NAHB
National Association of Home Builders

Housing Finance & Regulatory Affairs
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Legislative and Regulatory Activities Division
Office of Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Docket ID OCC-2018-0040

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

Docket No. R-1638

Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RIN 3064-AE91

Notice of Proposed Rulemaking
Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations

Dear Sir or Madam:

The National Association of Home Builders (NAHB) is appreciative of the opportunity to submit comments on the Notice of Proposed Rulemaking (NPR) to simplify the measurement of capital adequacy for qualifying community banking organizations. Current capital requirements put in place by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Federal Reserve) and the Federal Deposit Insurance Corporation (FDIC) (collectively, "the banking agencies") in 2013 created a costly and burdensome compliance regime, which had a particularly negative impact on community banks. Responding to Section 210 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), the NPR proposes changes that would provide regulatory relief to some community banks.

NAHB is a Washington DC-based trade association representing more than 140,000 members involved in the development and construction of for-sale single family homes, including homes for first-time and low- and moderate-income homebuyers, as well as the construction, ownership and management of multifamily rental housing, including affordable rental housing. NAHB's members are predominately small to mid-sized home builders and developers who rely on their community banks as their primary source of acquisition, development and construction (AD&C) financing. NAHB believes easing the regulatory burden faced by community banks will improve the ability of NAHB's members to address housing needs in their communities, including increasing the supply of housing, and contribute to economic growth.

Background

In response to the financial crisis, the banking agencies revised capital requirements for most banking institutions with the release of the Basel III Regulatory Capital Rule in 2013. With the exception of Advanced Approaches banks, the largest internationally active banking organizations and G-SIBs, Global Systemically Important Banks, which have more stringent capital requirements that include a countercyclical capital buffer, a supplemental leverage ratio and a capital surcharge, all U.S. banking institutions are subject to the same capital calculations and required capital ratios. The revised capital requirements were implemented to enhance the quality of required capital, more effectively tie capital to risk, and increase the overall level of capital with the intent of eliminating weaknesses exposed during the financial crisis in the capital framework of banking organizations.

Since January 1, 2015, community banks have been subject to the following capital ratios:

- Minimum ratio of Common Equity Tier 1 (CET1) capital to total risk-weighted assets of 4.50 percent (new requirement)
- Minimum ratio of Tier 1 capital to total risk-weighted assets of 6.00 percent (up from 4.00 percent)
- Minimum ratio of Total Capital to total risk-weighted assets of 8.00 percent (no change)
- Minimum leverage ratio of Tier 1 capital to adjusted average consolidated assets of 4.00 percent

A Capital Conservation Buffer (CCB) was gradually phased into its current, maximum level of 2.5 percent. A bank's capital conservation buffer is determined to be the lowest of the following three amounts: (1) a bank's CET1 ratio minus 4.5 percent; (2) a bank's Tier 1 risk-based capital ratio minus 6 percent; (3) a bank's total risk-based capital ratio minus 8 percent. If the sum of any of these calculations is less than 2.5 percent, certain capital distributions by the bank are restricted.

The significant increase in required capital and added complexity to the capital calculation per Basel III came on the heels of the *Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)* of 2010, which also required a substantial number of regulations to be imposed on banking institutions. Compliance with Basel III and Dodd-Frank regulations have proven to be overly burdensome and resource-intensive for community banks. Since implementation of Basel III and Dodd-Frank regulations, there has been considerable support and numerous legislative attempts to ease the burdens of these regulations for small community banks. NAHB agrees that efforts to review regulations that may be overly restrictive for community banks should continue and the banking agencies should continue to consider options for regulatory relief for these essential institutions.

Proposed Rule

The proposed rule is drafted to implement Section 210 of the *Economic Growth, Regulatory Relief and Consumer Protection Act* (EGRRCPA), which was signed into law by President Trump on May 24, 2018. EGRRCPA was quite specific in its direction to the federal banking agencies. The statute says the appropriate federal banking agencies shall, through notice and comment rulemaking, develop a Community Bank Leverage Ratio (CBLR) of not less than 8 percent and not more than 10 percent for qualifying community banks; and establish procedures for treatment of a qualifying community bank that has a CBLR that falls below the determined percentage. A qualifying community bank is defined as a depository institution or depository institution holding company with less than $10 billion in total consolidated assets with limited amounts of off-balance sheet exposures, trading assets and liabilities, mortgage servicing assets (MSAs), and deferred tax assets (DTAs) arising from temporary differences that a banking organization could not realize through net operating loss carrybacks (temporary difference DTAs).

Any community bank that exceeds the determined CBLR shall be considered to have met the generally applicable leverage capital requirements and the generally applicable risk-based capital requirements and any other capital or leverage requirements to which the qualifying community bank is subject. Exceeding the determined CBLR also means the bank is considered to be well-capitalized under the federal agencies' prompt corrective action (PCA) framework.

The proposed rule would set the CBLR at greater than 9.00 percent.

NAHB Comments and Recommendations

NAHB supports easing the capital compliance burden on community banks as long as they remain safe and sound. The proposal offers a simple calculation for a qualifying bank to determine whether it has a CBLR greater than 9 percent and is therefore eligible to use the CBLR framework and be exempt from risk-based capital ratios under the current generally applicable capital requirements. The CLBR is the ratio of tangible equity capital (as defined by the proposal) divided by average total consolidated assets. However, as the banking agencies appear to have the authority to define tangible equity, NAHB recommends they define it to match Tier 1 capital in order to further simplify a community bank's capital calculation and reporting options. Since banks would have the flexibility to move between the CBLR framework and the current generally applicable capital requirements as their business operations may dictate, NAHB suggests the federal agencies consider calculating the CBLR using the current minimum leverage ratio calculation of Tier 1 capital to adjusted average consolidated assets rather than introducing a new calculation that incorporates the federal agencies' definition of tangible equity.

NAHB believes qualifying community banks that choose the CBLR framework could reduce their administrative costs due to the simplified calculation of regulatory capital and subsequent streamlined reporting process.

NAHB also supports the CBLR approach because we believe allowing community banking institutions to opt out of the risk-based capital regime will encourage community banks to reengage in AD&C lending and origination of high volatility commercial real estate (HVCRE) loans. NAHB members continue to face challenges accessing AD&C financing. In part, NAHB attributes this to the fact that certain AD&C and HVCRE loans have high risk-weightings under the generally applicable capital requirements, which we believe may be causing community banks to limit their origination of these capital-intensive products.

According to NAHB analysis of FDIC data, the stock of outstanding residential construction loans totaled $79 billion at the end of the final quarter of 2018. While this is a significant improvement of the $40.7 billion total from the first quarter of 2013, after which AD&C lending conditions first started easing following the market crisis, it is substantially smaller than the $203.8 billion stock of residential construction loans outstanding in early 2008. Residential construction lending is primarily undertaken by smaller financial institutions. In fact, banking data shows that 56 percent of residential construction loans are held by financial institutions with less than $10 billion of assets. Allowing small community banks to opt out of the requirement to calculate their capital using the risk-weights assigned to their assets could benefit home builders and developers who depend on their community banks for AD&C financing.

NAHB defers to the banking institutions to opine on whether a CBLR greater than 9.00 percent is appropriate. However, we have noted that many industry participants suggest establishing the CBLR at 8.00, as allowed by the statute. If the CBLR is adjusted to equal the current Tier 1 leverage ratio, the CBLR still would be notably higher than the existing Tier 1 leverage ratio of 5.00 percent that currently qualifies a bank as well-capitalized.

Conclusion

NAHB believes the statute is a good step toward eliminating the one-size-fits-all approach of Basel III and Dodd-Frank banking regulations. Please contact Becky Froass, Director, Financial Institutions and Capital Markets, at rfroass@nahb.org 202-266-8529 if you have any questions about our comments on this issue.

Sincerely,

[redacted]

David L. Ledford