

November 26, 2018

Mr. Robert E. Feldman, Executive Secretary  
Attn: Comments/Legal ESS  
Federal Deposit Insurance Corporation  
550 17th Street NW.  
Washington, DC 20429

RE: Notice of Proposed Rulemaking: RIN 3064-AE90  
*Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures*

Dear Sir or Madame,

I am contacting you today in dual capacities: as Senior Vice President and Chief Lending Officer of WaterStone Bank, SSB in Wauwatosa (Greater Milwaukee), Wisconsin, and as a board member of WBD, Inc., a SBA certified development company. WBD, Inc. is one of the largest SBA lenders in the country and is very active in its trade association, the National Association of Development Companies (NADCO). As both a banker and a WBD board member, I support the following comments presented by NADCO.

NADCO appreciates the opportunity to comment on the Notice of Proposed Rulemaking regarding "*Regulatory Capital Treatment for High Volatility Commercial Real Estate (HVCRE) Exposures.*" NADCO is the association that represents the 217 Certified Development Companies (CDCs) involved in the SBA Development Company program, commonly referred to as the 504 Loan Program. During FY 2018, these CDCs provided \$11.3 billion in 504 financing to small businesses, representing 5,874 projects, and creating or retaining 55,729 jobs.

By way of background, 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. SBA designates CDCs, most of which are local economic development organizations, as the delivery system for the SBA 504 Loan Program.

NADCO and its members 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 revise the definition of High Volatility Commercial Real Estate (HVCRE) exposure to align with the new statutory definition of High Volatility Commercial Real Estate Acquisition, Development or Construction (HVCRE ADC). NADCO's response to this request for comment focuses on Questions 4, the proposed interpretation of the term "community development." There is one area of concern in this proposed rulemaking which we have highlighted below in Section 2 of the Notice.

## 2. COMMUNITY DEVELOPMENT INVESTMENT

*Consistent with section 214, the revised HVCRE exposure definition will exclude loans financing the acquisition, development, or construction of real property that would qualify as an investment in community development. For purposes of this exclusion, the proposal refers to the agencies' Community Reinvestment Act (CRA) regulations and the definition of community development investment in these regulations.<sup>120</sup> Accordingly, this exclusion would apply to credit facilities that finance the acquisition, development, or construction of real property projects for which the primary purpose is community development, as defined by the agencies' CRA regulations, which generally includes affordable housing, community services targeted to low- and moderate-income individuals, and various forms of economic development and small business financing. Under the agencies' CRA regulations, loans have to be evaluated to determine whether they meet the criteria for community development. For example, an ADC loan that is conditionally taken out with U.S. Small Business Administration section 504 financing would have to be evaluated against the criteria for community development in order to determine if the loan would qualify for this exclusion.*

NADCO is strongly opposed to the highlighted language in this proposed rule, as it represents a complete reversal from the Agencies' September 2017 "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." The 2017 proposed language is highlighted below.

### 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.*

NADCO strongly supported these changes and provided detailed comments to the Agencies. In fact, there were many comments filed in support of this amended language for the SBA Development Company Program.

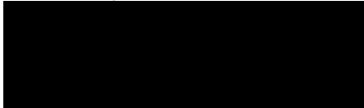
The essence of the SBA Development Company Program is embodied in its enabling legislation. Section 501(a) of the Small Business Investment Act of 1958 states: *“The Congress hereby finds and declares that the purpose of this title is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns through the development company program authorized by this title.”* The program’s regulatory structure continues to emphasize this required mission, stating that the purpose of the 504 program is “to foster economic development” and “create or preserved job opportunities” (13 CFR §120.800).

Clearly, the statutory definition of this program and its accompanying financing are community development and do not require any further evaluation to be exempted from the HVCRE ADC requirements. The original language in the Proposed Rulemaking of September 2017 was correct and fully aligned with the statute governing the SBA Development Company Program. The Agencies should adopt this previous language.

NADCO thanks the Agencies for providing us this opportunity to comment on this Proposed Rulemaking.

I also thank the Agencies for seeking comments from the bankers and CDC-lending industry who work hard within the various regulations to provide economic development in our communities.

Sincerely,



David R. Provancher  
Senior Vice President &  
Chief Lending Officer