Capital Simplification Form Letter (70 similar comments received; 71 total letters received)

The is a Comment on the **Comptroller of the Currency** (OCC) Proposed Rule: **Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction**

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Comment

Dear Federal Banking Agencies:

As a real estate finance professional, I appreciate the opportunity to comment on this proposal by the Office of the Comptroller of the Currency, the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies). I comment specifically on the proposal to replace the current High Volatility Commercial Real Estate (HVCRE) risk-based capital rule with a High Volatility Acquisition, Development or Construction (HVADC) rule.

I agree that the HVCRE rule needs to be changed, to reduce regulatory burden. In my experience, regulatory burdens resulting from the HVCRE come from two factors:

- The definition of which loans are within the scope of the rule is not clear enough; and
- Some of the specifications of the capital contribution exemption are too rigid and restrictive.

The HVADC rule helps to make the rule clearer, by adding the term "primarily" and by adding a "permanent loan" exemption, but it does not go far enough. To reduce uncertainty, the rule's definition also needs to specify that it applies only to loans secured by real estate, and only to loans where repayment is dependent on future income or sales proceeds from the property, or refinancing.

The HVADC approach to the capital contribution exemption (eliminating it to reduce complexity) completely fails to address my concerns. I value that exemption, even in its current state, and I would like to see it improved to provide more flexibility. In particular, companies should have the flexibility to count the value of contributed appraised land and to limit contractual restrictions on borrower withdrawals to the 15 percent minimum borrower capital contribution. Removing something of value generally does not improve it, and this case is no exception.

In addition to not solving the problem, HVADC actually creates new problems of its own. For example, for reasons not related to risk, HVADC expands the scope of loans subject to a higher risk weight, increasing capital requirements. HVADC also reduces the rule's risk-sensitivity and, by creating an alternate capital requirement, HVADC creates the enormous and complex regulatory burden of complying with two inconsistent rules (and possible market impacts). This does not add up to a reduction in regulatory burden.

The need to revise the HVCRE rule is real, but HVADC is not the answer. Therefore, I strongly recommend that the agencies refocus their efforts on the factors I've described, and take action to further clarify the definition in the rule and add flexibility to the capital contribution exemption. I also recommend not making any changes that would expand the scope of loans subject to a higher risk weight or otherwise increase capital requirements, aiming instead for a solution that could reasonably and harmoniously apply across new and existing loans and across both standardized and advanced approaches.

I am pleased the agencies recognize the need to change the HVCRE rule, but the HVADC rule is not the change it needs. I hope that the agencies will seriously consider these comments and make the changes that would solve the actual problems with the rule.

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