mercy HOUSING

May 16, 2013

Re: Proposed Changes to Interagency Q&A

OCC: Docket ID OCC-2013-0003
Federal Reserve: Docket No. OP-1456
FDIC: Attention: Comments on CRA Interagency Q&A

To Whom It May Concern:

Mercy Housing and Mercy Loan Fund appreciate the opportunity to comment on the changes to the CRA Interagency Q&A. The proposed changes are an important step toward modernizing the CRA to more effectively regulate the banking industry and promote community development activities.

We urge you to take this opportunity to expand upon these proposed changes in the following ways:

1. Make community development investment a separate and measurable part of the CRA reporting structure.
2. Create a new National Needs investment category and distinguish between the performance contexts of financial institutions with and without a physical presence.
3. Give full CRA credit to investment in CDFIs with missions to serve lower income people and communities.

This letter also includes comments that directly address several of the proposed regulatory changes. We urge you to:

1. Clarify the impact of community development investment on the lending test rating.
2. Add CDFIs to category of institutions for which broader geographic criteria may be applied.
3. Add further proxies for definition of low and moderate income individuals.
4. Expand the definition of substantive board service to a community development organization.
5. Clarify the new Q&A about investing in instruments without a primary community development purpose.

The comments build on testimony submitted by Julie Gould, Senior VP of Public Policy and Advocacy and Mercy Loan Fund President, to the Federal Financial Institutions Examination Council's Community Reinvestment Act hearing in July of 2010. The testimony can be read in full at http://www.fdic.gov/regulations/laws/federal/2010/10c11AD60.PDF .

Mercy Housing is one of the nation's largest nonprofit affordable housing organizations. We build new apartment communities and acquire and rehabilitate existing housing, in addition to managing our own and others' affordable housing communities. We are redefining affordable housing by creating a stable foundation where our residents can explore their potential, supported by practical Resident Services

Mercy Loan Fund
1101 30th Street NW, Suite 250, Washington, DC 20007 p | 202-495-7402 f 202-290-1109
mercyhousing.org

LIVE IN HOPE

such as health classes, financial education, employment initiatives, parenting, and after school programs for kids. On any given day, more than 144,000 people live in a Mercy Housing home.

For nearly three decades, Mercy Loan Fund has provided reliable, flexible funding for affordable housing and essential community infrastructure projects that support affordable housing. By collaborating with socially-responsible developers across the country, Mercy Loan Fund has helped finance 18,400 single and multifamily homes for rental and homeownership.

<u>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)</u>

In our experience, the previous wording of Q&A § __.12(h) – 6 stopped community investment from reaching low income communities outside of major metro areas. We commend the proposed changes, which make it clear that credit will be given for investments in the state or regional area of the assessment area if not in lieu of investments in the assessment area. However, this would be a stronger incentive if the performance context of the financial institution took into account the needs of the area and the institution's capacity. This change also makes it even more crucial that examiners receive training in cross-agency consistency, because more judgment calls will be required. It would be useful for the Agencies to prepare data briefs or studies on underserved areas so that financial institutions could be assured that their investment will count for CRA credit.

We strongly believe that the Agencies should take up our recommendation to make community development investment an integral, separate and measurable part of the CRA examination and reporting structure. Ensuring that banks know whether their activities will count is an important first step, but further incentives are needed. In the current examination and reporting format, Community Development Lending and Investments generally are too small for serious consideration in assessing an institution's community performance. Moreover, the current examination process fails to distinguish between innovative and complex community projects that demonstrably have a positive community impact. Nor does the current system recognize the quality of community activities and resident services that a high-impact organization provides. Under the current regulations, regardless of track record, capacity and financial strength, all developers and loan funds/CDFIs are treated the same. Data on community development impact is widely available from strong organizations, so the Agencies should not settle for less.

<u>Investments in Nationwide Funds</u>

As a nationwide developer and CDFI, we appreciate the Agencies' continued consideration of the benefits of investing in nationwide funds. The Q&A takes several important steps in the right direction. It recognizes that institutions with national footprints and many assessment areas, or no retail presence and therefore a nationwide assessment area, can appropriately invest in nationwide funds and assume that they are likely to benefit the institution's assessment areas. Smaller or regional institutions might also want to invest in nationwide funds if the local CDFI capacity in the area is inadequate. Investments in nationwide funds should be considered separately from assessment areas. We support the creation of a new "national needs" category, which should be considered separately from assessment area, state, and regional investments. Because institutions are deciding how to allocate a fixed amount of money for community development credit, their investments are likely to be more highly leveraged and innovative.

The move away from onerous requirements to "earmark" investments is helpful. Aside from the paperwork issue, such requirements prevent developers like Mercy Housing and CDFIs like Mercy Loan Fund from going where the capital is needed, and exacerbate problems of geographic concentration. They create a disincentive to invest in community development in general, and national developers and CDFIs in particular, because of the lack of clarity about whether the investment will count in the CRA evaluation. Our bank investors have been willing to invest their capital but require lending only in their investment areas. For example, Mercy Housing received an investment from a large multiregional bank, including rare long-term capital, but the funds cannot be used our largest markets because they do not overlap with the bank's assessment areas. Providing a structured process for these types of institutions to invest nationally would greatly benefit the flow of capital to underserved people and communities.

Indeed, the focus on community impact within assessment areas defined by physical branch presence is increasingly counterproductive to community revitalization efforts. Mercy Housing works in hundreds of neighborhoods to build healthy communities. While performing this work, we often rely on national bank partners. Sometimes, however, national banks will not partner on neighborhood revitalization projects even though they conduct substantial business, especially mortgage transactions, in the neighborhoods. In many cases, these banks own substantial portfolios of distressed and vacant property in the neighborhoods as a result of foreclosure. When asked to participate, they sometimes decline because they do not have a retail presence and are therefore not incentivized by CRA to address the blight in poor communities caused by foreclosed properties they own. Their CRA assessment areas are in different regions and would be unaffected by the new Q&A. Since the CRA was originally intended to return investment to the communities in which banks work, it is a clear win/win to give these banks CRA community investment credit for nationwide investment in community development purposes.

Impact of Community Development on Lending Test Rating

Proposed new Q & A .22(b)(4)-2 addresses an inconsistency in supervisory policy with regard to the inclusion of community development activity in the lending test rating. The proposal makes it clear that community development can have a positive, neutral or negative impact on lending test ratings. This is a sensible change that makes a consistent policy across the agencies and gives community development more weight in the lending test rating. In 2010, we encouraged the agencies to go much further and include community development as an integral, separate and measurable part of the CRA Examination and Reporting structure. We further suggested that qualitative extra credit be offered to financial institutions based on the community impact of their community development investing. We understand that such a change is beyond the scope of these changes to the Qs & As but we encourage the agencies to move forward expeditiously to consider more sweeping modernization of the CRA regulations.

Adding CDFIs to Category of Institutions for which Broader Geographic Criteria May be Applied

We agree with the Agencies decision to apply a "broader geographic criterion when evaluating capital investments, loan participations, and other ventures undertaken by that institution in cooperation with minority- or women-owned institutions or low-income credit unions..."(Re-designated Q&A § __.21(f)-1) but urge the Agencies to include investments with CDFIs in this effort to help financial institutions reach the populations targeted by minority- and women-owned institutions and low-income credit unions. More important, they serve the markets targeted by CRA and so would help meet the CRA's purpose in the same way as those institutions. In order to be certified by the US Treasury, a CDFI must demonstrate that it has a primary mission of promoting community development; that it provides financial products and development services to designated distressed or underserved target markets, and that it maintains accountability to these markets – all purposes within the scope of CRA.

Proxies for Definition of Low and Moderate Income Individuals

Section III revises the definition of low and moderate income individuals for the purposes of the services test to include schools with a majority of students who receive free or reduced price lunch and individuals eligible for Medicaid. There are other means tested government programs that will also serve as useful proxies, such as receipt of Section 8, residency in public housing or LIHTC developments, and receipt of SNAPS benefits, TANF, or SSI. The use of these proxies will make it easier to demonstrate that services benefit low and moderate income people without requiring community organizations to obtain actual income data.

Board Service to Community Development Organization

The proposed revisions to Q&A § __.12(i) – 3are a useful clarification in the how service on a community development organization's board of directors should be treated. However, the list misses several types of substantive services that bank employees could provide to community development organizations. Assisting an organization with human resources, information technology, communications and marketing, and consumer compliance would are also practical and meaningful ways a financial institution could help a community organization grow and develop. They should also count for the services test.

Investment in Instruments without Community Development Purpose

The proposed new Q&A § __.12(t)– 9 on qualified investments in which the bank allows the recipient to use the interest but not the principal may need some revision to accomplish its goal. We urge you to look carefully at how it is drafted to ensure that it does not restrict real community development activities. If the bank makes an investment in a CDFI and the funds will be deployed over a number of years, the CDFI may initially invest the bank's funds in safe investments like Treasury securities. If the CDFI is allowed to eventually use the entire investment for community development purposes, it does not make sense to restrict the CRA credit only to the interest on the securities. To accommodate the common practice of banks making Qualified Investments in CDFIs and similar organizations, the following language should be added:

> ***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.***

In conclusion, we thank you for the opportunity to comment on these proposed changes to the Qs & As, and we encourage you to quickly revise and adopt them with improved examiner training. We then encourage you to begin the long overdue process of modernizing and updating CRA's regulatory regime and we are happy to work with you on this challenging and essential project. If you have any further questions, feel free to contact Julie Gould at (202)495-7401 or jgould@mercyhousing.org.

Sincerely,

S. Lillian Murphy, RSM

Sr. Lillian Murphy, RSM
CEO Mercy Housing, Inc.

Julie Gould

Julie Gould
President, Mercy Loan Fund
SVP Public Policy & Advocacy