

Controversial Amortization Bill Returns for a Second Debate

July 19, 2011 - This legislation might as well be called "The Kick the Can Act" and for once, its backers aren't ashamed to admit it. In fact, they're damn proud of it. It's the whole point.

The issue in question: commercial real estate. The question at issue: would the economy benefit if today's CRE losses were pushed out a few years?

A trio of Colorado congressmen — Democrat Ed Perlmutter and Republicans Mike Coffman and Scott Tipton — say the answer is yes. They're sponsoring the Capital Access for Main Street Act, a bill that would let community banks with less than \$10 billion in assets amortize losses on commercial real estate for seven years.

The hope is that the bill would free up capital that would otherwise be eroded by losses, allowing community banks greater capacity to lend.

"It is a bill that helps small businesses access the capital that they need to get through the tough times and keep their employees working," says Leslie Oliver, a spokeswoman for Perlmutter.

"The policy ... has been that the first loss is the best loss, but our feeling is that we really have to help people out," Oliver adds. "Rather than rip the band-aid off, if we prolong the situation we might be able to provide meaningful help to our small businesses."

This is Perlmutter's second attempt to provide community banks with such forbearance; last year, he was able to get the proposal attached to the small-business bill that created the \$30 billion Small Business Lending Fund. The amendment was killed in the Senate. The most recent version was assigned to the Financial Services Committee.

Oliver says Perlmutter opted to back the bill after talking with business owners and banks. As a lawyer, he followed a similar policy instituted in the 1980s for farm lenders as they dealt with deteriorating farmland prices. "Historically, amortizing losses has been very useful, so we think it can be useful now," Oliver says.

Perlmutter was not available for an interview. A spokesman for Coffman said he was traveling, and a call to Tipton was not immediately returned.

"Small business owners and small banks are not looking for a bailout or a free deal," Perlmutter said in a late April press release touting the bill. "They are asking for a fair deal, to be able to compete and work out their difficulties over time."

Reactions are mixed. Banks and their lobbyists back it. Lawyers say it is a good idea in theory, but struggle with its practicality. Regulators and investment bankers are staunchly against it.

Paul Merski, a senior vice president and chief economist for the Independent Community Bankers of America, says the amortization technique would give small banks room to work out problems and perhaps give the property's underlying value more time to recover, which could result in smaller losses. "So long as they are able to remain viable, why not spread out the lump?" he says.

Merski adds it could be a useful alternative to save capital since so many small banks are unable to find new investors. "There is virtually no private capital for small and midsize banks," he says.

Amortizing losses would make finding capital harder, say regulators and investment bankers.

Earlier this month, George French, deputy director of policy and examination oversight for the Federal Deposit Insurance Corp., testified before the House for a separate bill that changing the policy for capital and nonaccrual loan treatment would be damaging to the industry.

"Regulatory capital forbearance would detract from investors' confidence in the reliability of all banks' financial statements," he said. "Historical experience has been that policies to systematically delay the recognition of bank losses can ultimately increase losses to the FDIC Deposit Insurance Fund."

Charlie Crowley, a managing director at Paragon Capital Partners, says that while the technique may have worked in the farm crisis, it didn't work in the late 1970s and early 1980s for savings and loan associations.

"It turned out to be a disaster and allowed bankers to not face up to reality and ended up creating bigger losses because some banks were allowed to stay open

longer than they should have been," Crowley says, adding that it could hurt already struggling capital raising efforts.

"Anything that departs from generally accepted accounting principles would not inspire confidence ... and would therefore hinder recapitalization," Crowley says. "Any attempts to come up with tricks like this would end up hurting rather than helping."

Jim Wheeler, a lawyer at Morris Manning & Martin, said he likes the idea but agreed that it could complicate recapitalization.

"Banks are sitting on this huge pile of real estate that they can't move, and they are wondering 'is this my albatross forever?' " Wheeler says. "I think this is an interesting tool that could certainly buy them some time, but we would have to see it put into practice. I don't know if it would help them."