



**International Bancshares
Corporation**

May 11, 2012

Via E-Rulemaking Portal: <http://www.regulations.gov>

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

Re: FDIC; RIN 3064-AD92
Assessments; Large Bank Pricing Definition Revisions

Dear Mr. Feldman:

The following comments are submitted on behalf of International Bancshares Corporation ("IBC"), a multi-bank financial holding company headquartered in Laredo, Texas. IBC holds four state nonmember banks ranging in size from approximately \$520 million in total assets to almost \$10 billion. Further, IBC is the largest Hispanic-owned financial holding company in the continental United States with over \$11.8 billion in assets. It is a publicly-traded financial holding company listed on the NASDAQ Global Select Market. While none of IBC's subsidiary banks currently have assets of more than \$10 billion, IBC's lead bank is slightly under the \$10 billion threshold. If IBC's lead bank were to exceed the \$10 billion threshold in total assets for at least four consecutive quarters, the lead bank would be subjected to the large bank FDIC assessments, which based on our initial estimate, would cause the lead bank's FDIC assessment to double. Because of this result, our institution, as well as others similarly situated, must consider the assessment impact into our overall asset strategy and we are particularly concerned about the nuances of the FDIC's Large Bank pricing definition revisions. For this reason IBC is commenting on the Proposal affecting Large Banks.

Overview

A. Generally

On March 20, 2012, the FDIC issued a notice of proposed rulemaking (the "Proposal") that would, if adopted, amend the FDIC assessment regulations for large and highly complex financial institutions, generally those with more than \$10 billion in total assets ("Large Banks"). The Proposal would amend FDIC regulations, adopted in 2011, to make deposit insurance premiums more sensitive to risks taken by Large Banks. The FDIC stated that the changes in the Proposal would address certain banking industry concerns by revising the definitions of leveraged loans and subprime consumer loans used to identify concentrations of higher-risk assets, clarifying the timing of identifying an asset as higher risk, clarifying the way securitizations are to be identified, and refining the definitions used in Large Bank pricing. The FDIC issued the Proposal in response to concerns raised by banks and bank trade groups that the original definitions of leveraged loans and subprime consumer loans were too broad and that banks did not have the right types of data to comply with the original definitions, which were part of a 2011 final rule that established a new risk-based formula for assessing deposit insurance fees. The original requirements would have required very costly and complicated data capture systems that banks would have struggled to implement. We applaud certain aspects of the Proposal that do not require banks to periodically evaluate loans for subprime status, but we believe the definition of "refinance" under the Proposal is too broad and inconsistent with Regulation Z, as discussed in more detail below.

B. Leveraged Commercial Loans

Under the Proposal, the leveraged loans category would be renamed "higher-risk commercial and industrial loans and securities." Included in the revised definition is a purpose test that would be used to help identify loans with the highest risk. If the purpose of any of the borrower's debt was to finance a buyout, acquisition, or capital distribution, and that debt was material, a [commercial and industrial] loan or security to that borrower would be classified as higher risk."

“Higher-risk commercial and industrial loans and securities” would include any commercial loan (funded or unfunded, including irrevocable and revocable commitments) owed by a borrower to the evaluating bank with an original amount greater than \$5 million *if* certain conditions are met as of origination, or, if the loan has been refinanced, as of the refinance date, and the loan does not meet the asset based lending exclusion or the floor plan line of credit exclusion.¹

C. Subprime Consumer Loans

Under the Proposal, the subprime consumer loans category would be renamed “higher-risk consumer loans and securities” and defined as: (i) All consumer loans where, as of origination, or, if the loan has been refinanced, as of refinance, the probability of default (“PD”) within two years (of origination or refinancing), as determined using a defined historical stress period, is greater than 20 percent, excluding those consumer loans that meet the definition of a nontraditional mortgage loan; and (ii) Securitizations that are more than 50 percent collateralized by consumer loans meeting the criteria in (a), except those classified as trading book. Large Banks must also report the balance of all consumer loans, including those with PDs below the 20 percent threshold, stratified by 10 product types and 12 PD bands, and indicate whether the PDs were derived using scores and default rate mappings provided by a third party vendor or an internal approach. The FDIC will use this data to determine whether the PD threshold should be changed in the future. The Proposal provides specifications for PD estimation, including how PD is defined and the period over which it is estimated. PD estimation must reflect the average two-year stress period performance of loans across a range of remaining maturities, as opposed to within the first two years of origination.

¹ The definition of “higher-risk commercial and industrial loans” will be applicable if the following conditions are met: **(a) (i)** The purpose of any of the borrower’s debt (whether owed to the evaluating insured depository institution or another lender) that was incurred within the previous seven years was to finance a buyout, acquisition, or capital distribution and such debt was material; and **(ii)** The ratio of the borrower’s total debt to trailing twelve-month EBITDA (*i.e.*, operating leverage ratio) is greater than 4 or the ratio of the borrower’s senior debt to trailing twelve-month EBITDA (*i.e.*, operating leverage ratio) is greater than 3; **or (b)** Any of the borrower’s debt (whether owed to the evaluating institution or another lender) is designated as a highly leveraged transaction by a syndication agent; (2) All securities held by the evaluating institution that are issued by a commercial borrower, if the conditions specified in (a) or (b) above are met, except securities classified as trading book; and (3) All securitizations held by the evaluating institution that are more than 50 percent collateralized by commercial loans or securities that would meet the higher-risk commercial and industrial loans and securities definition if directly held by the evaluating institution, except securities classified as trading book.

The FDIC may alter the specifications and 20% threshold without public notice and comment but would provide a quarter's prior notice. When a bank acquires a consumer loan or security, it must determine whether the asset meets the higher-risk definition using the origination criteria and analysis performed by the original lender. If this data is unavailable, the bank must obtain recent, refreshed data from the borrower or an appropriate third-party.²

The new definitions will go into effect on October 1, 2012. Prior to October 1, 2012, Large Banks will continue to use the transition guidance included in the instructions to the Call Report updated as of March 31, 2012. For consumer and residential real estate loans and securities (other than securitizations) originated or purchased prior to October 1, 2012, a bank would have to determine whether the loan or security met the definition of a "higher-risk consumer loan and security" no later than December 31, 2012, using information as of the date of the origination of the loan or security if the institution had that information.

I. Bank Evaluation of Subprime Loans

Importantly, unlike earlier FDIC issuances, the Proposal does not expressly require banks to periodically evaluate loans (*e.g.*, quarterly) for subprime (or leveraged) status (*i.e.*, post-origination or post-renewal) which would have been significantly burdensome and costly and, for certain types of retail loans, would not be possible because existing loan agreements do not require borrowers to routinely provide updated financial information. This approach is consistent with the interagency Expanded Guidance for Subprime Lending Programs issued in 2001 which stated, "... subprime lending does not refer to individual subprime loans originated and managed, in the ordinary course of business, as exceptions to prime risk selection standards. The agencies recognize that many prime loan portfolios will contain such accounts. *Additionally, this guidance will generally not apply to: prime loans, that develop credit problems after acquisition* [Emphasis added]..." Accordingly, we support the Proposal's provision not requiring banks to periodically evaluate loans for subprime or leveraged status (*i.e.*, post-origination or post-renewal).

² Nontraditional mortgage loans would continue to be defined as under the February 2011 rule. The Proposal would clarify that nontraditional mortgage loans include securitizations that are more than 50 percent collateralized by nontraditional mortgage loans meeting the criteria of the definition.

II. Refinancing Definition

As previously noted, an institution must determine whether a loan meets the definition of a "higher risk consumer loan or a nontraditional mortgage loan" as of the origination date, or, if the loan has been refinanced, as of the refinance date. Under the Proposal, a "refinance" is broadly defined as "an extension of new credit or additional funds on an existing loan or the replacement of an existing loan by a new or modified obligation." The Proposal provides that a refinance includes the consolidation of multiple existing obligations, disbursement of additional funds to the borrower, an increase or decrease in the interest rate, or rescheduling of principal or interest payments to create or increase a balloon payment or extend the legal maturity date of the loan by more than six months. The Proposal also provides that additional funds include a material disbursement of additional funds or, with respect to a line of credit, a material increase in the amount of the line of credit, but not a disbursement, draw, or the writing of convenience checks within the original limits of the line of credit. Except for credit cards, a material increase in the amount of the line of credit is defined as a 10 percent or greater increase in the quarter-end line of credit limit.

We believe the proposed definition of "refinance" is too broad and inconsistent with Regulation Z's current definition of "refinancing." More particularly, Regulation Z (12 C.F.R. Section 226.20(a)) currently defines the term "refinancing" as follows: "(a) Refinancings. A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation." Section 226.20(a) further provides that the following shall not be treated as a refinancing: "(1) A renewal of a single payment obligation with no change in the original terms; (2) A reduction in the annual percentage rate with a corresponding change in the payment schedule; (3) An agreement involving a court proceeding; (4) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in §226.4(d); and (5) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart."

The Federal Reserve's Staff Commentary relating to Section 226.20(a)(1) states that the foregoing Section 226.20(a) (1) through (5) events are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one."

The Federal Reserve's Staff Commentary also provides that, "...Whether a refinancing has occurred is determined by reference to whether the original obligation has been satisfied or extinguished and replaced by a new obligation, based on the parties' contract and applicable law. The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. *In any form, the new obligation must completely replace the prior one* [Emphasis added]." The Federal Reserve's Staff Commentary also provides that, "changes in the terms of an existing obligation, such as the deferral of individual installments, will not constitute a "refinancing" unless accomplished by the cancellation of that obligation and the substitution of a new obligation."

While we recognize that the Federal Reserve proposed a new and broader definition of "refinancing" under Regulation Z on September 24, 2010, that is similar to the FDIC's proposed "refinance" definition for purposes of determining subprime or leveraged loan status, the Federal Reserve has, thus far, *not* adopted this expansive definition.³ Accordingly, we believe the FDIC should utilize Regulation Z's current definition of "refinancing" which requires that an existing obligation be satisfied and replaced with a new obligation in order to constitute a "refinancing" for purposes of determining subprime or leveraged loan status.

Finally, we wish to bring to your attention that in states, like Texas, with a strong military presence, the FDIC's proposed expansive "refinancing" definition will, as a practical matter, be very problematic. Under the Servicemembers Civil Relief Act, active or deployed servicemembers are entitled to have the interest rates on their outstanding loans reduced to 6%.

³ 75 FR 58489 (September 24, 2010). Under the Federal Reserve's proposed new definition of "refinancing" under Regulation Z, a transaction would be considered a refinancing if any of the following elements were present: (i) an increase in loan amount (except for arrearages, related charges and escrow adjustments), (ii) a fee is imposed, even if provided for in the loan agreement, (iii) a change in loan term, (iv) a change in interest rate, (v) increasing the periodic payment, (vi) adding a risk factor, or (vii) adding collateral that is real property or a dwelling. Under the Federal Reserve's Proposal, the new "refinancing" definition would exclude certain modifications such as those entered into as part of a court proceeding, including bankruptcy.

Mr. Robert E. Feldman
May 11, 2012
Page 7

Under the FDIC's proposed expansive "refinancing" definition, these legally required modifications would constitute "refinancings," requiring banks to take time to un-needlessly make subprime loan determinations.

Thank you for this opportunity to comment.

Respectfully,

A handwritten signature in black ink, appearing to be "DENNIS E. NIXON", written over a circular stamp or seal.

Dennis E. Nixon
President and CEO