Testimony of Ignatius MacLellan,
Vice President of Public Affairs
Northern New England Housing Investment Fund

Public Hearing on
Community Reinvestment Act Regulations
Federal Reserve Bank, Chicago, Illinois
August 12, 2010

Summary

My testimony will focus on our smaller-market states of northern New England and the interplay between the Community Reinvestment Act (CRA) and the federal low-income housing tax credit (Tax Credit) program. While there is one Tax Credit program, the types of developments it finances vary depending on a property's location. In Maine, New Hampshire and Vermont, Tax Credit projects typically consist of 25-35 housing units, built primarily by local nonprofits in smaller communities. The deals in our states, while sound, are very different from those in larger, more urban markets. Yet, we rely on national and regional banks whose preferred business model is based on larger deals in more populous markets with larger developers.

Our overall goal is to ensure that you, as regulators, consider the impact that any proposed changes could have on smaller markets. *We must keep the "community" in the Community Reinvestment Act.* Therefore, we seek to ensure that the CRA regulations require banks to provide resources to the communities in which they do business, while also maintaining enough flexibility to allow CRA dollars to work within the existing integrated housing finance system.

We make the following specific recommendations:

- The CRA regulations should clearly allow full CRA credit for state-level Tax Credit investments. This would mean that banks doing business within a given state would know that they will receive full credit for their in-state CRA investments, regardless of where those investments occur within the state and even if the investments are outside the bank's particular assessment area.
- CRA credit for investments beyond state boundaries should not be allowed. We oppose the regionalization of CRA because such an approach does not ensure that local needs are being met and would lead to capital flowing from smaller markets to larger markets.
- If the regulations allow CRA recognition of regional investments, then: (1) before allowing CRA recognition and credit for regional investments, banks must show that the Tax Credit capital needs have been met in their assessment areas or in the state in which they are doing business; and (2) the CRA regulations should require that banks will only get CRA credit for such investments if the regional fund actually makes investments in all areas purported to be served by funds, including smaller markets and other underserved markets.
- Incentives should be considered to encourage banks to invest in smaller markets or underserved areas.

Testimony

Introduction

Good morning. I am Ignatius MacLellan, Vice President of Public Affairs at the Northern New England Housing Investment Fund (NNEHIF). We are a nonprofit syndicator of federal low-income housing tax credits (Tax Credits) for Maine and New Hampshire. Since 1996, we have raised over $325 million, resulting in the development of over 3,300 rental apartments that are affordable to lower-income people. Over the last 14 years, we have raised over 50% of all Tax Credit equity in Maine and New Hampshire.

This testimony is supported by Housing Vermont, a private, nonprofit Tax Credit syndicator in Vermont. Since 1988, Housing Vermont has raised more than $200 million, resulting in the development of about 4,200 apartments that serve low-income Vermonters. Housing Vermont syndicates about 75% of all Tax Credit equity in Vermont.

This testimony is also supported by Maine State Housing Authority, New Hampshire Housing Finance Authority and the Vermont Housing Finance Agency. These housing finance agencies (HFAs) are state-chartered authorities established to help meet the affordable housing needs of their states. In our three states, the housing finance agencies award Tax Credits, provide significant other state and federal resources and oversee the Tax Credit program.

Thank you for this opportunity to present our small-state perspective. We have spent significant time working on CRA issues, but we admit that we are not experts in the technical aspects of CRA regulations. What we do know is that the CRA is the primary motivator for banks that invest in Tax Credits in our states. We have some specific proposals, and we ask your expert staff to consider other ways that the CRA regulations can be clarified to promote more geographically equitable bank investments in the Tax Credit program. We also ask that you ensure the CRA regulations work with—not against—the state policymakers' decisions.

We applaud your efforts to improve the CRA via the regulations. But regulatory action alone is not sufficient. Congress has unfinished business and needs to pass a CRA modernization bill. Specifically, we hope Congress will apply the CRA more broadly throughout the financial industry. Such an approach would likely increase the amount of CRA-motivated investments in Tax Credit projects.

I want to thank our investors, from the local community banks to the regional banks to the large national banks. We value their financial investments and their commitment to our communities and our local housing organizations. We hope our testimony today will not only ensure that they remain as investors but also will make their jobs easier.

In my testimony, I will use the term "banks" to refer to those financial institutions that are subject to the CRA, including banks, thrifts and community savings banks.

Outline

We have some specific proposals. But first, we want to provide some context. So, I will:

- Provide an overview of the Tax Credit housing we build;
- Describe the banking environment in our states;
- Explain why the CRA is essential for continued housing production; and
- Put forth our specific recommendations.

Tax Credit Housing in Northern New England

The Tax Credit program is the principal rental production program in the United States, having produced over 2 million decent and affordable apartments for our lower-income neighbors. This program succeeds because it combines both public and private resources and perspectives. CRA-motivated institutions are the primary source of Tax Credit equity, and they bring private-market discipline to the program. The banks also benefit because Tax Credit housing is a safe and sound investment.

While housing practitioners in our states put together strong Tax Credit projects, these deals do not fit the usual business model for our larger bank investors. Therefore, the CRA is essential for keeping these banks motivated to invest in the housing that our state HFAs want built and that our communities need.

For perspective, let me give you a few statistics.

State Statistics

Our states are not densely populated. Maine is home to 1.3 million people and its largest city, Portland, has a population of 64,000. New Hampshire also has 1.3 million residents while the population of its largest city, Manchester, is 110,000. Finally, Vermont is home to 610,000 people, and its largest city is Burlington with 40,000 people.

Annually, the Tax Credit program creates the following outcomes in each of our states:

- The HFA allocates $2.5 to $3 million in Tax Credits, representing $17 to $21 million of Tax Credit equity;
- This will result in 6-8 projects, comprising a total of 210 units;
- The average project will be 25 to 35 units;
- The total development costs will average $4 to $8 million per project and equity investments average $2 to $3 million per project;
- Generally, but not exclusively, projects are built by small nonprofit developers who have an extensive knowledge of the local market and are excellent developers and managers but have limited financial resources; and
- Projects will be located in our small cities and towns.

The good news: we have strong HFAs, experienced developers and state syndicators that understand local markets, the players and the financial analysis needed to ensure that banks are getting solid investments. We also provide excellent on-the-ground, affirmative asset management for the term of the investment.

The challenging news: our deals do not fit into the banks' preferred business model. Our deals are generally too small for large banks and too big for community banks. Let me first provide a summary of our banking environment and then comment on the business model of banks as it pertains to Tax Credits.

Banking Environment

In Maine and New Hampshire, four large banks hold about 68% of the total deposits. These banks have historically represented about 75% of the Tax Credit equity in our funds. We also work with regional banks and community banks, and they provide the balance of the needed equity.

Vermont banks fall into two clear categories: (1) two regional banks that hold 42% of total deposits; and (2) a plethora of community banks, none of which controls more than 10% of the remaining market share. No large national bank has a significant presence in Vermont.

Given these market realities, we rely heavily on our national and regional banks for the bulk of the Tax Credit equity, and we work diligently to ensure community banks invest as well.

Before addressing bank business models more specifically, let me provide information on non-CRA motivated Tax Credit investors. This will help explain why our banks are so important to our housing work.

We have reached out to non-CRA motivated investors with limited success. First, non-CRA motivated Tax Credit investors tend to be larger companies, such as insurance companies. Generally, these investors will only make large investments. Given the limited amount of Tax Credits allocated by the states each year, our funds are simply too small for most non-CRA motivated investors. Second, there is insufficient capital from non-CRA motivated investors to replace the capital that is available from CRA-motivated investors. Finally, even for national funds with non-CRA motivated investors, our deals would still be too small for consideration.

Bottom line: CRA-motivated banks are and will be the source of Tax Credit equity in our states. Our market realities explain why the CRA is the key to ensuring that the banks in our states remain investors in our states.

Business Models

I will now comment on how the affordable housing built in our states does not fit into the banks' business models.

A bank's decision-making process regarding whether and how to invest in Tax Credits varies based on the bank's size.

In deciding whether to make a Tax Credit investment, larger banks have certain business-model goals: 1) large deal size; 2) well-capitalized developers; and 3) bank ability to garner other business along with the Tax Credit investment, such as providing the construction or permanent loan or obtaining developer deposits. Larger banks would prefer to undertake one $25 million investment in a larger market with a bigger developer than five $5 million investments in more remote areas with smaller developers. Yet, a small deal for a large bank is actually a large deal for our states.

Moreover, larger banks prefer to invest either directly (bank makes the investment without a syndicator) or via proprietary funds (bank is sole investor in a syndicator's fund). Both approaches generally disfavor the small, more rural deals in the three northern New England states.

Community banks can play a significant role in Tax Credit equity, but in our states, they cannot fill the equity need. For community banks, Tax Credit investments will be in smaller amounts, will be for projects directly in their local community and will not be yearly investments. For example, if a community bank (say, $500 million in deposits) makes a significant Tax Credit investment (say, $2 million), that bank will likely be out of the Tax Credit market for several years. In addition, community banks do not always have expertise and experience with Tax Credits and thus can be reluctant to invest.

The larger banks have the deposit base, the expertise and the business infrastructure to invest yearly in Tax Credit housing. Yet, there is a mismatch between the characteristics of our markets and the large banks' business model. In our states, the CRA is essential to keeping the larger banks, which hold the majority of deposits, investing in Tax Credit housing even if such investments, sound though they are, do not fit within their business model.

Our Recommendations

Banks need clarity on what investments will receive full CRA recognition. Such clarity would also help Tax Credit syndicators and developers who must seek out investors. Here are our suggestions:

1) The CRA Regulations Should Allow a Statewide Approach to Better Align with State Allocation Decisions

The CRA's geographic regulations, such as assessment areas, should be based on a tiered system that reflects market realities and the needs of different areas. The current regulatory practice of microscopic targeting of CRA to specific assessment areas has had negative consequences in our states. As an example, a Tax Credit project in Hooksett, NH (a town of 4,000 people that adjoins Manchester, NH) falls just outside the Manchester, NH assessment area of one of our large investors. This technicality has made it more difficult for us to direct willing capital to a worthwhile transaction that received Tax Credits from New Hampshire Housing Finance Authority. Investors want certainty that their investments will receive full CRA credit.

We strongly recommend that the CRA regulations clearly provide that a bank will receive full CRA credit for any Tax Credit investment in a given state in which that bank has CRA obligations, regardless of where the equity investment ultimately occurs within that state. This should be true even if the investment does not directly benefit the bank's assessment area(s) within the subject state. For example, a Maine bank with a concentration of deposits in Portland, Maine should receive full CRA credit for a Tax Credit investment in Bangor, Maine.

This statewide approach aligns with the Tax Credit allocation process, whereby state allocating agencies determine where Tax Credit projects will be located, based on a public plan and a competitive process. Banks have no control over where Tax Credit projects will be located within a state. Under current CRA regulations, banks with investment capacity are reluctant to invest outside of their narrowly defined assessment areas. This denies capital to critically needed affordable housing developments. Therefore, CRA regulations should not only allow, but should encourage, banks to invest where housing policy makers, like our three HFAs, decide to put the housing to meet community needs. Full CRA credit for investments within a state would provide sufficient flexibility to meet community needs without being too remote from the communities in which banks do business.

2) CRA Should Not Encourage Regionalization; Regional Funds Will Likely Hurt Smaller Markets

While we believe that a statewide approach would benefit rural communities and would better align with the Tax Credit allocation process, we strongly object to allowing CRA recognition of investments in regional funds. Providing full CRA credit for regional funds will gut the community focus of the CRA, adversely impacting smaller and more rural states. A regional approach is too diffuse to ensure that local communities are served.

We object to guidance that reflects a greater emphasis on the business needs of the banking industry rather than on the essential test of whether the banks are meeting the credit needs of the communities in which they do business.

Others have asserted that moving to a hyper-regional CRA assessment will accomplish two goals: (1) raising more Tax Credit capital; and (2) geographically distributing that capital more evenly. We do not agree that a regional approach will increase the overall amount of Tax Credit capital raised or improve the delivery of that capital to smaller, harder-to-serve markets. It is possible that larger CRA assessment areas will allow broader distribution of available capital, but this capital will be concentrated in the nation's <u>larger</u> markets and in bigger transactions. It will likely not reach the smaller deals in smaller markets.

Furthermore, we believe that a larger regional approach will align Tax Credit capital with the dominant investor business model that favors larger deals, larger developers and larger markets. Seen in the national context, our states would not fare well.

If you decide that the regulations should permit banks CRA credit for regional investments, we ask you to include the following:

- Before allowing CRA recognition and credit for regional investments, banks must show that the Tax Credit capital needs have been met in their assessment areas or the state in which they are doing business. This process should include community notice and an opportunity for public comment; and
- The CRA regulations should require that banks will only get CRA credit for such investments if the regional fund actually makes investments in all areas purported to be served by funds, including smaller markets and other underserved markets. The current Questions and Answers only require targeting; they do not require actual investments. If regional funds are really needed to address underserved areas, then the regulations should require that such funds actually invest in underserved areas.

We have included as an attachment to our testimony a technical request for rulemaking, which we sent to the CRA regulators in March 2010.

3) CRA Should Provide Incentives to Banks that Make Investments in Smaller Deals in Smaller Markets

As we have explained, it can be difficult to find capital for smaller Tax Credit deals. We urge you to consider what incentives could be offered through the CRA to encourage banks to make investments in smaller markets. For example, to recognize the loss of economy of scale inherent with smaller deals, the regulations could provide a boost to the value of such investments for CRA purposes or the regulations could allow such investments to count towards an outstanding rating.

Conclusion

Community is at the core of the CRA. While banks must be allowed to efficiently and effectively deploy their resources, the CRA must be the tether to the local community and the counterweight to business practices that could otherwise leave some communities behind. In this dynamic time, the CRA can and should ensure that all communities have access to the capital needed to create affordable homes for those of modest means.

On behalf of our housing finance agencies, our housing developers and investors, and, most importantly, the families who rely on us to meet their critical housing needs, thank you for your time and attention to this important subject.

March 15, 2010 Letter to CRA Regulators
Attachment to Testimony of Ignatius MacLellan
Vice President of Public Affairs
Northern New England Housing Investment Fund

Public Hearing on
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Federal Reserve Bank, Chicago, Illinois
August 12, 2010

NORTHERN NEW ENGLAND
HOUSING INVESTMENT FUND

HOUSINGVERMONT
Building possibilities.

March 15, 2010

Sheila C. Bair
Chairwoman, Federal Financial Institutions Examination Council
Chairwoman, Federal Deposit Insurance Corporation

John E. Bowman
Acting Director, Office of Thrift Supervision

Daniel Tarullo
Member, Board of Governors of the Federal Reserve System

John C. Dugan
Chairman, Office of the Comptroller of the Currency

Dear Members of the Federal Financial Institutions Examination Council:

Introduction

The Northern New England Housing Investment Fund (NNEHIF) and Housing Vermont (HVT) wish to provide input about how bank[1] investments in low-income housing tax credits (LIHTC) funds should be treated under the Community Reinvestment Act (CRA). We make no comment about investments other than LIHTC investments.

Specifically, we wish to address the January 6, 2009 and March 11, 2010 Questions and Answers (Federal Register, Volume 74, No. 3; Federal Register, Volume 75, No. 47). We understand that other groups have weighed in on this issue, [2] and we want to provide the perspective of LIHTC funds that serve smaller and more rural markets. We agree that determining how best to apply the CRA to larger banks is complicated, and we appreciate your willingness to consider this issue in this dynamic market. We also encourage an open dialogue, looking for solutions that help the lower-income communities and people we all serve. In no way should our concerns be taken to mean that we favor the status quo and think that the regulatory agencies should do nothing.

There seems to be a great deal of uncertainty on the part of banks about how examiners are implementing the complex and nuanced language of the CRA Q's and A's. Different aspects of bank investments in LIHTC funds are dealt with in different parts of the Q's and A's and examiners need to understand the interplay between different parts of the Q's and A's. It is not surprising that bank examiners are unsure how to give credit for certain types of LIHTC investments. There are also complexities in how a bank's rating in an assessment area rolls up into its statewide rating and ultimately into the institution's overall CRA rating. We encourage the bank regulatory agencies to give this matter some attention and create a more transparent and consistent system and train the examiners to implement this system.

[1] We will use the word "banks" for "CRA-regulated financial institutions."

[2] National Community Reinvestment Coalition February 1, 2010 letter; Local Initiatives Support Corporation, March 9, 2009 letter; and Opportunities Finance Network and Enterprise, December 15, 2009 letter

Who We Are and Our Markets

Maine and New Hampshire

The NNEHIF is a private, nonprofit corporation that promotes housing and community development by providing equity capital, technical assistance and consulting to affordable housing developers throughout Maine and New Hampshire. We have raised over $325 million through 2009. This total represents over 50% of all capital raised for LIHTC in the two states over the last 13 years. We have invested those funds, via the LIHTC program, in affordable housing developments, resulting in the construction or rehabilitation of over 3,340 rental apartments.

Maine (total population 1.27 million; Portland largest city 84,000) and New Hampshire (total population 1.3 million; Manchester largest city 110,000) are small states. The average LIHTC development is located in a small city or town, has only 26 units and will have total development costs of about $4 million. LIHTC developers tend to be small local nonprofits.

We have always sought investments from all possible investors —local community banks, regional banks, national banks, economic investors (e.g., Verizon Capital) and GSEs (Fannie & Freddie). Despite our comprehensive outreach efforts, four CRA-motivated national banks represent 75% of all the capital we have ever raised.

Our experience has been that our investors invest in Maine and New Hampshire because of CRA's narrow targeting. Our investors have been explicit that the LIHTC investments they make in Maine and New Hampshire are inconsistent with their preferred business model; instead they invest in Maine and New Hampshire to satisfy the investment test under CRA. Moreover, in the last couple of years, national and regional syndicators have virtually left our states, leaving NNEHIF as the primary LIHTC equity source in New Hampshire and Maine.

Vermont

Housing Vermont is a private, nonprofit development company founded in 1988 to produce permanently affordable rental housing for Vermonters through partnerships with communities and the private sector. The partnerships advance State and local development goals, particularly downtown revitalization, and create safe and attractive apartments.

Since its inception, Housing Vermont has raised more than $201 million in private equity to finance 136 affordable rental housing developments throughout the State. This equity has leveraged an additional $304 million in private financing and public investment. The 4,160 apartments created or renovated in these efforts serve low and moderate income Vermonters including seniors and those with special needs. Many developments also include commercial space. Housing Vermont syndicates about 75 percent of the Low Income Housing Tax Credit equity in Vermont.

Vermont is a small, rural state. Vermont's population stands at 610,000. No city has a population greater than 40,000 and the Burlington-South Burlington MSA is the only metropolitan statistical area. Housing Vermont's portfolio reflects this characteristic. The average project size is 30 apartments, though 52 projects have 15 or fewer apartments. The average LIHTC project investment is $1,480,000. Investors are nearly exclusively banks subject to CRA regulation and have ranged in size from Fannie Mae to the Wells River Savings Bank (total assets $136 million).

Keeping Community in the Community Reinvestment Act

We agree with the OFN/Enterprise letter that regulators must "send the clear message" that CRA activities are a "core responsibility" for banks. We also agree with the LISC letter that "CRA remains the primary motivation for most of the remaining LIHTC investors…." We have been and will continue to work with other housing groups on CRA issues. We support a vigorous and open dialogue between housing groups and CRA regulators. Our goal is to ensure that you, as the regulators, consider the impact that any proposed changes could have on smaller markets. Therefore, we seek to ensure that the CRA regulations, and their implementation, require banks to provide resources to the communities where the institutions do business. We are concerned with discussions that would allow CRA credit for investments that are increasingly distant from a bank's business footprint. At some point that approach, which divides the country into quadrants or combines several large states, becomes too diffuse to ensure that local communities are being served. We ask you, as the CRA regulators, to be receptive to comments and responsive to local concerns in these dynamic times.

Provide CRA Incentives to Banks that Make Investments in Smaller Deals in Smaller Markets

Current dynamics in the LIHTC markets have been very negative for small tax credit deals serving rural areas. Some thought should be given to what incentives could be offered through CRA to banks that make smaller investments in smaller markets. For example, allow a boost to the value of the investment for CRA purposes to recognize the loss of economy of scale inherent with smaller deals.

Formerly, serving smaller markets and smaller deals presented very few problems. Before 2007, there was sufficient LIHTC capital, resulting in competition for deals and relatively high pricing. The local markets were being served. As the agencies are aware, Fannie Mae and Freddie Mac exited the LIHTC market and the remaining financial institutions have had a diminished appetite for the tax benefits of LIHTC due to insufficient taxable income. This has meant that there is only approximately one-half the needed LIHTC equity in the market today; LIHTC credit needs are not being adequately met.

Additionally, as the overall amount of LIHTC capital has shrunk, the banks' business model has been pushed towards larger deals in larger markets which, absent a strong CRA motivation, could hurt smaller states and smaller deals from finding LIHTC investors. While our smaller deals are inherently less favored by large financial institutions' business models, they are essential to the creation of much-needed affordable housing in our communities. CRA obligations are the counterforce needed to keep capital in smaller markets.

We Support a Statewide Approach

We agree with the thrust of the OFN/Enterprise letter that it is constructive to encourage banks to invest through LIHTC funds. Funds give banks an efficient investment vehicle, and it makes it easier to serve rural and underserved markets. We ask you to clarify that banks participating in multi-investor ***statewide*** funds that invest in LIHTCs will receive full and undiscounted credit for these investments regardless of whether the investment directly benefits the bank's assessment area(s) within the subject state. For example, a bank with CRA obligations in Portland, Maine should receive full credit towards those obligations for its investment in a LIHTC project in Bangor, Maine. This statewide approach better aligns with the LIHTC allocation process, whereby the state allocating agencies determine where LIHTC projects will be; banks have no control where projects will be located within a state.

Please note that we speak from our perspective and experiences in smaller, more rural states, and we reiterate that we are only addressing the way CRA credit is applied to LIHTC investments. We acknowledge that this statewide approach may not be warranted in larger, more urban states. For now, we would propose that the allowed area for full CRA credit be no further removed from an assessment area than its state borders, with more local targeting in larger states.

The current regulatory practice of microscopic targeting of CRA has had negative consequences in our states. As an example, a project in Hooksett, NH (just north of Manchester) falls just outside the Manchester assessment area of one of our large investors; this technicality has made it more difficult for NNEHIF to direct this willing investor's capital to a worthwhile transaction in what is clearly part of the Manchester market.

NNEHIF and HVT are members of the National Association of State and Local Equity Funds (NALSEF), which supports this statewide approach.

The Current LIHTC Challenge and Our Concerns about Regionalization of CRA

While we believe that a statewide approach benefits more rural communities and is better aligned with the LIHTC allocation process, we strongly object to allowing CRA recognition of investments in regional or quadrant funds which do not have a direct benefit on the state in which a bank's assessment area lies. Such an approach would gut the community focus from CRA, adversely impacting smaller and more rural states. We understand that the CRA Questions and Answers provide guidance to banks so they can make informed and efficient investment decisions. We object, however, to guidance that reflects a greater emphasis on the business needs of the banking industry rather than on the essential test of whether the banks are meeting the credit needs of low-income communities.

We have three recommendations:
(1) Revise Q&A §____.12(h)-6 to require a showing of immediate or direct benefit to a bank's assessment area or to another area within the same state;
(2) Require a stronger threshold test for investments in regional funds that do not meet the above requirement; and
(3) Consider providing CRA incentives to banks that make investments in smaller deals in smaller markets.

Revise Q&A §____.12(h)-6

We recommend revisions to Q&A §____.12(h)-6.

Banks invest in LIHTC housing for two reasons: 1) to meet the CRA investment test; and 2) to realize a return on their investment. In our states, CRA requirements are far and away the primary motivation for investors—even as yields have risen. With this reality in mind, we note that the investment test regulation, see 12 CFR 25.23(a), 228.23(a), 345.23(a) and 563e.23(a), states the following:

> The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) ***through*** qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s). (Emphasis added.)

This regulation starts with the ***standard*** that must be met—the test: "helping to meet the credit needs of its assessment area(s)…." Then, it provides the ***means*** to accomplish that: "through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s)." Unfortunately, the current Q&A §____.12(h)-6 focuses on the means and fails to adequately protect the standard. That answer states that banks have met this test if an investment includes a ***potential*** benefit to the assessment area; the answer does not require an ***actual*** benefit. This answer is inconsistent with 12 CFR 25.23(a), 228.23(a), 345.23(a) and 563e.23(a), which require a record of "helping to meet the credit needs…." The regulation does not say "potentially" helping.

At the same time, Q&A §____.12(h)-7 is concerned with determining whether a regional investment actually impacts a bank's assessment areas: "With larger regional areas, benefits to the institution's assessment area(s) may be diffused and, thus, less responsive to the assessment area(s) needs." In other words, examiners should look at ***actual*** impact. If actual impact is the standard, as it should be, then Q&A §____.12(h)-6 should similarly require actual benefit to the assessment area or the broader statewide area that includes the bank's assessment area.

With regard to the letters filed by LISC and OFN/Enterprise, we agree that the two greatest challenges currently facing the LIHTC equity market are the need to: 1) Raise more LIHTC capital; and 2) Geographically distribute that capital more evenly.

LISC and OFN posit that moving to a hyper-regional CRA assessment will address both of these issues. We do not agree that such an approach will either increase the overall amount of LIHTC capital or improve the delivery of that capital to smaller, harder-to-serve markets. We do agree that broader CRA assessment areas will allow more even distribution of available capital across the nation's larger markets and transactions.

We believe that larger regional areas, such as quadrant-based CRA assessment areas, will result in LIHTC capital aligning with the dominant investor business model that favors larger deals, larger developers and larger markets. Seen in the context of the United States, Maine, New Hampshire and Vermont do not have large deals, developers or markets.

Threshold Test for Investments in Regional Funds

We suggest a threshold be established for banks to receive credit for regional investments that do not have an immediate or direct benefit to a bank's assessment area or to another area within the same state. This approach was suggested in the OFN/Enterprise letter, but we would urge a higher threshold and a more open process.

1) Given the dynamic nature of the LIHTC market over the last few years, CRA regulators should ensure that banks are not relying on past performance but rather on an evaluation of current capital needs. Therefore, before allowing credit for regional investments, banks must show that the LIHTC capital need has been and is being currently met in their assessment areas. This process should include community notice and an opportunity for public comment.
2) To the extent that an existing CRA rating is to be relied upon, "satisfactory" is not a high enough threshold on its own. From a policy perspective, the required rating should be "outstanding". Furthermore, since the CRA can provide bank CRA officers with the leverage needed to get harder deals done, an "outstanding" requirement could provide motivation within the bank to make these investments.
3) LIHTC investments are considered under the investment test. The threshold for allowing more regional investments should align with this fact and require banks to achieve an "outstanding" rating on their investment test, as well as their overall CRA evaluation, before allowing them credit for investments which do not directly benefit their assessment areas or other areas within the same state.

Consideration should also be given to how assessment areas are drawn, to ensure that communities are appropriately defined so as to meet their credit needs. For example, some New Hampshire communities are currently lumped in with Massachusetts communities in forming certain bank assessment areas. While they may be close geographically, combining localities across state borders within a bank's assessment area does not align with the way affordable housing is developed and financed.

Conclusion

Community is at the core of the CRA. While banks must be allowed to efficiently and effectively deploy their resources, the CRA must be the tether to the local community and the counterweight to business practices that could otherwise leave some communities under-served. In this dynamic time, the CRA can and should ensure that all communities have access to the capital needed to create affordable housing for their lower-income residents.

Thank you for your time and attention to this important issue. We look forward to being part of the ongoing dialogue regarding the future of the CRA, as we all strive to help our communities meet their credit needs.

John Anton, President,
Northern New England Housing Investment Fund
183 Middle St., 3rd Fl, Portland, ME 04101
(207) 772-8255

Nancy Owens, President
Housing Vermont
123 St. Paul St, Burlington, VT 05401
(802) 863-8424

3/16/10

John Anton — Date

3/15/10

Nancy Owens — Date