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Submitted via regulations.gov

Council of Environmental Quality
730 Jackson Place NW
Washington, DC 20503

RE: Comments of Indiana Statewide Certified Development Corporation on
NEPA Notice of Proposed Rulemaking, Docket No. CEQ-2019-0003

Dear Council on Environmental Quality:

Indiana Statewide Certified Development Corporation (“ISCDC”) submits these comments in response to the Council on Environmental Quality’s (“CEQ”) January 10, 2020 notice of proposed rulemaking for the agency’s National Environmental Policy Act (“NEPA”) regulations published at 85 Fed. Reg. 1684 (the “Proposed Rule”).

ISCDC supports CEQ’s proposal to “exclude as non-major Federal actions” the Small Business Administration (“SBA”) business loan guarantee programs under 15 U.S.C. §§ 636(a), 636(m), and 695-697f, including the program commonly known as the SBA 504 Loan Program. 85 Fed. Reg. at 1709.

Interest of ISCDC in the Rulemaking

ISCDC is a Certified Development Company (CDC) involved in the Small Business Administration (SBA) Development Company 504 Loan Program. During FY 2019, ISCDC provided over \$21 million in 504 loans to 31 Indiana small businesses. These funds were part of over \$52 million in total project costs and created or retained more than 350 jobs.

The SBA 504 Loan Program is designed “to foster economic development, create or preserve job opportunities, and stimulate growth, expansion, and modernization of small businesses” by providing access to long-term fixed rate financing for major fixed assets, such as land, buildings, and machinery. 13 C.F.R. § 120.800. (The name is derived from Section 504 of the Small Business Investment Act of 1958, P.L. 85-699, as amended). SBA designates CDCs, like ISCDC, as the delivery system for the SBA 504 Loan Program. Without the SBA 504 Loan Program, many small businesses would lack access to sufficient capital to enable them to grow and create jobs.

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ISCDC supports CEQ's proposal to exclude the Small Business Administration's
504 Loan Program from NEPA review

Under existing NEPA regulations, it is not clear whether SBA's issuance of a guarantee under the 504 Loan Program is a major Federal action that is subject to NEPA's requirement to analyze its environmental impacts. This uncertainty has created procedural burdens, litigation risk, and unnecessary expense that undermine the effectiveness and efficiency of the 504 Loan Program.

ISCDC supports CEQ's proposed revision to the definition of "major Federal action" in proposed 40 C.F.R. § 1508.1(q) to exclude SBA debenture guarantees under the 504 Loan Program. 85 Fed. Reg. at 1709. The proposed revision would clarify that a debenture guarantee under the program is not subject to NEPA, providing certainty to our loan process and our small business borrowers. This change would align CEQ's regulations with existing U.S. Supreme Court caselaw providing that NEPA analysis is not necessary where federal involvement in a project is minimal or NEPA analysis would not assist the federal agency in its decision-making regarding the project. *Dept. of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004).

NEPA's requirement to prepare an analysis of environmental impacts is intended to "ensure[] that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." *Dept. of Transp. v. Public Citizen*, 541 U.S. 752, 768 (2004). Whether an agency is required to prepare a NEPA document before taking an action depends in part on "the usefulness of any new potential information to the decision-making process." *Public Citizen*, 541 U.S. at 767. Requiring SBA to analyze environmental impacts of a project for which SBA issues a debenture guaranty does not further that objective because (1) the SBA's role in a project funded by a section 504 loan is minimal and (2) the SBA cannot control the outcome of a project funded by a section 504 loan.

The minimal role played by the SBA in projects that receive a section 504 loan is not a "major Federal action" subject to NEPA review. SBA's role in the 504 Loan Program is generally limited to issuing a guaranty on no more than 40% (often less) overall financing of a standard section 504 project. Of the total project costs, a third-party lender typically provides at least 50% of the financing, the CDC provides up to 40% of the financing backed by an SBA-guaranteed debenture, and the applicant provides at least 10% of the financing.¹ SBA does not control the third-party lender or the borrower. In the event of a default, the properties are sold. Projects that receive section 504 funding are subject to all applicable federal, state, and local land use and environmental laws.

A NEPA document analyzing environmental effects of a project that receives a section 504 loan would not assist SBA in determining whether to provide a debenture guaranty. The link between SBA's decision to guarantee a portion of the financing and any environmental effects results from the project is exceedingly tenuous.

¹ See Congressional Research Service, *Small Business Administration 504/CDC Loan Guaranty Program* (Updated October 23, 2019) at 3.

SBA has no authority to control the outcome of a project that receives a section 504 loan. Prior court decisions have recognized that a minimal amount of federal funding for a project is not a “major Federal action” subject to NEPA. *E.g., Touret v. NASA*, 485 F. Supp. 2d 38 (D.R.I. 2007); *Riverfront Garden Dist. Ass’n v. City of New Orleans*, No. 00-cv-544, 2000 WL 3501851 (E.D. La. Dec. 11, 2000). Where an environmental impact statement would “serve no purpose,” an agency is not required to prepare one. *Public Citizen*, 541 U.S. at 767.

The 504 Loan Program provides small businesses with access to reasonably priced, long-term capital to support investment, growth, and job creation in communities around the country. ISCDC believes that CEQ’s proposed rulemaking would promote the 504 Loan Program’s effectiveness by removing unnecessary procedural hurdles, streamlining the issuance of SBA debenture guaranties, and speeding up the distribution of funds to small businesses. CEQ’s proposed revision would not undermine NEPA’s objectives and would not result in adverse environmental impacts. Projects that receive section 504 funding remain subject to all applicable federal, state, and local land use and environmental laws.

ISCDC appreciates CEQ’s proposal to modernize and improve its NEPA regulations. ISCDC supports CEQ’s proposed revision to the definition of “major Federal action” to exclude SBA loan guarantees under the 504 Loan Program. Thank you for considering these comments.

Respectfully submitted,



Jean Wojtowicz
Executive Director
Indiana Statewide Certified Development Corp.