January 16, 2024

Chief Counsel's Office
Attention: Comment Processing,
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E–218
Washington, DC 20219

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

James P. Sheesley
Assistant Executive Secretary
Attention: Comments/Legal OES (RIN 3064–AF29)
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: "Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity"; Docket ID OCC–2023–0008 (OCC); Docket No. R–1813, RIN 7100–AG64 (Board); and RIN 3064–AF29 (FDIC)

To Whom It May Concern:

We, the undersigned housing organizations, are united in our concern that the Basel III Endgame proposed rule, as currently drafted, will cause unintended harm to home loan borrowers by significantly increasing overall required capital and risk weights for mortgage assets held in portfolio by banks. To address this, in addition to other recommendations we may independently and separately make, we ask that your agencies modify your risk-based capital regulations so that it is clear banks can use reinsurance credit risk transfer (CRT) for risk mitigation and receive capital relief for using it.

In 2012, after the Global Financial Crisis, the Federal Housing Finance Agency (FHFA), which regulates and acts as conservator for the two Government-Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, established a new CRT program. It allowed the GSEs to use "…CRTs via capital markets issuances (both corporate debt and bankruptcy remote trust structures), insurance/reinsurance transactions, senior/subordinate transactions, and a variety of lender collateralized recourse transactions" to protect American taxpayers.[i] The FHFA recognized that CRT would distribute the GSEs' monoline credit risk, improve their safety and soundness, and provide cost efficiencies in capital acquisition to the benefit of homeowners, taxpayers, and investors.[ii]

The benefits of having CRT options have proven valuable for the GSEs. The FHFA's capital regulations, which require a significant increase in capital for the GSEs, codified incentives for their use of CRT beginning in 2022.[iii] The GSEs have transferred credit risk to capital markets investors and reinsurers on well over half the loans purchased by the GSE to provide catastrophic risk protection. And lawmakers from both sides of the aisle and chambers in Congress support the FHFA's CRT program. Recent volatility in the capital markets demonstrated that reinsurance transactions are an attractive alternative. As just one example, pre-COVID, CRT provided by highly regulated, diversified, and well-capitalized reinsurers averaged roughly 25% of GSE CRT transactions. When the capital markets temporarily froze in 2020, the GSEs shifted a larger portion of CRT to reinsurance, growing its share to 37%. The FHFA's CRT program for the GSEs has been a notable success with important flexibility.

Your agencies' proposal to implement the Basel III Endgame international framework, which was agreed to by the U.S. and other countries, diverges significantly from regulations finalized in other jurisdictions. It increases risk weights by 20 percentage points overall without providing offsetting credit for a full range of proven and cost-efficient risk management tools, creating an unlevel playing field for larger banks in the U.S. that would be subject to it and borrowers who prefer to use those banks. If left uncorrected, bank mortgage credit will become less available and less affordable to potential homebuyers. Additionally, banks will maintain more concentrated portfolios, taxpayers will be at increased risk, and banks in the U.S. will remain at a competitive disadvantage to GSEs and banks in other nations that have access to reinsurance CRT.

Under your agencies' current bank capital regulations, highly regulated reinsurers are treated the same as unregulated corporates and permitted to provide banks with CRT. Unfortunately, unclear technical language largely prevents banks from using reinsurance CRT, and there is no capital relief for banks. Your agencies' proposal does not resolve this. We urge you to remedy this by amending your proposal, in part, by modifying the Basel III Endgame proposed rule so that it is clear that banks can transfer mortgage credit risk to well-diversified and capitalized reinsurers and receive a capital incentive when they use this risk management tool.

Sincerely,

Building Owners and Managers Association International
Housing Policy Council
Mortgage Bankers Association
National Association of REALTORS®
National Housing Conference

---

i https://www.fhfa.gov/PolicyProgramsResearch/Policy/Pages/Credit-Risk-Transfer.aspx
ii https://www.fhfa.gov/PolicyProgramsResearch/Policy/Pages/Credit-Risk-Transfer.aspx;
https://www.fhfa.gov/PolicyProgramsResearch/Policy/Pages/FHFA-Statements-on-Credit-Risk-Transfer.aspx
iii https://www.fhfa.gov/SupervisionRegulation/Rules/Pages/Enterprise-Regulatory-Capital-Framework%E2%80%93-Prescribed-Leverage-Buffer-Amount-and-Credit-Risk-Transfer.aspx; https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Announces-Final-Rule-Amending-the-Enterprise-Regulatory-Capital-Framework.aspx

HPC

HOUSING
POLICY
COUNCIL