



December 16, 2017

Legislative and Regulatory Activities Division
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,

Independent Development Services Corporation (IDS Corp) appreciates the opportunity to comment on the Notice of Proposed Rulemaking regarding *“Simplification to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996.”* IDS Corp is a Certified Development Company (CDC) involved in the SBA Development Company program. During federal fiscal year 2017, all CDCs provided \$11.3 Billion in SBA Development Company program financing to small businesses, representing 6,200 projects totaling over \$14 Billion, and creating or retaining 78,339 jobs.

IDS Corp supports 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 beneficial to banks and small business borrowers. 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.

IDS Corp wants 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.

IDS Corp is 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 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.”

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.

IDS Corp would also 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.

IDS Corp thanks 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,



William Ridgeway
Vice President