion, or 12-basis-point decline in NIMs, for Category IV Covered Non-IDI Entities and Externally Issuing IDIs).[21]
- ***Incremental Shortfall Approach*:** The Agencies estimate that the aggregate shortfall would be approximately $70 billion ($20 billion for Categories II and III Covered Non-IDI Entities and $50 billion for Category IV Covered Non-IDI Entities and Externally Issuing IDIs).[22] Under this approach, the Agencies estimate that pre-tax annual steady-state funding costs would increase by approximately $1.5 billion, which the Agencies estimate would represent a three-basis-point decline in aggregate NIMs ($460 million, or two-basis-point decline in NIMs, for Categories II and III Covered Non-IDI Entities and $1.1 billion, or five-basis-point decline in NIMs, for Category IV Covered Non-IDI Entities and Externally Issuing IDIs).[23]

The Agencies conclude that these costs are "estimated to be moderate" and that, although it is possible that alternate means exist to raise loss-absorbing resources that could be less costly, such alternatives "would likely be less effective in providing a stable enough source of loss absorption to achieve the objectives of the proposal."[24]

The Agencies did not consider the potential effects of the Basel III Endgame proposal in their impact analysis, but recognize that the proposal would, if adopted, increase RWAs across Covered Non-IDI Entities, which would "lead mechanically to increased requirements for LTD under the LTD proposal."[25] However, the Agencies also note that the increased capital that would be required under the Basel III Endgame proposal "could also reduce the cost of various forms of debt for impacted firms due to the increased resilience that accompanies additional capital."[26]

The Agencies also note that the incremental issuance requirements under the proposed rule could be "somewhat greater than the initial estimated shortfall, especially in the long run, for several reasons," highlighting the "likely use of management buffers" – that is, the practice of banking organizations to maintain regulatory capital or long-term debt in excess of the applicable requirements.[27] The Agencies did not address LTD shortfalls at Internally Issuing IDIs as part of this impact analysis.[28]

OBSERVATIONS AND IMPLICATIONS

As described above, the proposed rule is another example—following the Basel III Endgame proposal—of the Agencies proposing to align the prudential standards applicable to banking organizations in Categories I through IV. Notwithstanding the concerns raised by Governor Bowman and Vice Chairman Hill regarding whether the proposed rule is sufficiently tailored for banking organizations in Categories II through IV, some Agency principals appear to believe that the requirements should apply to an even broader universe of banking organizations. For example, CFPB Director Chopra, in his capacity as an FDIC Director, argued that the Agencies should "determine whether institutions below $100 billion, such as those with high levels of 'uninsured' deposits or those that have grown very rapidly, should also be subjected to a similar requirement."[29]

The proposed rule seeks public comment on more than 60 questions, including whether there are "elements of the rule that should be applied differently to Category IV organizations as compared to Category II and III organizations."[30]

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ENDNOTES

1 *Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions*, *available at* https://www.fdic.gov/news/board-matters/2023/2023-08-29-notice-dis-a-fr.pdf.

2 Separately, the FDIC issued a notice of proposed rulemaking that would revise its current rule that requires the submission of resolution plans by IDIs with $50 billion or more in total assets. The FDIC and Federal Reserve also issued proposed guidance on resolution plans for Categories II and III domestic bank holding companies and foreign banking organizations.

3 Proposed Rule, at 14.

4 *Id.*

5 Category I standards apply solely to U.S. GSIBs. Category II standards apply to banking organizations that are not U.S. GSIBs and that have $700 billion or more in total assets or at least $100 billion in total assets and $75 billion or more in cross-jurisdictional activity. Category III standards apply to banking organizations that are not subject to Category I or Category II standards and that have $250 billion or more in total assets or at least $100 billion in total assets and $75 billion or more in any of three indicators: nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposures. Category IV standards apply to banking organizations with $100 billion to $250 billion in total assets that do not meet any of the additional thresholds specified for Categories I through III. The tailoring framework is discussed in greater detail in *Regulatory Tailoring for Large Domestic and Foreign Banking Organizations* (Oct. 18, 2019), *available at* https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/SC-Publication-Banking-Agencies-Finalize-Tailoring-of-Enhanced-Prudential-Standards-and-Capital-and-Liquidity-Requirements.pdf.

6 The Basel III Endgame proposal is discussed in *Basel III 'Endgame': Regulators Propose Significant Revisions to Capital Rules Applicable to Large Banks* (Aug. 1, 2023), *available at* https://www.sullcrom.com/SullivanCromwell/_Assets/PDFs/Memos/sc-publication-basel-iii-endgame.pdf.

7 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), *available at* https://www.federalreserve.gov/newsevents/pressreleases/bowman-statement-20230829.htm ("*Governor Bowman Statement*").

8 Statement by Vice Chairman Travis Hill on the Proposed Long-term Debt Requirements for Large Banks (Aug. 29, 2023), *available at* https://www.fdic.gov/news/speeches/2023/spaug2923l.html ("*Vice Chairman Hill Statement*"). Vice Chairman Hill also suggested that, as the Agencies consider how to balance the costs and benefits in calibrating the LTD requirement, they should be mindful that (i) banking organizations in Categories II through IV issue materially less LTD as part of their business models than the GSIBs did prior to the finalization of the Federal Reserve's total loss-absorbing capacity ("*TLAC*") rule; (ii) the interest rate and economic environment today is very different than when the TLAC rule was issued in 2016; and (iii) the Basel III Endgame proposal would "materially change the calculations of [RWAs]." *Id.*

9 Governor Bowman Statement.

10 Vice Chairman Hill Statement.

11 Proposed Rule, at 10.

12 A Covered Non-IDI Entity is a Covered Holding Company (*i.e.*, a domestic bank holding company in Categories II through IV) or a Covered IHC (*i.e.*, an IHC of a non-GSIB FBO in Categories II through IV).

ENDNOTES (CONTINUED)

[13] The Agencies explain that the proposed rule would apply to any IDIs, regardless of asset size, affiliated with IDIs with at least $100 billion in total consolidated assets because the FDIC may seek to resolve those affiliated IDIs using either the same bridge depository institution or multiple bridge depository institutions. The Agencies also observe that "[w]hen an IDI in a group fails, it is likely that all IDIs in the group fail due to interconnectedness and the statutory cross-guaranty imposed on affiliated IDIs in the event of the failure of an IDI in the group." Proposed Rule, at 32-33.

[14] *Id.* at 92.

[15] *Id.* at 97-98.

[16] *Id.* at 98.

[17] *Id.* at 101.

[18] *Id.* at 100. Within these organizations, there are 24 Covered IDIs.

[19] *Id.* at 107.

[20] The Agencies did not estimate the pre-tax annual steady-state funding costs in relation to net income.

[21] Proposed Rule, at 112.

[22] *Id.* at 108-09.

[23] *Id.* at 111-112.

[24] *Id.* at 116.

[25] *Id.* at n.97.

[26] *Id.*

[27] *Id.* at 109.

[28] The Agencies note that the impact analysis relies on the assumption that it "will be costless to substitute external holding company-issued debt for external IDI-issued debt, as well as to downstream resources from holding companies to IDIs through eligible internal debt securities, to fulfill the requirements of the proposed rule and the general funding needs." *Id.* at 108. In other words, the impact analysis assumes that "there are no additional costs for IDIs to maintain eligible internal debt securities to holding companies beyond those attributable to any external holding company LTD that may be passed through to IDIs." *Id.* The impact analysis does not address the potential impact on a banking organization if the IDI has less outstanding debt than its holding company, such that the shortfall at the holding company level does not reflect the overall shortfall for the banking organization because the proposed rule would apply LTD requirements at both the IDI and holding company levels.

[29] Statement of CFPB Director Rohit Chopra Member, FDIC Board of Directors Regarding Proposals to Improve the FDIC's Options for Managing Large Bank Failures (Aug. 29, 2023), *available at* https://www.consumerfinance.gov/about-us/newsroom/statement-of-cfpb-director-rohit-chopra-member-fdic-board-of-directors-regarding-proposals-to-improve-the-fdics-options-for-managing-large-bank-failures/. With respect to the concerns about insufficient tailoring, Director Chopra argued that the proposed LTD requirement for Covered IDIs is "not a Dodd-Frank Act Section 165 'enhanced prudential standard,' and is therefore not tied to the [statute's] $100 billion asset threshold." *Id.*

[30] Proposed Rule, at 22.

ANNEX 1

CURRENT REQUIREMENTS VERSUS PROPOPOSED REQUIREMENTS

Current Requirements

	Category I	Category II	Category III	Category IV	Other Firms
TLAC/Long-Term Debt (Holding Company)*	✓				
Long-Term Debt (Bank Subsidiary)					
Stress Testing: Company-Run (DFAST)	✓ (Annual)	✓ (Annual)	✓ (Every Two Years)		
Stress Testing: Supervisory	✓ (Annual)	✓ (Annual)	✓ (Annual)	✓ (Two-Year Cycle)	
Stress Capital Buffer	✓	✓	✓	✓ (Two-Year Cycle)	
Annual Capital Plan Submission	✓	✓	✓	✓	
GSIB Surcharge	✓				
Advanced Approaches	✓	✓			
Standardized Approach	✓	✓	✓	✓	✓
Market Risk Capital Rule	If trading assets/liabilities ≥ $1 billion or 10% of assets	If trading assets/liabilities ≥ $1 billion or 10% of assets	If trading assets/liabilities ≥ $1 billion or 10% of assets	If trading assets/liabilities ≥ $1 billion or 10% of assets	If trading assets/liabilities ≥ $1 billion or 10% of assets
Countercyclical Capital Buffer	✓	✓	✓		
Opt-Out of AOCI Capital Impact			✓	✓	✓
Capital Rules Simplification			✓	✓	✓
SA-CCR	✓	✓	(Optional)	(Optional)	(Optional)
TLAC Holdings Deductions	✓	✓			
Generally Applicable Leverage Ratio	✓	✓	✓	✓	✓
Supplementary Leverage Ratio	✓ (Plus Enhanced)	✓	✓		

* IHCs of non-U.S. GSIBs are currently subject to TLAC/LTD requirements regardless of category

Proposed Requirements

	Category I	Category II	Category III	Category IV	Other Firms
TLAC/Long-Term Debt (Holding Company)*	✓	✓ (LTD only)	✓ (LTD only)	✓ (LTD only)	
Long-Term Debt (Bank Subsidiary)	**	✓	✓	✓	
Stress Testing: Company-Run (DFAST)	✓ (Annual)	✓ (Annual)	✓ (Every Two Years)		
Stress Testing: Supervisory	✓ (Annual)	✓ (Annual)	✓ (Annual)	✓ (Two-Year Cycle)	
Stress Capital Buffer	✓	✓	✓	✓ (Two-Year Cycle)	
Annual Capital Plan Submission	✓	✓	✓	✓	
GSIB Surcharge	✓				
Expanded Risk-Based Approach	✓	✓	✓	✓	
Standardized Approach	✓	✓	✓	✓	✓
Market Risk Capital Rule	✓	✓	✓	✓	If trading assets/liabilities ≥ $5 billion or 10% of assets
Countercyclical Capital Buffer	✓	✓	✓	✓	
Opt-Out of AOCI Capital Impact					✓
Capital Rules Simplification					✓
SA-CCR	✓	✓	✓	✓	(Optional)
TLAC Holdings Deductions	✓	✓	✓	✓	
Generally Applicable Leverage Ratio	✓	✓	✓	✓	✓
Supplementary Leverage Ratio	✓ (Plus Enhanced)	✓	✓	✓	

* IHCs of non-U.S. GSIBs are currently subject to TLAC/LTD requirements regardless of category
** The agencies did not propose to apply LTD requirements to IDI subsidiaries of U.S. GSIBs because (i) the parent companies of these IDIs are subject to the LTD requirement under the TLAC rule, (ii) U.S. GSIBs are subject to the most stringent capital, liquidity, and other prudential standards in the United States, and (iii) U.S. GSIBs have adopted resolution plans reflecting guidance issued by the Federal Reserve and FDIC that established a capital and liquidity framework for resolution.

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