



July 30, 2009

Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 2-3
Washington, DC 20219
Docket No. OCC-2009-007

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1361

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN 3064-AD42

Regulations Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2009-0007

Re: Docket No. R – 1361, OCC-2009-007, OTS-2009-0007, FDIC-RIN 3064-AD42 (Risk Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital – Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program)

Dear Sir or Madam:

Consumer Bankers Association (“CBA”)¹ respectfully submits this comment letter in response to the Interim Final Rule (“Interim Final Rule”) effective June 30, 2009, which provides capital risk-weighting guidelines for mortgage loans modified under the Making Home Affordable Program (“Program”).

Background

The Board of Governors of the Federal Reserve System, together with other Federal bank regulatory agencies, (collectively “Agencies”) has adopted the Interim Final Rule to provide that a mortgage loan modified under the Program will retain the risk weight assigned to the loan prior to the modification, so long the loan continues to meet other applicable prudential criteria. The Program applies to a spectrum of outstanding loans, some of which meet all of the prudential

¹ The **Consumer Bankers Association** is the recognized voice on retail banking issues in the nation’s capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, deposits and delivery.

CBA was founded in 1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include most of the nation’s largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry’s total assets.

criteria under general risk-based weight and some of which otherwise receive a 100 percent risk weight.

Accordingly, under the Interim Final Rule a qualifying mortgage loan appropriately risk weighted at 50 percent before modification under the Program would continue to be risk weighted at 50 percent after modification, and a qualifying mortgage loan appropriately risk weighted at 100 percent before modification under the Program would continue to be risk weighted at 100 percent after modification.

Under the Interim Final Rule, if a mortgage loan becomes 90 days or more past due, carried in non-accrual status, or otherwise restructured after being modified under the Program, such loan would be assigned a risk weight of 100 percent. Also, under the Interim Final Rule past due and non-accrual loans that receive a 100 percent risk weight will return to 50 percent risk weight under certain circumstances, including after demonstration of a sustained period of repayment performance.

CBA supports the Agencies' efforts to facilitate loan modification through the Interim Final Rule and thereby furthering the important goal of promoting affordable and sustainable loan modifications for homeowners that meet eligibility requirements under the Program. However, CBA respectfully requests that the Agencies provide some additional clarity in specific areas to help further support and facilitate the Program. Specifically, the final rule should address the appropriate risk weighting during the trial period, should state that a risk weighting of 100 percent may be returned to 50 percent upon the successful completion of the trial period, and should expand relief to certain qualifying second-lien mortgage loans that are not held by the same holder of the first-lien mortgage loans.

Comments

- **Risk Weighting During Trial Period**

The Interim Final Rule allows for a qualifying mortgage risk-weighted at 50 percent prior to modification to retain the same risk-weight after modification. Because the borrower's delinquency may advance during the trial period, CBA respectfully request that the Agencies clarify in the final rule that a qualifying mortgage should be treated as if it were modified under the Program at the start of the trial period for purposes of capital treatment. Otherwise, the bank may risk loss of the risk weighting during the trial period.

- **Risk Weighting of 100 Percent May Revert to 50 Percent Upon a Sustained Period of Repayment Performance and Other Circumstances**

Under the Interim Final Rule a mortgage loan with a risk weighting of 100 percent may be changed to a risk weighting of 50 percent upon the completion of a sustained period of repayment performance and other circumstances. CBA respectfully requests that the Agencies clarify in the final rule what would be the appropriate measurement of a "sustained period of repayment" and under what other circumstances a qualifying mortgage with a risk weighting of 100 percent may be returned to a risk weighing of 50 percent.

CBA believes a logical measurement of a sustained period of repayment should be the successful completion of the Program's 3- or 4-month trial period. Alternatively, a loan should return to a 50 percent risk weighting at the time that the borrower becomes eligible for their first "pay for performance" principal balance reduction under the Program's guidelines.

- **Relief of Certain Qualifying Second-Lien Mortgage Loans Regardless of the Identity of the First-Lien Holder**

Under the Interim Final Rule if a banking organization holds both a qualifying first-lien and second-lien mortgage loan on the same property, with no intervening lien, and both loans are modified under the Program, the banking organization may continue to apply the risk weights appropriate to the loans prior to the modification, as long as other prudential criteria remain satisfied.

CBA respectfully requests that the Agencies expand this treatment by providing that, if a qualifying second-lien mortgage loan is successfully modified under the Program, and the corresponding qualifying first-lien mortgage loan is also successfully modified under the Program, and there are no intervening liens, then the organization holding the second-lien mortgage loan may continue to apply the risk weight appropriate to the loans prior to modification, regardless of the identity of the first-lien holder. We believe this is in keeping with the expanded guidance provided to encourage the modification of both first and second liens even when owned by different parties.

We further request that the Agencies adopt in their final rule a standard allowing a second-lien loan, regardless of the identity of the first-lien holder and with no intervening liens, to return to 50 percent risk weighting under certain circumstances as outlined above, including after demonstration of a sustained period of repayment performance.

CBA appreciates the opportunity to comment on this matter. If you have any questions regarding the foregoing, please feel free to contact the undersigned at (703) 276-3869 or dpommerehn@cbanet.org.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Pommerehn", with a long horizontal flourish extending to the right.

David Pommerehn
Counsel, Legislative and Regulatory Affairs