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CALIFORNIA REINVESTMENT COALITION

May 17, 2013

Office of the Comptroller of the Currency
Docket ID OCC-2013-0003
E-mail regs.comments@occ.treas.gov

Federal Reserve Board of Governors
Docket No. OP-1456
Email: regs.comments@federalreserve.gov

FDIC:
Comments on CRA Interagency Q&A
Email: comments@fdic.gov

Re: California Community Groups Comment on Proposed Changes to Interagency Q&A

To Whom It May Concern:

Please accept these comments on behalf of the fifty undersigned California community groups that rely on the Community Reinvestment Act in working every day to improve and strengthen local communities through the development of affordable housing, support for small businesses, protection of consumer rights, and other community building efforts.

We thank the regulators for proposing to address a few of the issues raised in prior comment periods. In particular, we strongly agree that bank partnerships and activities that support community development, as well as the need to provide greater incentives for CRA activity in non-urban areas, are of critical importance. Unfortunately, we do not think this proposal goes far enough to address those stated concerns, and the proposal does nothing to address the myriad of other issues that groups have raised in the past about how regulators must update and strengthen CRA implementation.

What is Good about the Proposal

We strongly support two apparent goals of the proposal – to emphasize the critical importance of community development activities, and to encourage additional CRA activity in non-urban areas that are in dire need of such partnerships and support.

Some banks have been good partners with nonprofit groups building affordable housing through the provision of community development loans, tax credit investments, and other means. Yet California's housing crisis has only gotten worse as the foreclosure crisis has disproportionately impacted our residents and communities, and as the demise of redevelopment agencies in our state has eliminated a major and important form of subsidy that developers have come to rely on

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in putting together affordable housing development finance packages. We need financial institutions to do more, and to be more creative, in helping to meet the growing need for affordable housing in our state.

Further, the impact of the financial crisis is most severely felt in non-urban California. For the last several years, some of the hardest hit communities in the nation in terms of foreclosures have been located in California's Central Valley. But capacity and resources in the Valley and non-urban areas are limited, making it harder to mitigate problems and meet needs. Banks, both those located in the area and those not so located, are failing to do enough to support these communities. As one strong example, affordable housing developers outside of the major California markets report a marked drop in bank competition, and an accompanying drop in prices, for tax credit deals in non-urban California. This lack of bank competition means fewer affordable housing units built in the areas most in need of such housing.

What is NOT GOOD about the Proposal

Having well identified important community development needs that must be further addressed, the proposal fails to tailor an effective solution to those problems.

To address the goals of increasing community development activities, and those in non-urban areas, the regulators should revisit outdated notions of CRA "assessment areas", as well as dramatically reform the way in which the regulators implement CRA by extending full scope review CRA examinations to various non-urban markets.

Reform CRA implementation to benefit non-urban areas. The problem is not that all banks need to go outside their assessment areas to serve non-urban areas, as the proposal suggests. Many banks, including the largest institutions, currently have non-urban areas within their assessment areas, where they currently have CRA obligations, but where they are not meeting local needs or competing for business. We believe this is due to the way that regulators have telegraphed to banks their interest in CRA activity in the largest markets. We propose that in each large bank examination, the regulators include for full scope review a non-urban area that is part of the institution's assessment area, that this non-urban area change for every examination, and that the institution not be given advanced notice which non-urban area will be reviewed. This will force banks to do what the CRA envisioned, to serve ALL of the communities, including low and moderate income communities, where they are chartered to do business.

Reform assessment area definitions for banks with few branches but nationwide profits. For years, CRC and others have railed against outdated CRA regulatory interpretations that allowed institutions like Countrywide Bank, H&R Block Bank, Charles Schwab Bank, Capital One Bank and internet banks to conduct business and encourage deposits nationally, but designate only one branch or deposit-taking ATM for CRA purposes. We believe that some or all of these institutions structured themselves to take advantage of narrow regulatory interpretations so as to evade CRA responsibility. The banking industry is rapidly adapting to technology innovations. New technologies are changing the ability of banks to gather deposit and deliver services without a "brick and mortar" delivery system. It is clear that regulatory requirements, under CRA, are not keeping pace.

For these institutions, the regulators should look to expand their assessment areas to where they are marketing products, making loans, and earning profits, as well as where their depositors reside (not where they formally "accept" those deposits using legal contortions).

Expand transparency through data collection of community development activities. CRA should empower jurisdictions to expect banks in their area to well serve local communities, consistent with safety and soundness. Currently, there is very little information available to the public about what kinds of loans and investments are being made by banks in their assessment areas. The only real information that exists currently, are the banks' CRA Performance Evaluations, which can often read like marketing materials from the banks themselves in that they highlight a few successful projects, but do not convey the universe of a bank's community development activities, and how far the bank went in meeting local needs. In comparison, detailed HMDA data allow the regulators within Performance Evaluations to conduct a clear and extensive analysis of how much single family lending an institution is doing in a given area. The banking regulators should begin to provide more detailed data on community development lending and investments in Performance Evaluations, and work with CFPB to enhance HMDA to include fields that will demonstrate whether bank loans supported projects that are affordable for a period of years, the number of units that are affordable, the income level of residents who can afford such housing, whether the developer is a nonprofit, etc. This will finally make HMDA multifamily lending data meaningful, worth analyzing, and helpful to communities that are seeking to understand whether and where banks are meeting their credit needs.

Do not pit communities against one another. We are concerned that efforts by the regulators to highlight certain activities or geographies will be viewed by banks as an opportunity to shift resources. We want to avoid a zero sum game whereby urban communities get more, while rural communities get less, or vice versa. Current examination procedures and CRA implementation seem to be clearly furthering the former dynamic, and yet we do not want to see changes that go too far to promote the latter. Right now, there is hyper competition for tax credit investments between banks in urban markets, and a dearth of competition for such investments in rural areas. But we likewise would not want regulatory guidance to result in a race to the bottom to buy the cheapest investments at the expense of strong competition in other markets. The bottom line is that banks are currently not doing enough in the metropolitan assessment areas that are frequently examined, they are doing less in the rural areas that get limited regulatory review, and they are doing next to nothing in areas that are not designated CRA assessment areas. At a minimum, the guidance should tighten the definitions of "to the detriment of" and "in lieu of," so that it is clear that in no instance can banks do the SAME or LESS throughout their assessment areas compared to the prior period, if they seek to engage in activities outside of their assessment areas. More appropriately, the bank should have to demonstrate "outstanding" performance in its assessment areas before being permitted to seek credit for CRA activities outside of those areas.

Another way to address this concern would be to clarify what constitutes adequate CRA performance in an assessment area. The current proposals clarify that banks can get credit for eligible activity that does not directly benefit their assessment areas provided, amongst other things, that such activity will not be to the detriment or in lieu of, activity in the banks' assessment areas. But what do these phrases mean when communities feel that not enough is currently being done to address local needs? The regulators should look to clarify when a bank's CRA performance in its assessment area is good enough that it can look outside of its assessment areas. This could be accomplished through various means, including looking at the relationship of CRA activity to the level of depositors who reside in a given assessment area, by having the regulators promulgate community needs assessments that banks and regulators can refer to in order to see if such local needs are being met, or otherwise.

Don't forget local needs in rush to endorse national funds. Financial intermediaries play an important role in community development, and we support that work. At the same time, CRC has long raised concerns that support for national funds and efforts often does not trickle down to the local level. By clarifying that large national retail banks and limited purpose banks can more easily seek CRA credit by investing in national funds, the regulators are making it easier for banks to fail to get to know their local communities. And while intermediaries can serve a critical niche, it may also be true that their loans come with added transactional costs (no "one stop shopping," more legal work) and perhaps tighter underwriting than if the bank made the loans itself. We are already trying to recover from the many problems with Too Big To Fail financial institutions, and discounting local access in favor of ease of working with large organization located outside of local markets is NOT the best long term solution. It is important for banks to have a local presence and strong relationships in all of the communities where they are chartered to do business. The proposal moves in the wrong direction here.

Community development should only positively or negatively impact a CRA evaluation. We support the proposal's emphasis on community development, and note approvingly the proposal's confirmation that community development performance will impact a CRA evaluation. But allowing for a "neutral" impact in effect undermines this provision. Additionally, we are concerned that a strong retail lending performance could offset a weak community development performance, or vice versa, as the proposal suggests. Each analysis should stand on its own.

<u>What is COMPLETELY MISSING from this Proposal</u>

Perhaps most disappointing about this proposal is what is not in it. CRC, the National Community Reinvestment Coalition (NCRC) and others have for years criticized the way in which regulators have allowed CRA to be outpaced by bank practices. So, it was with great optimism that we welcomed the CRA hearings to Los Angeles in 2010, organized our members and allies to participate, and looked forward to reform that would bring meaningful benefits to the low-income communities that were meant to benefit from CRA.

Instead, three years later we only see this narrow proposal which seeks to clarify aspects of the Questions and Answers. We articulate here, again, critical issues that the regulators must address so that banks have more incentive to offer loans, investments and services in all communities where they are charted to do business, consistent with safety and soundness.

Support small business. Community practitioners report that small business lending is down, especially in non-urban areas, and there is not enough capacity to support these businesses. The lack of contributions and community development services in non-urban areas means there is not enough capacity to provide technical assistance and other needed support for burgeoning businesses that can not only enhance wealth, but also provide jobs and improve neighborhoods.

Include race and ethnicity, along with income, as a factor in determining whether banks are meeting their CRA obligations to serve all communities. When CRC has conducted analysis of home mortgage lending patterns, the greatest disparities are often with regard to race and ethnicity, not necessarily income. CRA came about due to local responses to redlining, a race based practice of exclusion. The CRA should finally be clear in the importance of ensuring equal access to bank services to all, not only regardless of income, but of race and ethnicity, as well. There are far too many analyses of banks failing to provide access to communities of color to the financial mainstream to continue to ignore this dynamic.

Don't forget branch location. As banks continue to attempt to lower costs, we will continue to see a reduction in the size of branches, increased use of technology to delivery services, or branch closings. These branch closings are often in the neighborhoods most in need of a branch bank. Branch location is especially important in light of the regulators failure to move the CRA beyond branches, so that branch location largely dictates where banks have their CRA obligations. As such, we have the anomalous result that if you are a bank that is not located in LMI areas or neighborhoods of color (and you are able to evade fair lending laws), then CRA condones your failure to provide loans, investments and services in these neighborhoods. Regulators should look more closely at where branches are located, where branch closings are happening, and where branches are being opened, when evaluating CRA performance.

Enhance transparency through data collection: small business, multifamily, loan modifications, and consumer products. As noted above, communities and residents cannot understand whether and how CRA is working in their communities if there is insufficient data. In addition to more detailed data on multifamily affordable housing lending, regulators should collect and make public bank data about: 1) small business lending by race and ethnicity of small business owners; 2) loan modifications with principal reduction, versus short sales, versus foreclosure, by race, ethnicity, gender and census tract; and 3) consumer products, such as the number of bank accounts opened and maintained for six months to a year, by census tract. To the extent these data issues are now in the purview of the CFPB, the regulators should work with CFPB to ensure HMDA and small business race data are quickly enhanced and created, respectively, in a manner that will aid local understanding of whether community needs are being met.

Downgrades for poor performance and harmful practices. Advocates have long decried the unwillingness of bank regulators to downgrade bank CRA evaluations where they engaged in practices that harmed communities. Imagine if regulators had examined Countrywide Bank with an eye towards downgrading harmful practices, as well as expanding assessment area definitions beyond a lone "branch" in Alexandria Virginia such that Countrywide would have been examined for its CRA performance more broadly. Things might look rather different today had that been done, and the promise of the CRA kept.

We see this proposal as another missed opportunity to clarify that while banks should rightly get CRA credit for making sound loans and investments, and providing affordable financial services in the community, they should be downgraded for engaging in such harmful practices as:

- payday lending, certainly in offering triple digit interest rate loans, and also in financing payday storefronts that charge 460% APR;
- fueling gentrification by financing projects that directly lead to the displacement of LMI residents and people of color in order to attract upper income residents;
- evicting tenants in REO properties in violation of federal, state or local tenant protection law, and even if done lawfully when the bank could extend a lease to any rent paying tenant wishing not to be displaced, as Fannie Mae currently does;
- engaging in predatory consumer abuses that result in legal actions or settlements by financial institutions; and
- fair lending violations, such as steering conventional qualified borrowers into subprime or FHA loans; or engaging in foreclosure practices that have a disproportionate impact on borrowers of color (such as by failing to translate documents or make single points of contact available to speak in all languages spoken by borrowers).

Substantially enhance community participation and input. It is an extremely rare community development practitioner, no matter how long tenured, that is ever approached by a regulator or bank to serve as a community contact to help provide context for the community needs by which a bank will be evaluated. The local thirst for engagement with banks is great, as evidenced by the movement in support of Responsible Banking Ordinances (RBOs). It is probably a sign that CRA is not working as it should, that local communities have organized to demand more responsiveness from their financial institutions. And yet, though not surprisingly, banks fight these efforts.

Bank regulators and the CRA should support these local Responsible Banking Ordinance efforts by ensuring maximum transparency of public data, and by contacting local jurisdictions and advocates participating in RBO efforts to inform regulatory views of community context and bank performance. Additionally, banks should be encouraged to target their activities consistent with local planning documents and initiatives. Further, the regulators must do a better job of reaching all communities. The CRA hearings in California, where rural issues were discussed, was held in Los Angeles. Though the Federal Reserve Board currently does a good job in dedicating a staff person to the San Joaquin Valley, there is more the Federal Reserve can do, and much more that the OCC and FDIC can do to hold hearings, roundtables, and workshops in non-urban California.

In conclusion, we support the proposals efforts to enhance bank support for community development activity and for more lending and investment in non-urban areas. But we think the regulators missed the opportunity to get there more effectively, by reforming outdated definitions of assessment areas and telegraphed CRA examinations that allow banks to game the system. Further, there is much that is wrong with CRA that should have been fixed with this proposal, but wasn't. Community commenters provided extensive comments three years ago urging a more substantial updating of CRA. We urge the regulators to go back to the drawing board, take up those issues raised then and reiterated here, and develop new regulations that provide more meaningful reform.

Thank you for the opportunity to comment and considering our views. Should you have any questions, please feel free to contact Kevin Stein of California Reinvestment Coalition at 415-864-3980.

Very Truly Yours,

A Community of Friends
Able Works
Affordable Housing Services
Burbank Housing Development Corporation
Cabrillo Economic Development Corp
California Coalition for Rural Housing
California Housing Partnership
California Reinvestment Coalition
California Resources and Training (CARAT)
California Rural Legal Assistance
Center for Sustainable Neighborhoods
CHISPA Housing
Civic Center Barrio Housing Corporation
Coalition for Quality Credit Counseling (CQCC)
Community Economics Inc.
Community HousingWorks (CHW)
Community Housing Improvement Program (CHIP)
Community Housing Opportunities Corporation (CHOC)
Community Legal Services East Palo Alto
Contra Costa Interfaith Supporting Community Organizations (CCISCO)
East Bay Housing Organizations (EBHO)
Fair Housing Council of San Diego
Fair Housing Council of the San Fernando Valley
Financial Resource Center
Housing California
Jefferson Economic Development Initiative (JEDI)
Law Foundation of Silicon Valley
Legal Aid Foundation of Los Angeles
Los Angeles Local Development Corporation
Mammoth Lakes Housing
Mutual Housing California
Napa Valley Community Housing
Napa Fair Housing
Neighborhood Housing Services Silicon Valley
Nehemiah Community Reinvestment Fund
Northern Circle Indian Housing Authority
Orange County Community Housing Corporation
Peoples' Self-Help Housing
Project Sentinel

Public Counsel
Renaissance Entrepreneurship Center
Rural Community Assistance Corporation
Sacramento Housing Alliance
San Diego Housing Federation
San Luis Obispo County Housing Trust Fund
Self Help Enterprises
Sierra Business Council
Southern California Housing Rights Center
Thai Community Development Center (Thai CDC)
Visionary Home Builders
Yolo County Housing
Yolo Mutual Housing Association

cc: National Community Reinvestment Coalition