

October 22, 2012

Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
(R 7100, RIN AD87)

Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219
(RIN 1557-AD46)

Federal Deposit Insurance Corporation
550 17th St, NW
Washington, DC 20429
(RINs 3064-AD95, 3064-AD96, and 3064-AD 97)

Re: Regulatory Capital Rules:

- A. Regulatory Capital, Implementation of Basel III: Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions and Prompt Corrective Action (Regulatory Capital Rule)
- B. Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements (Standardized Approach)
- C. Advanced Approaches Risk-based Capital Rule; Market Risk Capital Rule (Advanced Approach)

To Whom It May Concern:

The undersigned organizations welcome the opportunity to provide the collective insights of the real estate industry regarding the commercial and multifamily real estate elements of the above regulatory capital rules (the Proposals). We recognize the extraordinary effort and coordination that were required to develop and publish the Proposals.

While each of the undersigned organizations may submit comment letters from their respective memberships' perspectives, we emphasize the importance of commercial and multifamily real estate as an asset class and collectively believe that the Proposals should not be implemented until the significant concerns raised in this letter have been comprehensively addressed.

The Proposals Creates Competitive and Regulatory Imbalances

Due to higher capital charges, the Proposals will create an unlevel playing field between U.S. and European Union (EU) banks. Excessive risk-based capital for commercial mortgage-backed securities (CMBS) and other bank assets will skew the marketplace by incentivizing irrational decisions concerning assets and liabilities. This is against the spirit and intent of the Basel Accords of harmonizing on an international basis bank regulatory capital rules. Finally,

the layering of Basel III on top of other new or proposed rules will stifle real estate finance. This would be especially harmful to community and smaller regional banks that may have great difficulty implementing the Proposals' barrage of new compliance mandates.

Securitization Exposures

The proposed risk-weight treatment of private-label securitizations, including CMBS, held by banks is punitive along a number of dimensions. Under the Simplified Supervisory Formula (SSFA), the total risk-based capital requirement for CMBS is higher than it would be for an identical set of loans that would be held in a bank's lending portfolio. Additionally, risk-based capital for CMBS is higher under the SSFA than it is for both the U.S. and EU ratings-based risk capital methodologies.

The Proposals' alternatives to the SSFA, the gross-up approach and the 1,250 percent risk-weight approach (100 percent capital requirement) both produce risk-weights that are even more punitive than the SSFA. Consequently, regulators should recalibrate the SSFA in a manner that will allow it to more closely approximate the risk-weights of competing EU financial institutions. Until the SSFA is recalibrated, the current U.S. ratings-based approach should remain in place.

Commercial and Multifamily Real Estate Loans

We support the Proposals' 50 percent risk-weight treatment of "statutory" multifamily mortgages. The Proposals creates a new risk-based capital category for certain acquisition, development and construction (ADC) loans – High Volatility Commercial Real Estate Exposures (HVCRE). The risk-weight for an ADC loan is 150 percent versus 100 percent for non HVCRE loans. For meeting the 15 percent contributed capital requirement to be excluded from HVCRE status, the difference between the land's fair market value and its purchase price should be included in the contributed capital total.

Fannie Mae & Freddie Mac (GSEs) Multifamily MBS

We support the 20 percent risk-weight for multifamily MBS issued by the GSEs, which is consistent with its current risk-weight treatment. For the tranches of a multifamily MBS that are issued by a third-party but are guaranteed by either Fannie Mae or Freddie Mac, we strongly support the "substitution approach" that allows the 20 percent risk-weight to be applied to the multifamily family tranches that Fannie Mae or Freddie Mac guarantee. For tranches of a multifamily MBS that are not supported by Fannie Mae or Freddie Mac guarantees, they should receive the same capital treatment as private-label MBS.

REITS

The Proposals applies a 100 percent Credit-Conversion Factor (CCF) to off-balance sheet repurchase agreements, doubling the current 50 percent CCF. Repurchase agreements are a key form of mortgage finance, particularly for Real Estate Investment Trusts (REITs) entities, whose industry has the potential to bring substantial balance sheet capacity to the mortgage finance market. A sizable portion of REIT financing occurs through repurchase agreements. By doubling the CCF, the cost of these agreements will increase significantly under the Proposals, and in the process will unnecessarily negatively impact the REIT market. We believe this approach ignores the reality of repurchase financing which allows the repurchase agreement holder to have actual title and ownership of assets. Given this practice, we strongly urge for the 50 percent CCF to remain in place for repurchase agreements.

Commercial and Multifamily Servicer Cash Advances

Advance obligations in CMBS transactions do not provide credit support to the investor, loans to the borrower or fund liquidity needs of either advancing obligations since the inception of CMBS. In fact, because of the strict repayment requirements of servicer cash advances specified in CMBS loan documents, their non repayment is highly unlikely. Despite this, the Proposal calls for a 100 percent capital charge for all servicer cash advances. We oppose this punitive capital treatment and strongly recommend that these cash advances be excluded from the risk-weighting requirements included in the Proposals.

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This letter represents the broad strokes of the industry's position on the Proposals; the individual responses by the undersigned organizations will provide a more detailed examination of the issues raised in the Proposals.

We appreciate the substantial effort that was required to develop the Proposals. We are concerned, however, about the impact the Proposals, as currently written, would have on the CMBS market, REITs, MSRs and the competitive bank landscape. Until these impacts are considered and adequately addressed, the Proposals should not be implemented.

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Thank you for the opportunity to submit comments on this critically-important rulemaking.

Sincerely,

Appraisal Institute
Building Owners and Management Association International
CRE Finance Council
Mortgage Bankers Association
National Apartment Association
National Association of REALTORS
National Multifamily Housing Council
The American Institute of Architects