From:
Sent:
To: Comments
Subject: Basel III Capital Standards for Commerical/Multifamily Real Estate

Dear FDIC Federal Deposit Insurance Corp. Federal Deposit Insurance Corp.:

A. Regulatory Capital, Implementation of Basel III: Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions and Prompt Corrective Action (Regulatory Capital Rule)

B. Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements (Standardized Approach)

C. Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule (Advanced Approach)

Fed: R 7100, RIN AD87
FDIC: RINs 3064-AD95, 3064-AD96, and 3064-AD 97
OCC: RIN 1557-AD46

To Whom It May Concern:

I want to thank the Board of Governors of the Federal Reserve System (Fed), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) (collectively the Regulators) for the opportunity to comment on the three proposed regulatory capital rules (the Proposal). Our specific issues with the Proposal will be addressed in turn below. I urge the Regulators to consider my specific issues with the Proposal described below, make the appropriate changes and re-propose the rule.

The Proposal Creates Competitive and Regulatory Imbalances

Due to higher capital charges, the Proposals will create an unlevel playing field between United States (U.S.) and European Union (EU) banks. Excessive risk-based capital for commercial mortgage-backed securities (CMBS) and other banks assets will skew the marketplace by incentivizing irrational decisions concerning assets and liabilities. This is against the spirit and intent of the Basel Accords of harmonizing -- on an international basis -- bank regulatory capital rules. Finally, the layering of Basel III on top of other new or proposed rules will stifle real estate finance. This would be especially harmful to community and smaller regional banks that may have great difficulty implementing the Proposal's barrage of new compliance mandates.

Securitization Exposures

The proposed risk-weight treatment of private-label securitizations, including CMBS, held by banks is punitive along a number of dimensions. Under the Simplified Supervisory Formula (SSFA), the total risk-based capital requirement for CMBS is higher than it would be for an identical set of loans that would be held in a bank's lending portfolio. Additionally, risk-based capital for CMBS is higher under the SSFA than it is for both the U.S. and EU ratings-based risk capital methodologies.

The Proposal's alternatives to the SSFA, the gross-up approach and the 1,250 percent risk-weight approach (100 percent capital requirement), both produce risk-weights that are even more punitive than the SSFA. Consequently, regulators should recalibrate the SSFA in a manner that will allow it to more closely approximate the risk-weights of competing EU financial institutions. Until the SSFA is recalibrated, the current U.S. ratings-based approach should remain in place.

Commercial and Multifamily Real Estate Loans

As noted above, a fundamental premise of the Basel Accords is to put banks on a level playing field, regardless of the country in which they are domiciled. In that spirit, I recommend that the Agencies support a 50 percent risk-weight for commercial mortgages that is modeled after the European Commission's rule for commercial loans and for U.S. multifamily loans that meet certain underwriting requirements.

The Proposal creates a new risk-based capital category for certain acquisition, development, and construction (ADC) loans -- High Volatility Commercial Real Estate Exposures (HVCRE). The risk-weight for an ADC loan is 150 percent versus 100 percent for non-HVCRE loans. For meeting the 15 percent contributed capital requirement to be excluded from HVCRE status, I recommend that the difference between the land's fair market value and its purchase price should be included in the contributed capital total.

Fannie Mae & Freddie Mac (GSEs) Multifamily MBS

I support the 20 percent risk-weight for multifamily mortgage-backed securities (MBS) issued by Fannie Mae and Freddie Mac (GSEs), which is consistent with its current risk-weight treatment. For the tranches of a multifamily MBS that are guaranteed by a GSE, I strongly supports the "substitution approach" that allows the 20 percent risk-weight to be applied to the multifamily family tranches that the GSEs guarantee. For tranches of a multifamily MBS that are not supported by GSE guarantees, they should receive the same capital treatment as private-label MBS.

REITS

The Proposal applies a 100 percent Credit-Conversion Factor (CCF) to off-balance sheet repurchase agreements, doubling the current 50 percent CCF. Repurchase agreements are a key form of mortgage finance, particularly for Real Estate Investment Trusts (REITs) entities, whose industry has the potential to bring substantial balance sheet capacity to the mortgage finance market. A sizable portion of REIT financing occurs through repurchase agreements. By doubling the CCF, the cost of these agreements will increase significantly under the Proposal, and in the process will unnecessarily negatively impact the REIT market. I believe this approach ignores the reality of repurchase financing, which allows the repurchase agreement holder to have actual title and ownership of assets. Given this practice, I strongly urge for the 50 percent CCF to remain in place for repurchase agreements.

Commercial and Multifamily Servicer Cash Advances

Advance obligations in CMBS transactions do not provide credit support to the investor, loans to the borrower, or fund liquidity needs of either advancing obligations since the inception of CMBS. In fact, because of the strict repayment requirements of servicer cash advances specified in CMBS loan documents, their non-repayment is highly unlikely. Despite this, the Proposal calls for a 100 percent capital charge for all servicer cash advances. I oppose this punitive capital treatment and strongly recommends that these cash advances be excluded from the risk-weighting requirements included in the Proposal.

I appreciate the opportunity to share my comments with you.