N A A H L

NATIONAL ASSOCIATION OF AFFORDABLE HOUSING LENDERS

May 17, 2013

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th Street SW
Washington, DC 20219
Docket ID OCC-2013-0003
Regs.comments@occ.treas.gov

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. OP-1456
Regs.comments@federalreserve.gov

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
comments@fdic.gov

Dear Madams/Sirs,

The National Association of Affordable Housing Lenders (NAAHL) represents lenders and investors who are committed to increasing the supply of private capital in low- and moderate-income (LMI) communities and underserved areas. Our membership includes community development practitioners from major banks, blue-chip, non-profit lenders, consortia, CDFIs, and others in the vanguard of affordable housing and community economic development.

Summary

We strongly support the Interagency process and its goal of spurring more Community Development (CD) lending, investing, and services. Revisions to the "Interagency Questions and Answers Regarding Community Reinvestment" should meet two basic criteria: 1) help to meet an especially urgent need now, as LMI communities and underserved areas continue to grapple with challenges in economic recovery; and 2) ensure a sustainable path forward beyond the current economic conditions.

The Interagency Notice acknowledges that "community development activities are undervalued". We believe that the proposed revisions are a significant step forward by the Agencies to provide much-needed clarity in evaluating an institution's record. Acknowledging both the unique strengths of each institution in the context of its business model, and the related capacity to help meet the needs of its communities through CD opportunities, reaffirms the importance of assessing the performance context in which an institution does business. This course correction is critical to sustaining the Community Reinvestment Act (CRA): the increased emphasis on the quantitative versus the qualitative impacts of CRA activities in recent years has focused institutions on activities that are costly, may not yield meaningful benefits for LMI communities, and have undermined the reputation of CRA.

We are also aware of the challenge of balancing the needed certainty with significant flexibility in the guidance in order for the revisions to be effective in expanding the flow of private capital in underserved areas. Given the complex nature of these issues and the vast impact even seemingly innocuous changes might have in either fulfilling or undermining the intent of the CRA, it is very evident how much

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thoughtful consideration and time the Agencies have invested in producing what is a very balanced, measured approach that maintains a level playing field for CD practitioners and products.

Even so, we urge you to finalize the revisions as soon as practical with the ultimate goal of increasing the flow of capital to underserved communities by appropriately recognizing the value and impact of these activities within the CRA evaluations. Given current economic conditions, we respectfully request that you do not delay issuing the final community development Q&As until the full set of revised Q&As is completed.

To facilitate this, we offer detailed responses to your questions concerning how concepts and language might affect your objectives, because, as always, the devil truly is in the details of implementing the final language.

Proposed Revisions to Existing Q&As

I. Community Development Activities Outside an Institution's Assessment Area(s) in the Broader Statewide or Regional Area That Includes the Institution's Assessment Area(s)

Current Q&As § __.12(h)-6 and § __.12(h)-7

Do the revised Q&As clearly convey *the Agencies' intent that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will receive* consideration?

The revised Q&As clearly re-establish the longstanding, very valuable approach of the Agencies' ensuring that depository institutions receive full CRA credit for their investments in statewide and regional funds. They also recognize that, like all good things, CD lending and investing by pooled funds that both meet community needs and also diversify banks' risks, all takes time. The Agencies explicitly recognize that "at some point the institution's assessment area[s] may receive some benefit." This is a critical re-affirmation of CD success stories that predate even the 36 years of the CRA, that have been the primary delivery channel for financing affordable rental properties in states as diverse as Massachusetts, Alabama, California, and Ohio.

Will this clarification of consideration in the broader statewide or regional area that includes an institution's assessment area(s) provide an incentive for banks to increase their community development activities or expand their opportunities to engage in community development activities?

While NAAHL members consider the "clarification of consideration" a very positive and necessary development, we caution that insured depository institutions will still require a "brighter line" to feel comfortable increasing their CD activities on a statewide or regional basis. If there is any question about banks receiving full credit, disincentives persist. We recommend the Agencies utilize an institution's most recent CRA rating, "Satisfactory" or above, as the bright line for consideration in its next exam of CD activities in the broader statewide or regional area where it has at least one assessment area.

***Does "community development activities being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s)" raise the same uncertainty as "adequately* addressed the**

***community development needs of its assessment area(s)"? If so, how can the Agencies better describe* the concept that a financial institution cannot ignore legitimate and financially reasonable community development needs and opportunities in its assessment area(s) to engage in community development activities elsewhere in the broader statewide or regional area when those activities will not provide any benefit to its assessment area(s)?**

Yes, the proposed revision does raise the same uncertainty as the current guidance.

The assertion that CD activities may not be conducted "in lieu of, or to the detriment of" is not more precise than "adequately addressed", and could in practice produce even more inconsistent examination outcomes. This lack of precision could, in the extreme, allow an examiner charged with evaluating an "institution's performance context, including the community development needs and opportunities in its assessment area[s]" to view any unmet need in the assessment area as disqualification of any activities outside because they may be considered to have been made "in lieu of".

The Agencies should explicitly acknowledge that "meeting every need" is neither a practical standard nor a goal of the CRA and its implementing regulation which holds banks to the expectation of "helping" to meet the credit needs of their communities.

Rather than adopting the proposed revision, a tighter and more precise standard, as previously noted, would utilize an institution's most recent CRA rating, "Satisfactory" or above, as the bright line for consideration of community development activities in the broader statewide or regional geography where it has an assessment area. As discussed more fully in Item II below, "Investments in Nationwide Funds," this standard is provided by the Agencies when they conduct CRA exams and produce a rating which addresses whether the credit needs of an institution's assessment area(s) have been met.

We recommend replacing the last two sentences of §__.12(h) – 6, with the following:

> ***"Such community development must be performed in a safe and sound manner consistent with the institution's capacity to oversee these activities. Examiners will consider an institution's performance context, including the*** **community development needs and opportunities in the assessment area(s), its business capacity and focus, and its past performance. Institutions with a rating of "Satisfactory" or higher on their most recent CRA evaluation will be deemed to have met the threshold** ***for consideration."***

Does removal of the portion of current Q&A § __.12(h)-7 that discussed a diffuse potential benefit to an institution's assessment area(s) alleviate the confusion between the two Q&As and help to clarify that community development activities in the broader statewide or regional area that includes an institution's assessment area(s) will receive consideration?

Yes. We support the deletion of the language in the current Q&A § __.12(h)-7 that discussed "a diffuse potential benefit" to an institution's assessment area(s).

Is the proposed definition of "regional area" sufficiently clear and appropriately flexible?

Yes, we believe that the proposed definition of "regional area" is appropriate and provides sufficient clarity.

II. Investments in Nationwide Funds

We agree that bank involvement in nationwide funds can be a useful and "effective means of" meeting CD lending and investment needs in underserved areas consistent with safe and sound banking practices. This type of investing can also help alleviate capital crowding in CRA "hot spots" where numerous institutions are competing for a limited share of CRA-eligible investments and ultimately increase capital availability in CRA "deserts".

Current Q&A§ __.23(a)-2

Would the proposed revised Q&A assist institutions that deliver products on a nationwide basis to address community needs in areas where they provide products and services?

The debate regarding nationwide funds is essentially about the benefits to the assessment area(s) and ultimately where individual projects are located. In practice, the proposed approach is far more complex than it needs to be. Regional, statewide, multi-state, and nationwide need not be important distinctions. Once an area is larger than an institution's assessment area(s), these terms create distinctions without differences because, if projects outside the assessment area(s) get recognition, it should not matter how far outside of the assessment area(s) a project may be located. The standard should simply be whether the fund has a service area that includes the assessment area(s).

Maintaining the current assessment area standards for lending (mortgages, small business) and services to communities where an insured depository has a retail footprint and employees still makes sense. However, crucial opportunities and possible unmet needs for CD lending and investing are often outside assessment areas.

Some commenters *indicated that current methods of "earmarking" investments, including through* the use of side letters, are burdensome. Are such methods, in fact, burdensome and, if so, in what way?

"Earmarking" projects financed with pooled funds, and "side letters", create disincentives for insured depository institutions to participate in multi-investor funds, and undermine the objectives of pooling funds from multiple institutions. Side letters can also restrict the CD funds' ability to cross-subsidize the more complex deals with simple ones.

A pro-rata system of credit apportionment to fund investors, recognizing that, "legally" each investor owns a pro-rata share of each investment, much more efficiently incents banks to increase their investments in nationwide funds. Under this system, for decades banks have received CRA credit equal to the share of their investments.

Some agencies have already successfully implemented the policy of dividing the country into four quadrants. Banks receive credit for their entire investment in a fund as long as at least one of the fund's activities is in a quadrant containing that bank's assessment area(s). Again, in instances where banks

receive less than full consideration for their investment, they will be less likely to make such investments and favor those with greater certainty.

If the proposed revised Q&A is adopted, how should investments in nationwide funds be considered in *an investing institution's CRA evaluation? Should there be a special category for investments* in *nationwide funds? How would such a category affect the amounts of an institution's investments at* the assessment area and/or statewide levels?

We appreciate the clarification in the revised Q&A that there should be more flexibility in the evaluation of bank investment in nationwide funds. As long as the bank has a reasonable approach in allocating these investments within its assessment areas, the current examination framework will suffice.

The CRA never contemplated that an institution must meet all the credit needs in its community. Rather, it states that an institution has a responsibility to help meet the needs of its community.

Alternatively, should investments in nationwide funds be attributed to particular states or assessment areas? If so, how can that be done in a meaningful manner, particularly if there is no earmarking by the fund?

Nationwide funds often provide their bank investors with information about where potential investments may be made broadly, but the information may not be geographically specific. While these intermediaries are not able to identify all of their investment opportunities in advance, they would be able to tell potential investors that they may invest outside of the banks' assessment area(s), and their investments may have eventual impacts on their assessment area(s). This needed flexibility is rightly recognized in the Q&A revisions.

Nationwide funds should be treated the same with respect to geographic requirements. As we have suggested for state and regional funds, investors in national funds should get recognition for the full amount of the investment dollars, provided that the institution has a "Satisfactory" rating at the last examination for activities in its assessment area(s).

In the CRA exam, the Agencies produce a rating and that rating addresses whether an institution has adequately met the needs of its assessment area(s). We should look to this benchmark, which the Agencies defend and use in a public forum when considering expansionary applications. As suggested earlier, for nationwide funds, one option is dividing the country into four quadrants and banks be given credit for their entire investment in a fund as long as at least one of the fund's activities is in a quadrant containing that bank's assessment area(s).

If nationwide fund investments are attributed to particular states or assessment areas, how can the Agencies avoid double counting the same funds in the same assessment areas in different i*nstitutions'* evaluations?

You completely avoid "double-counting" when you only give banks credit for the amount they invest, not a dollar more nor a dollar less.

III. Community Services Targeted to Low- or Moderate-Income Individuals

Will the use of eligibility for free and reduced-price meals and Medicaid effectively identify individuals who are low- or moderate-income? Will the use of these proxies reduce the burden on financial institutions and community organizations to obtain actual income and, thus, promote the provision of community development services?

Yes, using established, means-tested poverty criteria for determining that the majority of beneficiaries qualify as LMI is an important revision that will allow more bank resources to be applied to the actual activities rather than burdensome documentation. Proxies relevant to CD loans and investments should also be accepted, where applicable. For example, the free and reduced price meals' proxy can be useful for qualifying school financing (loans, letters of credit), while using the Medicare proxy is valuable in underwriting skilled nursing facilities.

IV. Service on the Board of Directors of an Organization Engaged in Community Development Activities

The Agencies request comment on whether there are other activities that should also be included in this Q&A as explicit examples of community development services. The Agencies have previously *stated that "service on the board of directors of an organization that promotes credit* availability or *affordable housing" meets the criterion that a community development service must be related to the* provision of financial services. See Joint Final Rule, 60 FR 22156, 22160 (May 4, 1995). Service by financial institution personnel on the board of directors of an organization engaged in community development activities should consistently receive consideration as a community development service. To further clarify this point, the Agencies propose to modify current Q&A § __.12(i)-3 to include service on the board of directors as an explicit example of a technical assistance activity that can be provided to community development organizations and that would receive consideration as a community development service.

NAAHL supports the Agencies' proposal to modify current Q&A § __.12(i)-3 to reaffirm that service on the board of directors is an explicit example of a technical assistance activity that can be provided to community development organizations and such activities will always receive favorable consideration as a community development service. We also support continued recognition that service on a community development organization's loan review committee will receive consideration as a CD service as well.

Proposed New Questions and Answers

II. Community Development Lending in the Lending Test Applicable to Larger Institutions

The Agencies are proposing new Q&A § __.22(b)(4)-2 to address this inconsistency among the Agencies and to address commenters' concerns that community development lending is undervalued. The proposed Q&A clarifies that an institution's record of making community development loans may have a positive, neutral, or negative impact on the institution's lending test rating. The Agencies would consider the institution's community development lending performance in the context of the institution's business model, the needs of its community, and the availability of community development opportunities in its assessment area(s) or the broader statewide or regional area(s) that

includes the assessment area(s) (i.e., the institution's performance context). Further, strong performance in retail lending may compensate for weak performance in community development lending, and conversely, strong community development lending may compensate for weak retail lending performance.

As the Agencies have noted, there is a longstanding need to re-emphasize community development, and NAAHL has consistently recommended increasing regulatory incentives for these transformational activities. For more than a decade, NAAHL has strongly recommended a "Community Development Test" option for insured depository institutions with expertise in this work. For those that opt to be evaluated under this test, CD loans and qualified investments would constitute 50% of their rating. The Lending and Services tests would each then represent 25% of the CRA rating.

If an insured depository institution does not select the CD Test option, it should still receive greater quantitative and qualitative considerations for CD loans in its Lending evaluation, but not be penalized if it cannot or does not engage in CD lending. Since opportunities for CD lending do not happen every year in every community, it is not reasonable to expect that CD lending would grow, period over period, without compromising safety and soundness. Banks should be incented to do as much CD lending as possible, but always within the constraints of safe and sound banking principles. Banks have never received enough consideration for the CD loans they do, and penalizing banks will not create more CD lending opportunities.

Our major concerns with are as follows:

- Qualitative factors will continue to be undervalued. In conjunction with increasing focus on community development, we recommend the Agencies reduce emphasis on the quantitative methodology of comparing activity to quantitative benchmarks without serious consideration of need, risk, profitability, and meaningful benefits for LMI communities. This imbalance has undermined support for CRA. It is important to provide more flexibility and greater weight to high-impact activities so that banks will be encouraged to reach deeply into underserved areas.

  Yet the full impact of factors like complexity, innovation, and leadership are often difficult for examiners to document if they have little or no background in community development. CRA examiners need both training in contemporary community development activities (loans, investments and services), and Agency encouragement to simplify greatly what has been an overly complex regimen of CRA evaluations. We look forward to continuing to work with the Agencies to remedy these longstanding exam problems.

- The Agencies should not be prescriptive about how a bank and its business model should meet the unique needs of an underserved area in its market. Rather, the bank should decide how to deploy its capital to help meet the needs of its community given its business model and its capacity.

  We are concerned about how the proposed revisions create an unnecessary "either/or" situation regarding CD lending and retail/mortgage lending in proposing that "strong performance in retail

lending may compensate for weak performance in community development lending." While we agree with the philosophy offered here, we do not believe that applying a negative standard will serve to promote sustainable community development.

NAAHL strongly supports clear incentives for CD lending and investment, a "carrots" approach to regulation. We recommend that the Q&A revisions be modified to reflect current OCC policy, which acknowledges that not all institutions have the strategic focus or the capacity to conduct meaningful community development in every assessment area. Because exam practices have seriously undermined banks' confidence in favorable consideration for CD activities, the solution lies in simplifying policies and exam practices to provide greater flexibility and incentives for banks to increase their involvement in community development.

Redesignation of Existing Question and Answer Without Substantive Change

In 2010, the Agencies first adopted implementing regulations for section 804(b) of the CRA. See 75 FR 61035 (Oct. 4, 2010). Section 804(b) of the CRA provides that the Agencies may consider capital investment, loan participation, and other ventures undertaken by the institution in cooperation with minority- and women-owned financial institutions and low-income credit unions as a factor when assessing the CRA record of nonminority- and nonwomen-*owned financial institutions ("majority-owned institutions").*

NAAHL strongly supports the reaffirmation of the amendment to CRA enacted to ensure favorable consideration for "majority-owned institutions" investment in, or loans to, minority and women-owned banks wherever they are located.

We also strongly support this Notice's effort to increase flow of bank CD loans, investments, and services to underserved areas through all intermediaries and maintain a level playing field. The Agencies should not designate additional "protected classes" that favor one type over another.

Conclusion

Thank you for the opportunity to address these important questions. We look forward to working with you to increase the flow of private capital to underserved areas in sustainable ways.

Sincerely,

Judith A. Kennedy
President and CEO

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