REINVESTMENT PARTNERS
"ADVOCATING FOR ECONOMIC JUSTICE AND OPPORTUNITY"

May 17, 2013

OCC: Docket ID OCC-2013-0003
Federal Reserve: Docket No. OP-1456
FDIC: Attention Comments on CRA Interagency Q&A

To Whom It May Concern:

Reinvestment Partners (formerly the Community Reinvestment Association of North Carolina) is a nonprofit advocacy and community development practitioner whose mission is to advocate for economic justice and opportunity. We have submitted prior comments on reform of the Community Reinvestment Act. It is clear the agencies are responding to those concerns and suggestions. Thank you.

Our responses follow the federal register order of questions.

§ ll.12(h)—6: Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?

Reinvestment Partners agrees with the analysis and proposed answer to the query. Providing CRA credit for a broader or statewide assessment area will foster CRA investments. We negotiated a $200,000 subordinated debt CRA investment into a statewide CDFI based in Durham. The regulator did not grant CRA credit because the headquarters of the CDFI was outside the assessment area despite making investments to a member community development credit union in the bank's assessment area. This change in policy would correctly recognize the CRA benefit of such investments.

It is vague language to say "in lieu of or to the detriment of activities in the assessment area." Nonetheless, it recognizes that allowing for investments into regional agencies may allow banks to avoid investments directly into local communities. For example, if two CDFIs approach a bank for an investment, the lender will have a regulatory incentive to choose the one with a larger geographic coverage in order to gain greater CRA coverage - national over regional, regional over state, state over local. The concern for specific language and clarity is provided to some extent in the comments on .23(a)2.

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This concern must also be addressed by the evaluation procedure itself. To what extent are CRA regulators surveying needs and opportunities within assessment areas? In the 1990's regulator interviews with community groups and the development of area needs assessments were heavily weighted in a CRA exam, but since 1998, it became almost non-existent. We hope that regulator contact with community groups will be included in the exam process to provide a basis for whether a bank's CRA investments in the larger regional area are to the detriment or in lieu of opportunities within the assessment area.

We agree with the guidance given on the definition of a regional area .12(h)7.

Q&A .23(a)-2 In order to receive CRA consideration, what information may an institution provide that would demonstrate that an investment in a nationwide fund with a primary purpose of community development will directly or indirectly benefit one or more of the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?

The origin of the Community Reinvestment Act was to ensure that local credit and investment needs within a bank's assessment areas were adequately addressed. Since 1977, banks have become national, as have some community development nonprofits. We support the concept that investments into national intermediaries with a primary purpose of community development does address needs and fulfill a bank's CRA obligation. Reinvestment Partners has submitted more extensive comments on how CRA should be applied to small financial institutions that act as processors for national products such as prepaid cards.

The application of this standard would be beneficial to apply to wholesale banks that operate nationally, but because of their limited branch location are held to fulfilling only a limited regional CRA obligation. Wholesale and special purpose banks in Salt Lake City, Utah are an example where institutions take deposits nationally, but are only evaluated within Salt Lake County. The $38 billion Morgan Stanley wholesale bank, is an example of where the allocation of CRA dollars to one county does not match the bank's size or recognize the national service area from which it solicits deposits. If Morgan Stanley were held to a performance context, investments into national intermediaries would meet community development needs across a broader footprint. As an example, Durham, North Carolina has a local Morgan Stanley investment office that solicits deposits for the wholesale bank, but which the bank has no local CRA obligation. Investments into national intermediaries would allow for both greater dollar amounts and greater geographical dispersion.

We wrestle with how to accomplish an assignment of national funds to regional impacts. It is of concern if large bank institutions due to lower transaction cost and higher returns met its obligations without consideration of local opportunities. We find this to be a current problem with Bank of America. It has downsized its CRA and community affairs staffing dramatically. Local partnerships outside of Charlotte can be hard to find and interest in local deals is limited. This is in large part because higher profile partnerships with national organizations at higher dollars amounts are easier.

From an interview with a bank CRA officer, we understand the FDIC is currently using a minimum standard of community development investments equal or greater than 1% of deposit shares across assessment areas. This is causing the lender to reevaluate investments by a geographical matrix. Reinvestment Partners supports this practice when the evaluation is also done in context of the bank's performance allowing for flexibility across regions, as deal flows are not consistently even in timing or quality.

If this type of matrix is used for megabanks it ensures a floor of community investment and assessment. Additionally, national investments should be able to demonstrate that it does provide benefit in regional areas of the bank as defined in *.12(h)7*. These investments should compliment not be done in lieu of or to the detriment of local opportunities as discussed in *§ ll.12(h)—6:*. The key to regulatory oversight is performance context, which is difficult to standardize.

The National Community Reinvestment Coalition has argued forcefully that the assessment areas for these institutions should be broadened to include where it does business. We support this position, but understand that the Q&A section is not the vehicle to accomplish this. Reinvestment Partners hopes that the regulatory and legislative changes needed for the Community Reinvestment Act will come in a timely fashion.

.12(g)(2)-1 Community development includes community services targeted to low- or moderate income individuals. What are examples of ways that an institution could determine that community services are offered to low- or moderate-income individuals?

Reinvestment Partners concurs with the proposed answers to the queries. Our agency produces financial education products that are video based and distributed nationally via broadcast television. Our flagship product is Nuestro Barrio, a telenovella that provides financial education that has been broadcast into more than 25 million households. Obviously, a range of incomes will view the program, but the intent and benefit is to low and moderate-income individuals. This definition creates new opportunities for regional or special purpose banks to support nationwide programs that have scale while serving LMI households.

.12(i)-3 What are examples of community development services?

These specific examples are helpful. We hope that the intent is to keep bank investments and involvement focused on community development functions, rather than granting credit for any community service activity. The arts are an important aspect of the health of the community, but per se are not community development. Art that is targeted as part of a neighborhood revitalization strategy or LMI youth has a community development service. Performance context is important. Additional language that explains this concept may be helpful to encourage innovation without losing sight of the intent and purpose of community development services.

Qualified Investments

How do examiners evaluate loans or investments to organizations that, in turn, invest in instruments that do not have a community development purpose, and use only the income, or a portion of the income, from those investments to support their community development purpose?

Reinvestment Partners believes the question is sufficiently clear and it will encourage investments into bona fide community development agencies. It will prevent CRA grade inflation and a diversion of resources from qualified investments.

The proposed answer to the question addresses the current practice of the Senior Housing Crime Prevention Foundation. This nonprofit holds investments by CRA banks and places the principle into Treasury securities. A portion of the interest is used to serve retirement homes in low income census tracts. Historically, banks were able to claim the full principle of the Treasury security towards its CRA investment test. Additionally, the principle investment counted each year of the placement, not simply for the year placed even though no new additional dollars were committed. The new rule correctly limits the qualified CRA investment to the portion of the income from the underlying investment.

In response to this regulatory change, the Senior Housing Crime Prevention Foundation is now holding bank investments and placing these into a qualified CRA investment pool such as housing finance agency mortgage revenue bonds, so that according to the proposed Q&A, the full basis of the principle will be counted. It then places a portion of the investment income into services to retirement homes in low-income census tracts as it has historically done. Therefore both the investment is CRA qualified as is the portion of investment income that is utilized for a qualified community development purpose.

The significant policy implication of this new arrangement is that banks will be able to claim the full investment principle as a qualified investment for any geographic area in which a portion of the interest is donated.

For example, a North Carolina bank's $1 million investment with SHCPF can be used to purchase mortgage revenue bonds or low income tax credits or multifamily loan securities as a CRA qualified investment based in New York. Services provided by SHCPF using income from this investment into a retirement home in a low income census tract in North Carolina allows the bank to claim the full principle as a qualified CRA investment for its assessment area. This is regardless of the actual dollar amount provided in North Carolina and regardless of whether New York is in any of its assessment areas.

The advantage being offered to the bank by SHCPF is the ability to export CRA regulatory credit to its assessment areas where it does not have any direct qualified investment.

Reinvestment Partners disagrees with this CRA strategy. This scheme is playing the regulatory rules to allow for investments in one area to artificially inflate CRA credit for investments in other assessment areas. This distorts the actual amount provided to communities as a qualified investment. This should not be the intent or effect of the CRA Q&A.

All prior comments and guidelines for community development activities should apply to this approach. We argue that a qualified investment must have an impact in the assessment area or region, direct or indirect, but it can not be divorced from it. Investments into such a vehicle must not be done in lieu of or to the detriment of local assessment areas. Regulators should also question whether the proposed services further community development goals. For example, providing lock boxes to residents of senior citizen homes is good, but it is not a community development service.

.22(b)(4)-2 How do examiners consider community development loans in the evaluation of an institution's record of lending under the lending test applicable to large institutions?

In speaking with lenders, a key challenge is a standard definition of community development loans. From one year to the next or among regulators the definition may change. It does not have a lending code that would allow for easier reporting. As a principle, we support the concept of context performance based evaluation. But it is unclear from the proposed answer how community development lending will be weighted in context of the five tests. It is unclear whether this encourages more community development lending as a lender may feel encouraged to specialize in retail lending to compensate for community development lending which tends to be more complex and deal specific.

We concur with the existing language o .21(f)-1 regarding the investments into MWLIs.

Investments Across Assessment Areas

That lenders are willing to pay a premium to export CRA credit from a non-assessment area to an assessment area illustrates the challenge of how to ensure geographic evenness of community development investments without introducing perverse regulatory incentives. It is also illustrated in the secondary market for CRA qualified mortgages, small business loans and community development investments. Banks purchase these instruments in order to meet a CRA evaluation and then sell them to the next bank for a CRA evaluation. Communities do not benefit from these types of regulatory gamesmanship.

Regulators are challenged to maintain the integrity of the CRA evaluation for lenders actual impact in community reinvestment. We recognize that banks are challenged to find qualified investments across all geographies as nonprofits and communities do not have an evenness of investment opportunity, but often excess of need. Therefore the CRA Q&As and regulatory policy need flexibility with integrity.

The prior practice of choosing full scope reviews primarily in urban areas provided a regulatory incentive for investments into urban area and a disincentive for rural areas. Urban areas with higher nonprofit and government capacity as well as greater population density with residential and commercial opportunities also make urban investments more attractive. As a result, rural and small city nonprofits and government agencies complained of a lack of proactive bank involvement.

The competitiveness of investment opportunities across geographies allowed for CRA capital to flow towards those deals that were higher returns and lower risks. From a market perspective this competitiveness is good for investors and rewards quality projects. Combined with CRA regulatory incentives it distorted where CRA dollars are made.

In our comments of a community reinvestment benefits test we argue that the exam should provide a regulatory incentive for lenders to work with higher risk, lower rate of return projects that serve greater need populations and neighborhoods.

Community development practitioners work with hard-to-serve populations and neighborhoods. Their projects face higher administrative hurdles. Practitioners must find grant dollars to supplement their existing assets. They serve populations that are historically hard to reach: very low-income households, special needs individuals, and businesses with low equity or collateral. They work in neighborhoods where property values are below the costs for new construction. Given the ability of these projects to appraise, their practitioners are challenged to overcome underwriting criteria based upon collateral and loan-to-value metrics. Many projects are in neighborhoods with historically low appreciation rates. Others are in locations where home values have depreciated because of the foreclosure crisis. There is a public interest that these projects get done; yet each and all would find it difficult to work without the support of community development loans. These are all challenges that require additional assistance for success.

Currently CRA exams give the same level of CRA credit to a bank's community development loan, investments and services regardless of the impact, cost or return.

As an example, a bank that makes a CRA loan to a household at 80% area median income gets the same CRA credit as the bank that works to create a mortgage product and process that allows a Section 8 certificate as a source of income for a mortgage payment. This ignores profit margin. In the Section 8 investment, there are higher transaction costs, as entities must accept a non-conforming source of income. Nonetheless, the Section 8 loan will help very-low income borrowers. When choosing between a new market tax credit investment that makes a 15% plus annual return on equity or a grant, investment or loan with lower financial returns but earns the same CRA credit, banks logically choose the tax credit investment. Many profitable and worthy CRA projects cannot achieve a fifteen percent rate of return. Though they lack the kind of financial return that banks want, these projects have a significant rate of social return. The market will not give those social goals any weight. The CRA exam should

create a framework that puts those values into the equation. This is the logic of a benefits criterion.

Practitioners support the concept of a benefits criterion that will provide regulatory incentives to target community development loans, services and investments to those projects that have higher costs or lower returns in order to serve greater need populations. Projects that utilize other grant funds such as the Federal Home Loan Bank AHP programs or SBA7 guarantees or CDBG/HOME funds to serve low-income households, businesses and communities should be incented.

Reinvestment Partners asks that the regulators issue advisory guidance whether banks will receive credit if community development investments and loans are sold between institutions for the purpose of meeting regulatory guidelines in lieu of and to the detriment of community investments. We recommend a study by the Federal Reserve on what if any this practice has to benefit community reinvestment. We recommend a consideration be given to our argument to grant higher regulatory credit for those projects, which have higher costs and risks or serve very low income households and neighborhoods.

Sincerely,

Peter Skillern
Executive Director