Lend Lease
REAL ESTATE INVESTMENTS

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Edward L. Hurley
Principal

Lend Lease Real Estate
Investments, Inc.
700 North Pearl
Suite 2400 LB 342
Dallas, TX 75201

Telephone
214 953-7715
Facsimile
214-953-7797

Mr. Alfred Pollard
General Counsel
Office of Federal Housing Enterprise Oversight
Fourth Floor, 1700 G Street NW
Washington DC 20552

Dear Mr. Pollard:

Re: Comments to Proposed Changes to Risk Based Capital Rule

I appreciate the opportunity to comment on the proposed changes to the Risk Based Capital rule.

I am a Principal at Lend Lease Real Estate Investments, Inc. where I am responsible for the commercial mortgage lending activities of the company. Lend Lease is one of the largest managers of equity real estate in the country. In addition, our affiliate companies include Holliday Fenoglio Fowler, the largest commercial mortgage banking company in the country, and CapMark Services, one of the largest commercial mortgage servicers. Via our subsidiary Lend Lease Mortgage Capital, we participate in the Fannie Mae DUS and the Freddie Mac Program Plus multifamily lending programs.

First and foremost, I want to thank OFHEO for taking prompt action to correct problems with the original rule, and for addressing many of the concerns expressed by us and other industry participants. The proposed corrections go a long way toward making required capital levels consistent with the risk, while reducing or eliminating the significant potential competitive disadvantages or dislocations which would have resulted from the original language in the rule.

While acknowledging that OFHEO has made significant progress, I would also like to take this opportunity to ask you to consider further improvements in the rule in the following specific areas.

The first specific area I want to comment on is counterparty risk. The haircut and phase-in modifications in the proposed rule are absolutely appropriate and in the right direction. This was a major problem with the original rule. The proposed changes go a long way toward correcting the problems. However, I would urge OFHEO to go further. The haircut levels remain high relative to the risk, and the differences between levels remain too large. One way to correct this would be to modify the loss assumptions. The existing loss assumptions appear to be based on Great Depression experience. This is an overly severe standard. In our judgement OFHEO should use loss rates based on the stress period OFHEO has used for other provisions in the rule. The language in the statute mandating the RBC rule would appear to support this.

We strongly support another improvement in the counterparty risk provisions that directly relates to Fannie Mae DUS lenders. Unrated DUS lenders are treated as BBB counterparties. Under the proposed rule, the OFHEO Director has discretion to consider other factors and improve this rating. The language indicates that an improvement in rating requires a cash reserve account, held as collateral, of at least 1% of the at-risk portfolio balance. In addition to the reserve accounts, we urge OFHEO to include capital and the value of servicing as support for an improved rating. Fannie Mae DUS servicing includes a large premium for the shared risk. This premium would be available to Fannie Mae to support the counterparty risk. Fannie Mae explicitly recognizes this value when computing required capitalization. Not giving credit to the servicing would ignore a critical source of support for the risk. The current requirements give Fannie Mae a basis to increase the capital requirements for DUS lenders, which would directly disadvantage privately held companies.

We also strongly support the proposed changes to the ARM flag and to the "underwater DSCR" flag. These changes mitigate the punitive levels of capital assigned to ARM loans under the original rule, and reduce the volatility of required capital. We urge OFHEO to continue to examine capital requirements related to ARM loans. Even with the changes, our analysis indicates that the rule continues to assign capital levels to ARM loans in excess of the actual risk.

Finally, we support OFHEO's efforts to accurately model the risks in low income housing loans, including loans to projects accepting Section Eight vouchers. This housing serves a critical need, and it is extremely important to carefully balance the risks and not create disincentives for the GSEs to be market leaders in affordable housing lending.

In closing, we firmly support OFHEO in its mission to establish capital standards which reflect the risks of the GSE's operations. Just as firmly, we support establishing standards which are fair, consistent, and do not create competitive disadvantages or dislocations for Fannie Mae, Freddie Mac, or the many companies that do business with the GSEs.

I and my Lend Lease associates would be happy to answer any questions or to provide additional information should that prove helpful. In addition, we stand ready to work with the OFHEO staff to provide data and analysis on an ongoing basis in order to continue to improve the accuracy of the rule.

Thanks for your time and attention.

Sincerely,

Edward L. Hurley
Principal