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December 6, 2023

Office of the Comptroller of the Currency

Attn: Michael J. Hsu, Acting Comptroller of the Currency
4007th Street SW, Suite 3E-218
Washington, DC 20219

Board of Governors of the Federal Reserve System

20th Street and Constitution Ave NW
Washington, DC 20551

Federal Deposit Insurance Corporation

550 17th Street NW
Washington, DC 20429

Re: Regulatory capital rule: Amendments applicable to large banking organizations and to banking organizations with significant trading activity; Docket ID OCC-2023-0008

Dear Acting Comptroller Hsu:

The staff of the Clean Energy States Alliance (CESA) is pleased to provide this response to the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation's notice of proposed rulemaking (NPR) regarding the *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations with Significant Trading Activity*, Docket ID OCC-2023-0008.

These comments reflect the perspective of CESA, a national nonprofit coalition of public agencies and organizations working together to advance clean energy. CESA members—almost all of which are state agencies—include many of the most innovative, successful, and influential public funders of clean energy initiatives in the country. The comments do not necessarily represent the views of individual CESA member organizations or of CESA funders.

CESA's comments pertain to the impact of the proposed regulatory capital requirements for large banks on clean energy, which could significantly impair the domestic banking sector's ability to support the nation's clean energy transition. The NPR proposes to indiscriminately assign a high risk weight to tax equity in calculating a bank's minimum capital requirements.¹ Specifically, the NPR proposes to expand the current "simple risk-

¹ See Table 7: Risk Weights Applicable to Equity Exposures under the Expanded Simple Risk-Weight Approach, [NPR](#), Federal Register, Vol. 88, No. 179, Monday, September 18, 2023, page 64076

weight approach” used in evaluating equity risk exposure (a) to eliminate the 100 percent risk weight for “non-significant equity exposures whose aggregate adjusted carrying value does not exceed 10 percent of the banking organization’s total capital” and (b) to introduce a 400 percent risk weight category for “equity exposure that is not publicly traded.”² This change would lead to higher capital adequacy requirements for banks that engage in the tax equity market.

The proposed rules would impact, among others, “banking organizations with total assets of \$100 billion or more and their subsidiary depository institutions,”³ i.e., the types of banks that have traditionally been the source of tax equity funds for clean energy projects across the country. Since 2015, just three banks accounted for about 57 percent of the total US wind and solar capacity additions financed through tax equity.⁴ In 2020, 50 percent of the tax equity for solar originated with two banks, JPMorgan and Bank of America.⁵

We believe the proposed change will have disastrous effects on the trajectory of the clean energy transition. We believe that the proposed capital requirements for tax equity (a) are unwarranted, (b) unnecessarily hinder clean energy projects, (c) run counter to federal policy goals, and (d) will negatively impact the clean energy goals of states across the country.

First, the proposed capital requirements for tax equity are unwarranted. The proposed four-fold increase in the capital adequacy ratios for tax equity are not reflective of its risk profile, which has proven very stable. Under the proposed rules, tax equity would be considered significantly riskier than other categories of investment that are by nature less stable. For example, under the NPR, publicly traded stocks would carry a risk weight of 250 percent, implying that tax equity is 62.5 percent riskier than the stock exchange. In reality, tax equity investments are relatively safe due to the predictable nature of payments from the federal government and other usual project structuring features that allow tax equity to function more akin to a loan than a true equity investment. Tax equity is not riskier than volatile stock market investments.

Second, the proposed capital requirements unnecessarily hinder clean energy projects. While the proposed regulations are rightfully intended to manage systemic risk, they create unintended consequences with dire impacts on the expansion of clean energy in the United States. If finalized, the proposed regulations will make it more expensive for developers to obtain capital. Across the US, and before changes to the IRA that increased the rates of investment tax credits and production tax credits available to certain projects, tax equity financing accounted for 45-65 percent of the capital stack for a wind project

² See Section 141(b)(5), [NPR](#), page 64214: “A [BANKING ORGANIZATION] must determine the risk-weighted asset amount for an equity exposure that is not an equity exposure subject to § 11.142 by multiplying the adjusted carrying value of the exposure by the lowest applicable risk weight in this paragraph (b). (...) An equity exposure that is not publicly traded and is not described in paragraph (b)(6) of this section, must be assigned a 400 percent risk weight.”

³ See [NPR](#), page 64030

⁴ Credit Suisse, [US Inflation Reduction Act: A Tipping Point in Climate Action](#), 2022, page 19

⁵ Keith Martin, [Solar Tax Equity Structures](#), 2021

and 30-40 percent for a solar project.⁶ If tax equity investments become cost prohibitive for large banks, developers will need to turn to more expensive forms of capital.

This would also lead to less capital available overall because of the limited room for growth in this sector due to banks' existing tax equity portfolios. According to policy analysis firm Capstone, annual tax equity investments in the clean energy sector could shrink by 80-90 percent under the proposed rules,⁷ meaning many projects might never come online. Some tax equity investors are reportedly already pausing new investments and others are seeking to add protections to new deals and existing deals that have not yet been fully funded.⁸ If this trend continues, it will become increasingly difficult to find adequate financing to deploy clean energy projects.

Third, the proposed capital requirements run counter to federal policy goals. According to the National Climate Task Force, the goals of the federal government include (a) reducing US greenhouse gas emissions 50 to 52 percent below 2005 levels in 2030, (b) reaching 100 percent carbon pollution-free electricity by 2035, (c) achieving a net-zero emissions economy by 2050, and (d) delivering 40 percent of the benefits from federal investments in climate and clean energy to disadvantaged communities.⁹

In addition, landmark legislation passed by Congress in 2022, i.e., Public Law 117-169 commonly known as the "Inflation Reduction Act of 2022" (IRA), aims to meet the country's climate goals as stated above, and to strengthen energy security, invest in America to create good-paying jobs, reduce energy and health care costs for families, and make the tax code fairer.¹⁰ Similarly, Public Law 117-58 commonly known as the "Infrastructure Investment and Jobs Act" (IIJA) is intended to be "a once-in-a-generation investment in our nation's infrastructure and competitiveness." A whole-of-government approach to delivering these goals requires that our banking regulations not undermine the goals of both IIJA and IRA.

In particular, the IRA emphasized the central role of tax credits in the clean energy transition by restoring its value to a higher rate, by expanding it to new technologies such as energy storage, and by creating bonuses that bring the maximum rate from previously 30 percent of eligible costs to 70 percent of eligible costs when projects meet certain location and sourcing requirements. For OCC to make tax equity financing more expensive at a time when Congress allocated additional resources to this funding source would be at odds with Congressional intent and the stated federal policy goals of the Biden Administration.

Lastly, the proposed capital requirements impact state clean energy goals. At least 23 states, plus the District of Columbia and Puerto Rico, have 100 percent clean energy

⁶ Ashby Remley, Leveraging Tax Equity Investment in Your Clean Energy Strategy, 2023

⁷ Thomas Dee & Eric Scheriff, Basel III and the Looming Threat to Tax Equity Market and Clean Energy Industry, 2023

⁸ David Burton & Hilary Lefko, Proposed Basel III Rules could be catastrophic for the traditional tax equity market, 2023, and Pete Schroeder & Michelle Price, Big U.S. banks warn capital hikes could weigh on green energy equity products, 2023

⁹ The White House, President Biden's Actions to Tackle the Climate Crisis, 2021

¹⁰ The White House, FACT SHEET: One Year In, President Biden's Inflation Reduction Act Is Driving Historic Climate Action and Investing in America to Create Good Paying Jobs and Reduce Costs, 2023

goals.¹¹ The states—representing 53 percent of the US population—are politically diverse, including:

- Nevada – 100 percent carbon-free electricity by 2050
- New York – 100 percent carbon-free electricity by 2040
- North Carolina – Carbon neutrality in the electricity sector by 2050
- Wisconsin – 100 percent carbon-free electricity by 2050

States require a stable investment environment to realize their policy goals. Turbulence in the tax equity market will impact states' ability to reach decarbonization goals and deliver on federal programs within the IRA, for which states are the main implementers. The timeframe for deploying IRA funding is limited, with some programs having to deploy billions of dollars within five to seven years. For example, the \$7 billion Solar for All (SFA) program will enable millions of low-income households to access affordable solar energy for the first time. States will partner with solar developers to deliver savings to consumers and will rely on tax equity investments as a core part of the capital stack layered into SFA programs. Time is therefore of the essence. Equity investors pausing investment or reducing capital availability, could preclude states from effectively delivering program implementation under the IRA.

The clean energy industry's experience with tax equity investments does not warrant such a radical change. We urge you to consider the impacts of such a rule on state and national climate goals as well as the economic impacts of slowing down the clean energy transition.

Respectfully,

/s/

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/s/

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/s/

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¹¹ Clean Energy States Alliance, [Table of 100% Clean Energy States](#)