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July 30, 2009

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Re: Docket No. R—1361, OCC-2009-007, OTS-2009-0007, RIN# 3064-AD42 (Risk Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital – Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program)

Ladies and Gentlemen:

Bank of America Corporation and its affiliates (hereinafter, "Bank of America") appreciate the opportunity to comment on the interim final rule effective June 30, 2009, which provides that residential mortgage loans modified under the Making Home Affordable Program will retain the risk weight assigned to the loan prior to the modification, so long as such loans continue to meet other applicable prudential criteria.

Bank of America supports efforts to facilitate loan modifications through the Interim Final Rule, and believes that the Interim Final Rule also reflects an appropriate judgment of required capital for safety and soundness purposes.

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I. Background

The Federal bank regulators, have adopted the Interim Final Rule to clarify that a mortgage loan modified under the Program will retain the risk weight applicable to such mortgage loan prior to modification, so long as the applicable prudential criteria remain satisfied

Under the Interim Final Rule a qualifying mortgage loan appropriately risk weighted at 50 percent before modification under the Program would continue to be risk weighted at 50 percent after modification, and a qualifying mortgage loan appropriately risk weighted at 100 percent before modification under the Program would continue to be risk weighted at 100 percent after modification. In other words, the Interim Final Rule means that a bank will not be required to hold additional capital against a mortgage solely because the mortgage has been modified to increase the chances of repayment.

Consistent with current treatment, under the Interim Final Rule, if a mortgage loan becomes 90 days or more past due, carried in nonaccrual status, or otherwise restructured after being modified under the Program, such loan would be assigned a risk weigh of 100 percent. Also consistent with current treatment, under the Interim Final Rule past due and nonaccrual loans that receive a 100 percent risk weight will return to 50 percent risk weight under certain circumstances, including after demonstration of a sustained period of repayment performance. We believe these standards are sufficient to ensure that additional capital is held against problem mortgage loans, and that modification is not required as an additional trigger for a change in risk weighting.

We request that the Agencies provide additional clarity and modification in certain key areas to further support and facilitate the Program.

II. Specific Comments:

A. The Final Rule Should Address the Appropriate Risk Weighting During the Trial Period

The Agencies should clarify that during the Program's Trial Period, a qualifying mortgage loan will retain the risk-weighted category that existed prior to the Trial Period.

The Program requires that a borrower successfully complete a three or four month Trial Period in order to qualify for a permanent loan modification. A borrower's required Trial Period payments are generally less than the borrower's full regularly scheduled monthly payments. As a result, the borrower's delinquency status may advance during the Trial Period.

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Under the Interim Final Rule, a qualifying mortgage loan that is risk weighted at 50 percent before modification under the Program would continue to be risk weighted at 50 percent after modification. We respectfully request that the Agencies clarify in the final rule that a qualifying mortgage loan should be treated as if it were modified under Program at the start of the Trial Period for purposes of capital treatment. This will ensure that the banking organization is not at risk of losing its appropriate risk weighting because of the Trial Period requirement. For example, for purposes of capital treatment, a loan should not be considered to have been restructured during the Trial Period, nor should a banking organization lose the appropriate 50 percent risk weighting if the borrower's delinquency advances during the Trial Period.

B. The Final Rule Should State that a Risk Weighting of 100 percent May Be Returned to 50 Percent upon the Successful Completion of the Trial Period

Consistent with current practice, under the Interim Final Rule the agencies intend to continue to allow past due and nonaccrual loans that receive a 100 percent risk weight to return to 50 percent risk weight under certain circumstances, including after demonstration of a sustained period of repayment performance. We would request that the Agencies clarify under what other circumstances the appropriate 50 percent risk weighting will be restored to a loan under the Program.

The successful completion of the Program's Trial Period is a logical and meaningful measure of what constitutes a sustained period of repayment performance. The Trial Period was created to give the borrower the opportunity to perform and is a logical and measurable point of establishing success, warranting a return to a 50 percent risk weight, which would remain in effect as long as the borrower remains in "good standing" under the Program.

Alternatively, the loan should return to a 50 percent risk weighting at the time that the borrower becomes eligible for their first "pay for performance" principal balance reduction payment under the Program.

C. The Final Rule Should Expand Relief to Certain Qualifying Second-Lien Mortgage Loans.

Under the Interim Final Rule if a banking organization holds *both* a qualifying first and second-lien mortgage loan on the same property, with no intervening lien, and both loans are modified under the Program, the banking organization may continue to apply the risk weight appropriate to the loans prior to modification. Under the agencies' current general risk-based capital rules, the two loans, before modification under the Program, are treated as a single loan

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secured by a first-lien mortgage and risk-weighted at 50 percent if the two loans, when aggregated, meet the conditions to be a qualifying mortgage loan. Other junior-lien mortgage loans are risk-weighted at 100 percent.

The MHA programs for first and second liens are intertwined even when different parties own the first and second liens. We understand that it will be mandatory for Program loan servicers to participate in a first and second lien matching program (The McDash Database). The goal of the McDash Database is to ensure that first and second lien holders identify and work with each other to fashion a comprehensive solution to the borrower's unique financial situation.

The matching process results in consistent treatment of both loans under the Program as if both loans were held by the same banking organization. The Program also provides for second-lien lenders to receive incentive payments based on a calculation that takes into account the difference between the interest rate on the modified first-lien mortgage and the reduced interest rate (either 1 percent or 2 percent) on the corresponding second-lien mortgage, following modification.¹ Both servicers and borrowers may receive second-lien incentive payments, but only if the corresponding first-lien mortgage is modified under the Program. Taken together, these incentives should help responsible homeowners with two mortgage loans – an important portion of homeowners – remain in their homes and avoid foreclosure.

Because the Program explicitly provides a detailed framework and uniform process for modifying qualifying first and second-lien mortgage loans at the same time on the same property, we request that the Agencies expand the relief suggested in the Interim Final Rule. The final rule should provide that if a qualifying second-lien mortgage loan is successfully modified under the Program, and the corresponding qualifying first-lien mortgage loans is also successfully modified under the Program, and there are no intervening mortgage loans, then such qualifying second-lien mortgage loan will enjoy a 50 percent risk weighting, regardless of the identify of the first-lien holder.

Additionally, consistent with our request outlined in Section B. above, we request that the Agencies adopt in the final rule a standard that any qualifying second-lien loan, including those where the associated first lien is held by a different banking organization and there is no intervening lien, may return to a 50 percent risk weighting under certain circumstances, including after demonstration of a sustained period of repayment performance.

We believe this relief is appropriate for Program modifications of second liens. We believe this action would further the policy goals of the Interim Final Rule. It is also supported by the special and unique incentive features of the Program, the intertwined nature of the

¹ The April 28th Program guidelines for second liens state that Investors will receive an incentive payment from Treasury equal to half of the difference between (i) the lower of the contract rate on the second lien and the interest rate on the first lien as modified and (ii) 2 percent, subject to a floor.

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modification program for first and second liens, and the number of second-lien loans that are not held by the first-lien holder. The fact that the Program is offered by the U.S. government in order to achieve the public policy objective of promoting sustainable loan modifications for homeowners at risk of foreclosure also supports this treatment.

III. Conclusion

Bank of America appreciates your efforts to support and facilitate the timely implementation and acceptance of the Program. If you have any questions regarding the comments contained herein, we would be happy to address them.

Respectfully submitted,



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