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Office of the Comptroller of the Currency
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Docket ID OCC-2013-0003
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Mr. Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
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Docket No OP-1456
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Mr. Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
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May 13, 2013

Gentlemen:

Thank you for this opportunity to comment on proposed revised Q&As under the Community Reinvestment Act regulations. I submit these comments as a concerned individual. From 1997 through 2001, I was the Director of the Office of Thrift Supervision (OTS). As Director I worked hard to make sure that CRA was taken seriously and implemented effectively by the institutions we supervised. Since leaving OTS, I have written about CRA and testified during the agencies' 2010 CRA hearings.¹ I have also experienced CRA in action, from both a CDFI bank and a CDFI loan fund perspective.

¹ See Testimony before the House Financial Services Committee on the Community Reinvestment Act, February 13, 2008, available at: [http://www.house.gov/apps/list/hearing/financialsvcs_dem/seidman\(21308\).pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/seidman(21308).pdf); "A More Modern CRA for Consumers," in Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act, Federal Reserve Banks of San Francisco and Boston, February 2009, available at: http://www.frbsf.org/publications/community/cra/more_modern_cra_consumers.pdf; "Don't Blame the Community Reinvestment Act," American Prospect, June 29, 2009, available at http://www.prospect.org/cs/articles?article=dont_blame_the_community_reinvestment_act; Testimony at Community Reinvestment Act Joint Public Hearing, August 12, 2010, available at http://www.federalreserve.gov/communitydev/files/full_transcript_cra_20100812.pdf (starting page 7).

This proposal is an important step forward in the modernization of CRA. I urge the agencies to move forward quickly to adopt these revisions concerning community development and to proceed to other areas in need of revision. Community development is, as the agencies recognize, a good place to start, in part because it is important to the health of low and moderate income communities and the intermediaries that serve them and also because it is area in which there is a fair amount of agreement among interested parties. Community development is also the area in which relatively modest changes in the Q&As, such as those in proposed Q&A __.23(a)-2, should yield significant improvement in service to underserved areas, including this country's rural communities.

Achieving the promise of this proposal will require creative work by institutions (as well as their local partners) and good judgment on the part of examiners. Therefore it is absolutely critical that the agencies follow through vigorously on the promised revisions to examiner guidance and improved examiner training. These are essential to predictability, consistency and intelligent use of examiner judgment, all of which are needed to encourage institutions to move beyond their traditional comfort zones to better serve the needs of the entire nation.

Performance Context

While performance context has been an important element of CRA examinations since 1995, several of the new or revised Q&As (in particular __.12(h)-6, __.23(a)-2, and __.22(b)(4)-2) place new and increased emphasis on the performance context. It is important that the agencies make substantial improvements to the performance context process to make it more meaningful in assessing community needs and capacities, and to recognize that a well-informed performance context can serve as guidance for future activities, as well as assisting in assessment of the past. The 2011 comments submitted by a group of community development organizations make some important and useful suggestions in this respect, the most important of which is that the agencies should experiment with creating joint assessments of community needs and capacities.

Proposed revised Q&As __.12(h)-6 and __.23(a)-2 create additional opportunities to improve the performance context on an interagency basis. In contrast to the traditional situation, in which an examination is focused on activity in known assessment areas, the proposed revisions, especially to __.23(a)-2, create an incentive to meet community needs in areas beyond assessment areas, particularly rural areas. This is a wonderful opportunity to experiment with new strategies to help both banks and examiners understand the needs in these areas. For example, if the agencies, on a joint basis, published needs and capacity assessments of, e.g., rural Idaho, Alabama or Maine, there would be a greater likelihood that investments would flow to those areas, that the investments would be related to actual needs in the communities, and that institutions would get credit for making those investments.

Although I believe that even under the current system, in which creation of the performance context is the responsibility of individual examiners, interagency development of documents related to performance context would save time as well as improve quality, there is an even better opportunity. The Federal Reserve Bank of San Francisco is experimenting with a pilot program under which the Community

Development staff will have responsibility for the needs and capacity section of performance contexts. The result should be increased examiner efficiency, as well as more meaningful performance contexts, as the Community Development staff brings their research and analytical capabilities, as well as the on-the-ground contacts of their field staff, to the problem. I urge the agencies to watch this experiment closely, and, if successful, to consider extending and expanding it.

Comments on Specific Q&As

__12(h)-6, __ 23(a)-2

Both of these Q&As propose to substitute the words "in lieu of, or to the detriment of, activities in the institution's assessment area" for the concept of "adequately addressed the needs" of an assessment area. While this is an attempt to provide greater encouragement to institutions to lend and invest outside their assessment areas, I am not sure it will accomplish its purpose, in part because in almost all institutions, with the possible exception of CDFI banks, community development investments are essentially tradeoffs within a limited pool of funds. If the agencies wish to get away from the existing language, I suggest that "addressing the needs" of an assessment area may better accomplish the desired result of encouraging loans and investments in underserved areas while continuing to meet the needs of assessment areas.

__12(g)(2)-1

The proposal to add reduced price and free school lunches and Medicaid eligibility as proxies for determining income in the services test is welcome. As the agencies recognize, these determinations yield results within the LMI envelope, and, having once been made, using them for CRA purposes will reduce burden on many parties. With respect to the request for additional proxies, I suggest the agencies also consider receipt of HUD Section 8 vouchers, food stamps, or benefits under either SSI or TANF as similar proxies. In addition, the agencies should consider adopting similar proxies under the lending and investment tests.

__12(i)-3

The proposed revisions to this Q&A are welcome: service on the Board of an organization engaged in community development activities is a significant undertaking. Moreover, a knowledgeable and active Board is critical to the health and effectiveness of the organization. I suggest, however, that the agencies have not gone far enough. The proposed Q&A retains the limitation that technical assistance must be "on financial matters" to count. This is unduly limiting. While the agencies are correct in limiting credit under this section to substantial activity (in contrast to, for example, single day activities), organizations engaged in community development have needs beyond "financial matters" that many banks are willing and able to help provide. These include professional assistance with human resources, information technology and even, as more CDFIs become involved in consumer-facing activities, compliance with consumer protection laws. I urge the agencies to expand this section to include these critically important services.

__.12(t)-9

This proposed Q&A appears to respond to a legitimate concern. However, it may be written over broadly. Standard CRA support of CDFIs (among others) includes loans by banks with extended (e.g., 5 or 7 years) maturities. The proceeds of these loans are deployed over a series of years, and repayment is expected under the terms of the loan. Quite properly, during the period before the funds are deployed, CDFIs invest them in relatively safe instruments. While it is unlikely the agencies intended to restrict CRA credit for this type of investment in any way, the proposed Q&A might be read that way. To make sure the Q&A does not limit CRA lending to CDFIs and other community organizations by banks, I suggest that the second sentence of the Q&A be amended to read as follows, and that a sentence be added (changes in **bold italics**):

If an institution invests in (or lends to) an organization that, in turn, invests those funds in instruments that do not have as their primary purpose community development, such as Treasury securities, and ***the agreement between the institution and the recipient requires that the recipient use*** only the income, or a portion of the income, from those investments to support the organization's community development purposes, the Agencies will consider only the amount of the investment income used to benefit the organization or activity that has a community development purpose for CRA purposes. ***If the agreement between the institution and the recipient requires that the investment be used for community development purposes, then the Agencies will give consideration for the full amount of the investment even if the recipient, in turn, invests the funds and earns income from that investment.***

__.21(f)-1

This redesignated Q&A states that an institution can get credit for investment in (or loans to) minority and women owned banks as well as low income credit unions that operate in any location, without regard to the investing institution's assessment areas. As pointed out in the 2011 Community Development Comments, it is long past time to extend this concept to investment in all certified Community Development Financial Institutions. While many minority and women owned banks are devoted to serving their particular market segments, certified CDFIs have committed to serving a market that is precisely congruent with the market targeted by the CRA, namely low and moderate income communities. I urge the agencies, consistent with, for example, the rationale for accepting income proxies under proposed Q&A __.12(g)(2)-1, to finally extend to investments in and loans to certified CDFIs the same treatment accorded to investments in and loans to minority and women owned banks and low income credit unions.

Conclusion

The proposed community development Q&As are a welcome beginning to essential CRA modernization. I congratulate the agencies and urge you to proceed quickly to adoption, and to cement the effect of the revisions with universal, consistent and effective examiner training. I also urge you to take advantage of the momentum

established by this proposal and proceed quickly to other areas of the CRA regulations and Q&As that, as discussed in 2010, are also in need of revision.

Thank you for this opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read 'E Seidman', with a horizontal line extending to the right.

Ellen Seidman

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