

# United States Senate

January 18, 2024

**VIA ELECTRONIC DELIVERY**

The Honorable Michael Barr  
Vice Chair for Supervision  
Board of Governors of the Federal  
Reserve System  
20<sup>th</sup> Street and Constitution Ave NW  
Washington, D.C. 20551

The Honorable Michael Hsu  
Acting Comptroller  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street SW  
Washington, D.C. 20219

The Honorable Martin J. Gruenberg  
Chairman  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429

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

We write regarding the implementation of the final phase of the Basel III Capital Requirements as it relates to your work to continue strengthening regulation, supervision, and oversight of the banking system to better protect the American taxpayer. We support your work to finalize and implement the goals of the Basel Committee on Banking Supervision, whose mission has been set into motion since the financial crisis of 2008, and whose efforts to strengthen the international banking system has made significant strides in the safety and soundness of the global economy. To that end, we are supportive of your work to continue these efforts to strengthen the banking system's ability to withstand economic challenges and further improve the safety and soundness of our financial system.

We appreciate the Agencies' commitments to take into consideration the extensive comments received across multiple industries. Furthermore, we recognize your recent extension of the comment period as a positive signal that the final rule will reflect a thoughtful, thorough analysis of the comments submitted. Because of that, we urge you to consider an appropriate balance of strong capitalization and risk weightings that would prevent a permanent chilling effect on future clean-energy deployments. We are concerned that the rule as written could result in unintended consequences on the deployment of our shared clean energy objectives, and in light of your continued efforts, we ask that you take into consideration the role that tax equity investments play in facilitating clean energy expansion, in addition to the reduced risk profile of these investments as compared to other forms of nonpublic equity such as private equity.

Tax equity investments serve as a primary form of capital for clean energy projects. These investments facilitate clean energy projects by allowing the project sponsors to obtain financing from banks, which will generate enough tax liability to qualify for available tax benefits. These are the key incentives used to motivate investment into clean energy projects and further expand clean energy. The current design allows involved parties to benefit by achieving maximum scalability and taking advantage of the tax incentives that are intended to spur investment into renewable energy, while providing banks with a reliable, low-risk investment product. This maximizes the opportunities for both energy savings and expanding our country's clean energy portfolio.

The proposed rule's treatment of all nonpublic investments would represent a considerable change in the way tax equity investments are treated by banks seeking to meet minimum capital standards under the rule. The proposed rule would remove the current 100 percent risk weight for non-significant equity exposures whose aggregate carrying value does not exceed 10 percent of the firm's total capital and apply a 400 percent risk weight to equity investments that are not publicly traded. We are concerned that the proposed rule, if enacted as currently written, could impede the significant progress that is possible through the Inflation Reduction Act, which is currently estimated to incentivize billions of dollars in renewable energy investment in hydrogen, carbon capture, and other clean energy technologies.

As a result of these changes, the risk weighting for clean energy tax equity investments would increase. In doing so, the planned rule treats tax equity investments the same as private equity, despite tax equity investments having a lower risk profile. Renewable energy tax equity investments have a risk-return profile that makes them notably different from other types of non-publicly traded investments. For example, investors of renewable energy tax credits are repaid from a consistent stream of the tax credits. Key features of these investments, such as the absence of senior debt, limit the relative risks of tax equity investments.

We are concerned that without recalibration, the rule could potentially have a chilling effect on clean energy financing across the country. Several institutions are beginning to shy away from tax equity-funded clean energy investments, including some multi-million-dollar clean energy projects across the nation. Developers of multiple renewable energy project sponsors across the country have expressed concerns with the sudden shift in deals failing to move forward until further notice. This is particularly alarming for smaller project sponsors who rely on this financing to remain in operation and deploy future projects.

We are concerned about the near- and long-term implications of this uncertainty for project sponsors, which could place their financial well-being at risk and force limited activity in the clean energy financing space altogether. Given the concerns noted above, we ask that you finalize a rule that reflects the low-risk profile of tax equity investments. We also ask that you work with regulated institutions in order to best minimize a disruption to clean energy investment in the interim while a rule is being finalized.

We are appreciative of your hard work to ensure that the final rule is reflective of extensive analysis and thoughtful feedback. This was reinforced in a recent hearing in the Senate Committee on Banking, Housing, and Urban Affairs, in response to a line of inquiry by Senator

Van Hollen, reflecting the importance of these products as a resource for clean energy development.<sup>1</sup> In your responses, each of you reaffirmed your commitment to considering the impact of these rules on clean energy development, and because of this, we remain confident that your work will be reflective of such consideration.

We appreciate your thoughtful attention to comments and public feedback as you continue this work, and we applaud your efforts to continue strengthening the resilience of our financial system.

Sincerely,



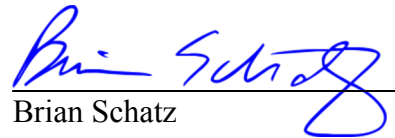
Chris Van Hollen  
United States Senator



Martin Heinrich  
United States Senator



Sheldon Whitehouse  
United States Senator



Brian Schatz  
United States Senator



Thomas R. Carper  
United States Senator



Ron Wyden  
United States Senator

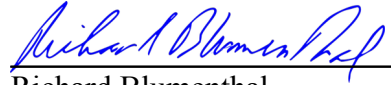
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<sup>1</sup> *Oversight of Financial Regulators: Protecting Main Street, Not Wall Street*. Hearing before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, 118<sup>th</sup> Cong.  
<https://www.banking.senate.gov/hearings/oversight-of-financial-regulators-protecting-main-street-not-wall-street>



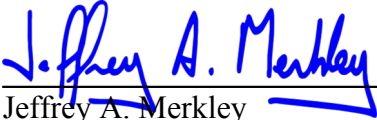
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Christopher S. Murphy  
United States Senator



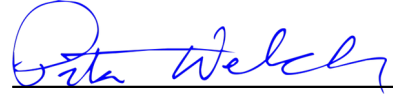
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Richard Blumenthal  
United States Senator



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Jeffrey A. Merkley  
United States Senator



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Peter Welch  
United States Senator



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Jacky Rosen  
United States Senator



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Michael F. Bennet  
United States Senator



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John Hickenlooper  
United States Senator