January 15, 2023

Via: Federal eRulemaking Portal: www.regulations.gov ("Docket ID OCC-2023-0008")
Hon. Michael Barr, Vice Chair for Supervision
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Hon. Michael Hsu, Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Hon. Martin Gruenberg, Chair
Federal Deposit Insurance Corporation
550 17th St NW
Washington, DC 20429

January 15, 2024

Subject: Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity (OCC Docket ID OCC–2023–0008, Federal Reserve System Docket No. R–1813; RIN 7100–AG64, Federal Deposit Insurance Corporation 12 CFR Part 324; RIN 3064–AF29)[1]

Dear Vice Chair Barr, Acting Comptroller Hsu, and Chair Gruenberg,

Newport, an Ascensus Company (Newport), thanks the Board of Governors of the Federal Reserve System, the Office of Comptroller of the Currency, and the Federal Deposit Insurance Corporation for their invitation to provide comments on the Notice of Proposed Rulemaking (Proposal) referenced above.

For over three decades, Newport has provided insurance services to banks of all sizes relative to bank-owned life insurance programs (BOLI), including design, implementation and administration. As of December 31, 2023, Newport is responsible for the administration of approximately $65 billion of BOLI, including general, separate and hybrid account BOLI underwritten by over 70 different life insurers. Newport provides BOLI administration services to 21 of the top 30 owners of BOLI, many of which will be impacted by changes in the Proposal.

[1] Regulatory Capital Rule: *Large Banking Organizations and Banking Organizations with Significant Trading Activity*, Office of the Comptroller of the Currency, Federal Reserve System, and FDIC, 88 Fed. Reg. 64028, Sept. 18, 2023.

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On behalf of our banking clients and the insurance carriers for which Newport acts as the placing agent for their BOLI products, we would like to raise the following items for consideration:

1) whether different risk weightings of general account BOLI for publicly traded and mutual carriers are appropriate,
2) to clarify the extent to which the Proposal's Look-Through Approaches for Equity Exposures to an Investment Fund would apply to separate account BOLI and whether an exception for separate account BOLI is appropriate, and
3) to seek a more appropriate risk weighting to BOLI generally given the unique credit characteristics of the asset.

Treatment of General Account BOLI Exposures

Currently, general account insurance exposures are treated as corporate exposures and receive a risk weight of 100%.[2] Under the proposal's expanded risk-weight based approach, corporate exposures receive differentiated treatment, with corporate exposures "to a company that is investment grade and that has a publicly traded security outstanding or that is controlled by a company that has publicly traded security outstanding" assigned a risk-weight of 65%.[3]
Under the proposal, general account insurance exposures that do not have a publicly traded security outstanding or that are controlled by a company that has publicly traded securities outstanding would receive a risk-weight of 100%.

The Proposal requests comment on

- whether a risk weighting lower than 100% is appropriate for exposures to companies that are not publicly traded but are companies that are "highly regulated";
- criteria that the agencies should consider to identify companies that are "highly regulated";
- alternatively, the advantages and disadvantages of assigning lower risk weights to highly regulated entities including, among other regulated entities, mutual insurance companies, pension funds, or registered investment companies.

Risk weightings of corporate exposures should be comparable if there is comparable financial information available to banks and bank regulators regardless of whether the corporate exposure is to a publicly traded organization.

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[2] *Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule*, Office of the Comptroller of the Currency and Federal Reserve System, 78 Fed. Reg. 62087, Oct. 11, 2013.

[3] Proposal, at 64192.

All insurance carriers are required to produce and file financial statements with state regulators under standardized statutory accounting principles ("SAP"). SAP standards focus on conservatism, recognition and consistency with a focus on the carrier's balance sheet and solvency over the span of economic cycles[4]. Assets that may not be readily available to pay claims are omitted from carrier balance sheets.[5] Carriers are also subject to risk-based capital requirements of their own which serve a purpose similar to the risk-based capital requirements applicable to banks. Information on the carriers' risk-based ratios is readily available to regulators, rating agencies and the banks acquiring the policies.

SAP is based on GAAP principles which also serves as the framework for Securities Exchange Commission ("SEC") financial reporting[6] with a primary difference being the adjustments to the carrier's balance sheet and the focus on the carrier's longer-term solvency over business cycles, as noted above. The availability of financial filings with the SEC may provide corroborating information to state regulators, banks and their regulators, but there does not appear to be a basis for concluding that carriers that are not publicly traded are less transparent or inherently riskier because they do not file financial statements separately with the SEC under GAAP.

With respect to a purchasing decision, banks often rely on the ratings of the Nationally Recognized Statistical Rating Organizations ("NRSROs") which take into account the risk-based capital ratios of the carriers as well as the publicly available financial statements filed with the states and, if available, the SEC. Banks and banking regulators have access to multiple reviews by SEC-accredited NRSROs in addition to the carrier financial statements available at the state level when evaluating the corporate exposure to a carrier and regardless of whether the carrier is a publicly traded company.

A bank's willingness to purchase BOLI products from highly rated mutual carriers will be significantly impaired if the Proposal is adopted as currently drafted. In many instances, the NRSRO rating of a mutual carrier may be substantially higher than the rating for a publicly traded carrier. The "publicly traded discount" available to the lower-rated carrier could incentivize the bank to buy the lower rated product in order to improve its risk capital ratios, counter to the policy objectives of the Proposal. The Proposal could result in a significant reduction in available investment grade carriers. Reduced availability in turn will reduce the banks' ability to diversify the carrier concentration of their BOLI allocation, thereby increasing the portfolio risk to the banks.

In light of the publicly available information for all carriers, which is designed to foster reliable comparisons based on a uniform accounting standard that focuses on long-term solvency, there does not appear to be a basis for concluding that mutual carriers are inherently 53.8% riskier than

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[4] *Statutory Accounting Principles*, National Association of Insurance Commissioners, Statutory Accounting Principles (naic.org) May 31, 2023. NAIC standards do not preempt state authority to adopt variations under prescribed and permitted accounting practices.
[5] *Id.*
[6] Statutory Accounting Principles (naic.org); https://content.naic.org/cipr-topics/statutory-accounting-principles;

publicly traded carriers, based solely on the fact that they do not file their financial statements with the SEC. Accordingly, Newport encourages the banking regulators to adopt a uniform standard of a 65% risk weighting for all investment-grade carriers.

Look-Through Approaches for Equity Exposures to an Investment Fund Held as a BOLI Separate Account

Under current regulations, separate account BOLI is treated as if it were an equity exposure to an investment fund with risk-weighting determined using one of the three available look-through options: Full Look-Through Approach, Simple Modified Look-Through Approach, or Alternative Modified Look-Through Approach.[7]

For equity exposures to an investment fund broadly, the proposal replaces the Simple Modified Look-Through Approach with a flat 1,250% risk-weight, and establishes a hierarchy of look-through approaches, which requires banks not subject to the market risk capital framework to use the Full Look-Through Approach if the necessary information to use that method is available.[8] This same section of the proposal makes no mention of separate account BOLI. Newport is requesting clarification as to whether the provisions of this section apply to separate account BOLI. Specifically, is the Simple Modified Look-Through Approach replaced with a 1,250% risk-weight and does the hierarchy of look-through approaches apply to Separate Account BOLI?

Assuming the proposed section on Risk Weights for Equity Exposures to Investment Funds does apply to separate account BOLI, we ask that Hierarchy of Look-Through Approaches not apply. The investment guidelines for separate account BOLI are written with a potential banking client's risk weighting in mind such that the results of the Full Look-Through Approach should never differ significantly from the Alternative Modified Look-Through Approach. There is also a practical limitation in that some BOLI carriers provide the data necessary to perform the Full Look-Through Approach while others, due to time and costs associated with producing the additional information for the Full Look-Through Approach, will not.

For both of these reasons, many banks, including those that would be subject to the Proposal, utilize the Alternative Modified Look-Through Approach to determine separate account BOLI risk-weights even when the data is available to apply the Full Look-Through Approach. A requirement to use the Full Look-Through Approach in all cases will require significant carrier resources that some carriers may provide while others will not, resulting in an arbitrary negative risk weighting while the actual risk exposure to the bank across all of its policies is substantially the same.

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[7] Regulatory Capital Rules, at 62126.
[8] Proposal, at 64078.

Risk-Weighting of Life Insurance used to Fund a Deferred Compensation Plan

Many banks utilize life insurance in order to informally finance the bank's obligations under its deferred compensation plans. Life insurance is particularly suited to informal financing as the product is designed so that its separate account portfolios rise and fall in tandem with the gains and losses of the plan's notional investment allocations. Without the insurance, the notional investment gains and losses of the plan could distort the bank's income statement for reporting periods when the capital markets experience temporary but unusual volatility. Over time, the growth in notional equity and bond investments in the plan, without a corresponding actual allocation by the bank, could result in substantial future net liabilities on the bank's balance sheet. The capital structure of the bank is improved with respect to this non-banking liability when separate account life insurance is paired with the deferred compensation plan. Under current guidance, some banks categorize the policies used as a set-aside for paying deferred compensation plan liabilities as non-significant equity exposures to be risk weighted at 100%.[9]

The proposal eliminates the 100% risk-weight for non-significant equity exposures, regardless of the non-banking purpose of the policies[10] which could significantly and adversely impact the ability of banking organizations to informally finance its benefit obligations relative to the informal financing options available to non-bank employers. The public policy objectives behind regulatory risk weightings for lending activities should not operate to the disadvantage of banks compared to employers in non-banking industries when it comes to recruiting and retaining executive talent.

Newport asks the regulators to consider reinstatement of the 100% risk-weight for non-significant equity exposures to allow banks to continue using this important financing and risk-mitigating plan design. If the regulating agencies determine that a categorical exception is not an appropriate policy, Newport requests that the Proposal recognize the financial offset of plan liabilities with policies designated by the bank as informal financing set-asides and permit banks to perform a risk weighting based on the net of the plan's liabilities and the asset value of the designated insurance policies.

Overall Approach to BOLI Risk-weighting

In addition to the requests and clarifications noted above, we would suggest broader changes to BOLI risk-weighting. The scale of BOLI ownership, coupled with the unique credit characteristics of the asset justify differentiated treatment. We ask that consideration of these changes be applied to both the current standardized and proposed expanded risk-based approaches.

General Account

As noted above, General Account BOLI is currently treated as a corporate exposure for risk-weighting purposes. We believe the nature of general account counterparty risk justifies lower

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[9] Regulatory Capital Rules, 62124.
[10] Proposal, at 64076.

overall risk-weighting than most corporate exposures. Accordingly, we request that general account BOLI be risk-weighted lower than the 100% requirement under the current standardized approach and the 65% floor under the proposed expanded risk-based approach.

Life insurance policyholders enjoy a number of features that improve the overall risk profile relative to corporate exposures. These features include coverage through state guaranty associations that are designed to cover at least a portion of death benefit and cash values in the event of a carrier failure. In the event of a carrier insolvency, policyholders are priority claimants with payments made before those of general creditors. [11]

In addition, we are unaware of a general account cash value write down as a result of an insolvency of a carrier marketing and selling BOLI products. The one instance of a BOLI carrier insolvency came in 1996 with Confederation Life Insurance Company, but all BOLI policies were assumed by New York Life Insurance Company with no reduction in value. [12] Newport continues to administer many of those policies.

Separate Account

Under current regulation, separate account BOLI risk-weighting is determined using one of the allowable look-through methods previously noted. Furthermore, the regulations set a minimum risk-weight of 20% for separate accounts, including separate account BOLI.[13]

We ask for the minimum risk-weight of 20% to be removed, especially when using the Full Look-Through Approach to determine risk-weight. The 20% minimum is unnecessary when conducting the Full Look-Through Approach and sets an arbitrary minimum. By removing the 20% minimum the calculation under the Full Look-Through Approach would provide a clearer picture of the overall separate account exposure.

Conclusion

Newport requests that the regulators provide additional clarity around the risk-weight treatment of BOLI and consider changes proposed to the treatment of general account and separate account BOLI, which Newport believes more closely align with the risks associated with the ownership of those assets.

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[11] National Organization of Life & Health Insurance Guaranty Associations, n.d., *What Happens When an Insurance Company Fails?*, https://www.nolhga.com/policyholderinfo/main.cfm/location/insolvencyprocess

[12] National Organization of Life & Health Insurance Guaranty Associations, n.d., *Confederation Life Insurance Company (CLIC)*, https://www.nolhga.com/companies/public/main.cfm/NAICCode/80667/GAID/100

[13] Regulatory Capital Rules, 62126.

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Thank you again for the opportunity to provide comments on the proposal. If you have any questions or would like to discuss further, please contact me at (407) 531-5608 or sam.brkich@newportgroup.com or Scott Bethune at (336) 369-2270 or scott.bethune@newportgroup.com.

Best regards,

[redacted]

Samuel Brkich
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