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August 20, 2019

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Ms. Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

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

Re: Regulatory Capital Rules: Treatment of Land Development Loans for the Definition of High Volatility Commercial Real Estate Exposure

Dear Ladies and Gentlemen:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the proposed rule *Regulatory Capital Rules: Treatment of Land Development Loans for the Definition of High Volatility Commercial Real Estate Exposure*. This proposed rule seeks to limit the scope of the one-to-four family loan exclusion contained in the agencies' regulatory capital rules surrounding higher regulatory capital requirements for high volatility commercial real estate exposures (HVCRE). By isolating the land development phase from the construction phase of a one-to-four family residential construction project, the agencies are

¹ The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America. For more information, visit ICBA's website at www.icba.org.

The Nation's Voice for Community Banks.®

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attempting to raise regulatory capital requirements for community banks that provide financing for individuals and families when they choose to purchase a home. Such an attempt to raise regulatory capital requirements defies the intent of Congress with its recent passage of the Economic Growth, Regulatory Relief, and Consumer Protection Act (the Act), which specifically prohibits assigning a heightened risk weight to a HVCRE exposure when it primarily finances the acquisition, development, or construction of a one-to-four family residential property. This proposal also attempts to raise the costs of purchasing a new home by making residential construction projects more expensive for investors and penalizing community banks who seek to grow their communities. The level of risk tolerance permissible for acquisition, development, and construction lending on one-to-four family residential construction projects is a matter of regulatory supervision that should be conducted between the bank's primary federal regulator and the bank's management. Forcing all land development loans on one-to-four family construction projects to be flagged as risky penalizes responsible lending, raises the cost of homeownership, kills valuable construction jobs in rural and underserved communities, and is not consistent with the will of Congress.

When the agencies originally attempted to interpret the Act through their notice of proposed rulemaking for the regulatory capital treatment for HVCRE exposures dated September 28, 2018, they were largely correct in their understanding of the one-to-four family residential property exclusion by stating that the exclusion included credit facilities financing the acquisition, development, or construction of such properties. Only loans used to acquire raw land would not qualify for the one-to-four family scope exception regardless of the land zoning. However, with the current proposal the agencies are attempting to overrule what Congress has lawfully enacted by categorizing land development loans as not qualifying for the one-to-four family scope exception while providing no valid reason for such a change. Simply stating in this current proposal that providing a consistent definition of a one-to-four family residential property and land development somehow reduces a burden and simplifies reporting requirements is not only inaccurate, it conflicts with Congressional intent. ICBA encourages the agencies to stay clear of any interpretation of the law that could place additional capital constraints on community banks and is inconsistent with the intent of Congress. ICBA expects the agencies to promote the efforts of Congress to enact common sense legislation to help communities achieve favorable financial outcomes while maintaining high-quality regulatory capital standards for the community banks that serve them.

ICBA understands the need for federal prudential bank regulators to engage in heightened scrutiny of all real estate transactions where raw land is converted to improved properties. When not properly evaluated, such loans can deteriorate rapidly during times of economic stress or uncertainty. Look no further to the financial crisis of 2008-2009 to understand the horrific impact that such lending had on small communities where construction projects were foreclosed before completion harming the lender, the borrower, and the municipality. But such failures were brought about by lenders, borrowers, and regulators who did not properly evaluate the risk of the projects creating a lending culture that encouraged excessive risk. When properly

collateralized and evaluated under stress scenarios, one-to-four family land development projects can be considered sound lending ventures for community banks that can provide quality loan opportunities while growing local economies. Which is why the scrutiny of land development projects should be a matter of examiner supervision and not universally applied regulation with adverse consequences to community institutions and the associated stakeholders who benefit when local economies flourish.

ICBA appreciates the opportunity to comment on this proposal. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 821-4364 or james.kendrick@icba.org.

Sincerely,

/s/

James Kendrick
First Vice President, Accounting and Capital Policy