November 27, 2018

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218
Washington, DC 20219

Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

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

Re: Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures

Dear Ladies and Gentlemen:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the proposed rule *Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures*. This proposed rule is being introduced pursuant to section 214 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, which called for an overhaul to the HVCRE definition. The purpose of the legislation was to limit the scope of

[1] The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than $4.9 trillion in assets, $3.9 trillion in deposits, and $3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

commercial loans that would qualify as HVCRE exposures and be subjected to higher risk weightings under risk-based capital rules.

Under the proposed rule, the risk-based capital rules would be amended to define HVCRE exposures as high volatility commercial real estate acquisition, development, or construction loans (HVCRE ADC). HVCRE ADC exposures would exclude any loan made prior to January 1, 2015. HVCRE ADC loans would carry a 150 percent risk weight under the standardized approach of the regulatory capital rules. The analysis of a commercial real estate exposure to determine if that exposure meets the definition of an HVCRE ADC exposure would be made only at origination.

The proposed rule would continue to include most exemptions contained in the current HVCRE definition. One-to-four family residential facilities would continue to be exempt. However, the agencies have concluded that loans to finance the construction of condominiums and cooperatives are multifamily construction and would not qualify for the one-to-four family residential exemption. Community development investment exposures, agricultural land exposures, and loans that qualify as permanent financings would also continue to be exempt.

The remaining key exemption from HVCRE ADC classification would require the borrower to contribute capital of at least 15 percent of the real property's appraised as completed value. Under the proposal, the definition of contributed capital would be amended to include cash, unencumbered readily marketable assets, paid development expenses out-of-pocket, and contributed real property or improvements. The value of contributed real property would be determined by the appraised value.

ICBA would like to thank the banking agencies for issuing this proposal in a very timely manner in response to the signing of this very important legislation. As the agencies are well aware, the capital treatment of HVCRE loans has been very confusing for community bankers to understand, implement, and manage since the adoption of Basel III. Community banks with little to no HVCRE exposure have been forced to conduct very focused analyses of their ADC loan portfolios to adequately document the conditions present in the loan so that they would not be subject to the higher risk weights prescribed for HVCRE loans. In some cases, community bankers made the decision to classify the loan as HVCRE rather than defend their view that the loan met the criteria for traditional commercial loan risk weighting. This proposed rule, once enacted, will go a long way toward easing the current regulatory burden that community banks continue to face with regard to the current complexity of Basel III.

However, ICBA questions whether the HVCRE designation is needed any longer. The fact that legislation had to be enacted to remove certain ADC loans from the population of bank assets needing elevated risk weights indicates that the HVCRE designation was providing little to no strength to the community banking regulatory framework. Community banks originate ADC loans because they are key drivers of economic growth in local communities. Adding capital surcharges to these loans makes community banks uncompetitive in the commercial lending marketplace and can raise costs for borrowers. This can force otherwise beneficial construction projects to be delayed, deferred, or financed by nonbank providers of credit that do not face the burdensome prudential standards faced by community banks. Therefore, ICBA recommends that the banking agencies consider removing the HVCRE risk weight requirement altogether for banks with total consolidated assets of $50 billion or less.

ICBA appreciates the opportunity to comment on this proposal. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 659-8111.

Sincerely,

/s/

James Kendrick
First Vice President, Accounting and Capital Policy