AHIC

May 17, 2013

VIA EMAIL TO: REGS.COMMENTS@OCC.TREAS.GOV; REGS.COMMENTS@FEDERALRESERVE.GOV; and COMMENTS@FDIC.GOV

Office of the Comptroller of the Currency Attn: Legislative and Regulatory Activities Division Docket ID OCC-2013-0003	Federal Deposit Insurance Corporation Attn: Comments, Robert E. Feldman, Executive Secretary
Board of Governors of the Federal Reserve System Attn: Robert deV. Frierson Secretary Docket No. OP-1456	

Re: Notice on Interagency Questions and Answers Regarding Community Reinvestment

Ladies and Gentlemen:

The Affordable Housing Investors Council (AHIC) appreciates the opportunity to comment on the Notice in the Federal Register Volume 78, No. 52, dated March 18, 2013 (Notice) regarding proposed changes to the Interagency Questions and Answers Regarding Community Reinvestment (Questions and Answers).

AHIC is a non-profit organization comprised of corporations, primarily financial institutions, engaged in investing in affordable housing properties that qualify for low-income housing tax credits (LIHTC) under section 42 of the Internal Revenue Code of 1986. AHIC's mission is to provide educational opportunities to investors, create a forum for investors to share their insights on issues facing the field, and promote the investor's voice and perspective in this unique public/private partnership. Through these activities, as well as the creation of best practices for the industry, AHIC seeks to strengthen the housing credit as an efficient and effective tool for the development of affordable housing. In light of its mission and membership, AHIC is keenly interested in how the proposed revisions to the Questions and Answers, in particular items [illegible] and [illegible], would affect the LIHTC market.

AHIC views the revisions to the Questions and Answers as an opportunity for the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (the Agencies) to clarify the treatment of our financial institution members' out-of-assessment area LIHTC investments so as to allow the program to: (1) make more efficient use of the private dollars supporting affordable housing and (2) better meet the community development needs of hard to serve areas, including rural and Native American communities. We believe that these are goals that we share with the Agencies, and we are pleased that the proposed revisions reflect a thoughtful and serious approach to grappling with how to achieve these ends.

This comment letter first describes what AHIC believes is the current impact of the Community Reinvestment Act of 1977, 12 U.S.C. 2901 and its implementing regulations in 12 C.F.R. part 25 (CRA) on investments in the program. It then explains AHIC's response with respect to items and II in the Notice as regards the 9% LIHTC program.

Background: the Market for LIHTC Investments and CRA

The LIHTC creates market incentives for the acquisition and development or rehabilitation of affordable rental housing. Corporate investors participate in the LIHTC program by making equity investments in affordable rental housing projects in exchange for receiving tax credits generated by the projects. In the 9% LIHTC program, these projects are first selected by state allocating agencies through competitive processes in which developers propose projects to the agencies, which evaluate them based on each state's specific affordable housing goals. Therefore, investors do not have a direct impact on the determination of the locations of the projects, but can only seek to invest in development opportunities that have been chosen by the states.

To qualify for an allocation of LIHTCs, an affordable rental housing project must, among other criteria, commit to low-income occupancy threshold requirements. Because of these requirements, equity investments in LIHTC projects generally receive consideration as a "qualified investment" under CRA. Banking entities subject to CRA constitute a major segment of the LIHTC investor population, and their investments are often largely motivated by CRA objectives.

The impact of this CRA motivation has been to direct more investor dollars to what one industry participant has described as "CRA Hot" areas, in which multiple investors are competing for limited opportunities in locales that are considered high need assessment area(s) for many financial institutions. Conversely, it severely constrains the amount of investor dollars in "CRA Not" areas, which are not so providentially placed. These CRA Hot areas are the beneficiaries of pricing that can be $0.35 more than the price for a credit in CRA Not areas. This disparity leads to imbalances in the affordable housing system, as developers in CRA Not areas struggle to make their projects feasible while similar projects in CRA Hot areas can have excess equity. Over the long run, this can result in projects in the CRA Not markets being more vulnerable to financial problems due to a variety of factors, such as debt burdens, amenities relative to the marketplace, etc. It can also affect the rent structure of these projects if developers must set rents at the higher end of allowable levels in order to make projects financially feasible. As a result, the affordability of the project suffers and fewer needy households (especially those with the lowest incomes) are served.

An additional unintended consequence has been that some astute developers purposefully direct their applications to the state allocating agencies to CRA Hot areas in order to maximize the price of their tax credits. While creating application criteria for their allocation processes, states may also by-pass opportunities in areas of need due to a lack of investor interest in certain markets.

Overall, the result has been a bifurcated market for 9% housing credits, resulting in an inefficient use of private dollars and less than optimal deployment of investments to meet the community development needs of some communities, especially rural and small town locales. Our comments below on the first two items in the Q & A Notice are based on this context.

Proposed Revision 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).

AHIC believes that the revisions of Q&As §___.12(h)-6 and §___.12(h)-7 are helpful for investment test treatment of 9% LIHTC investments because they remove the uncertainty around whether the institution has "adequately addressed the community development needs of its assessment area(s). " Similarly, the clarification regarding the definition of a region is positive. However, the language "in lieu of, or to the detriment of, activities in the institution's assessment area(s)" could be problematic if:

- "in lieu of..." is interpreted to include any shift in an investor's level of LIHTC investment activity to projects outside of its assessment area(s) and/or
- "to the detriment of..." is interpreted to include any decrease in LIHTC pricing in a particular assessment area; this could result if prices in CRA Hot markets adjust downward due to investors redirecting their competitive efforts to hard to serve areas.

The LIHTC allocation process in essence ensures that a housing credit investment cannot be made "in lieu of or to the detriment of" community development from one area to another because the credits are not portable. It is important to remember that the 9% LIHTC market is in essence a closed system – the level of allocations to the states is determined by statute, so changes in the Questions and Answers cannot have an impact on the overall volume of credits.

Hence, the potential positive LIHTC outcome regarding community development goals that can result from clarifying this Question and Answer is not an increase in overall investment levels, but a more rational distribution of investor equity to the advantage of underserved communities. Changes to the Questions and Answers could thus have an impact on the overall volume of investment dollars in underserved markets across the country and result in a more efficient distribution of investments, providing an overall better return to the taxpayer.

In addition, the proposed language is sufficient if an institution can prove through documentation in its performance context that it is appropriately making LIHTC investments in the broader statewide or regional area that includes an institution's assessment area(s) by

(1) demonstrating that it has pursued LIHTC opportunities in its assessment area and

(2) providing evidence that those opportunities are being filled by the market, even if the institution has not been able to secure them through the competitive process in a manner that meet its investment strategy and pricing guidelines (i.e., the credits have been purchased).

AHIC suggests an additional clarification around this point, that language be added (bold, underlined) to state "When evaluating whether community development activities are being conducted in lieu of, or to the detriment of, **<u>overall community development</u>** activities in the institution's assessment area(s), examiners will..." This makes it clear that it is the fulfillment of needs by the collective LIHTC market, not just the particular institution, that is important in determining whether a community is being well served.

Once the institution has successfully demonstrated that sufficient efforts were made to address LIHTC investment needs in the assessment area(s), the examiner should weigh investments in the broader statewide or regional area in the same manner as investments in the assessment area(s) that receive a full scope review.

Proposed Revision II: Investments in Nationwide Funds

Item [illegible] is related to item [illegible], in that it pertains to the consideration of investments outside an institution's assessment area(s). First, as with the previous section, AHIC suggests that language be added (bold, underlined) to state "When evaluating whether community development activities are being conducted in lieu of, or to the detriment of, **<u>overall community development</u>** activities in the institution's assessment area(s), examiners will..." Again, the notion is that institution's first priority is to its assessment area, but that, barring the availability of opportunities there, a wider distribution of LIHTC investment dollars will be considered as meeting important community development needs as determined by state allocating agencies.

For institutions that operate on a nationwide basis, the revised Questions and Answers provide helpful clarification. For other institutions, how to determine whether a fund is an appropriate vehicle remains a challenge.

AHIC suggests that a new approach by the Agencies would be helpful to investors in making this determination. It would involve creating a separate category of nationwide funds with a different evaluation rubric for institutions with multiple assessment areas. This rubric would be predicated on the concept that the state allocating agencies are responsible for directing where investment dollars are needed, and that institutions with larger footprints should be responding to these opportunities when presented with funds that include projects in the broader statewide or regional area that includes their assessment area(s).

In this scenario, while multiple financial institutions might reference the same project(s) in their documentation to justify investing in any one fund, there would be an overall benefit to underserved areas and therefore community development as a whole.

Again, investors would need to provide evidence that they have also pursued projects in their assessment area(s) and that these opportunities, as well as the nationwide funds in which they invest, are being evaluated pursuant to consistent investment strategies and pricing guidelines. Absent this type of re-envisioning of the treatment of nationwide funds, AHIC supports retaining CRA allocation letters for the clarity they provide.

AHIC appreciates the opportunity to comment on the potential impact of the revised Questions and Answers on the 9% LIHTC market. If you wish to discuss the above comments further, please contact the undersigned at (347) 392-9983 or jhertzog@ahic.org.

Respectfully,

THE AFFORDABLE HOUSING INVESTORS COUNCIL

Julie H Hertzog

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