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MID-SIZE BANK COALITION OF AMERICA

December 26, 2017
Via: Email - comments@FDIC.gov
Robert E. Feldman, Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street S.W.
Suite 3E-218
Mail Stop 9W-11
Washington, DC 20219

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue N.W.
Washington, DC 20551

RE: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (OCC Docket ID OCC-2017-0018, RIN 1557-AE10; FRB Docket No. R-1576, RIN 7100 AE-74; FDIC RIN 3064-AE59, RIN 3064-AE66) – Notice of Proposed Rulemaking by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation (collectively, the "Agencies") regarding the proposed new high volatility acquisition, development or construction loan exposure definition ("New HVADC Rule")

Ladies and Gentlemen:

This letter is submitted by the Mid-Size Bank Coalition of America ("MBCA") in response to the Notice of Proposed Rulemaking on Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (the "Proposal"), and specifically with respect to those aspects of the Proposal that apply to the assessment of risk for acquisition, development and construction ("ADC") loans and the corresponding capital requirements. Founded in 2010, MBCA is a distinct and singularly focused "self-help" organization for mid-size banks that has the direct involvement of its members' CEOs and most of their management committee members. MBCA advocates for, champions, and serves as a resource to America's mid-size banks.

MBCA's eighty-five member banks average less than $20 billion in size and serve customers and communities through more than 10,000 branches in all 50 states, the District of Columbia, and three U.S. territories.

MBCA appreciates the intention of the Agencies to reduce regulatory burden on the banking industry, but recommends not adopting the NEW HVADC Rule contained within the Proposal in its current form. While there is confusion and lack of consistency in application of the existing High Volatility Commercial Real Estate ("HVCRE") rule, it follows the logical risked based capital practice of assessing the risk in a loan asset and requiring elevated capital when warranted by a higher risk classification. The logic used in the assessment recognizes a correlation between the amount of equity which is invested by a borrower into a given real estate project, and the relative riskiness of that loan. This principle is embodied in the "15% contributed equity" exemption currently in place. To qualify for an exemption from HVCRE status, a borrower must contribute equity in an amount equal to 15% of an ADC project's "as complete" appraised value prior to a bank advancing ADC loan proceeds into the project. ADC loans which meet this contributed equity requirement (along with certain other requirements contained within the existing HVCRE rule) are able to avoid the HVCRE designation and the 150% risk weighting associated with such assets.

The New HVADC Rule would entirely remove any contributed equity exemption for future ADC loans and would instead treat virtually all ADC loans as high risk assets. The New HVADC Rule proposes reducing the current high volatility risk weight from a 150% risk weighting to 130%, thus providing relief to a specific subset of loans currently defined as high risk. However, the New HVADC Rule would uniformly penalize lenders with less than $250 billion in assets for making ADC loans, regardless of the overall quality of a loan's structure and the lender's commitment and adherence to safe and sound lending principles. Categorizing all ADC loans as "highly volatile" ignores the risk mitigation which results from prudent loan underwriting, equity requirements and lending standards. The existing HVCRE rules recognize the variance of risk, and encourage institutions to exercise proper levels of caution in order to minimize their ADC loan risk exposures.

Implementation of the New HVADC Rule would likely result in higher pricing for future ADC loans since virtually all of those loans would be subject to an HVADC classification and the accompanying higher capital requirements. This increased pricing would essentially represent an artificial regulatory surcharge on ADC loans. The New HVADC Rule could also cause most borrowers to obtain financing for their ADC projects from larger banking institutions or non-bank entities, since those institutions and non-bank entities would be required to hold less capital for such loans and could charge lower rates than their community banking competitors.

One of the concerns expressed by the Agencies in their Notice of Rulemaking, was a concern that the current HVCRE definition is "unclear, overly complex, burdensome to implement, and not applied consistently across banking organizations." MBCA believes that the appropriate means of removing the existing confusion is to add clarity and definition to the existing rule. Banking institutions would then have the tools necessary to confidently and consistently underwrite ADC loans in a manner which conforms to the rule and prudent lending standards, and bank regulators would have the clear definitions required to give guidance and promote consistent enforcement. Procedures for assigning risk ratings to loans could incorporate a scale that recognized the reduction of risk when loan to value ratios are below the required thresholds, and the heightening of risk as loan to value ratios approach those thresholds.

MBCA believes the Agencies are drastically miscalculating the impacts on the amounts of capital required under these changes. The proposed rule states that "the FDIC estimates that there could be a maximum increase in risk weighted assets of approximately $2.6 billion, or less than one percent of the aggregate risk weighted assets for the 2,338 FDIC-supervised small banking entities." Those 2,338 banks are all banks below $550 million in assets which does not consider the impact to the banking industry as a whole, as banks between $550 million and $250 billion have $208 billion in ADC loans as of September 30, 2017 according to S&P Global Market Intelligence.

While the relief applied to loans currently deemed to be HVCRE would be beneficial, the reclassification of existing ADC loans to have a 130% risk weighting would far outweigh the benefit and would be extremely punitive to the banking industry as a whole. Additionally, the proposed New HVADC Rule does not address risk weightings on unfunded commitments related to ADC loans. Under current rules, banks are required to include up to 50% (one-half of 100%) of unfunded commitments in their risk-weighted assets. The capital requirements for these commitments need to be defined, and should not be arbitrarily increased from current levels without consideration of related risk.

Under the proposed New HVADC Rule the Agencies are proposing that 1-4 family ADC loans would generally not be considered HVADC and would retain a risk-weighting of 100%. However, ADC loans on condominiums would generally be considered HVADC and would be risk-weighted at 130%. Given the legal structure of condominiums as separate single family residences with individual titles and mortgages, we believe condominiums should be considered 1-4 family ADC loans. Additionally, this increased risk weighting is punitive to projects in larger metropolitan areas where population density requires condominiums be a prominent source of 1-4 family housing.

MBCA RECOMMENDATIONS:
MBCA strongly opposes the New HVADC Rule and believes it to be fundamentally flawed. MBCA urges the Agencies to not implement the New HVADC Rule in its proposed form. At its core, the New HVADC Rule would have serious negative consequences on the safety, soundness, availability and affordability of future ADC loans.

Sincerely,

[redacted]

Brent T. Tjarks
Executive Director, Mid-Size Bank Coalition of America

1. Ameris Bank (Moultrie, GA)
2. Arvest Bank (Fayetteville, AR)
3. Associated Bank (Green Bay, WI)
4. BancorpSouth (Tupelo, MS)
5. Banner Bank (Walla Walla, WA)
6. BankUnited (Miami Lakes, FL)
7. Banc of California (Santa Ana, CA)
8. Bank Leumi USA (New York, NY)
9. Bank of Hawaii (Honolulu, HI)
10. Bank of the Ozarks (Little Rock, AR)
11. Berkshire Bank (Pittsfield, MA)
12. BOK Financial (Tulsa, OK)
13. Bremer Bank (Saint Paul, MN)
14. Cadence Bank (Houston, TX)
15. Cathay Bank (Los Angeles, CA)
16. Cenlar FSB (Ewing, NJ)
17. CenterState Bank (Winter Haven, FL)
18. Central Bancompany (Jefferson City, MO)
19. Chemical Bank (Midland, MI)
20. City National Bank (Los Angeles, CA)
21. Columbia Bank (Tacoma, WA)
22. Commerce Bank (Kansas City, MO)
23. Community Bank (De Witt, NY)
24. Cullen/Frost Bankers (San Antonio, TX)
25. Customers Bank (Phoenixville, PA)
26. EagleBank (Bethesda, MD)
27. Eastern Bank (Boston, MA)
28. East West Bank (Pasadena, CA)
29. EverBank (Jacksonville, FL)
30. F.N.B. Corporation (Pittsburgh, PA)
31. FirstBank Holding Company (Lakewood, CO)
32. First Citizens Bank (Raleigh, NC)
33. First Financial Bank (Cincinnati, OH)
34. First Hawaiian Bank (Honolulu, HI)
35. First Horizon Bank (Memphis, TN)
36. First Interstate Bank (Billings, MT)
37. First Merchants Bank (Munci, IN)
38. First Midwest Bank (Itasca, IL)
39. First National Bank of Omaha (Omaha, NE)
40. Flagstar Bank (Troy, MI)
41. Fulton Financial (Lancaster, PA)
42. Glacier Bank (Kalispell, MT)
43. Great Western Bank (Sioux Falls, SD)
44. Hancock Bank (Gulfport, MS)
45. Heartland Financial (Dubuque, IA)
46. Independent Bank (McKinney, TX)
47. International Bancshares (Laredo, TX)
48. Investors Bank (Short Hills, NJ)
49. IBERIABANK (Lafayette, LA)
50. MB Financial (Chicago, IL)
51. MidFirst Bank (Oklahoma City, OK)
52. NBT Bank (Norwich, NY)
53. Northwest Bank (Warren, PA)
54. Old National Bank (Evansville, IN)
55. Pacific Premier Bank (Irvine, CA)
56. PacWest Bank (Beverly Hills, CA)
57. People's United Bank (Bridgeport, CT)
58. Pinnacle Bank (Lincoln, NE)
59. Popular Community Bank (New York, NY)
60. PrivateBank (Chicago, IL)
61. Provident Bank (Iselin, NJ)
62. Raymond James Bank (Saint Petersburg, FL)
63. Renasant Bank (Tupelo, MS)
64. Signature Bank (New York, NY)
65. Silicon Valley Bank (Santa Clara, CA)
66. Simmons Bank (Pine Bluff, AR)
67. South State Bank (Columbia, SC)
68. Sterling National Bank (Montebello, NY)
69. Stifel Bank & Trust (Saint Louis, MO)
70. Synovus Bank (Columbus, GA)
71. TCF Bank (Sioux Falls, SD)
72. Texas Capital Bank (Dallas, TX)
73. TowneBank (Portsmouth, VA)
74. Trustmark (Jackson, MS)
75. UMB Financial (Kansas City, MO)
76. Umpqua Bank (Roseburg, OR)
77. Union Bankshares (Richmond, VA)
78. United Bank (Glastonbury, CT)
79. United Community Bank (Blairsville, GA)
80. United Bankshares (Charleston, WV)
81. Valley National Bank (Wayne, NJ)
82. Washington Federal (Seattle, WA)
83. Webster Bank (Waterbury, CT)
84. WesBanco Bank (Wheeling, WV)
85. Wintrust Financial (Rosemont, IL)