The Real Estate Roundtable

CENTER FOR CAPITAL MARKETS COMPETITIVENESS

June 8, 2012

Ms. Jennifer Johnson
Secretary
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue
Washington, DC 20551

Mr. Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Office of the Comptroller of Currency
250 E Street, SW
Washington, DC 20219

Re: Proposed Guidance on Leveraged Lending; Docket ID OCC-2011-0028; OP-1439

Dear Ms. Johnson, Mr. Feldman, and To Whom It May Concern:

Our organizations represent all sectors of the economy, speaking on behalf of businesses that employ tens of millions of workers domestically. Because our members need access to a variety of different forms of capital to provide the resources for operations, expansion and job creation, we support strong risk management practices and the appropriate level of controls needed to insure responsible and sustainable business lending. As such, we appreciate the opportunity to provide comment on the Proposed Guidance on Leveraged Lending ("proposed guidance") issued by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve (Federal Reserve") and the Federal Deposit Insurance Corporation ("FDIC") (also collectively known as the "Agencies").

While we agree that unreasonable risk-taking should be mitigated to the extent possible, we firmly believe that reasonable risk-taking is a necessary ingredient for the free enterprise system to work. Accordingly, we believe that sound risk management and lending controls are an important part of leveraged lending. The proposed guidance is an important step to achieving that goal, but it should avoid artificial bright line tests that do not allow for capital to be allocated efficiently as lenders may defer to these artificial ratios and tests rather than taking into account the specific characteristics of a business. Strict bright line tests could impede capital flows and have negative impacts upon business expansion and job creation.

Companies small and large, particularly new businesses, need a mix of capital sources to meet short-term and long-term growth needs, including but not limited to debt markets, equity markets, bank loans, trade finance, angel investing, venture capital, credit cards, home equity loans, etc. This diversity of capital has provided the liquidity needed for different sized firms to be able to have the opportunity to achieve success. Businesses need a mosaic of interconnected products of varying size and complexity to meet the capital needs of a 21st century global economy. Leveraged lending is a part of that capital formation mosaic.

Strong risk-management practices and monitoring of borrower performance are the hallmarks of business lending including leveraged financing. This also requires lenders to understand the unique characteristics, prospects, and maturity of a business. Lending and capital deployment decisions are subject to a consideration of factors unique to a business and not subject to a one size fit all approach. Therefore, lending decisions should be based upon credit analysis and risk based judgments rather than bright line tests.

We are concerned that some aspects of the proposed guidance are too prescriptive in nature and inconsistent with accepted practice and procedures of leveraged lending. The Agencies appear to adopt definitions of leverage financing based upon ratios without providing commenters with an understanding of how the ratios are constructed. Rather, we believe that financial institutions should be able to develop industry and sector definitions that take into account historic norms, lending history, and risk management considerations. Similarly, underwriting practices and treatment of covenants need to reflect standard practices on an industry by industry basis rather than bright line rules that may encompass some but not all industries. Such a one size fits all approach can lead to practices that misallocate capital and have negative consequences for the economy.

In the release of the proposed guidance, the Agencies acknowledge that information collection will be required as a part of implementing the proposal. Similarly, no cost-benefit analysis is provided as a part of the proposed guidance. Therefore, it is difficult for commenters to understand the burdens imposed upon parties subject to the guidance and the costs that may accrue to the overall economy. Accordingly, we recommend that the proposed guidance be subject to a regulatory review process by the Office of Information and Regulatory Affairs ("OIRA").

Thank you for the opportunity to comment on the proposed guidance and we would be happy to meet and discuss these concerns in fuller detail. We believe that the proposed guidance relies too much on bright-line tests and fails to account for industry practices and approaches taking into consideration industry and business specific consideration. This approach may stratify lending practices and fail to allow worthy companies of having access to capital. Addressing these concerns will provide for guidance that will allow for efficient leveraged lending balanced with reasonable risk taking.

Sincerely

Chip Rodgers

Tom Quaadman
Center for Capital Markets Competitiveness
U.S. Chamber of Commerce

Chip Rodgers
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