THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy

HPC
HOUSING POLICY COUNCIL

May 17, 2013

Via Electronic Delivery to regs.comments@occ.treas.gov; regs.comments@federalreserve.gov; comments@fdic.gov

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
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Mr. Robert deV. Frierson
Secretary, Board of Governors of the
Federal Reserve System
20th St and Constitution Ave NW
Washington, DC 20551

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th St NW
Washington, DC 20429

RE: Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment Act; OCC-2013-0003; Docket No. OP-1456

Ladies and Gentlemen:

The Financial Services Roundtable[1] and its Housing Policy Council[2] (jointly the "Roundtable") appreciate the opportunity to comment on the proposed revisions ("Proposal") to

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[1] The Financial Services Roundtable represents 100 integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for $98.4 trillion in managed assets, $1.1 trillion in revenue, and 2.4 million jobs.

[2] The Housing Policy Council of The Financial Services Roundtable consists of thirty of the leading national mortgage finance companies. HPC members originate, service, and insure mortgages. We estimate that HPC member companies originate approximately 75% and service two-thirds of mortgages in the United States. HPC's mission is to promote the mortgage and housing marketplace interests of member companies in legislative, regulatory, and judicial forums.

the Interagency Questions and Answers Regarding Community Reinvestment Act ("CRA Q&As").[3] We join the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC) (collectively the "Agencies") in the goal of acknowledging the value that depository institutions' community development activities deliver to communities across the United States. Our members are strongly committed to serving communities and low- and moderate-income individuals through outreach programs, targeted lending programs, financial education and funding of projects that improve the community.

We thank the Agencies for their work in revising the CRA Q&As to better reflect the reality of today's market where depository institutions serve many communities, not just those where they have brick-and-mortar operations. Like the Agencies, we are focused on refining the Q&As to ensure that community development activities are appropriately valued and encouraged.

I. The standard for evaluating community development activities outside an institution's assessment area and investments in nationwide funds should be modified.

The Roundtable supports the Agencies' interest in providing CRA credit for activities in the broader statewide or regional area even where those activities do not benefit the institution's assessment area. However, proposed Q&As §__.12(h)-6 which deals with community development activities outside an institution's assessment area, and §__.23(a)-2 which addresses investments in nationwide funds, require that to qualify for CRA credit an institution's activities in a broader statewide or regional area must "be performed in a safe and sound manner consistent with the institution's capacity to oversee those activities and may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s)."[4]

The quoted language poses several issues. First, the reference to "the institution's capacity to oversee" implies that an institution is responsible for overseeing independent community development programs. However, it is not clear what level of oversight the institution would be expected to exercise. In addition, oversight is not currently required and is not feasible since many institutions invest through intermediaries. We urge the Agencies to remove this language to better reflect the CRA's purpose and the fact that institutions do not – and should not be expected to – oversee independent community development programs.

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[3] Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice, 78 Fed. Reg. 16765 (Mar. 18, 2013).
[4] 78 Fed. Reg. at 16769, 16771.

A second issue involves the phrase, "may not be conducted in lieu of, or to the detriment of." This language suggests that certain activities may be prohibited if they are determined to be substitutes for other, arguably "better" activities. This would put an institution in the position of proving a negative, namely, that it did not neglect Projects A, B and C by investing in Project D. The CRA does not prohibit activities; it either gives credit or does not give credit for certain activities and should not involve a balancing test.

Additionally, we believe that the Q&As should award CRA credit for addressing broader regional or statewide areas where the institution shows that the need is equal to or greater than in the institution's assessment area. For example, in an assessment area with a high income census tract, the need for low- to moderate-income housing may be minimal. However, an area adjacent to the institution's assessment area or within a larger defined region may include more low- to moderate-income census tracts where the need for affordable housing is greater. The Q&As should recognize when an institution is addressing a need in a broader statewide or regional area that does not exist in the institution's assessment area.

II. Consideration of community development lending should be modified.

The Agencies propose to add a new Q&A §__.22(b)(4)-2 to address an inconsistency among the Agencies regarding the treatment of community development lending and concerns that community development lending is undervalued. Currently, the OCC's Large Bank CRA Examiner Guidance states that community development lending "will have only a neutral or positive impact on overall lending test conclusions."[5] However, the FDIC and the FRB state that community development lending may have a "positive, neutral, or negative impact on the lending test rating."[6] The new Q&A takes the position that "an institution's record of making community development loans may have a positive, neutral, or negative impact on the lending test rating."[7]

Since the major overhaul of the regulation in the mid 1990's, community development lending has been an important component of the Lending Test. In 2011, the most recent year for which data is available, nearly $47 billion in community development loans were reported by financial institutions. Often these loans are large, complex and have significant impact to underserved communities. The Roundtable believes, as the Q&As recognize, that financial institutions have not historically received CRA credit commensurate with the impact of community development lending. Further, we believe the Agencies' proposal to penalize banks for not engaging in this type of lending, or not meeting some arbitrary level of community

[5] OCC Bulletin 2000-35, p 18 (Dec. 29, 2000).
[6] 78 Fed. Reg. at 16774.
[7] 78 Fed. Reg. at 16774.

development lending in each assessment area, would have unintended, but serious, consequences.

The CRA does not require institutions to engage in particular types of lending. Rather, the Act and implementing regulation have always provided flexibility for institutions to meet the needs of their local communities based on their particular business strategies, with capacity and constraints as major considerations. The proposal significantly expands the rules to implicitly require community development lending and goes even further by suggesting that a certain level of lending must occur to avoid a negative ratings impact.

The statement that performance context will be a factor in the evaluation process raises several concerns. For example, how will a particular institution know that it has originated a sufficient number or amount of community development loans to avoid a penalty? Peer comparisons are not useful since community development lending opportunities and individual loan amounts for a given institution can vary widely from year to year. Moreover, community development lending is complicated and not all institutions have the necessary expertise. The potential for subjectivity in grading an institution's performance is high and fraught with so many factors requiring interpretation and sound judgment that similar treatment from institution to institution would be difficult, if not impossible, to ensure.

Given this uncertainty, institutions may be led to overcompensate in order to avoid negative consequences. However, since the Agencies cannot increase the number of lending opportunities (and that number could decrease due to federal, state and local budgetary pressures in providing public funds), the end result could be unhealthy competition for the finite number of loans available in each market. This is especially true since the proposed change primarily affects OCC-regulated banks (about 44% of community development lending amounts reported in 2011) that currently only receive neutral or positive consideration. In addition, the top eight community development reporters by loan amounts in 2011 accounted for 25% of the total and are all regulated by the OCC. The average loan for the top eight reporters was $4.6 million in 2011 or double the average amount of all other reporters ($2.3 million) confirming a concentration of the largest and most complex loans. Such significant changes to time-tested rules, within a large portion of the industry, coupled with the uncertainty of how much lending is required to reach a neutral level of performance, are likely to lead to institutions accepting higher levels of credit risk and unsound low pricing, ultimately resulting in unsustainable practices that do not benefit the industry or underserved communities.

We strongly recommend that the primary issue raised three years ago be addressed, namely, the development of concrete and meaningful ways to appropriately recognize the positive consideration that community development lending deserves. Specifically, the Roundtable urges the Agencies to effectively encourage bank engagement in community development lending by increasing the positive impact of such activity on the lending test.

Providing financial institutions with the proper incentives to conduct safe, sound and sustainable community development lending aligns with the true intent of the law and will inure to the benefit of the industry and the communities most in need of such reinvestment.

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Thank you again for the opportunity to comment. We look forward to working with the Agencies on this issue going forward and hope you will contact us if we can help in any way.

Sincerely,

John H. Dalton   Richard M. Whiting

John H. Dalton	Richard Whiting
President	Executive Director, General Counsel
Housing Policy Council	The Financial Services Roundtable