

May 16, 2013

By Electronic Mail

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th Street SW
Washington, DC 20219

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve
System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

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

Re: Notice and Request for Comment, Community Reinvestment Act:
Interagency Questions and Answers Regarding Community Investment,
Office of the Comptroller of the Currency Docket ID OCC-2103-0003,
Board of Governors of the Federal Reserve System Docket No. OP-1456,
Proposed Revised Question and Answer §____.23(a)-2

Dear Sir/Madam:

We appreciate the opportunity to comment on the proposed revisions to Question and Answer §____.23(a)-2 ("Q&A §____.23(a)-2") of the Interagency Questions and Answers Regarding Community Investment, as set forth in the Interagency Notice and

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Request for Comment dated March 18, 2013 (the “Notice”).¹ We submit this comment on behalf of one of our client banks (the “Bank”) that is a full-service depository institution with a strong commitment to Community Reinvestment Act (“CRA”) compliance. In both its current and proposed revised forms, Q&A §____.23(a)-2 provides useful guidance about investments in nationwide funds in the context of the banking agencies’ CRA regulations’ scope of the “investment test”. Over the years, the Bank has been an active investor in local, regional and nationwide low-income housing tax credit (“LIHTC”) funds, notwithstanding the limitation on the amount of CRA credit it has received for these investments.

First, the Bank supports the proposed revisions to Q&A §____.23(a)-2. The simplification and increased flexibility of the investment documentation requirements will facilitate the mechanics of making a qualified investment. In addition, the proposed revisions would encourage much-needed CRA investments outside of an institution’s assessment area(s). The proposal would have this effect by removing some of the uncertainty that currently holds institutions back from out-of-assessment area CRA investments, by replacing the current rule that out-of-assessment area investments will only receive CRA credit if in-assessment area needs have been adequately addressed. In its place, institutions will be given CRA credit for investments as long as they are not being conducted “in lieu of, or to the detriment of, activities in the institution’s assessment area(s).”²

At the same time, the Bank believes that it would be consistent with the economic realities of nationwide funds to take the next logical step in revising Q&A §____.23(a)-2 and recognize that institutions investing in nationwide funds should receive CRA credit for the full investment amount, even where some portion of the invested funds are applied to investments in projects located out of the statewide or regional area that includes the institution’s assessment area(s).

In the Notice the banking agencies state that the current Q&A §____.23(a)-2:

¹ 78 Fed. Reg. 16765 (March 18, 2013).

² Id. at 16771.

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. . . places too much focus on quantitative measures tied to the assessment area that do not give sufficient recognition to the broader community development needs of the area or business model of the financial institution making the investment. The proposed revised Q&A continues to recognize that nationwide funds are important sources of investments for low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs.³

While the proposed revisions to Q&A §___.23(a)-2 recognize the “important” role of national funds, the Bank believes that they do not go far enough in one material respect. At present, institutions, like the Bank, only receive investment credit for the portions of their investments in national funds that can be attributed to projects located in their assessment areas or in the statewide or regional areas that include those assessment areas. This means that institutions cannot get credit for the full amount of their investments, even though the full amount of the investments goes to address the needs of “low- and moderate-income and underserved communities throughout the country”. Revising Q&A §___.23(a)-2 to explicitly recognize the ability of institutions to obtain full credit for their investments in nationwide funds would facilitate meeting those needs.

Providing full recognition of investments in national funds would not only enhance the attractiveness of such funds and bring in more resources to support CRA community development, it would also correct certain economic and safety and soundness issues that have been created by only recognizing investments in local, statewide or regional projects.

For example, in the LIHTC market, based on the Bank’s experience, the amount of CRA credit associated with a particular project has become a major driving force behind investment decisions and has created extremely high demand for LIHTC and other CRA investment opportunities in major metropolitan areas, particularly more prosperous areas, where many institutions may be competing for a limited number of CRA investment opportunities. In these areas, developers (who are often sellers of

³ Id. at 16770.

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LIHTCs) are demanding economic terms that may increase credit risk and that may not be sustainable in the long term. This, in turn, may have an adverse impact not only on investors (who, because of competition for a limited number of opportunities may have to accept more credit risk), but also on the low- to moderate-income community. Projects that lack sufficient financial support may not be equipped to handle unforeseen rent, expense or capital issues and may not be able to operate on a long-term basis.

At the same time, there are significant wealth and income disparities between different metropolitan and geographic regions that are compounded by the current method of assigning credit for CRA investments only if made within the depository institution's own geographic area. There are less prosperous metropolitan areas, or rural or other non-metropolitan geographies where there are an abundance of community development investment opportunities, but a lack of potential investors, because fewer, and smaller, institutions have assessment areas in those locations. In some wealthier metropolitan areas, there is an excess of demand for CRA investments over supply, producing lower returns and potentially higher risks, while in other metropolitan or rural areas there is an excess of supply of potential CRA projects over demand from investing institutions, and a large volume of investment opportunities that institutions are unwilling or unable to pursue.

Awarding full CRA credit for investments in national funds that fund projects outside local, statewide or regional areas would encourage more funding to projects outside of institutions' assessment area(s) and broader statewide and regional geographies, potentially reducing credit risk to investors while increasing the resources available to locations that historically may not have been able to attract such investments. Importantly, it also would help to ensure that affordable housing developments are financially sustainable in the long run.

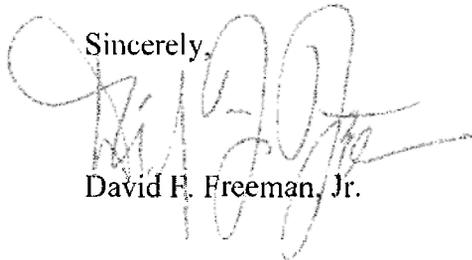
The Bank fully understands that the primary focus of an institution's CRA activities should be its assessment area(s). At the same time, recognizing the full scope of those activities on a broader statewide, regional, and even national level will provide further encouragement to satisfy the investment objectives of the CRA, while also enhancing the ability of institutions to meet these objective in a safe and sound manner. Accordingly, the Bank respectfully requests that the revised Q&A §___23(a)-2, as finally implemented, recognize the availability of full CRA credit for investments in nationwide funds.

ARNOLD & PORTER LLP

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2. We appreciate the opportunity to provide the Bank's views on Q&A §___.23(a)-

Sincerely,

A handwritten signature in black ink, appearing to read "David F. Freeman, Jr.", is written over the word "Sincerely,".

David F. Freeman, Jr.