MORTGAGE BANKERS ASSOCIATION

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Docket No. R-1876; RIN 7100-AH08

RE: Regulatory Capital Rule: Revisions to the Community Bank Leverage Ratio Framework

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the recent Notice of Proposed Rulemaking[2] (NPR) issued by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Board of Governors of the Federal Reserve (collectively the "Agencies") that that would lower the community bank leverage ratio (CBLR) requirement for qualifying community banks from 9% to 8%, consistent with the lower bound provided in section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (the "Act"). The NPR would also extend the period during which qualifying community banks can remain in the CBLR framework while not meeting all the qualifying criteria from 2 quarters to 4 quarters, subject to a limit of 8 quarters in any 5-year period.

[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership; and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage-lending field. For additional information, visit MBA's website: www.mba.org.

[2] A Proposed Rule by the Comptroller of the Currency, the Federal Reserve System, and the Federal Deposit Insurance Corporation on 12/01/2025 to revise the community bank leverage ratio framework.

Background

In 2013, the Agencies (pursuant to Basel III requirements) revised the regulatory capital rule framework for banking organizations with the goal of "strengthening" applicable capital requirements to ensure sound, high-quality capital in the banking system. This revision introduced more stringent and complex rules on regulatory capital requirements for banks, and the impact on community banks was particularly burdensome. In fact, the costs and burdens associated with compliance for community banks significantly outweighed any perceived benefits. In response to industry feedback, in March 2017, the Agencies submitted a major joint report to Congress as part of the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) review[3], indicating their intent to simplify the capital rules for community banks in order to reduce regulatory burdens for these entities – while still maintaining the safety, soundness, and quality of capital in the banking system.

In 2018, Congress responded by passing the Act, pursuant to which Section 201 established the community bank leverage ratio (CBLR) framework – a simplified process of regulatory capital calculation for qualifying community banks. This provision allows a qualifying community bank to avoid the burdensome regulatory capital requirements under Basel III and instead adopt the new simplified capital framework. Congress directed the Agencies to establish the qualifications for community banks to opt into the CBLR framework, including establishing an acceptable CBLR level and developing procedures for addressing situations when a previously qualifying community bank falls out of compliance.

Summary

The provision directed the Agencies to establish an applicable community bank leverage ratio between 8% and 10% for banks that choose to opt in. Accordingly, a bank that meets or exceeds the established ratio would be treated as having met: *(i) The generally applicable leverage and risk-based capital requirements under the agencies' capital rule; (ii) the capital ratio requirements in order to be considered well capitalized under the agencies' prompt corrective action (PCA) framework (in the case of insured depository institutions); and (iii) any other applicable capital or leverage requirements*; and therefore, allowed to avoid the burdensome capital requirements under Basel III.

In February 2019, the Agencies proposed a 9% CBLR level, as well as a two-quarter grace period for a community bank that fails to meet any of the qualifying criteria after having previously met them. Despite stakeholder recommendations for a lower CBLR level and an increased grace period, the Agencies finalized the rule as proposed in November 2019.

The NPR proposes to revise the 2019 final rule by lowering the established 9% CBLR level to 8% and increasing the out-of-compliance grace period from two quarters to four quarters.

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[3] The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) mandates the Federal Financial Institutions Examination Council (FFIEC) and its member agencies—the OCC, the FDIC, and the Fed - to review their regulations at least every 10 years with the goal of identifying and eliminating, as appropriate, regulations that are outdated, unnecessary, or unduly burdensome on insured depository institutions.

Comments

I. CBLR Level

MBA fully supports the proposed lowering of the CBLR level from 9% to 8%. As we noted in our comments to the 2019 proposal, the 9% CBLR level effectively excludes many qualified institutions from opting into the CBLR framework, thereby negating Congress's goal of making available a simplified regulatory capital framework for the smallest and least complicated community banks. While there is no evidence that a lower CBLR level would undermine regulatory safety and soundness in the banking system, or incentivize CBLR banking organizations to hold less regulatory capital than they do today, it is clear that a lower CBLR level would incent more community banks to opt into the framework.

II. Increase in Grace Period.

MBA fully supports the NPR's increase in the grace period for out-of-compliance banks from two quarters to four quarters. This additional time would provide a sufficient runway for a bank to remediate and come back into compliance, or effect a smooth transition out of the framework and into the more complex risk-based capital requirements under the generally applicable capital requirements.

III. CBLR Calculation – Eliminate Cap on MSAs

In calculating a bank's CBLR, the Agencies consider the bank's CET1 capital calculation, which caps a bank's mortgage servicing assets (MSAs) at 25% of CET 1, and requires dollar-for-dollar capital on MSAs above the cap. In effect, the current Basel III cap on MSAs indirectly impacts CBLR banks – despite the fact that such banks were meant to be excluded from the more stringent and burdensome Basel III rules, including those related to MSAs.

As we have noted for years, MSAs are not high-risk assets and should never have been subject to the punitive 250% risk weight and 25% CET1 capital cap under Basel III.[4] The Agencies themselves stated in their 2016 report to Congress on MSAs ("the Report")[5] that MSAs were not a major contributing factor for the majority of the banks that failed during the Great Financial Crisis. In fact, of the 518 banks that failed, only 66 had MSAs on their books, and except for one institution, there was no evidence that having MSAs on their books was a major contributing factor to the failures.[6]

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[4] As the MBA has noted on several occasions to the Agencies, the erroneous and outdated premise that MSAs are extremely risky and difficult to value has played a role in the draconian treatment that the asset has received over the last few years. MSAs are now better understood, better managed, and better controlled. Many holders of the asset have a better understanding of the asset and engage in various effective activities – including hedging – to manage volatility and greatly reduce any risk in holding the asset. The great strides that have been made over the last few years to better understand, control and manage MSAs have not only made the asset one with an extremely low risk level, but have also resulted in increasing the ability of banks to value MSAs, which has led to well-functioning markets for MSAs.

[5] Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Offices of the Comptroller of the Currency, National Credit Union Administration, *Report to the Congress on the Effect of Capital Rules on Mortgage Servicing Assets* (June 2016).

[6] See page 13. "Of the 518 banking institutions that failed between 2007 and year-end 2015, 66 had MSAs on their books at the date of failure…problems with MSAs were described as a significant factor leading to the failure of one institution and as contributing to the failures of three others."

While CBLR institutions get relief from the current punitive 250% MSA risk weighting, there is no justification for maintaining the 25% CET1 capital cap on these assets. This cap for CBLR banks defeats the purpose of the CBLR option, as it excludes many community banks with very low risk profiles (i.e., very little trading assets and liabilities and off-balance-sheet exposures) from qualifying for the CBLR framework.

As we have noted in the past, mortgage servicing is a critically important line of business for community banks. The servicing function – collecting payments, administering impound accounts for taxes and insurance, and working with borrowers who encounter difficulties meeting their loan obligations – is arguably the most important relationship a bank has with its customers and the community. By retaining the servicing function, banks are able to continue to maintain these important relationships with their customers even when they sell mortgages into the secondary market. The ultimate result of these draconian rules on MSAs over the years has been higher costs and the forced sale of MSAs by banks to third-party servicers.

MBA strongly recommends that the Agencies use this opportunity to amend the CBLR framework to eliminate the 25% MSA cap in CET1 capital, as it unnecessarily limits the number of community banks that can opt into the framework. The revised rule should clarify that in calculating CBLR, community banks that opt into the framework would not be subject to the unjustified Basel III 25% cap on MSAs that can be included in CET1 capital.

In addition, MBA also strongly urges the Agencies to address in other forthcoming rulemakings the punitive capital treatment of MSAs for all *non*-CBLR institutions.

Conclusion

MBA appreciates the Agencies' goal of making the CBLR framework available to more community banks, and we believe that implementing our recommendations above would significantly help achieve this goal. We look forward to working with the Agencies as they continue to develop these and other bank capital rules. Please feel free to contact me ([redacted] or Fran Mordi [redacted]) if you have any questions or wish to discuss any aspect of this letter further.

Sincerely,

[redacted]

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Mortgage Bankers Association