NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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October 22, 2012

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To Whom It May Concern:

On behalf of the National Affordable Housing Management Association (NAHMA), I would like to thank you for the opportunity to comment on the notices of proposed rulemaking (NPRs)[1] that would revise and replace the Federal Reserve, the Federal Deposit Insurance Corporation, and the Department of Treasury Office of the Comptroller of the Currency's (the agencies) current capital rules related to the implementation of the Basel III accords. Our comments will focus specifically on provisions within the "Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements" NPR.

NAHMA is a 501(c)(6) non-profit trade association which represents apartment property owners and managers, multifamily housing industry stakeholders, and providers of goods and services to the affordable housing industry. NAHMA's mission includes promoting the development and preservation of quality affordable multifamily housing and preparing affordable housing professionals to succeed in evolving economic and political environments.

While NAHMA understands the need to decrease financial institutions' exposure during economic downturns, we are concerned that the standardized approach for risk-weighted assets in the "Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements" NPR could deter deals for the new construction and rehabilitation for affordable multifamily housing.

[1] "Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action," *Federal Register* 77: 169 (August 30, 2012) p.52792 - 52886.
"Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements" *Federal Register* 77: 169 (August 30, 2012) p.52888-52975.
"Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule" *Federal Register* 77: 169 (August 30, 2012) p. 52978-53057.

High Volatility Commercial Real Estate Exposures

The "High Volatility Commercial Real Estate Exposures" proposal would apply "a 150 percent risk weight to certain credit facilities that finance the acquisition, development or construction of real property," which can include loans to some multifamily projects.[2] The proposal effectively increases what banks must hold against loans to developers/owners for acquisition, development and construction of real property by half (100 percent to 150 percent). Nevertheless, the provision provides a narrow exception for single family and commercial real estate properties[3] where the developer/owner provides 15 percent of a project's appraised value in the form of cash or unencumbered readily marketable assets, or has paid the development expenses out-of-pocket.[4] The agencies claim that implementing this proposal "would more appropriately align capital requirements with these exposures and contribute to the resilience of both individual banking organizations and the banking system."[5]

However, NAHMA believes that the narrow exception for this proposal neglects to take into consideration other indicators of risk-weight. These include, but are not limited to:

- The value of land for the project;
- Sources of financing outside of cash contributions, such as the LIHTC;
- The developer/owner's prior borrowing history; and
- Existing relationships with the institution or its affiliates.

These factors can help mitigate the risk associated with the loan. Relying on a developer/owner's capital contribution alone for the loan could prevent financing for otherwise dependable, well-written acquisition, development, and construction loans for affected affordable multifamily projects, particularly those with LIHTCs. Therefore, we would encourage the agencies to broaden the narrow exception to account for other financing factors that can help mitigate risk.

Securitization Exposures

NAHMA is also concerned about the due diligence requirements of the "Securitization Exposures" provision. For example, if a bank is unable to demonstrate a "comprehensive understanding of the features of a securitization exposure that would materially affect the performance of the exposure" to its federal supervisor, the bank must assign asset-backed securities a risk-weight of 1,250 percent.[6] Such high risk-weights and significant due diligence requirements could deter many banking institutions—particularly those that are small and medium-sized—from financing more complex securities, including affordable multifamily mortgages and loans. This effectively concentrates the supply of financing to a limited number of institutions and could discourage broader investment in affordable multifamily rental housing. In addition, such high risk weights may not be accurate reflections of the actual risk associated with an asset-backed security. We would encourage the agencies to pursue risk-weight penalties that more accurately reflect a security's actual risk rather than arbitrary numbers that inflict disproportionate penalties on institutions and discourage investment in a broad variety of assets.

Statutory Multifamily Mortgages

Nevertheless, NAHMA supports the provision in the standardized approach for risk-weighted assets NPR that maintains the general risk-based capital rules for statutory multifamily mortgages.[7] This approach preserves existing underwriting requirements for multifamily mortgages and conforms with section 618(b)(1) of the Resolution Trust Corporation Refinancing, Restricting, and Improvement Act of 1991 (RTCFFIA). We

[2] Ibid, 52893.
[3] The term "commercial real estate" can encompass certain multifamily projects, depending on the financial institution and the loan-to-value ratio for the affected project.
[4] Ibid, 52940.
[5] Ibid, 52892.
[6] Ibid, 52941.
[7] Ibid, 52900-52901.

do not believe this provision should be changed in the final rule, as it ensures a competitive balance for multifamily lending.

Additional Considerations

NAHMA questions the reasonableness of implementing the NPRs without further investigation of their impact on the multifamily housing finance market. We are concerned that some of the provisions of the NPRs could deter eligible financial institutions from participating in the multifamily mortgage market, which could effectively concentrate the market within government and GSE programs. This is contrary to the goals expressed by the Obama Administration and Congress of reinvigorating the private multifamily mortgage marketplace.

Furthermore, the demand for affordable rental housing is growing. According to the U.S. Department of Housing and Urban Development (HUD), the number of households with "worst case housing needs"[8] has jumped from 20 percent between 2007 and 2009, 5.9 million to 7.1 million respectively.[9] Additional financial resources are essential to helping the government and private providers meet this demand, lest the number of homeless families and/or overcrowded housing units increase. Therefore, we urge the agencies to review the NPRs to ensure that the final rule does not include provisions that could work against other government initiatives to increase private sector participation in multifamily housing finance.

Conclusion

The financial institutions that the agencies are seeking to regulate in the NPRs play a very important role in providing financing and support for critically needed affordable housing nationwide. Therefore, NAHMA strongly encourages the agencies to review the NPRs and make changes to the final rules that ensure there are no unintended consequences to private sector participation in the multifamily housing mortgage market.

Please feel free to contact me if you have any questions regarding our comments. Thank you in advance for the consideration of our feedback.

Sincerely,

Kris Cook

Kristina Cook, CAE
Executive Director

[8] The U.S. Department of Housing and Urban Development (HUD) defines the term "worst case needs" as very low-income renters with incomes below 50 percent of the Area Median Income who do not receive government housing assistance and who either paid more than one-half of their income for rent or lived in severely inadequate conditions, or who faced both of these challenges.

[9] Office of Policy Development and Research, "Worst Case Housing Needs 2009: Report to Congress" Washington: U.S. Department of Housing and Urban Development, February 2011, vii.