

Congress of the United States

Washington, DC 20515

December 18, 2023

The Honorable Jerome Powell
Chair
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue NW
Washington, DC 20551

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Commission
550 17th St. NW
Washington, DC 20429

The Honorable Michael J. Hsu
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th St. SW
Washington, DC 20219

Dear Chairman Powell, Chairman Gruenberg, and Acting Comptroller Hsu:

We write regarding the proposed rules implementing Basel III endgame issued jointly by the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation (collectively, “the Agencies”) on July 27, 2023.¹ We strongly support the Agencies’ goals of prioritizing the safety and soundness of our banking system and ensuring large banks are well-capitalized. However, we are concerned that substantially increasing the capital requirements for banks making tax equity investments, primarily in clean energy projects, is not reflective of such investments’ risk profiles and would have unintended consequences that endanger the clean energy transition. We therefore urge the Agencies to reconsider this change in the proposed rule and consider alternatives that accurately reflect the risk profiles of tax equity investments.

We appreciate the Agencies’ focus on safeguarding the strength and resilience of the banking system and were pleased to see an extension of the comment period to allow interested parties more time to analyze the issues and prepare their comments. We further support the Agencies’ attention to ensuring our financial system can adequately withstand challenges and continue to lend through periods of economic stress.

However, we are concerned with the proposed changes to risk weighting for non-publicly traded equity within the proposed rules.² Currently, certain equity exposures carry a 100% risk weighting unless in aggregate they exceed more than 10% of a bank’s capital, at which point the marginal equity exposures carry a 400% risk weighting, also known as the 10% non-significant equity threshold test. The test includes all public and non-public equity exposures except certain qualified community development investments³, such as low-income housing tax credit investments, which carry a 100% risk weight regardless of the threshold test.

¹ “Regulatory Capital Rule: Large Banking Organizations and Banking” 18 Sep. 2023, <https://www.federalregister.gov/documents/2023/09/18/2023-19200/regulatory-capital-rule-large-banking-organizations-and-banking-organizations-with-significant>.

²Regulatory Capital Rule, *supra* note 1.

While the proposed rules maintain the 100% risk weighting for community development investments, they would remove the non-significant equity threshold test. As a result, it would quadruple the capital requirements for all non-community development tax equity investments regardless of the level of exposure relative to the bank's capital. This effectively increases the risk weighting for clean energy tax equity, from 100% risk weighting to 400% risk weighting. The proposed rule would apply the same risk weighting to tax equity as it would for private equity despite the former being less risky.

Clean energy tax equity investments have a similar risk profile to community development investments and, like community development investments, receive comparable support from the federal government. Tax equity has loan-like characteristics that allow project sponsors and banks to take advantage of federal tax incentives for clean energy projects. Therefore, we believe that they should have proportional risk weightings to other tax credit investments that qualify as community development investments.

The Inflation Reduction Act (IRA) is predominantly a tax incentive bill that extended and expanded federal tax incentives to decarbonize the U.S. economy, including technology such as clean energy manufacturing. And while the IRA facilitated new tax credit monetization options through transferable tax credits and direct pay for eligible taxpayers, there remains a critical role for tax equity to finance projects that typically have high up-front capital costs. Energy finance experts believe that the current \$20 billion annual market for tax equity must increase to more than \$50 billion to meet the goals of the IRA and fulfill the demand created by the new incentives.⁴

As written, the proposed rule would make it prohibitively expensive for banks to extend tax equity financing for clean energy project development, which would slow deployment of clean energy generation and manufacturing. Leading tax equity providers anticipate that annual tax equity investments in the clean energy sector could shrink by up to 90%, and many banks could exit the renewable tax equity market entirely.⁵ More urgently, we are aware of this draft rule already causing tax equity providers to pause new clean energy investments pending the outcome of the regulatory rule making.

Given this, we urge the Agencies to carefully review the changes to capital requirements for non-community development tax equity investments in the proposal and consider alternatives that more accurately reflect the risk profiles of these investments. Additionally, we urge the Agencies to acknowledge the current chilling effect that this proposal is having on tax equity financing and

³ An equity exposure that qualifies as a community development investment under section 24 (Eleventh) of the National Bank Act.

⁴ "Expectations for Renewable Energy Finance in 2023-2026." <https://acore.org/wp-content/uploads/2023/06/ACORE-Expectations-for-Renewable-Energy-Finance-in-2023-2026.pdf>.

⁵ "Tax equity is not traditional private equity investment, but a unique." 22 Aug. 2023, <https://acore.org/wp-content/uploads/2023/08/ACORE-Letter-on-the-Impact-of-Proposed-Bank-Regulatory-Capital-Requirements-on-Tax-Equity-Investment-in-Clean-Energy.pdf>.

consider solutions to ensure that the investments in clean energy projects and the projects themselves continue to move forward, while the rulemaking continues to play out.

We appreciate your attention to this important matter and look forward to your response. Please do not hesitate to contact my office with any questions.

Sincerely,



Sean Casten
Member of Congress



Paul D. Tonko
Member of Congress



Juan Vargas
Member of Congress



Joyce Beatty
Member of Congress



Mike Quigley
Member of Congress



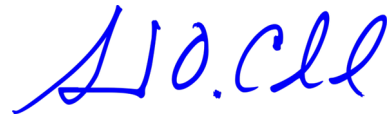
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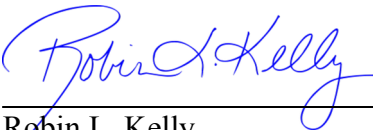
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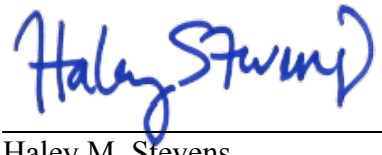
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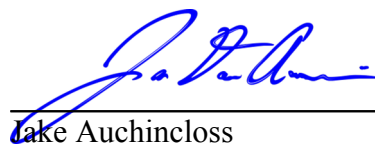
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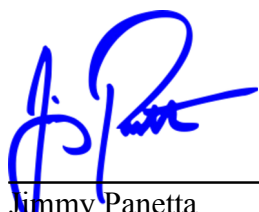
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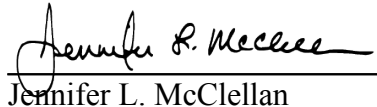
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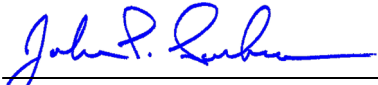
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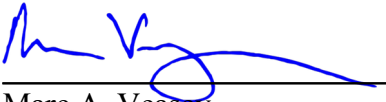
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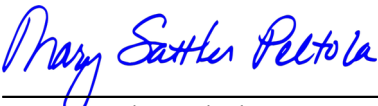
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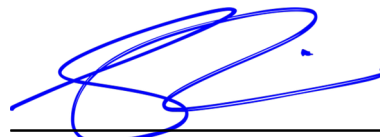
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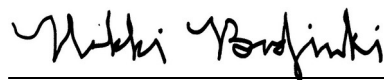
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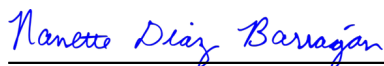
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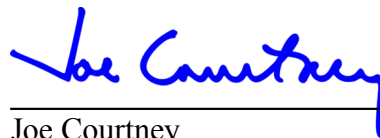
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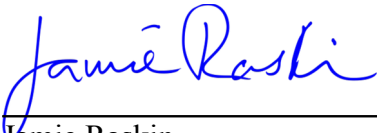
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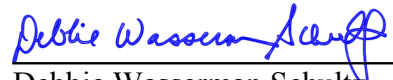
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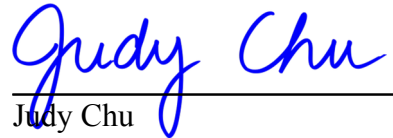
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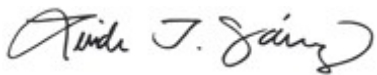
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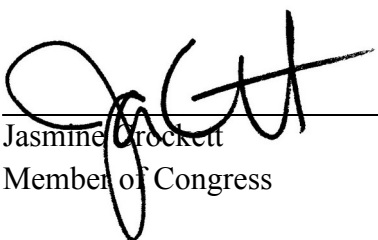
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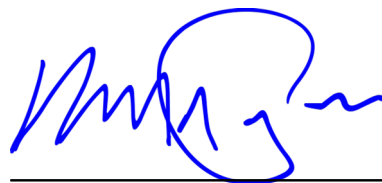
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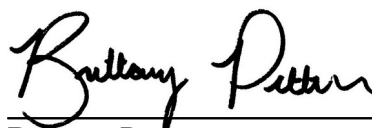
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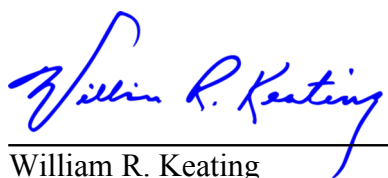
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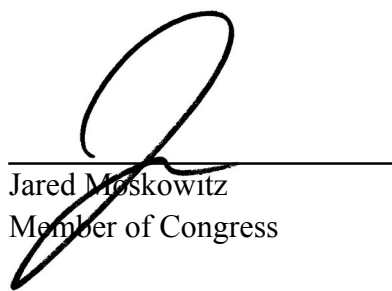
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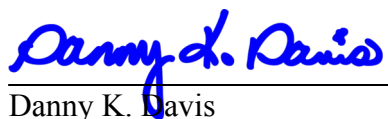
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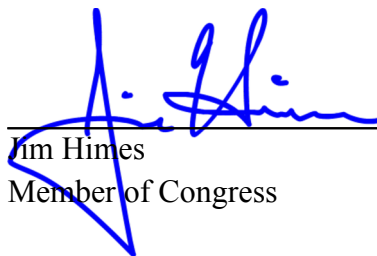
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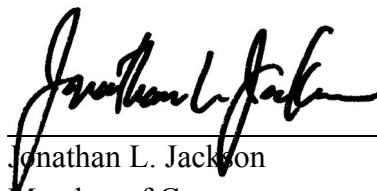
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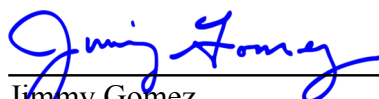
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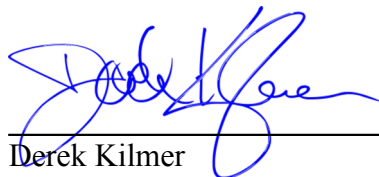
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Cc: Lael Brainard, National Economic Council

