NATIONAL ASSOCIATION
OF REALTORS®

REALTOR®

The Voice for Real Estate®

430 North Michigan Avenue
Chicago, Illinois 60611-4087
312.329.8411 Fax 312.329.5962
Visit us at *www.REALTOR.org.*

222 St Joseph Avenue
Long Beach, CA 90803
562.439.5303 Fax 562.987.4854
E-mail: dickgaylord@earthlink.net

Richard F. Gaylord, CIPS, CRB, CRS, GRI
President

October 27, 2008

Office of the Comptroller
of the Currency
Mail Stop 1-5
250 E Street, SE
Washington, DC 20219
Docket No. OCC-2008-0006
Transmitted by email to: regs.comments@occ.treas.gov

Board of Governors of the Federal
Reserve System
Ms. Jennifer J. Johnson, Secretary
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. R-1318
Transmitted by email to: regs.comments@federalreserve.gov

Federal Deposit Insurance Corporation
Mr. Robert E. Feldman, Executive Secretary
Attn: Comments/Legal ESS
550 17th Street, NW
Washington, DC 20429
RIN 3064-AD29
Transmitted by email to: comments@FDIC.gov

Office of Thrift Supervision
Regulation Comments
Chief Counsel's Office
1700 G Street, NW
Washington, DC 20552
Docket No. OTS-2008-0002
Transmitted electronically through Federal eRulemaking Portal

RE: Risk-Based Capital Guidelines; Capital Adequacy Guidelines: Standardized Framework—Proposed Rule and Notice

Dear Sir or Madam:

On behalf of the more than 1.2 million members of the National Association of REALTORS® (NAR), I am pleased to provide comments to the federal banking agencies regarding the Joint Notice of Proposed Rulemaking (NPR) published on July 29, 2008 entitled "Risk-Based Capital Guidelines; Capital Adequacy Guidelines: Standardized Framework."

Our nation is currently facing a significant tightening in the availability of credit for both the business community and consumers. A lack of available credit is deleterious to all sectors of our economy in general, but it is especially detrimental to the housing and commercial real estate industry. Reasonably priced and accessible credit is the lifeblood of housing and commercial real estate development, sales and secondary market purchases. Credit availability and pricing is directly influenced by the capital charge imposed on these loans by the banking regulators. It is therefore critically important that the final regulation reflect the true economic risk of housing related loans, and not take an overly conservative approach that will unnecessarily restrict the flow of capital to this segment of our economy.

I. The Proposed "Standardized Approach"

The NPR would establish a capital framework that would be available as an option to all banking organizations other than the so-called "core banking organizations" required to use the Basel II advanced approach. This new framework would be a U.S. version of the "Standardized Approach" provided for in the Basel II International Accord that was ratified by the banking authorities of the leading economic countries in 2004.

The Standardized Approach proposed in the NPR provides for a more risk-sensitive capital framework than under the current Basel I regulations currently in use in the U.S. As such, it is a much better system for establishing capital requirements and the agencies should be commended for proceeding with this rulemaking. However, NAR believes that there are certain aspects of this proposal that can be improved upon, in particular with respect to mortgage lending and commercial real estate exposures.

II. Residential Mortgage Lending

Under the Basel I rules, prudently underwritten mortgage loans with a loan-to-value (LTV) ratio of 90 percent or less are risk weighted at 50 percent. The NPR assigns risk weights for residential mortgages based on LTV ratios[1], and whether the loan is considered a first or junior lien.[2] A first lien includes a junior lien if no one else holds an intervening position.[3] Otherwise the junior position is subject to higher risk weights. The risk weights for first-lien residential loans are as follows:

---

[1] The LTV ratio is determined at the time of loan origination, or if the loan is restructured, at the time of such restructuring.

[2] Pursuant to the statute, the NPR assigns a 50 percent risk weight for certain pre-sold residential construction loans and multifamily mortgage loans.

[3] If the same bank holds a $500,000 first mortgage and a $100,000 second mortgage, the NPR would consider the entire $600,000 as a first mortgage, provided there are no other intervening lien holders.

Risk Weights for First-Lien Residential Mortgage Exposures

Loan-to-Value Ratio	Risk Weight
Less than or equal to 60	20%
Greater than 60 and less than or equal to 80	35%
Greater than 80 and less than or equal to 85	50%
Greater than 85 and less than or equal to 90	75%
Greater than 90 and less than or equal to 95	100%
Greater than 95	150%

In calculating the LTV ratio, a banking organization may take into account loan level private mortgage insurance, provided the insurance company is not an affiliate and its long-term senior debt or its claims paying ability is rated in one of the three highest categories.[4]

NAR is concerned that the proposed risk-weights do not reflect the actual risk of low LTV loans. While there has been a marked increase in mortgage delinquencies and defaults in the past year, the problem has been concentrated in poorly underwritten loans that typically have very high LTVs and other risk factors. We are particularly concerned with the proposed increase in the risk weight for loans with an LTV of between 85 percent and 90 percent. Currently, these loans qualify for a 50 percent risk weight, but under the NPR, the risk weight for these exposures would be increased to 75 percent. We are aware of no experience based justification for this increase, even in light of the current default and delinquency rates. The preamble to the final rule should justify higher risk rates to avoid contributing to the current over-reaction to weak underwriting in recent years. Just as lenders should have avoided “risk layering” because it resulted in too many mortgages doomed to fail, “safety layering” should now be avoided so lenders do not limit mortgage loans to those that are practically guaranteed to succeed. Excessively high risk weights will have the effect of discouraging safe and sound mortgage lending.

III. GSE and Federal Home Loan Bank Debt Instruments

The NPR assigns a risk weight of 0 to assets backed by the U.S. Government. On the other hand, debt instruments issued by Fannie Mae, Freddie Mac and the Federal Home Loan Banks are assigned a risk weight based on the credit rating of the securities, with a floor of 20 percent. However, pursuant to recently enacted federal legislation, the Federal Government has essentially guaranteed the debt of these entities. We believe that the risk weights assigned to these instruments should reflect the explicit support Congress has provided for these entities for two reasons. First, it will more accurately reflect the risk of these debt instruments. Second, it will provide a further signal to the markets that the Federal Government stands behind these entities, thus encouraging the flow of additional private capital into these mortgage finance institutions.

[4] NAR supports the consideration of private mortgage insurance when computing LTV ratios, but recommends that credit should also be given to pool coverage insurance as well as loan level insurance.

IV. Multifamily and Commercial Real Estate

The NPR proposes to treat multifamily loans and loans for the acquisition, development and construction of 1-4 family residential properties as corporate exposures, which means that they will generally be risk-weighted at 100 percent.[5]

NAR believes that multifamily residences with a history of high occupancy and revenue generation are much less risky than other, more speculative multifamily loans, and that the risk weight for these loans should be lowered in order to more accurately reflect the risk of these assets.

This is consistent with the Basel II Accord. Under Basel II, loans secured by multifamily residential real estate in which the funds for repayment are generated by rental income are treated as "income producing real estate" (IPRE). This group of assets is generally afforded a lower risk weight than loans secured by other types of commercial real estate.[6] Likewise, we believe that a loan secured by a multifamily residential project with a high occupancy rate and history of revenue generation should also be treated more favorably.

Finally, we note that certain acquisition, development, and construction (ADC) loans secured by pre-sold 1-4 family residences are placed in the 50 percent risk weight pursuant to federal statute.[7] To qualify under the statute, the loan must finance the construction of the residence, the residence must be subject to a binding sales agreement with a purchaser who has qualified for his or her mortgage in an amount sufficient to complete the purchase, and the purchaser has placed a non-refundable deposit with the builder. Certain loans secured by multifamily properties are also assigned to the 50 percent risk weight pursuant to this statute. NAR believes that this is the appropriate treatment for such loans, but notes that if a lower risk weight is appropriate, for example, because the loan is guaranteed by a highly rated corporate sponsor, the lower risk weight should apply.

V. Conclusion

Credit availability is essential for the health of our economy. It is particularly important for the housing industry, which is dependent upon credit at all stages, from acquisition of land, development of projects, construction, sales, and secondary resales. It is therefore very important that the bank capital regulations do not unnecessarily impede the flow

---

[5] If the exposure has an NRSRO credit rating, or if it is collateralized by eligible financial instruments, it may be entitled to a lower risk weight.

[6] Under the Basel II advanced approach, commercial real estate is divided into two categories: income-producing real estate (IPRE) and high-volatility commercial real estate (HVCRE). IPRE is characterized by the fact that the repayment of the loan is based on cash flows generated by the real estate, such as rent payments. HVCRE is characterized by loans secured by real estate in which repayment is based on the future sale of the property, such as loans for the acquisition, development and construction of a new housing development. IPRE loans are generally given a lower risk weight than HVCRE loans with similar probabilities of default. For example, a "strong" IPRE loan (with a low probability of default) is assigned a risk weight of 70 percent, but a HVCRE loan with a similar probability of default is assigned a risk weight of 90 percent.

[7] Section 618 of the Resolution Trust Corporation Refinancing, Restructuring and Improvement Act of 1991, Public Law 102-233 (1991).

of funds into our economy, and that capital charges for particular loans represent the actual risk of those exposures.

The NPR makes many improvements in the current risk based capital standards, and NAR applauds the banking agencies for developing this proposal and proceeding to modernize the bank capital requirements. This proposal will increase the risk sensitivity of the capital requirements and thus better align capital and economic risk. However, as described in this letter, NAR believes that it is necessary to amend the proposal in several areas in order to ensure that it will further the interests of our economy and be consistent with bank safety and soundness. These changes will improve the rule by making it more consistent with actual risk, and by encouraging the flow of capital that is needed by “Main Street” today.

We hope that you find these comments helpful. If you have any questions, please feel free to contact Jeff Lischer, Managing Director for Regulatory Policy (202.383.1117) or jlischer@realtors.org).

Sincerely,

Richard F. Gaylord, CIPS, CRB, CRS, GRI
2008 President, National Association of REALTORS®