December 21, 2017

Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
400 7th Street SW, Suite 3E-218, Mail Stop 9W-11
Washington, DC 20219
Docket ID OCC–2017–0018; RIN 1557–AE10

Federal Deposit Insurance Corporation
Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
550 17th Street NW
Washington, DC 20429
RIN 3064 AE-59

Board of Governors of the Federal Reserve System
Ann E. Misback, Secretary
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. R–1576; RIN 7100 AE-74

Re: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (proposed HVADC rule)

Dear Federal Banking Agencies:

The undersigned organizations appreciate the opportunity to comment on this proposal to the Office of the Comptroller of the Currency, the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies). We comment in particular on the proposal to replace the current High Volatility Commercial Real Estate (HVCRE) risk-based capital rule with a new **High Volatility Acquisition, Development or Construction (HVADC) rule.**

Our associations represent banks, borrowers and other commercial real estate industries affected by bank risk-based capital regulations for acquisition, development or construction (ADC) lending. Banks have traditionally been an important source of capital for ADC lending, and we believe that bank capital requirements should not create unwarranted impediments to banks continuing to serve that function.

Comments

We share the agencies' objective of reducing regulatory burden. However, we believe the proposal would actually increase the regulatory burden on bank ADC lending. To achieve the objective of reducing regulatory burden, we recommend further clarifying the definition of ADC, retaining and improving the capital contribution exemption, and applying a rule that does not cause undue disruption across all ADC loans and banks, as we describe below.

Definition of ADC loan. We appreciate the addition of "<u>primarily</u> finances or refinances" to the definition of ADC loan. This change helps clarify what loans are subject to a higher risk weight by excluding certain loans that are not fundamentally ADC loans.

However, we recommend providing even more clarity to the definition by also adding that ADC loans are loans secured by real estate, where repayment is dependent on future rental income of, or sales proceeds from, or refinancing of the property. Those additions could help clarify that the definition is intended only to capture loans that are truly ADC loans.

Permanent loan exemption. The proposal would introduce a "permanent loan" exemption that would exclude prudently underwritten loans that have a sufficient, clearly identified ongoing source of repayment. This would be an improvement over the current rule, which excludes loans that have been "converted to permanent financing." We appreciate the agencies willingness to include this clarifying change.

Capital contribution exemption. The proposal would eliminate the capital contribution exemption. The capital contribution exemption exempts loans from the 150 percent risk weight if they meet certain standards for LTV, borrower capital contributions and restrictions on capital withdrawals. Under the current rule, the risk weight for loans that meet those standards is 100 percent, and the risk weight for loans that do not meet those standards is 150 percent.

Removing this exemption would reduce the rule's risk sensitivity, would eliminate the incentive for banks and borrowers to meet specified prudent underwriting standards, and would fundamentally change the structure of the current rule. We recommend that the capital contribution exemption be retained and modified. Modifications should include adjustments to the treatment of contributed appreciated land and reductions to the scope of mandatory limitations on withdrawals of contributed capital.

Implementation disruption. As proposed, the final HVADC rule would apply under the standardized approach, and only to ADC loans originated after the effective date. At the same time, the original HVCRE rule would continue to apply under the standardized approach to loans originated prior to the effective date, as well as to all ADC loans under the advanced approach.

This simultaneous application of HVADC and HVCRE rules that are inconsistent with one another would increase the regulatory burden of compliance and could cause market disruption, most notably in the loan syndication market where the market depends on transactions' ability to meet the lending standards of multiple lenders. We therefore strongly encourage the agencies to modify the proposed rule in a way that prevents disruptive impacts to the maximum extent feasible, and to specify an implementation that would substantially mitigate any disruptive impacts that might remain.

Conclusion

Again, we appreciate that the agencies recognize that the HVCRE rule can be improved and that they seek to reduce regulatory burden. We hope that these comments help the agencies make the necessary changes to reduce regulatory burdens for the benefit of banks, regulators, borrowers and all others affected by ADC lending.

Sincerely,

Mortgage Bankers Association
Nareit
National Apartment Association
National Association of Realtors
National Multifamily Housing Council
The Clearing House
The CRE Finance Council
The Real Estate Roundtable