IBC
International Bancshares
Corporation

November 16, 2018

Via Federal eRulemaking Portal: www.regulations.gov
Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street, SW., Suite 3E-218
Washington, DC 20219

Via Email: regs.comments@federalreserve.gov
Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Via Email: comments@fdic.gov
Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW.
Washington, DC 20429

Re: OCC-Docket ID OCC-2018-0026, RIN 1557-AE48; FRS-Docket No. R-1621, RIN 7100-AF-15; FDIC-RIN 3064-AE90; Regulatory Capital Treatment for High Volatility Commercial Real Estate ("HVCRE") Exposures ("HVCRE Proposal")

Ladies and Gentlemen:

The following comments are submitted on behalf of International Bancshares Corporation ("IBC"), a multi-bank financial holding company headquartered in Laredo, Texas. IBC owns five state nonmember banks serving Texas and Oklahoma. With approximately $12 billion in total consolidated assets, IBC is one of the largest independent commercial bank holding companies headquartered in Texas. IBC is a publicly-traded holding company. The HVCRE Proposal is very important to IBC's subsidiary banks which originate commercial real estate loans. We appreciate the opportunity to comment on the HVCRE Proposal.

On September 18, 2018, the federal bank regulatory agencies jointly issued a notice of proposed rulemaking that would revise the definition of an HVCRE exposure in 12 C.F.R. Part 324, in accordance with Section 214 of the Economic Growth, Regulatory Relief, and Consumer Protection Act ("EGRRCPA") which became law on May 24, 2018, and provide interpretations of certain aspects of the revised HCVRE exposure definition.

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The agencies are proposing to revise the HVCRE exposure definition to make it consistent with the new statutory definition of an HVCRE acquisition, development, and construction ("ADC") loan. Section 214 of EGRRCPA states the agencies may only require a depository institution to assign a heightened risk weight (*e.g.*, 150%) to an HVCRE exposure, as defined under the capital rule, if such exposure is an HVCRE ADC loan as defined under the EGRRCPA. The statutory definition also excludes any loan made before January 1, 2015 (the effective date of the original final rule).

The new definition differs from the existing definition primarily in two ways. First, the existing definition applies to loans that finance ADC activities, whereas the new definition would apply only to loans that "primarily" finance ADC activities and that are secured by land or improved real estate. This change would exclude multi-purpose credit facilities that primarily finance the purchase of equipment or other non-ADC activities from the definition of HVCRE.

Second, while both the existing and the new definitions exclude financing for projects to which the borrower has contributed at least 15 percent equity, the existing definition permits only the purchase price of contributed land to be counted for this purpose. The new definition allows the full appraised value of borrower-contributed land (less the total amount of any liens on the real property securing the HVCRE exposure) to be counted as part of the equity contribution.

Comments

The HVCRE Proposal generally provides more favorable treatment of HVCRE loans and is clearer than the existing HVCRE rules. As such, IBC supports the HVCRE Proposal. However, IBC also has concerns regarding certain aspects of the HVCRE Proposal:

HVCRE ADC Exposure Loan Definition

In Question 1 of the HVCRE Proposal, the federal agencies ask the following question:

Question 1: The agencies invite comment as to whether the final rule should require re-evaluation of ADC loans originated on or after January 1, 2015 under the revised HVCRE exposure definition. What are the advantages and disadvantages of requiring re-evaluation? What alternative treatments, if any, should the agencies consider?

We believe that a requirement to re-evaluate ADC loans originated on or after January 1, 2015 would be overly burdensome because of the extensive work and expense involved in re-evaluation of HVCRE loans. The rule should allow, but not require, re-evaluations of HVCRE loans. We note the proposed rules are more favorable than the original final rule and will not likely result in the identification of loans as HVCRE that were not HVCRE under the original final rules. For this reason, financial institutions should have the *option* of conducting a HVCRE loan re-evaluation rather than being required to do so.

Contributed Capital Definition

Additionally, in Question 7 of the HVCRE Proposal, the federal agencies ask the following question:

Question 7: The agencies invite comment on whether their proposed interpretation of the 15 percent contributed capital exclusion is appropriate and clear or whether further discussion or interpretation would be appropriate. What other issues, if any, relating to the contributed capital exclusion require interpretation? What issues are there relating to the contribution of cash, unencumbered readily marketable assets, real property or improvements that require interpretation? What expenses should or should not qualify as development expenses and are there any other issues relating to paid development expenses that would require interpretation? The agencies also invite comment on whether it is appropriate and clear that the cross-collateralization of land in a project would not be included as contributed real property for purposes of the contributed capital exclusion.

Included in the definition of "Contributed Capital" is "unencumbered readily marketable assets." This is unchanged in the HVCRE Proposal, but clarification by the federal bank agencies is desperately needed. The concern is that readily marketable assets are not defined, but logically would include marketable securities, government bonds, and certificates of deposit (not marketable but certainly usable). The federal bank agencies should clarify precisely how readily marketable securities can be contributed to a project other than by being pledged as collateral to secure the loan? We note that when the question of pledging readily marketable assets as additional collateral has been posed at several "Ask the Fed" seminars relating to HVCRE loans, the response from the Federal Reserve has been that pledging of the assets is *not* an acceptable form of HVCRE-qualified capital. The Federal Reserve's position appears to be that the definition of "Contributed Capital" contemplates that the readily marketable assets would need to be liquidated and the resulting cash contributed to the construction project. If so, this would appear to be an illogical position. If the federal bank agencies truly intended for readily marketable assets to be liquidated, there would have been absolutely no reason to even include readily marketable assets in the definition of qualified capital in the original final rule. The only manner in which readily marketable assets themselves could ever be contributed is in the form of a pledge to secure the loan. Some Federal Reserve officials have confirmed this somewhat illogical position. Unfortunately, this limiting interpretation has severely impacted commercial real estate lending and capital allocations for loans that are currently classified as HVCRE simply because these loans do not meet the 15% qualified capital requirement. In many cases, developer borrowers have ready access to readily marketable assets and lending institutions frequently take them as additional collateral. Those same assets are allowed in the calculation of supervisory LTV guidelines (for example, subtract the amount of a pledged certificate of deposit from the loan commitment and compare the net amount to the appraised value for LTV). So, why would they not be allowed for HVCRE risk-weighting considerations? Accordingly, if readily marketable assets cannot be pledged as HVCRE collateral, they should be removed from the definition altogether.

Other Comments

Previously, the original HVCRE rules applied to loans that were made prior to January 1, 2015 (the effective date of the original final rule). HVCRE exposures were assigned a heightened risk weight of 150 percent under the capital rule. Applying the HVCRE rules retroactively to loans made prior to the effective date of the original final rule was patently unfair because it required banks to assign such loans heightened risk weight unless such loans met one of a handful of exemptions without the ability to mitigate risk weight. These loans were negotiated without any knowledge of the future HVCRE rules and the exemptions that could have been considered to avoid HVCRE status had the original final rule not been applied retroactively to loans made prior to January 1, 2015. Thus, the HVCRE Proposal is a marked improvement over the original final rules.

Additionally, we believe that loans secured by vacant land (except agricultural land) should be included in the scope of the revised HVCRE exposure definition only if EGRRCPA requirements for classification of that loan as an HVCRE ADC loan are met at origination.

Finally, we believe the proposed amendments should allow for a retroactive re-evaluation of ADC loans originated on or after January 1, 2015, under the proposed revised definitions contained in the HVCRE Proposal.

Thank you for your consideration.

Respectfully,

[redacted]

Dennis E. Nixon
President
International Bancshares Corporation