January 31, 2014

Honorable Ben S. Bernanke
Chairman
Board of Governors of the
Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
(Docket No. R-1466)

Honorable Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency Federal
250 E Street, SW
Washington, DC 20219
(Docket ID OCC-2013-0016)

Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th St, NW
Washington, DC 20429
(RIN No. 3064-AE04)

Re: Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring (OCC Docket ID 2013 – 0016; FRS Docket No. R-1466; FDIC RIN 3064-AE04)

Ladies and Gentlemen:

The undersigned organizations[1] (Signatories) are pleased to provide comments on the joint notice of proposed rulemaking (Proposed Rule) by the Board of Governors of the Federal Reserve System (FRS), the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) (and collectively, the "Agencies"), entitled "Liquidity Coverage Ratio: Liquidity Risk Measurement, Standards, and Monitoring". The Proposed Rule is intended to strengthen the liquidity positions of large financial institutions, in accordance with Section 165 of the Dodd-Frank Act (DFA) and standards promulgated by the Basel Committee on Banking Supervision (BCBS) as part of the Basel III framework.

The recent financial crisis demonstrated significant weaknesses in the liquidity positions of financial organizations, many of which experienced difficulty meeting their obligations due to a breakdown of the funding markets. The Proposed Rule seeks to limit leverage in the financial system and to encourage covered institutions to better maintain a liquid balance sheet through the application of a liquidity coverage ratio (LCR). Conformance with this ratio will require large banks, and potentially other institutions in the future, to incorporate on- and off-balance sheet exposures into their liquidity management considerations prescriptively and to hold a greater proportion of liquid assets as a buffer against future funding dislocations. According to the requirements, covered institutions must hold at least as many high quality liquid assets (HQLAs), the numerator, as estimated net outflows, the denominator, given a 30-day period.

The members of our associations represent key interests related to the commercial and multifamily real estate (CRE/MF) industry, including investors, lenders, owners, and developers.

[1] The undersigned organizations are: The Commercial Real Estate Finance Council, National Apartment Association, National Association of Real Estate Investment Trusts, National Multifamily Housing Council, and The Real Estate Roundtable.

The Signatories and their members lead an industry that generates more than 20 percent of America's gross national product, employs more than 9 million people, provides rental housing for 17.7 million households, and produces nearly two-thirds of the taxes raised by local governments for essential public services.[2] In the aftermath of the financial crisis, the U.S. multifamily and commercial real estate sectors remain critical forces in shaping the magnitude and direction of our economy and job recovery.

I. Overview

With respect to the Proposed Rule, the Signatories support the Agencies' efforts to ensure the safety and soundness of the financial system with the LCR framework as part of enhanced prudential standards. At the same time, the LCR has the potential to increase costs across a wide range of CRE/MF borrowers, including builders and developers, business owners, insurance companies, institutional investors, REITs, private equity funds, and others. In addition to commercial borrowers, affordable housing projects could be constrained by these new requirements. The Signatories and our members believe that the DFA/Basel III liquidity regime has the potential to influence capital flows and raise costs broadly across CRE/MF lending markets.

Indeed, the LCR is intended to guide some of the biggest and the most diversified lenders in making their strategic allocations internally to business lines. To the extent that CRE/MF products are disadvantaged by the LCR framework, liquidity could decline across the industry, including bank balance sheet lending to stabilized and development properties, and financings through certain bond structures and Commercial Mortgage-Backed Securities (CMBS). While the Signatories welcome the enhanced market discipline of DFA and Basel, ***we believe it is imperative that the Agencies ensure that final U.S. rules: 1) are harmonized with international expectations and standards, especially with respect to timing; and 2) avoid damaging market liquidity by failing to sufficiently differentiate between products.***

With regards to the recommendation that the Agencies harmonize U.S. rules with international standards, the Signatories believe that the conformance timeline is of critical importance for the CRE industry. Though large banks have adjusted partially to the BCBS standards, the conservatism of the national draft rule caught the industry unexpectedly. Even before the U.S. proposal was issued, liquidity was at times considered to be as valuable, and sometimes, more valuable, than regulatory capital. While there are many thresholds under Basel III, the LCR has been considered to be a challenging hurdle for some time now, and will continue to influence the lending perimeter in the future. Additionally, the Signatories are concerned that asymmetrical treatment between the U.S. Europe will advantage foreign lenders and borrowers, as well as their economies, at the expense of our own.

Accordingly, the Signatories recommend that the Agencies revise the LCR conformance schedule so that it better approximates foreign treatment, and that the regulators pause before adopting the final rule to consider data collected from the industry.

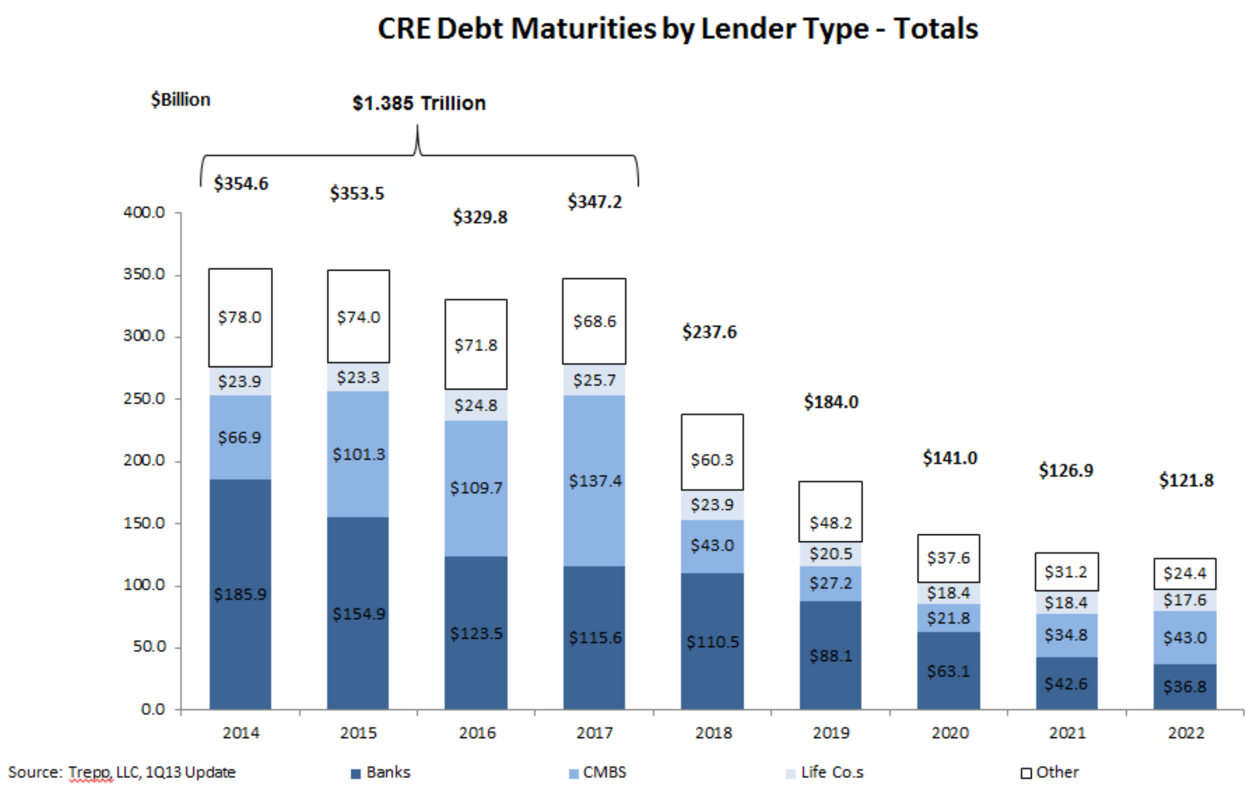
---

[2] For reference regarding rentals, see 2012 U.S. Census Bureau American Community Survey, 1-Year Estimates, Tenure by Units in Structure; and for reference to tax base, see U.S. Census Bureau, *State Government Tax Collections Summary Report: 2012*, at 4 (Apr. 11, 2013), *available at*: http://www2.census.gov/govs/statetax/2012stcreport.pdf.

Additionally, the Signatories believe that the Proposed Rule does not differentiate between products sufficiently. There are questions of classification and treatment for a number of CRE/MF products, especially those that have conditional draw features. Indeed, conditional draw processes are common and are contractually embedded in many types of arrangements – lines of credit, construction lending, lending to institutional platforms, etc. – and are also found outside of the CRE/MF sector in broad-based commercial and industrial lending.

As a result, the Signatories believe that it is in the Agencies' interests to provide additional specificity for CRE/MF and other products where the lender can control disbursements based on contractual conditions that apply to the borrower.

The Signatories believe that the recommendations enclosed in this letter are even more critical given the amount of loans maturing in years to come across bank and other major sources of credit for commercial real estate. Changes in liquidity levels can more easily lead to unintended consequences, like market dislocations, in periods of spiking funding needs. In addition to the recommendations enclosed herein, the Signatories offer to supply the Agencies at a later date with information that could be useful to better calibrate LCR methodologies in the final rule.



II. U.S. Proposed Rule and Harmonization with International Standards

The U.S. Proposed Rule exceeds the expectations of the international community in several significant aspects. In comparison to the BCBS's revisions to its LCR standards and to the European Union's methodologies, the U.S. proposal is more restrictive in its definition and treatment of HQLAs, outflow estimation and conformance schedule. The Signatories believe the U.S. authorities should seek harmonization across all major provisions of the rule, particularly, with respect to timing.

Where the BCBS schedule requires that covered institutions meet 60 percent of the required LCR by January 1, 2015, the U.S. proposal requires 80 percent conformance by this date. Similarly, the BCBS schedule requires full compliance by January 1, 2019, and the U.S. proposal a full two years earlier, in January 2017.

Respectfully, we would like to point out that the development and implementation of Basel II required more than two decades, and that Basel III risk-based capital methodologies are still being substantively revised even now following the 2013 Quantitative Impact Study (QIS). This is strong evidence that policy makers and regulators require time and relevant empirical data necessary to inform complex rules, and especially those that can fundamentally shift allocation of capital and liquidity.

As such, the Signatories recommend that the Agencies consider the below implementation table to be followed conditionally based on QIS results:

	2015	**2016**	**2017**	**2018**	**2019**
US Proposal	80%	90%	100%	100%	100%
BCBS	60%	70%	80%	90%	100%
EU	60%	70%	80%	100%	100%
Signatories' Recommendation	60% / conduct a QIS	70%	80%	100%	100%

In following, the Signatories urge the Agencies to: 1) conduct a QIS regarding the impact of the LCR before finalizing the rule; and 2) revise the proposed conformance schedule and target levels to better align with international timelines, in order to allow for policy evaluation with respect to market-wide liquidity.

III. Treatment of Securitizations – and CMBS - for the Purposes of Determining Outflow Estimates

The Proposed Rule applies a single outflow methodology to securitizations broadly that does not sufficiently distinguish by scope of liabilities, and that is not consistent with the treatment given to non-structured products, such as whole loans. Under the rule as drafted, CMBS and other VIEs would be subject to these following conditions: the greater of 1) 100 percent of the amount of all debt obligations that mature in 30 days or less from the calculation date; and 2) the maximum contractual amount of funding the covered company may be required to provide to the issuing entity 30 days or less from the calculation date through a liquidity facility, return of repurchase of assets from the issuing entity, or other funding agreement be incorporated into an institution's outflow calculation.

In short, the Agencies require that issuing banks incorporate the trust's liabilities into its outflow assumptions, as if these obligations were the covered institution's own contractual obligations. By extension, the Agencies should consider applying the same principle that is applied to other on-balance sheet assets and liabilities – that related cash flows be netted.

As follows, the Signatories recommend that where liabilities of the trust must be incorporated into the outflows assumption, the rule should reflect that assets in the trust should be netted against the liabilities, as would be the case if the assets sat on the balance sheet.

IV. Treatment of Commercial Real Estate-Related Facilities for the Purposes of Determining Outflow Estimates

A. Special Purpose Entities

Special Purpose Entities (SPEs) are commonly used in CRE/MF financings as a means to isolate assets. However, given the treatment for SPEs described above, the industry could benefit from clarification and differentiation between SPEs central to a securitization and those used for other purposes.

We respectfully request greater clarification regarding the treatment of SPEs, and we recommend that SPEs that own and operate commercial real estate be excluded from the LCR calculation.

B. CRE/MF Loans with Conditional Disbursements under Committed Credit Facilities

CRE/MF loans to stabilized properties often include contractually specific conditions that must be met in order to execute additional draws on the facility. The majority of construction loans are underwritten with conditions that the borrower must meet before receiving further disbursements.

Regarding facilities supporting the purchase of stabilized properties, a borrower would likely have to provide information regarding net operating income (NOI) of those buildings previously acquired through the platform. In the case of construction lending, the borrower typically must give the lender extensive information about progress on the project. In both cases, site visits may be in order. In addition, the lender would typically have a period of time in which to confirm the information, before deciding to extend the credit. Altogether, this process would likely extend beyond the 30-day period on which the LCR calculation is based. In the case of stabilized properties, this pause can cover more than three months, as NOI is reported quarterly.

At the same time, the section addressing committed credit facilities (CCFs) of the Proposed Rule does not adequately reflect this conditional nature and lengthiness of the disbursement process. Higher outflows than contractually and operationally possible create a cost for a risk not incurred.

The Signatories recommend that the Agencies refine the LCR outflows methodology to reflect the conditionality of certain types of CRE/MF lending and that we be allowed to present information and analysis at a later date to inform better calibration of the LCR outflows calculation.

Relatedly, it is common practice for interest on CRE/MF loans to be included in the loan budget and funded through the loan. These are internal journal entries that have no impact on the institution's cash position. All CRE/MF loan interest included in the outflow amount creates a cost for a risk not incurred.

We respectfully request that any amounts regarding loan facilities that are related to internal journal entries and disbursed by covered companies be excluded from outflows in the LCR methodology.

C. **Bonds Backed by Letters of Credit**

Letters of Credit (LoCs) are often incorporated into CRE transactions financed by bonds. LoCs can be used to guarantee the bondholders that they will receive the underlying economic value promised in the indenture. They can apply to market-rate transactions and to affordable housing transactions, as well.[3] In this case, the guarantor is agreeing to cover principal in the case of a default. However, the Proposed Rule does not define a treatment for LoCs with respect to outflows. We respectfully submit that there are structural considerations that must be factored into a final LCR rule, in order to avoid disrupting market liquidity. The process required to draw on a LoC is rigorous and would most likely require the better part of, or more than, 30 days.

Without guidance to determine outflows in this case, LoCs backing bonds cannot be priced on a risk-return basis, as is industry practice, and market liquidity will suffer accordingly. In the least, outflow assumptions for the 30-day period should be geared to historical experience. ***Ideally, here again, the Signatories would like to propose that they submit further information at a later date for consideration.***

In addition to the LoCs described above that provide credit-related guarantees, certain bonds are structured as variable rate notes (VRNs) and related LoCs can be used to cover the liabilities of maturing rate tranches, in the event that these bonds might not successfully be remarketed. Again, this scenario can apply to both commercial and affordable rental housing transactions. Additionally, in the event they might not be successfully re-marketed.

In these cases, we recommend that only the dollar amount of notes maturing within the 30-day window be included in the outflow estimate.

[3] The LoC, or credit enhancement offered by the bank or financial institution is not necessarily tied to the outstanding obligation of the underlying mortgage.

V. Conclusion

The Signatories understand and appreciate the Agencies' objectives, but we have serious concerns about the implications of the Proposed Rule. In light of this, we urge the Agencies to carefully consider the impact of the liquidity framework and to thoughtfully calibrate LCR methodologies with the historical behavior and with regards to structural features of these products to avoid unnecessary disruptions in capital formation and market liquidity. The Signatories appreciate this opportunity to comment, and we look forward to working constructively with the Agencies on this important matter.

Sincerely,

Commercial Real Estate Finance Council
National Apartment Association
National Association of Real Estate Investment Trusts
National Multifamily Housing Council
The Real Estate Roundtable