September 23, 2021

MEMORANDUM TO: Board of Directors

FROM: Doreen R. Eberley
Director
Division of Risk Management Supervision

SUBJECT: **Final Rule: Real Estate Lending Standards**

Summary of Recommendation

Staff recommends the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) approve and authorize publication in the *Federal Register* the attached Final Rule: Real Estate Lending Standards (Final Rule) to be effective 30 days after publication. The Final Rule amends the Interagency Guidelines for Real Estate Lending Policies[1] (Real Estate Lending Standards) to calculate the ratio of loans in excess of the supervisory loan-to-value limits (LTV Limits) using tier 1 capital plus the appropriate allowance for credit losses[2] in the denominator. The purpose of the Final Rule is to incorporate consideration of the community bank leverage ratio (CBLR) rule,[3] which does not require electing institutions to calculate tier 2 capital or total capital, into the method for calculating the ratio of loans in excess of the supervisory LTV Limits. The revision provides a consistent approach for calculating the ratio of loans in excess of the supervisory LTV Limits at all FDIC-supervised institutions and also avoids any regulatory burden that could arise if a FDIC-supervised institution subsequently decided to switch between different capital frameworks.

The Final Rule finalizes, without change, a Notice of Proposed Rulemaking (NPR or proposal) that was published in the *Federal Register* on June 25, 2021. The NPR received one comment, which supported the proposal.

CONCUR:

____
Nicholas J. Podsiadly
General Counsel

[1] FDIC: 12 CFR Pt. 365, App. A, Subpart. A
[2] Banking organizations that have not adopted the current expected credit losses (CECL) methodology will use tier 1 capital plus the allowance for loan and lease losses as the denominator. Banking organizations that have adopted the CECL methodology will use tier 1 capital plus the portion of the allowance for credit losses attributable to loans and leases.

Supplementary Information

Background

The Real Estate Lending Standards, which were issued pursuant to section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, 12 U.S.C. 1828(o), prescribe standards for real estate lending to be used by FDIC-supervised institutions in adopting internal real estate lending policies. The FDIC recognizes the LTV Limits as one of several pertinent credit factors to be considered when prudently underwriting a real estate loan. The current Real Estate Lending Standards establish supervisory LTV criteria for various real estate lending transaction types, but also allow exceptions to the supervisory LTV Limits. The Real Estate Lending Standards also establish an expectation that institutions limit LTV exceptions, measured against total capital, as defined in the footnote to the Real Estate Lending Standards to be equivalent to that defined in the capital rules.

Section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), Pub. L. 115-174, 132 Stat. 1296 (2018), amended provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act relative to the capital rules administered by the agencies. The CBLR rule was issued by the FDIC, the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC) to implement section 201 of the EGRRCPA, and it provides a simple measure of capital adequacy for community banking organizations that meet certain qualifying criteria.[4]

Proposal

The FDIC issued a NPR, published in the *Federal Register* on June 25, 2021, that would incorporate consideration of the capital framework established in the CBLR rule into the method for calculating the ratio of loans in excess of the supervisory LTV Limits, as set forth in the Real Estate Lending Standards. In the Real Estate Lending Standards, total capital is the denominator used to calculate the ratio of loans in excess of the supervisory LTV Limits. However, qualifying community banking organizations[5] that elect the CBLR framework (Electing CBOs) are not required to calculate or report tier 2 capital or total capital.[6] Under the proposal, the Real Estate Lending Standards would be amended so as to calculate the ratio of loans in excess of the supervisory LTV Limits using tier 1 capital plus the appropriate allowance for credit losses[7] in the denominator.

The proposed revision would provide a consistent approach for calculating the ratio of loans in excess of the supervisory LTV Limits at all FDIC-supervised institutions. The proposed revision

---

[4] 85 Fed. Reg. 64003 (Oct. 9, 2020).

[5] The CBLR rule defines qualifying community banking organizations as depository institutions and depository institution holding companies with less than $10 billion in total consolidated assets and that meet other qualifying criteria, including a leverage ratio (equal to tier 1 capital divided by average total consolidated assets) of greater than 9 percent.

[6] *See* the CBLR rule at 12 CFR 324.12. Total capital means the sum of tier 1 capital and tier 2 capital. *See* 12 CFR 324.2

[7] Banking organizations that have not adopted the current expected credit losses (CECL) methodology will use tier 1 capital plus the allowance for loan and lease losses as the denominator. Banking organizations that have adopted the

also would approximate the historical methodology specified in the Real Estate Lending Standards for calculating the ratio of loans in excess of the supervisory LTV Limits without creating any regulatory burden for Electing CBOs and other banking organizations. Further, the proposed revision would avoid any regulatory burden that could arise if Electing CBOs subsequently decided to switch between the CBLR framework and the generally applicable capital rules. Staff proposed to amend the Real Estate Lending Standards only relative to the calculation of loans in excess of the supervisory LTV Limits, due to the change in the type of capital information that will be available, and did not propose any revisions to other sections of the Real Estate Lending Standards.

The proposed revision to the calculation of loans in excess of the supervisory LTV Limits would provide regulatory burden relief, because with the changes in the capital information available after the implementation of the CBLR rule, CBLR institutions are not required to report tier 2 capital, which is part of "total capital." Replacing the reference to "total capital" further supports the burden relief efforts of the CBLR rule, as it ensures that institutions that have elected the CBLR framework are not disadvantaged. The proposed revision would ensure the approach for calculating the ratio of loans in excess of the supervisory LTV Limits is consistent for all FDIC-supervised institutions, regardless of the institution's CBLR election status.

Final Rule and Comments

Staff received only one comment on the NPR, which supported the proposed amendments. Therefore, staff recommends that the Board adopt the revision to the Real Estate Lending Standards as proposed.

The NPR proposed making all provisions of the Final Rule effective upon publication in the *Federal Register*. The Administrative Procedure Act (APA) allows for an effective date of less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule."[8] The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the Final Rule takes effect. Staff believed that this waiting period would be unnecessary, because the proposed rule would lift burdens, as noted above. Consequently, staff believed the FDIC would have good cause for the Final Rule to become effective upon publication. The FDIC did not receive any comments on whether good cause exists to waive the delayed effective date of the Final Rule. However, because it is not possible to identify how many institutions have real estate loans that exceed the supervisory LTV thresholds that would be directly implicated by either the current Real Estate Lending Standards or the revisions, staff, after further consideration, recommends implementing a 30-day delayed effective date as provided in the APA.

Lastly, even though the Real Estate Lending Standards were issued on an interagency basis, each agency has agency-specific language for its version of the Real Estate Lending Standards with respect to the definition of "total capital." Accordingly, the revision to Real Estate Lending

---

CECL methodology will use tier 1 capital plus the portion of the allowance for credit losses attributable to loans and leases.

[8] 5 U.S.C. 553(d)(3).

Standards in the attached Final Rule does not need to be made jointly with the FRB and the OCC.

Recommendation

Staff recommends that the Board approve the attached Resolution to authorize publication of the attached Final Rule in the *Federal Register*.

RMS Contact: Alicia R. Marks, Examination Specialist, (202) 898-6660

Legal Contact: Navid Choudhury, Counsel, (202) 898-6526
Catherine Wood, Counsel (202) 898-3788

Attachments