

December 12, 2017

Office of the Comptroller of the Currency
400 7th Street SW.
Washington, DC 20219

RE: Notice of Proposed Rulemaking: Docket ID OCC-2017-0018
Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory
Paperwork Reduction Act of 1996

Dear Sir or Madame,

Bay Area Employment Development Company is a California nonprofit economic development corporation that is licensed and regulated by the U.S. Small Business Administration as a "Certified Development Company" or "CDC" that provides SBA 504 community economic development financing of fixed assets to companies throughout California. Founded in 1981, over the last 35 years, we have provided over 2,500 small businesses obtain over \$4 billion in expansion capital, assisting these companies create over 20,000 jobs.

We are writing to submit comments on the Notice of Proposed Rulemaking regarding "*Simplification to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996*".

We support the efforts of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation to simplify compliance with certain aspects of the capital rule. In particular, we want to thank the Agencies for the proposed change in community development project exemptions. We believe that this exemption, with a slight clarification, will be greatly beneficial to banks and small business borrowers attempting to obtain community economic development financing in SBA's 504 program. Below is the relevant section from the Notice, followed by our comments.

"2. Scope of the HVADC Exposure Definition

c. Community Development Projects: The HVCRE exposure definition exempts community development projects. The proposed HVADC exposure definition would continue to exempt community development projects. However, the Agencies are proposing to simplify the definition by removing the reference to the broader statutory citations, 12 U.S.C. 24 (Eleventh) and 12 U.S.C. 338a. Under the proposed rule, all credit facilities financing the acquisition,

development, or construction of real property projects for which the primary purpose is community development, as defined by the Agencies' Community Reinvestment Act rules, would be exempt from the HVADC exposure category. In addition, the Agencies are proposing to remove the exception to the exemption for activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's (SBA) Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of \$1 million or less, unless they meet another exemption in the rule. Such loans are required to have a community development purpose under interagency guidance. The proposed simplified exemption for community development projects is not intended to substantively alter the scope of the exemption for community development projects set forth in the current HVCRE exposure definition.

Question 4: The Agencies seek comment on whether the proposed community development exemption is clear. What, if any, additional clarification would help banking organizations identify exposures that meet the community development exemption? Please describe any implementation challenges with the exemption."

Bay Area Employment Development Company ("BDC") wants to specifically ensure that the proposed community development exemption, as it pertains to SBA's Development Company program, also applies to the **bank's interim construction loan** provided to the small business borrower until project construction is complete and permanent financing can be put in place.

By way of background, SBA's Development Company program, more commonly called the SBA 504 Loan Program, is a program designed to foster economic development, create or preserve job opportunities, and stimulate growth, expansion, and modernization of small businesses by financing fixed assets for small businesses on reasonable terms (13 CFR §120.800). SBA designates Certified Development Companies ("CDCs"), most of which are local community economic development organizations, as the delivery system for the SBA's 504 Loan Program.

The SBA 504 Loan Program is designed to provide up to 90% long term fixed asset financing for small businesses. Typically, the bank provides 50% of the needed financing, and the SBA 504 loan provides up to 40% of the needed financing. A key to the 504 program's ability to foster job creation and community economic development as summarized above is its ability to avail small and mid-sized companies to below-market fixed-rate long term financing through the private capital markets, thereby helping these companies to preserve working capital to create more jobs and community economic development.

However one limiting feature of the SBA 504 Lending is that the 504 loan only provides permanent financing and therefore cannot provide the necessary interim or construction financing needed to complete the project financing. As a result, in all 504 projects, the bank must advance up to 90% financing to the small business on an interim basis until the project is complete, at which time the SBA 504 loan can fund its 40% junior position and the bank will be reduced to 50% loan to value.

Due to this limitation, banks will not advance construction or interim funds to the small business borrower until the CDC has secured SBA's approval for the take-out 504 loan. SBA's approval, evidenced through the instrument "Authorization for Debenture Guaranty (SBA 504 Loan)" provides the assurance needed by the bank to go forward with the interim or construction loan needed to complete the for the small business borrower's project.

We are providing this level of detail to ensure that the Agencies, most specifically the onsite examiners, understand the crucial relationship between the bank's interim or construction loan and the SBA 504 project financing. It is our hope that the changes made in this proposed new rule will apply to the interim or construction financing in an SBA 504 project, which would make this HVADC exemption clear for both participating banks and onsite examiners.

The exception language to the HVCRE exemption is found in the current final rule under PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS, §324.2 Definitions., and states the following:

"High volatility commercial real estate (HVCRE) exposure means a credit facility that, prior to conversion to permanent financing, finances or has financed the acquisition, development, or construction (ADC) of real property, unless the facility finances: (1) One- to four-family residential properties; (2) Real property that: (i) Would qualify as an investment in community development under 12 U.S.C. 338a or 12 U.S.C. 24 (Eleventh), as applicable, or as a "qualified investment" under 12 CFR part 345, and (ii) Is not an ADC loan to any entity described in 12 CFR 345.12(g)(3), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition."

It appears this clarity may be achieved in the proposed new rule by simply deleting the exception *"(ii) Is not an ADC loan to any entity described in 12 CFR 345.12(g)(3), unless it is otherwise described in paragraph (1), (2)(i), (3) or (4) of this definition..."*. However we would also request that the Agencies provide written guidance to banks and onsite examiners that clearly links this HVADC exemption to any ADC loans provided by the bank that are part of an SBA 504 loan project.

We thank the Agencies for providing us this opportunity to comment, and for their decision to provide the HVADC exemption to banks participating in SBA 504 Loan Program projects.

Sincerely,


James R. Baird, CEO