

## Capital Simplification Form Letter 2 (there are 2 other similar comments, received a total of 3 letters)

This 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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For related information, [Open Docket Folder](#) 

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### Comment

As a small business owner I 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. The SBA's Development Company program, also known as SBA 504 Loan Program, is a program designed to help small businesses create or preserve job opportunities, and stimulate growth, expansion, and modernization of small businesses by financing fixed assets on reasonable terms (see CFR 13 section 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.

Due to these unique circumstances involving construction and the SBA 504 loan, my banks would not advance construction funds to the small business borrower until the CDC has secured SBA's approval for 504 loan, that will pay down the bank - giving me two loans; Bank loan at 50% of my project and an SBA 504 loan at 40% of my project. SBA's approval, evidenced through the instrument "Authorization for Debenture Guaranty (SBA 504 Loan), " provides the assurance needed for the bank to go forward with the interim construction loan for the small business borrower's project.

There is a level of detail to ensure that the agencies, most specifically the onsite examiners, who should understand the relationship between the bank's interim construction loan and the SBA 504 Loan Program. It is my hope that the changes made in this proposed new rule will make this HVADC exemption clear for both participating banks and onsite examiners. Otherwise as a Small Business Owner I need to put more than the 10% down on the bank's interim loan. This is harmful to the small business owner, and has negative impact to the community.

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.

I suggest that the agencies provide written guidance to banks and onsite examiners that clearly links this HVADC exemption to any Small Business loans that are part of an SBA 504 loan project.

Donald E. McIntyre