

# MBA Positions on Bank Policy

MBA supports policies that enhance banks' ability to lend in local communities, promote balanced regulatory and examination regimes, and provide flexibility to address all economic conditions.

## BASEL III END GAME PROPOSAL

### Background

In July 2023, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Board of Governors of the Federal Reserve (Fed, and collectively, the "Banking Agencies") issued interagency proposed changes to capital requirements for banks with assets of \$100 billion or more (the "NPR" or "Basel III Proposal"). The so-called "end game" proposed rules complete U.S. regulators' implementation of the Basel III standards and make changes in response to the recent large bank failures. On January 19, 2024, MBA submitted comments that focused on the numerous negative impacts these proposed rules would have on the commercial real estate market and the housing finance ecosystem. MBA continues to meet with the Banking Agencies and members of Congress to advocate our positions.

### Key Issues and Positions

MBA supports regulatory capital requirements that are tailored to ensure that banks hold enough capital to serve as a cushion against losses under stressed financial conditions, thereby reducing the likelihood of bank failures and protecting the financial system. However, we caution against excessive or mis-calibrated capital requirements – both overall and for certain asset classes – that will impede economic growth, undermine stability and competition in the housing sector, and drive banks away from supporting certain key sectors of the economy.

At the macro level, it is unclear what specific problem the NPR is trying to solve, considering that the Fed and the U.S. Treasury have repeatedly stated that the U.S. overall banking system is strong. Before releasing the Basel III "Endgame" framework, the Basel Committee on Bank Supervision stated that these revisions were intended to be capital neutral, and yet, for reasons not well-explained, the NPR effectively increases capital requirements at large banks by an estimated 15 to 20 percent – large enough to impact credit availability economy-wide, as well as impact which lines of business banks choose to support – with potential implications for the entire mortgage market.

For commercial real estate, the implications of the Basel III Proposal vary. To the positive, the Basel III Proposal striates risk weights for commercial real estate to match the risk associated with the loan-to-value (LTV) ratio. Under current rules, all commercial real estate loans receive

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one risk weight that can be lowered after two years depending on the performance of the loan. Furthermore, the risk weight for most multifamily loans remains unchanged at 50 percent. However, risk exposure for securitization positions increased, while cross-defaults seem overly complicated. At present, MBA's main concerns with the Basel III Proposal for commercial and multifamily lending are the following:

1. Interaction with Other Rules/Community Reinvestment Act: The Basel III Proposal did not include a quantitative impact study (QIS), which typically accompanies such rulemakings. A QIS attempts to understand both the cost and interrelationship between one rulemaking and another.
2. Commercial Loan Cross Default (not applicable to most multifamily loans): Under the Basel III Proposal, if a borrower is in default on a loan, then that loan would be given a 150% risk weight. The proposal also requires that if a borrower defaults on one loan (with any creditor), then every loan that borrower has would receive 150% risk weight.
3. Securitization Risk Weights Increased: Securitization risk weight exposures increased in the Basel III Proposal, however little to no justification was given for the increase.

## **COMMUNITY REINVESTMENT ACT**

### **Background**

The Community Reinvestment Act (CRA) was enacted into law by Congress in 1977 to encourage banks to invest in underserved or low-income communities and lend to lower-income individuals and is enforced jointly by the Banking Agencies.

Banks achieve CRA credit through lending to individuals, and businesses, and through community development activities which include affordable multifamily lending. Affordable multifamily lending currently represents a significant portion of how banks achieve CRA credit.

In 2022, the Agencies issued a Notice of Proposed Rulemaking (NPR), making the first major regulatory changes to the CRA since 2007. In October 2023, the banking agencies issued their Final Rule on CRA (the "Final Rule"). The Final Rule includes several of MBA's recommendations including revised weightings assigned to retail and community development lending and preserving full credit for LIHTC investment.

### **Key Issues and Positions**

#### **Revised Weightings for Retail and Community Development Lending**

Under the NPR, the Retail Lending Test was weighted at 60% and the Community Development Financing Test was weighted at 40%. MBA strongly recommended that the Agencies revise the test weightings to achieve a 50-50 balance between the combined Retail and combined Community Development tests. We suggested reallocating 10 percentage points from Retail –

either by reducing Retail Lending by 10%, or by taking 5% each from Retail Lending and Retail Products/Services – and increasing the Community Development Lending test by 10 percentage points (to 40%). This would encourage large banks to aim for higher performance scores on both tests to achieve an overall outstanding rating. The Final Rule revised the weightings to achieve 50-50 balance between Retail Lending and Community Development tests, a positive outcome for MBA's members.

### **Product Line Threshold for Multifamily Lending**

The NPR proposed the establishment of a major product line threshold of 15 percent of the dollar value of a bank's retail lending in each assessment area to determine whether to evaluate certain loan products under the Retail Lending Test, including multifamily lending. MBA encouraged the Agencies to eliminate the threshold or consider a lower threshold for multifamily lending activities to qualify as a major product line under the Retail Lending Test. Due to the specialized and unique nature of multifamily lending, it would have been extremely difficult for any bank to meet a 15 percent major product line test for any one geographic area for their multifamily lending activities.

The Final Rule excluded multifamily loans entirely from the Retail Lending Test. The Final Rule only evaluates multifamily under the Community Development Financing Test, which is a positive outcome because the Retail Lending Test and Community Development Financing Test are given equal weight under the rule.

### **Definition of Naturally Occurring Affordable Multifamily Housing**

To better serve a greater number of LMI renters and conform with current industry definitions, MBA supported a definition of naturally occurring affordable multifamily housing to be housing where 50 percent of renters are paying rents targeted at 30 percent or below monthly incomes of 80 percent or lower of area medium income (AMI). A significant part of the industry has accepted the 80 percent AMI threshold as a definition for low-income tenants.

The Final Rule describes naturally occurring affordable rental housing as multifamily housing where the majority of units have monthly rent, as underwritten by the bank, reflecting post-construction or post-renovation changes that do not exceed 30 percent of 80 percent of the area median income and that also meets at least one of the following eligibility criteria: (1) the housing is located in a low- or moderate-income census tract; (2) the housing is located in a census tract in which the median income of renters is low- or moderate-income and the median rent does not exceed 30 percent of 80 percent of the area median income; (3) the housing is purchased, developed, financed, rehabilitated, improved, or preserved by any nonprofit organization with a stated mission of, or that otherwise directly supports, providing affordable housing; or (4) the bank provides documentation that a majority of the housing units are occupied by low- or moderate-income individuals or families.

### **Low-Income Housing Tax Credits (LIHTC) and CRA**

Low-Income Housing Tax Credits (LIHTC) represent a significant portion of how banks achieve CRA credit and how banks preserve and create affordable multifamily housing and serve LMI individuals and communities. MBA supported the treatment of LIHTC under the previous CRA rules, which allowed banks to receive consideration for the full amount of the loan or investment. The Final Rule preserves full credit for loans or investments involving LIHTC, regardless of the share of units that are considered affordable.

## **Disaster Preparedness, Recovery, and Climate Resiliency and Green Bonds**

MBA supports the expansion of CRA-eligible activities that assist LMI individuals and communities in the preparedness for, and ability to withstand natural disasters, weather-related disasters, or climate risks. Banks can play an important role in financing the retrofitting of commercial and multifamily properties where LMI individuals live and work to make them more climate resilient and to assist LMI individuals and communities in disaster preparedness and recovery. The Final Rule provides community development consideration for disaster preparedness and weather resiliency activities that assist individuals and communities in preparing for, adapting to, and withstanding natural disasters or weather-related risks or disasters.

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