

# The Basel III Endgame Proposal: Public Comments Snapshots

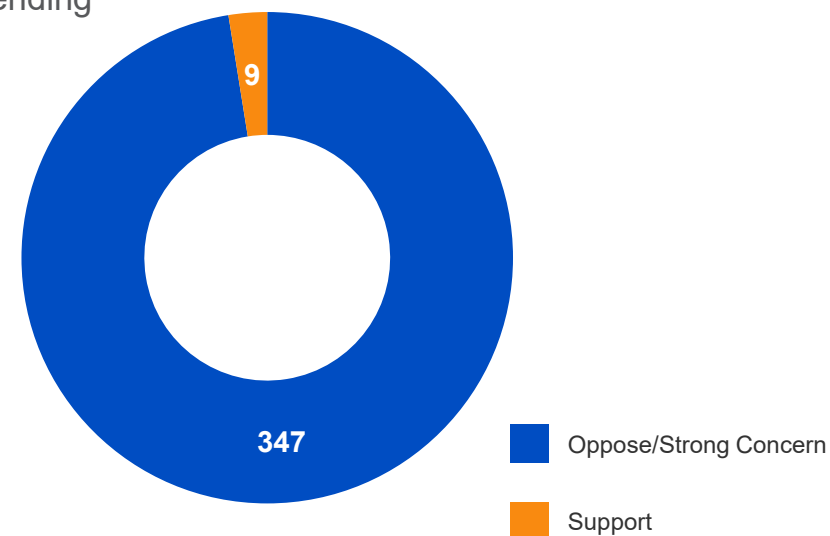
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# Overview of Comment Letter Breakdown\*

## Key Facts

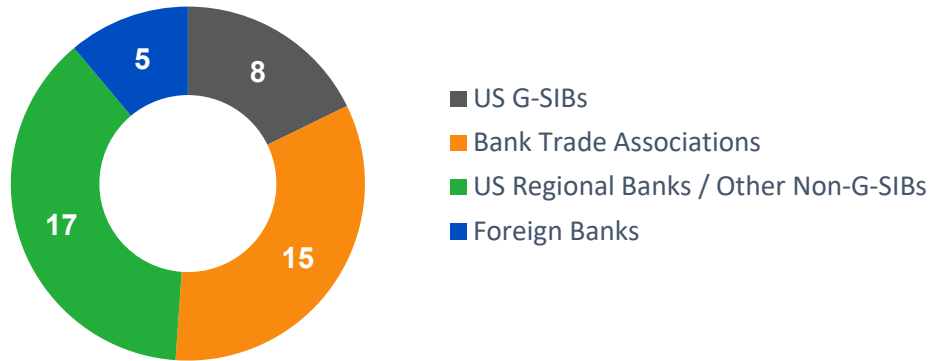
- The comment period closed on **January 16, 2024**
- We reviewed **356 comment letters** posted as of January 24, 2024, that we considered to be substantive; we excluded 46 letters that did not meaningfully address details of the Proposal
- Of the 356 comment letters, 347 of them — over 97% — either outright opposed the Proposal and called for a complete re-proposal, or raised substantial concerns with at least one important aspect
  - Approximately 86% of the negative comments were from outside the banking sector
  - Criticisms of the Proposal are significant and varied, coming from a wide range of commenters from all types of industries
  - Commenters criticized the Proposal on a wide range of economic and policy grounds, and many alleged that it violates legal and procedural requirements
  - Many commenters specifically focused on reduced access to credit (especially for small businesses, homebuyers, and minority communities), harm to renewable energy projects, and harm to the capital markets
- Nine letters – roughly 2% of letters reviewed – supported the rule as proposed; these included letters from academics, think tanks, and a group of 12 Senators led by Senate Banking Committee Chairman Sherrod Brown (D-OH)
  - Their letters argued that increased capital would reduce systemic risk and would result in increased lending



\* *This presentation provides a summary of the comments received on the Basel III Endgame Proposal (the Proposal). For a more detailed analysis, please refer to this [report](#).*

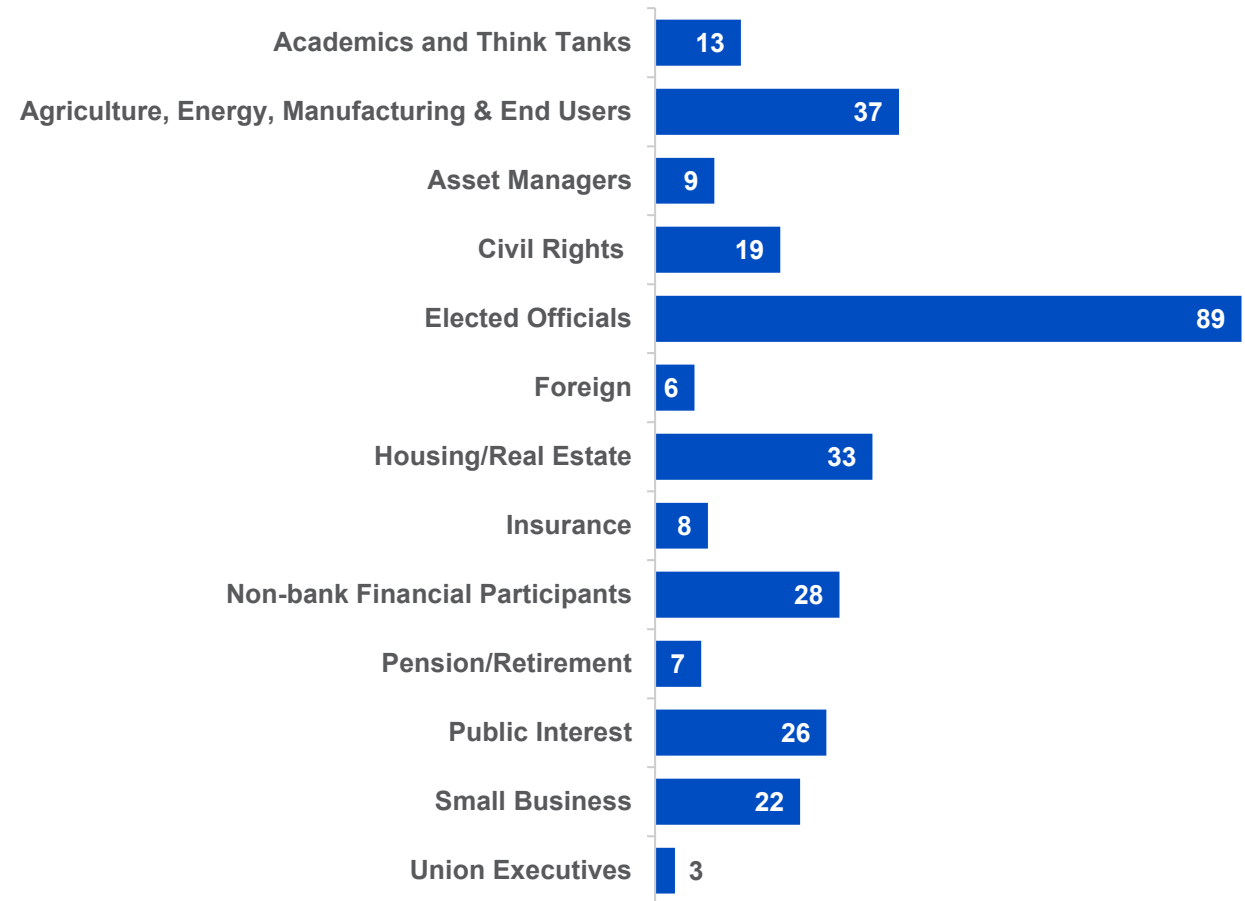
# Opposition to Proposal Came from Broad Range of Stakeholders

Members of the banking industry submitted 45 letters:



- **Banks (30 letters) and their respective trade associations (15 letters) had among the most substantial comments criticizing the Proposal, at both a general and technical level**
- 23 comment letters (approximately 6% of those reviewed) contended that the Proposal **all but eliminated differing capital treatment for large regional banks**. These commenters argued that the Proposal would undermine the spirit of a 2018 law that Congress passed that requires that such banking organizations not be subject to as stringent enhanced prudential standards as G-SIBs.

About 86% (300 letters) of those opposing or expressing strong concern came predominantly from outside the banking sector:



# Principal Areas of Concern From Commenters

Component of rule	End users / businesses / manufacturers	Non-bank financial market participants	Pension funds / retirement groups	Asset managers	Insurance companies	Consumers / small businesses	Housing / real estate	Agriculture / energy producers
Overall Basel III Endgame	⊗	⊗	⊗	⊗	⊗	⊗	⊗	⊗
Market Risk Rule (FRTB)	⊗	⊗	⊗	⊗	⊗		⊗	⊗
CVA capital charge	⊗	⊗	⊗	⊗	⊗			⊗
Securities financing transactions	⊗	⊗	⊗	⊗				
Operational risk capital charge	⊗	⊗	⊗	⊗	⊗		⊗	
Credit risk weightings (incl. IG risk weightings)	⊗	⊗	⊗	⊗	⊗	⊗		⊗
Securitizations	⊗	⊗					⊗	

“ The impact of this proposal is understated and will impede the ability of America’s banks to provide a range of critical financial services to Business Roundtable member companies, reducing both innovation and economic growth. ... The proposed increase in capital requirements will negatively impact the U.S. capital markets.”

[Business Roundtable](#) (on behalf of chief executive officers of large American companies)

“ [M]arket liquidity and market-making are fundamental to the efficient operation of financial markets. We are very concerned that this Proposal, in its rush to impose Basel III on US banks, has failed to explore in-depth — let alone pay more than even lip-service to — the potentially detrimental consequences to market liquidity and market-making of imposing higher or ill-conceived capital standards on banks, which in turn could harm funds and their millions of shareholders.”

[Investment Company Institute](#) (on behalf of the buy-side industry/regulated investment funds)

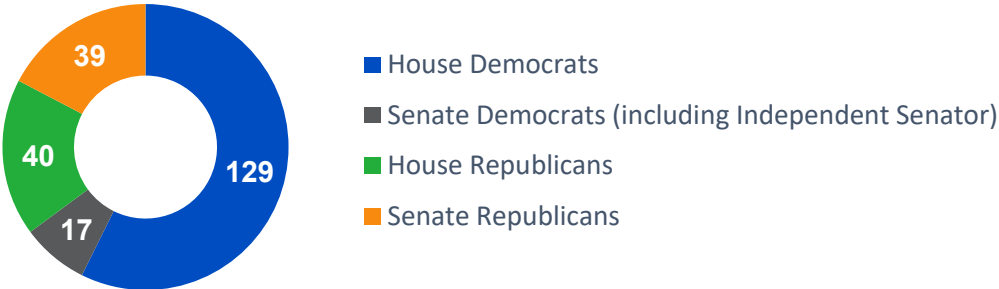
“ As currently written, the Proposal would interfere with our ability to access critical services, manage our assets in ways that create value for our members, and allow us to prudently manage our risk. The cumulative effect of these impacts is that U.S. public pension funds will experience increased costs, as well as additional volatility and risk, despite the fact that our Systems are highly creditworthy, transparent, accountable entities that provide retirement security for millions of Americans.”

[State of Wisconsin Investment Board and Ohio Public Employees Retirement System](#)

# Bipartisan Federal and State Elected Officials Raised Concerns

## Federal

- 225 of 237 Democratic and Republican Members of Congress (including one Independent Senator who caucuses with the Democrats) wrote or signed letters expressing opposition to or serious concern with the Proposal



**100%**  
of Republicans in Congress who joined comment letters on the Proposal expressed concerns

**93%**  
of Democrats in Congress who joined comment letters — including the Chairs of the Congressional Black Caucus and the Congressional Hispanic Caucus — similarly criticized aspects of the Proposal

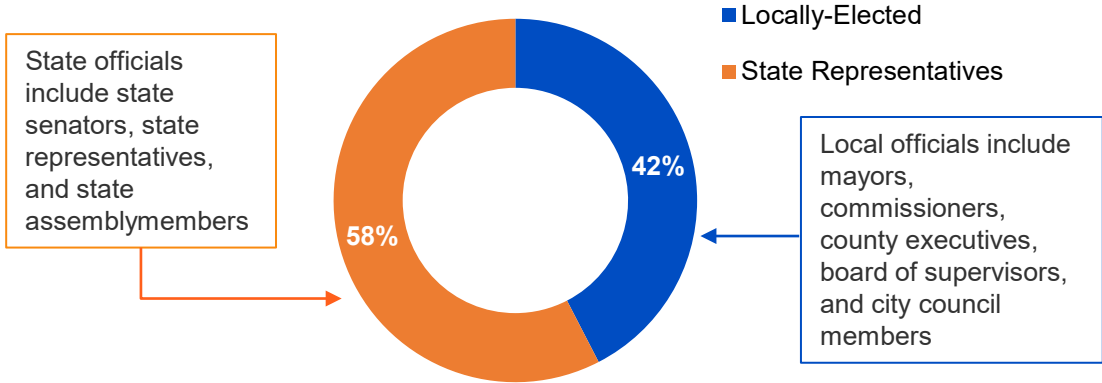
**1**  
Congressional comment letter, signed by 12 Senators (11 Senate Democrats in total, and one Independent Senator who caucuses with the Democrats), supported the Proposal

## State and Local

- Locally elected representatives — including state representatives and senators, mayors, and council members representing 12 states — submitted a total of 66 letters, all of which expressed concerns about the Proposal

Virginia	Georgia	Pennsylvania	Wisconsin
North Carolina	South Carolina	Ohio	Michigan
Minnesota	Nevada	Montana	Arizona

**Distribution of State and Local Commenters:**



# Supporters Came Mostly From Think Tanks and Academics

- Roughly 2% of comment letters supported the Proposal
- They principally argued that:
  - **Increased Capital Would Reduce Systemic Risk.** The aftermath of the 2008 Financial Crisis showed the economic challenges of relying on emergency government measures after a large bank failure.
  - **Increased Capital Would Result in Increased Lending.** With more capital to shield against losses, banks' lending would increase in all economic cycles and would be less likely to slow during economic downturns.
  - **Current rules underestimate regional bank risk.** The failure of Silicon Valley Bank showed that the insolvency of a bank that had between US\$100 billion and US\$250 billion in assets could have systemic effects.
  - **Large banks' internal models underestimated risk.** Therefore, the Proposal's expanded risk-based approach and revised approach to market risk were improvements over current rules.



The Proposal would revise capital measures and definitions for large banks to more accurately reflect the risk at these banks and shift the burden of that risk to the banks as well as their shareholders and away from the public. ... We strongly support the implementation of the Proposed rule, just as we have consistently supported higher capital requirements for more than a decade, though we believe it does not go far enough to strengthen capital levels at the largest banks.”

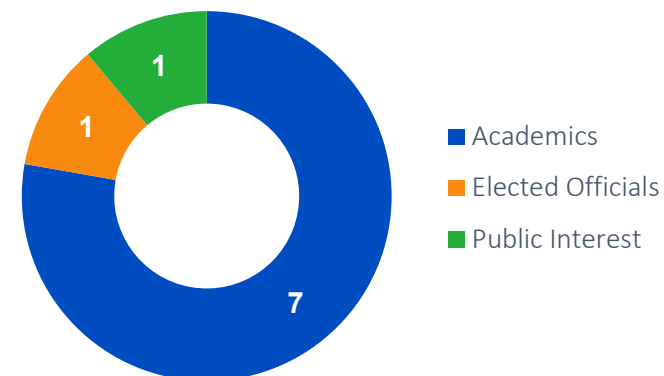
[Better Markets](#)



The Proposed Rule is an important step toward completing the Basel Committee's post-2008 regulatory framework and correcting regulatory weaknesses exposed by the 2023 banking turmoil. Once implemented, the Proposed Rule will strengthen large banking organizations' capital cushions, reduce the likelihood of future financial crises, and position large banks to remain a source of credit to households and businesses throughout the economic cycle. We urge the banking agencies to finalize the Proposed Rule without delay and without weakening its provisions.”

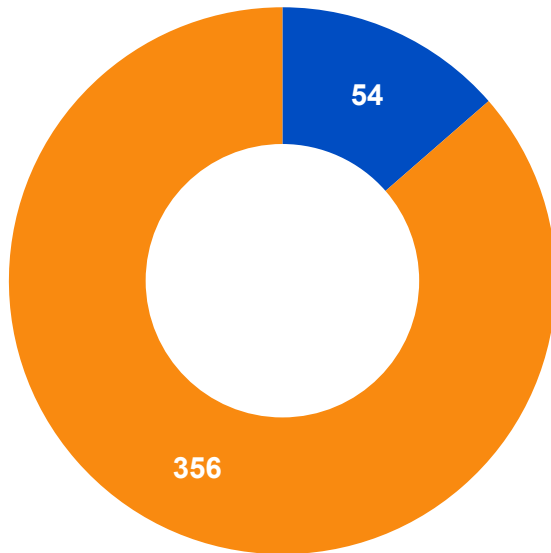
[Profs. Anat R. Admati, et al.](#) (30 signatures)

## 9 Letters Supporting the Proposal by Commenter Type:



# Legal / Process Concerns

54 of the 356 comment letters reviewed (about 15%) raised concerns with legal / procedural aspects of the Proposal:



In light of the Proposed Rule's significant negative impact on manufacturers, the NAM is concerned about the NPRM's lack of data or quantitative analysis in support of the banking regulators' policy choices. In fact, two months after the NPRM was released, the Federal Reserve announced a request for data from banks affected by the Proposed Rule. ... However, waiting until after the release of the NPRM to collect and analyze relevant data calls into question whether the banking regulators considered relevant data in formulating the Proposed Rule as required by the APA."

[National Association of Manufacturers](#)



The Proposal contains hundreds of pages detailing new proposed requirements. ... With such myriad of proposed changes, one would expect that the Agencies would present a detailed and comprehensive economic cost-benefit analysis to demonstrate that the economic benefits of the Proposal exceed the costs of implementing the proposed revisions. This, however, is not the case."

[Professor Anthony Saunders, New York University Stern School of Business](#)

The principal legal / process concerns were:

- **The Proposal provides little or no data and rests on insufficient economic analysis** in support of increased capital requirements and ignores voluminous data that should have informed the Proposal
- Further, the Banking Agencies relied on internal data and analyses to set capital requirements **without making such data and analyses available for public comment**
- The increased capital charges are **not connected to any objective standard of risk** for the banking sector
- The Banking Agencies issued a voluntary Quantitative Impact Study during the comment period, and thus **the public has been unable to comment on the expected impact** during the comment period
- The Banking Agencies **failed to provide justification for picking and choosing among Basel III Endgame recommendations**; sometimes, the Agencies copied the international agreement without any independent analysis; other times they deviated without explanation
- The Proposal may be vulnerable to a legal challenge based on **excessive delegation** of Congress's policymaking authority, or on the agencies' interpretation of their statutory authority

# Analysis

- The record of comments on the Proposal includes a **substantial amount of detailed and significant comments from a diverse range of industries** — almost all of which **express reservations** about at least some aspects of the Proposal
- Under the APA, the Banking Agencies **must consider and respond to these comments** as they decide whether and how to finalize the proposed rulemaking
  - Under applicable legal precedent, the Banking Agencies will need to “explain the assumptions and methodology underlying the Proposal. Failure to “respond to relevant and significant public comments” could lead a reviewing court to set aside any final rule as arbitrary and capricious\*
- Given the **unusually large volume of critical comments received from such a diverse group of stakeholders**, and the significant substantive, policy, and legal problems those commenters have identified in the Proposal, **the Banking Agencies face certain challenges:**
  - If they decide to finalize the proposed rule, they will need to provide considered responses to the array of detailed concerns raised by the commenters
  - Even if they make significant changes from the Proposal, any final rule could still be vulnerable to challenge for the reasons identified by commenters
- As an alternative, the Banking Agencies may consider withdrawing the Proposal or re-proposing the rule to address the many concerns commenters have raised\*\*

\* *Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 535 (D.C. Cir. 1983); *Cape Cod Hosp. v. Sebelius*, 630 F.3d 203, 211-12 (D.C. Cir. 2011); see 5 U.S.C. § 706.

\*\* On January 16, 2024, Federal Reserve Governor Christopher Waller opined that the Banking Agencies should consider withdrawing the Proposal and starting over, given how much work would be involved in producing an acceptable final rule. See [American Banker article \(Jan 16, 2024\)](#).



# Contact Information



**Arthur S. Long**  
Partner, New York  
email: [arthur.long@lw.com](mailto:arthur.long@lw.com)  
Phone: +1.212.906.1353



**Roman Martinez**  
Partner, Washington D.C.  
email: [roman.martinez@lw.com](mailto:roman.martinez@lw.com)  
Phone: +1.202.637.3377



**Pia Naib**  
Counsel, New York  
email: [pia.naib@lw.com](mailto:pia.naib@lw.com)  
Phone: +1.212.906.1208



**Jordan R. Goldberg**  
Associate, Washington D.C.  
email: [jordan.goldberg@lw.com](mailto:jordan.goldberg@lw.com)  
Phone: +1.202.637.3341



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