January 16, 2024

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention:
Ann E. Misback
Secretary
Docket No. R-1813
RIN 7100-AG64

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Attention:
Comments/Legal OES
James P. Sheesley
Asst. Executive Secretary
RIN 3064-AF29

Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219
Attention:
Chief Counsel's Office
Comment Processing
Docket ID OCC-2023-0008
RIN 1557-AE78

Re: Notice of Proposed Rulemaking for Amendments to the Regulatory Capital Rule (Docket ID OCC–2023–0008, Docket No. R-1813)

We write today to express concerns that the Basel III Endgame Capital Notice of Proposed Rulemaking ("Proposal") could have a significant negative impact on the availability of credit for commercial and multifamily real estate.

The commercial and multifamily real estate (CRE) industry is a roughly $20 trillion dollar market comprising a variety of income producing property types – apartment, office, retail, industrial, hotel, senior, student, and manufactured housing as well as medical offices, life science campuses, data centers, cell towers, and self-storage properties. Our organizations represent investors, borrowers, owners, lenders, and third-party service providers who participate in a vibrant commercial and multifamily real estate lending environment supporting housing and business across America.

This market is supported by $5.82 trillion of commercial real estate debt[1], of which 50% is held by commercial banks. Of that total debt, approximately $2 trillion of CRE loans are maturing over the next four years. Raising capital levels at the largest U.S. banks will only limit credit and feed a downward spiral that will put additional pressure on the financial system.

[1] *Federal Reserve as of 3Q 2023.*

Given our concerns about the Proposal's impact on housing providers and all types of real estate, we cannot support it. In our view, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System (Federal Reserve) have failed to demonstrate why the current capital rules are inadequate to protect banks from financial stress.

Generally, the Proposal:

(i) Increases capital requirements with respect to banking institutions that hold assets of $100 billion or more; and
(ii) Standardizes regulatory capital calculations and thresholds pertaining to regulatory capital ratios and risk-weighted assets for such banking institutions covered under the scope of the proposed rules.

While the scope of the Proposal directly impacts large banking organizations, there are several factors that would have indirect impacts on a wide range of industries that utilize funds from and otherwise work with such banking institutions, including institutions involved in the commercial real estate market and the multifamily housing market.

As outlined below, we believe several parts of the Proposal miss the mark and threaten to exacerbate credit availability to real estate, including housing affordability and availability challenges faced by many Americans today.

The Proposing Release lacks sufficient quantitative impact analysis, or an assessment of its costs versus its benefits.

- This is particularly concerning as CRE distress is rising and the counter-cyclical need for credit will be critically important.
- Large banks are well capitalized, have strong reserves in anticipation of distress, and have adhered to strong underwriting practices. The financial regulators should study whether even higher capital across the banking sector could exacerbate CRE liquidity if it unnecessarily constrains lending during market downturns.

The punitive capital charges clash with Congress's recent action.

- Neither the Dodd-Frank Wall Street Reform and Consumer Protection (Dodd-Frank Act) or any other law directs the Federal Regulators to adopt the Basel standards.
- In fact, Section 165 of the Dodd-Frank Act, as amended by Economic Growth, Regulatory Relief, and Consumer Protection Act, directs regulators to tailor prudential standards.

Specific to real estate, we are concerned that the overall impact to the banking industry could have a net negative impact on credit for CRE and multifamily.

Negative Overall Impact to Real Estate

By its own estimates, the Proposal would raise capital on the target institutions by 16%, on average, which could have a profoundly negative impact on the availability of credit for commercial and multifamily real estate during an already challenging time for the provision of affordable housing and high interest rates.

- Bank portfolio lenders make up 50.6% of the CRE and multifamily lending market.[2]
- Banks with more than $100 billion in assets hold $931 billion of CRE and multifamily loans on their books, which comprise 32% of all bank CRE loans and 16% of all CRE debt exposures.[3]
- These banks support the CRE and multifamily ecosystem beyond making loans, including through securitization, market making, warehouse lending, servicing, etc.
- Combined with a sectoral shift in the use of office space and a rapid increase in interest rates, this cost-raising proposal would inflict more pain on the real estate sector.

Unreasonable Cross-Default Provision

The Proposal would require banks to "look to the performance of the borrower with respect to credit obligations to any creditor" when determining if a non-retail exposure is a defaulted exposure. In practice, this would require a bank to automatically default all loans made to a borrower when any loan (to any creditor) goes into default. This is particularly onerous and very problematic.

- There are no inter-bank credit reporting bureaus for commercial entities, and most CRE loans are made to a special purpose entity (SPE) borrower designed to hold the debt and the property.
- When a bank underwrites a CRE loan, it is primarily assessing the creditworthiness of the CRE (*e.g.*, value of the property, expected rental cashflow). The creditworthiness of a parent company or broader group is of secondary importance. Even more notably, absent a guarantee, a creditor on a CRE loan has no recourse to the parent company or affiliates of an SPE following an SPE's default.

Securitization

The Proposal would increase the capital requirements for most exposures to securitizations, including commercial mortgage-backed securities ("CMBS") and CRE collateralized loan obligations ("CLOs"). Securitization allows CRE risk to be distributed across the economy to sophisticated investors who carefully allocate risk across their investment portfolios. Banks play an important role in organizing these transactions and as market makers. Additionally, Credit Risk Retention rules require the issuer to retain some of the risk on their books.

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[2] *Federal Reserve* as of 3Q 2023.
[3] *FDIC Bank Comparison by Asset Size* as of Sep. 30, 2023.

Risk-Weight

While the proposal better calibrates CRE risk-weights to loan-to-value ratios, any likely marginal relief will be outweighed by the overall increase in capital.

Undrawn Warehouse Lines

The Proposal could raise capital charges on undrawn warehouse line, thus decreasing financing opportunities available to CRE lenders and borrowers and making securitization execution more expensive.

- The Proposal would change the capital treatment for unconditionally cancelable commitments and commitments that do not have an express contractual maximum amount that can be drawn.
- For unconditionally cancelable commitments, the credit conversion factor ("CCF") would increase from 0% to 10%. For commitments that do not have an express contractual maximum amount that can be drawn, banks would be required to impute an amount based on 10 times the historical line usage.
- Draws on commercial facilities are far from automatic and require substantial engagement and assessment through a bank's due diligence process.
- Applying the proposed CCF to secured CRE warehouse facilities would be punitive and cause more banks to cease offering this product. Given that relatively few banks currently offer this essential product, the result will be decreased CRE lending.
- The regulatory capital rules should not imperil such a significant part of the economy without substantial evidence showing a need for change and benefits that outweigh the expected costs.

Conclusion

We support a safe, sound, and resilient approach to banking regulation, including capital rules that ensure banks can withstand periods of financial stress. However, regulations in this area must be thoughtfully tailored to mitigate the actual risks to which a bank is exposed, not impose unnecessary constraints on the financial system or place unreasonable burdens indirectly on housing providers or other stakeholders. As discussed in the introduction to this letter, the CRE market is a large and essential part of the U.S. economy and financial system, and the Federal Regulators must ensure that the Proposal will not impair the functioning of that market.

Sincerely,

CRE Finance Council

ICSC

NAIOP, Commercial Real Estate Development Association

Nareit

Real Estate Bar of New York

American Land Title Association

Mortgage Bankers Association

National Association of Home Builders of the United States

National Multifamily Housing Council

The Real Estate Roundtable