



Patricia Kibbe

The is a Comment on the **Comptroller of the Currency (OCC) Proposed Rule: Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction**

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Comment

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

We want to specifically ensure that the proposed community development exemption, as it pertains to SBA's Development Company program, 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 on reasonable terms (13 CFR 120.800). SBA designates Certified Development Companies, most of which are local economic development organizations, as the delivery system for the SBA 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 40% of the needed financing. One unique feature of the SBA 504 Loan Program is that it only provides permanent financing and therefore cannot provide the necessary interim construction financing if the small business project involves construction. In those cases, the bank must advance the entire 90% financing to the small business 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 its permanent 50% portion. Due to these unique circumstances involving construction and the SBA 504 loan, banks will not advance construction 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 construction loan 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 relationship between the bank's interim construction loan and the SBA 504 Loan Program. It is our hope that the changes made in this proposed new rule will 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 324CAPITAL 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."

On the surface, it appears that 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, this clarity will be achieved in the proposed new rule.

We suggest 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.

Sincerely,

Patricia M. Kibbe - President & COO, Evergreen Business Capital
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