Testimony of Terri Ludwig

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Before

Public Hearing on

Community Reinvestment Act Regulations

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Good morning, I am Terri Ludwig, Executive Vice President and Chief Operating Officer of Enterprise Community Partners. Enterprise is a national nonprofit organization. We create opportunity for low- and moderate-income people through fit, affordable housing in diverse, thriving communities. Enterprise provides financing and expertise to community-based organizations for affordable housing development and other community revitalization activities throughout the U.S. For more than 25 years, Enterprise has invested over $10 billion to create more than 270,000 affordable homes and strengthen hundreds of communities across the country.

To begin, I would like to thank you all for showing the leadership and initiative to convene these hearings to ask thoughtful questions about how to improve the regulatory implementation of the Community Reinvestment Act (CRA.) My career in investment banking and nonprofit leadership prior to coming to Enterprise has been intertwined with CRA. I have led nonprofits that benefited from bank investments driven by CRA and I also led the Merrill Lynch Community Development Company which was subject to CRA. I have seen how CRA made financial institutions see new lending and investment opportunities in low-and moderate-income communities and also how the CRA regulations sometimes did not work as well as intended.

Enterprise and other community developers that are testifying here today sent a joint letter in December asking that you commence a review to update the CRA regulations. As you all know, CRA is a broad statute that leaves the regulatory agencies considerable discretion to design the system to evaluate bank performance. The 1995 revisions to CRA regulations that created the "lending" "service" and "investment" tests provided a great improvement in the rigor and transparency of CRA examinations. The financial services industry has continued to evolve since then, however, and it is time to assess the whether further changes are needed to keep CRA relevant and useful. I applaud your leadership in convening these hearings and I look forward working with you to keep CRA a constructive force directing investment into low-income communities.

Currently, the community development industry faces many challenges including the problems in the larger economy that have diminished investor interest in tax credits and the declining efficacy of CRA's regulatory regime. Again, Enterprise supports your initiative to reopen the CRA regulations. There are four areas that we think are especially important: the need to create a "community development test", the importance of examiner training, recognition for green building practices and the need to rethink how assessment areas are determined and how banks get credit for activities.

Community development test:

The community development field has evolved a great deal since the "lending," "service" and "investment" tests for larger banks were created in 1995. At that time, the legislation creating Community Development Financial Institutions (CDFIs) had just passed. Thanks in part to the

CDFI statute, CRA, tax credits, and other policies, a whole industry has arisen that provides credit to low-income communities and individuals on more favorable terms than the private market alone could provide. Community Development Financial Institutions (CDFIs), community development credit unions, community development banks, loan funds, community development corporations (CDCs) and other socially-motivated investors finance affordable rental housing, economic development projects, community facilities like child care centers, and other projects that bring hope and jobs to low-income communities.

CRA, in combination with other policies mentioned above, has given financial institutions the motive and opportunity to invest in public-private partnerships with local CDCs and CDFIs, and sometimes local governments. These partnerships then invest in economic development projects, affordable housing, and other amenities that improve neighborhoods. Tax incentives like the Low Income Housing Tax Credit and the New Markets Tax Credit only work with private sector investment. Government grant programs like the Treasury's CDFI Fund and programs at the Department of Agriculture and Small Business Administration also support these activities.

Currently, evaluation of bank activities in these areas is scattered among the lending, service, and investment tests, depending on the form the investment takes. The dollar value of one loan on a supportive housing project that involved state and local government and a CDC can be dwarfed by a bank's volume of conventional home mortgage lending in low-and moderate income neighborhoods, yet that community development loan can have a larger impact on the neighborhood. The time and complexity required by community development projects needs to be recognized by a separate test that looks at community development as an integrated whole.

This is why current regulations should be augmented with a rigorous but qualitative "community development test" that replaces the investment test. Lending, services and investments in affordable rental housing, economic development projects, community facilities like child care centers and charter schools, community loan funds, microfinance loan funds, and other community development activities in low-and moderate- income communities should qualify for this test. Equity investments in community development financial institutions and other investments in building the capacity of community developers should qualify as well. The dollar value of the activity should be considered as well as how far the institution has stretched to meet community development needs, consistent with safe and sound lending.

Effective community development starts with an assessment of the community's needs. The regulatory agencies should work together on an interagency assessment for each major metro area that replaces the assessments of community needs done by individual agencies as part of CRA exams of various financial institutions. The agencies might want to contract out this responsibility to a knowledgeable, independent third party like a research firm or an academic institution. Public input should be a crucial part of this assessment. Bank performance could then be judged against an independent third party assessment of metro demographics, economic trends and community needs. It would be a great improvement over the current system if the assessments were uniform across agencies and were used for all of the institutions in the region that were examined.

A final thought on the Community Development Test is that currently there is no real incentive for institutions to get an "outstanding" rating. The system would be more effective if there were a more powerful incentive for performance, consistent with other CRA policies. The agencies should consider giving awards for community development leadership and recognition for best practices. Perhaps the green building field offers a model to consider. Developers with exemplary building practices are recognized and certified according to the Enterprise Green Communities Criteria or the U.S Green Building Council's LEED standard. Developers actively seek these designations. A similar "race to the top" for CRA performance could really benefit low-income neighborhoods.

Examiner training:

The "community development" test should reflect qualitative judgment of how much value community development investments, services, and loans add to communities. The current system is overly focused on quantitative targets that don't reward institutions for serving their communities well with products that meet community needs. A community development test by its nature requires more qualitative judgment than creating a table of mortgage lending data. The creation of a community development test requires training of bank examiners to succeed.

Enterprise would be happy to work with our community development colleagues and the banking agencies to design a curriculum for bank examiners that reflects the lessons and complexities of our more than twenty five years of community development experience. There are difficult questions about whether particular loans or investments really meet neighborhood needs. It is not reasonable to expect safety and soundness examiners with cursory training in community development to make judgment calls about whether an institution's products and strategy meet community needs. More rigorous and thoughtful training for bank examiners will be needed to make a community development test live up to its promise.

Green building:

Financial institutions should receive extra consideration under the "community development test" if the housing or commercial developments financed in a low- or moderate-income area are energy efficient and built according to green building standards like the Enterprise Green Communities criteria. Over the past five years, Enterprise has supported the development of over 17,000 homes built according to Enterprise's Green Communities Criteria, the first national framework for environmentally sustainable affordable homes. The Criteria were developed in collaboration with and endorsed by a number of leading environmental, energy, green building, affordable housing, and public health organizations.

In creating Green Communities, Enterprise sought to show that all affordable housing – new construction and rehabilitation, homeownership as well as rental, large urban developments and small rural projects – could be green within the budgets and capacity of the typical affordable housing developer. Enterprise has demonstrated that green affordable developments can be created for little if any higher development costs than conventional projects that do not offer the same benefits. Our extensive evaluation efforts have generated data that show we can create affordable housing that is environmentally sustainable for only marginally higher development costs – 2 percent over total development costs – and those first costs can come down with experience. Green building benefits residents living in a healthier environment and contributes to the financial viability of the projects due to measures such as energy and water efficiency that generate financial savings over time.

Enterprise's experience with Green Communities suggests that adding in an environmental overlay to CRA does not require any dilution of the low-and moderate-income focus of CRA. All lending, or investments that receive credit under CRA should serve low- and moderate-income communities and we are not suggesting that should change. What Green Communities has taught Enterprise is that green and affordable housing can be one and the same, and similar thinking should infuse the creation of a "community development test" that allows for additional consideration for green buildings that serve low- and moderate- income communities.

Assessment areas:

The concept of "assessment areas" under CRA needs to be reconsidered. One of the most difficult regulatory issues that you will grapple with is deciding where and how to give banks credit for lending, investment and services. Under the current system, banks have a strong incentive to lend and invest in the assessment areas that receive a full-scope CRA exam, and much less of an incentive to do business elsewhere. This results in some areas being "credit deserts" because they are not part of any financial institution's CRA footprint.

When CRA was passed in 1977, there was neither nationwide banking nor a community development industry. CRA encouraged banks to lend in the neighborhoods from which they took deposits. Today, in a world of nationwide banking and deposit taking and a wide array of mission-oriented community development conduits, like CDFIs, loan pools, or tax credit investment funds, it seems misguided to focus on only giving banks CRA credit where they take deposits. A better question to ask is "Is this high quality community development work that meets a need in a low- and moderate-income neighborhood?"

The agencies should consider different sorts of assessment area determinations for different sorts of financial institutions. True community banks that operate within one state should have community development responsibilities where they have branches. Larger institutions with branches in multiple states should have community development responsibilities where they have physical presence, but should also receive CRA consideration for lending and investments in nonprofit mission-oriented community development conduits like CDFIs that operate outside of their geography, as long as these institutions are meeting legitimate community development needs.

The largest financial institutions with nationwide branches pose a particular challenge. They should be evaluated on their performance in the largest metro areas where they have a physical presence, plus on a statewide basis for the balance of the those states, but they should also be scrutinized for their efforts in meeting nationwide community development challenges such as special needs housing or affordable, green development. Your recent regulatory proposal to give banks additional credit for foreclosure response activities is a good example of using CRA to meet a national community development challenge and we look forward to working with you to refine the proposal.

Limited purpose, credit card, and wholesale banks should be in a different category. They also should be evaluated on the basis of their national community development partnerships and not just on limited markets where they take deposits. Where deposits are booked is a banking law technicality. For these institutions, CRA performance should be judged more broadly in the context of their national financial presence.

Conclusion:

CRA is an unusual and powerful law whose effectiveness needs to be maintained. It is unusual because it is a broad, affirmative obligation for the private market. CRA doesn't prohibit behavior; instead it lays out a broad goal that is to be met consistent with safe and sound banking. And it has succeeded in fostering an industry that tackles tough community development challenges. As Federal Reserve Chairman Ben Bernanke observed last summer, "As the effects of the financial crisis and the resulting economic downturn have spread, there has been increased focus on preserving the gains made in low- and moderate-income communities over recent decades. Accomplishing that objective requires preserving the institutions that helped build these communities. Without strong CDFIs, attracting investments and capital to rebuild and revitalize communities would be even more difficult. Economic recovery, like economic development, is a bottom-up as well as top-down process. Through their work at the community level, CDFIs, together with other community development organizations, can help build a sustainable recovery for all of us."

Thank you for your efforts to maintain the strength and relevance of CRA. Enterprise would be pleased to work with you on these complicated and difficult issues.

Community Reinvestment Act Regulatory Reform

Recommendations to Bank Regulators
June 2011

Introduction

Over the past year, national and local community, consumer, and civil rights organizations have been engaged in discussions about how to improve and update the regulations governing the Community Reinvestment Act (CRA). Convened by the National Community Reinvestment Coalition, participants in the discussions were Enterprise Community Partners, Housing Assistance Council, Local Initiatives Support Corporation, Low Income Investment Fund, National People's Action, Opportunity Finance Network, Pathstone, and the Woodstock Institute. Our organizations believe that revised CRA regulations must account for changes in the financial services industry so that the CRA better promotes increased access to responsible loans, investments, and banking services for communities. This paper outlines our recommendations for a new CRA regulatory structure that we encourage the bank regulators to adopt.

The banking industry has changed dramatically since the Community Reinvestment Act became law in 1977. Rather than basing CRA obligations solely on where a financial institution takes deposits, we believe regulators should consider both the functions a bank performs (such as home mortgage lending, small business lending, deposit accounts, credit card services), and where they are performed, in determining the institution's CRA obligations. An institution providing deposit accounts and services through a branch network would meet its CRA obligations differently than an internet bank headquartered in one city offering home mortgages nationwide. In addition, many financial institutions today are hybrids, providing a range of banking services. An institution with multiple functions and products should have a total CRA obligation that reflects the sum of its parts with appropriate attention to the size of the institution and volume of its business.

The current three part structure of CRA exams should be retained. Under our proposal, banks would continue to be examined on their lending and services but the current investment test would be replaced with a community development test. Assessment areas would be updated to better reflect where banks conduct their business and to be more relevant to the particular test. In general, we would not expect small banks to be subject to the full set of obligations outlined below. Very large banks should have the most frequent CRA exams.

We believe that these recommendations can result in comprehensive CRA exams that are nevertheless more efficient than current exams and do not require a significant expansion of regulatory staff resources.

A chart summarizing CRA obligations for various banking activities follows along with a full narrative description of our recommendations.

Community Reinvestment Act (CRA) Obligations For Various Banking Activities

Activity or Product	Functional and Geographic Obligations		
	Lending Test	**Retail Consumer Service Test**	**Community Development Test** [1]
Deposit Accounts and Services	No obligation	Yes	Yes
branch based		In branch network area	In branch network area; if satisfied, credit for additional CD activity elsewhere.
internet		In branch network area for local deposits. National obligation for other internet deposits	In branch network area for local deposits. National obligation for other internet deposits
institutional, escrow, trust accounts		No obligation	Nationwide obligation.
Home Mortgage lending (including MBS issuances and loan servicing)	For home mortgage lending only.[2] Obligation in branch network area and other significant local home mortgage markets.[3] National obligation for home mortgage activity elsewhere.	No	Yes. Lending in markets with local branches generates local CD obligation. Lending elsewhere generates national obligation. [4]

[1] Under this recommendation, a community development test would replace the current investment test. CD test would include CD investment, lending and at least some activities (e.g., assistance to relevant nonprofits) now considered community development services. Qualitative factors should include responsiveness to local community performance context and national community development challenges, as well as leadership.

[2] Original purchases of mortgages or mortgage-backed securities (MBS) would be considered as part of the lending test. Loan originations and other primary market activities will be considered separately from secondary market activities. Loan originations should be weighted more than secondary market loan purchases. Servicing of mortgages should also be an activity considered by CRA exams, imposing penalties for abusive servicing and rewarding banks for sustainable loan modifications.

Community Reinvestment Act (CRA) Obligations
For Various Banking Activities (continued)

Activity or Product	Functional and Geographic Obligations		
	Lending Test	**Retail Consumer Service Test**	**Community Development Test**
Small business/small farm lending (including small business credit cards, purchases of small business loans originated by others, including for securitization)	For small business/farm lending only.[5] Obligation in branch network area and other significant local small business/farm markets. National obligation for small business/farm activity elsewhere.	No	Yes. Lending in markets with local branches generates CD obligation there. Lending elsewhere generates national obligation.
Consumer lending (including credit cards)	For consumer lending only. Obligation in branch network area and other significant local consumer lending markets. National obligation for consumer lending activity elsewhere.	No	Yes. Lending in markets with local branches generates CD obligation there. Lending elsewhere generates national obligation.
Wholesale, limited purpose, and other institutions that do not do a significant amount of consumer or small business lending (including investment and trust banks and institutions specializing in commercial real estate financing)	No	No	National obligation.

[3] Significant local markets" are markets where 1) a bank has significant local market share or 2) a substantial share of a bank's activity is located.

[4] As stated above, it could be appropriate to establish community development obligations in geographical areas in which an institution has a disproportionately high market share of loans (home or small business) compared to its market share elsewhere.

[5] Purchases of small business loans or securities would be considered as part of the lending test the first time a loan is sold.

Reforms to the Lending and Service Tests

Lending Test

Home mortgage and small business lending: Home mortgage and small business lending will continue to be prominent activities scrutinized by the lending test. We are recommending that in addition to originations, servicing and modifications be elements on the lending test. The quality of servicing and modifications has a profound impact on whether loans are sustainable. Serving and modifications have become prominent issues during the current foreclosure crisis and will likely remain elevated in importance for years to come.

Servicing: Bank servicing of loans must be on the lending test. Ratings should be downgraded if the bank is engaged in abusive servicing practices such as usurious late fees and high-cost forced place insurance. Loan modifications that are sustainable and affordable should be on the lending test. However, if a bank and/or its affiliate is engaged in a pattern and practice of abusive loan origination, commendable servicing and loan modification practices should not be allowed to compensate for the abusive loan origination practices. Since abusive loan origination practices were a major cause of the current foreclosure crisis, the key to preventing future crises is a policy of zero tolerance for predatory lending in the CRA and other fair lending regulations.

Consumer Lending: Small dollar consumer loans that serve as an affordable alternative to payday loans should be on the lending test. A subset of these are "credit builder loans" that are fully collateralized (by deposit accounts or other collateral) and are used as a means to help borrowers build good credit histories. In addition, providing lines of credit to abusive payday lenders must be penalized on CRA exams. The agencies can build upon their past experience in cracking down on bank partnerships with abusive payday lenders when assessing bank lines of credit to fringe financial institutions and deciding whether the bank financing is enabling predatory products.

Reporting to Credit Bureaus: Selective reporting of borrower payment history is an abusive practice that should be penalized on CRA exams. Regular and timely loan payments must be promptly reported in the same manner as delinquencies. Also, consideration of employment history and rent payments at the request of the borrower should be considered favorably.

Service Test

Types of services considered: Retail banking services including deposit accounts, check cashing, and money orders should be on the service test.

Specialized services: IDAs (individual development accounts) and other specialized retail services for low- and moderate-income (LMI) populations should be on the service test.

Qualitative factors: The quantitative factors should be tempered by consideration of affordability, and safety and soundness. Unsafe, unaffordable, and abusive products should be penalized regardless of whether these products are offered in the assessment areas or anywhere in the country.

Need for deposit data: Better deposit data is needed for the service test. Currently, deposit data is available by branch but the data does not reveal the income level of the census tracts in which the depositors reside. The data does not therefore indicate the levels of deposits for LMI neighborhoods, which would be a critical measure of bank services on CRA service tests.

Terms and conditions: Terms and conditions that particularly benefit LMI consumers, even if they differ from terms and conditions for other income levels should be encouraged. For example, low dollar amounts ($10) to open accounts and leniency regarding check systems can particularly benefit LMI consumers.
Assessment areas: The service test should have more AAs but less narrative for each AAs. The service test can focus on best AAs and worst AAs. Best and worst is defined to mean how well the institution performs in offering branches, deposit accounts, and consumer banking services to LMI people.

How to consider innovations: The qualitative analysis for the service test can focus on what innovations in best AAs can be applied to worst AAs.

Lending and Service Test: Assessment Areas

The great majority of loans and services must be covered on exams. For many large institutions, CRA exams presently scrutinize the minority of their activity, meaning that exams are not adequately considering if their lending and services are meeting community credit needs. Assessment areas for home mortgage lending, small business/small farm lending, and consumer lending should be drawn to include the geographical areas where an institution has a significant presence for a given loan category, either because it has a significant local market share[6] or because that area generates a substantial share of the institution's activity, as well as areas surrounding branches. Assessment areas for deposit services should cover geographical areas surrounding branches. As such, a bank might have different assessment areas for home mortgage lending, small business/farm lending, and deposit services. Activities not within an assessment area – e.g., home mortgage lending in places where the institution lacks a significant presence, or internet deposit accounts of customers not near branches – should be fully considered in the aggregate.[7]

Assessment Areas and branch networks – Our proposal also preserves attention to the geographical areas where institutions have physical branch networks. This approach is particularly appropriate for regional or local institutions that do not do much lending beyond their branch network. In some cases, these banks would not meet the market share threshold

[6] H.R. 1479, the Community Reinvestment Modernization Act of 2009, has a threshold of one half of one percent of the market. Either this threshold or another market share threshold should be carefully chosen based on empirical analysis that measures how much lending and service in various geographical areas would be covered by various thresholds.

[7] Currently, some CRA exams conduct national comparisons of a bank's lending activity compared to all lenders, as a group, when a bank is a nationwide lender but lacks significant market share in metropolitan areas or rural counties. This approach is appropriate when lending is at a high volume but diffuse across many geographical areas.

mentioned above, but the geographical areas in which they have branches are nevertheless important to the banks' business strategies and should therefore be assessment areas.

Full scope exams must cover all lending and service of banks and include rural as well as urban areas. Currently, some large banks have more limited scope than full scope exams for their assessment areas. Limited scope exams are cursory and do not adequately assess if an institution is meeting needs in assessment areas, and have little if any effect on a CRA rating. The distinction between full and limited scope exams should be eliminated. All assessment areas should have full scope exams with lending and service tests contributing to the overall rating. Our suggestions below for reducing exam narrative can facilitate full scope status for all assessment areas. Importantly, this approach is intended to increase attention to rural areas and smaller metro areas that currently receive only limited CRA reviews.

Proportion of loans in assessment area criterion on CRA exam – CRA exams consider the proportion of a bank's loans in its assessment areas as a criterion on the lending test. Currently, affiliate loans are not counted on this criterion. Affiliate loans must be automatically counted in order to ensure that the exam has complete expectations about lending in assessment areas, taking into account the capacity of the entire institution. For example, if a bank issues 90 percent of its loans in the assessment areas and an affiliate offers 40 percent of loans in the assessment areas, the combined lending in the assessment areas could be less than a majority of loans depending on the loan volume of the affiliate. Just examining the lending volume of the bank distorts the true picture of entire institution's lending inside and outside the assessment areas.

Change exam focus to save resources, facilitate more assessment areas, and focus on where a *bank's performance is above or below peer performance* - Lending and service tests evaluate activities (lending and deposits) that are relatively easy to quantify. Therefore, these tests can accommodate several assessment areas, possibly a few hundred for the largest banks. Tables can compute performance measures for lending and service and list the assessment areas in descending order from the best to worst. Since institutions generally provide similar products and terms across markets, the exams do not have to repeat narrative for every assessment area but perhaps focus attention in describing performance in best and worst areas.

The Community Performance Context (CPC) report described below will also provide context for considering performance across assessment areas and weighting different types of loan products. For example, if a lender performs in an exemplary manner in providing home improvement loans in areas of the country with aging housing stock, the home improvement performance could compensate for mediocre or poor performance on other loan types (this type of weighting and compensatory approach occurs now so CPC reports can enhance their effectiveness). Another example of the importance of CPC reports is that average performance is adequate in a well-served geographical area but may not be adequate in an underserved area. The CPC reports will help identify the geographical areas that are underserved.

Overall, this approach to sorting performance in assessment areas is a method to evaluate more assessment areas in a less cumbersome and resource draining manner than is currently the case.

In addition, it focuses the analysis on where the bank's performance is above or below its peers.[8] This provides a clearer indication to all stakeholders of how a bank can reduce unevenness in performance.

Replacing the Investment Test with a Community Development Test and Related Reforms

Community Development Test

A new community development test should replace the current investment test and complement separate tests for general lending and services. The new CD test would include all CD activities primarily benefitting low- and moderate-income households and communities, including multifamily housing, commercial and economic development activities that revitalize low- and moderate-income areas, community service facilities, construction and rehabilitation of single-family homes, and support for nonprofit CD organizations such as CDFIs and CDCs. Qualitative factors should include responsiveness to local community performance context and national community development challenges, as well as leadership.

Treatment of CD activities under the current rule and exam procedures does not work well for all activities in all communities. The content of CD activities is as important as its volume. Dividing consideration of CD activities among the three tests places the form of an activity ahead of its function, and impedes the planning and analysis of CD activities that are responsive to local needs and national challenges. CD loans are considered on the lending test, where they are not required but generate only "extra credit". CD loans tend to get little or inconsistent consideration, even though they often are disproportionately beneficial for communities, because the number and volume of CD loans tends to be small relative to standard home mortgage and small business lending. Meanwhile, the current investment test recognizes not only high value investments like LIHTCs, NMTCs, grants to nonprofit community developers and loan purchases from CDFIs, but also MBS purchases that are easy to make in volume but add little real CD value and would be more appropriately considered along with home mortgage lending.

CD loans would be moved from the current lending test. Purchases of home mortgages and small business/farm loans, including mortgage backed securities (MBS), which are now part of the

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[8] The following is a hypothetical example of how our proposal to sort geographical areas would work. One performance measure could be the percent of home mortgage loans to low- and moderate-income borrowers. In two metropolitan areas, Main Street Bank has the following performance:

East Coast metropolitan area - Main Street Bank - 15 percent of loans to low- and moderate-income borrowers; all lenders as a group, 25 percent; percentage point difference -10 percentage points.

Midwest metropolitan area - Main Street Bank - 35 percent; all lenders as a group, 20 percent; percentage point difference - +15 percentage points.

In this example, the Midwest metropolitan area is one of the areas with the best performance for Main Street Bank where Main Street Bank is above peer performance. The East Coast metropolitan area is one of the areas with worse performance where the bank is below peer performance.

investment test, should be considered along with direct home mortgage lending as part of the lending test, and not as part of the CD test, except those sold by CDFIs. CD services should include advice to nonprofit and public CD entities. Banks' partnership building activities with nonprofit and governmental entities should receive recognition. Whether an activity is conducted directly or through a CDFI or other entity at the local, state, regional or national level should not be important.

The content as well as the volume of CD activities should be considered together. The various kinds of activities should be considered (e.g., LIHTC investments, commercial revitalization loans, technical assistance to nonprofit and governmental CD entities.). Qualitative factors should include: responsiveness to local needs and national challenges, leadership and innovation, and the degree to which a market is underserved or a product is not otherwise broadly available. National challenges might include serving rural areas, preservation of affordable housing, financing for community service facilities such as health centers, charter schools and childcare centers, transit-oriented development, and energy efficiency. The responsiveness of banks to rural areas must be routinely considered on CRA exams and should be one of the national challenges that banks could be allowed to meet after they satisfy the CD needs of their assessment areas.

CRA exams sometimes benchmark CD investments against assets and other times Tier I capital., A consistent approach should be used in order to better compare institutions to each other.

Community Development Test Assessment Areas

On an interagency basis, regulators should develop "community performance context" reports for individual markets such as the fifty largest metropolitan areas and the balance of each state. All banks operating in a particular market could use the same community performance context report to inform their decisions prospectively about CRA-eligible activities that meet the needs of that market. Each report would focus on community needs and economic conditions in the market, such as levels of unemployment and housing affordability. Markets analyzed would include rural counties, smaller cities and large metro areas.

In developing the community performance context report, regulators would incorporate existing data (including consolidated plans, and qualified allocation plans for Low Income Housing Tax Credits, etc.) and provide an opportunity for public input. Such a system would better align CRA activities with community needs, improve transparency, and be more efficient than current practice, where each regulator creates an individual performance context for each bank in every market where the bank operates. Banks would remain responsible for shaping their CRA strategies based on their operating models, expertise and capacity. A period of transition from the current system to the new interagency community performance context approach would be expected.

The markets identified by regulators for community performance context (CPC) reports would become the assessment areas for purposes of the community development test (CD) only (Assessment areas for the lending and service tests would not change.) In other words, the metro areas and balance of each state analyzed by CPC reports would be CD assessment areas (AAs) if the bank had branches anywhere in the state and/or large market share of loans in the state. For example, if a bank had a branch in Philadelphia, the entire state of Pennsylvania would be an AA for the CD test. This avoids the current practice of a bank CD project not receiving credit in rural Pennsylvania simply because the bank has a branch in Philadelphia but no other branches in the state.

The current approach for determining assessment areas for the investment test creates hyper-competition in some markets and creates CD financing "deserts" in other geographical areas. Although the content and context of CD activity are as important as its volume, it is not practical to perform a content review for each of the hundreds of AAs that the largest institutions serve. An exam with too many assessment areas may result in banks striving for certain numerical targets in each assessment area when in fact, the needs will not be as great in each AA or the opportunities may not be readily available in each AA. In contrast, non-traditional institutions with one or only a few branches but with a national presence have narrow assessment areas consisting of only a few geographical areas while they have large scale lending or other operations.

Fewer AAs for the CD test is practical and would make a full review of content and volume of CD activity possible for all AAs. Larger AAs would encourage significant activities, including in smaller communities. A rigorous community performance context will guide community development financing levels and types by identifying specific needs in AAs and available infrastructure in AAs. There will be fewer assessment areas for the community development test but CRA exams need to make sure diversity of needs are met. (For example, rural East Texas and the Rio Grande Valley have different demographics and needs.)

The scale of an institution's community development obligation should be commensurate with the scale of an institution's overall activities. A community development obligation should include geographical areas where the institution has branches and where an institution's market share of loans is disproportionately high compared to its market share elsewhere. Beyond these geographical areas, an institution's community development activities can meet needs elsewhere such as rural counties and smaller metropolitan areas.. An investment into a CDFI may help an institution meet its CRA obligations regardless of whether the CDFI operates in the institution's assessment area. CDFIs should receive the same regulatory treatment afforded to minority- and women-owned depository institutions.

Additional Recommended Reforms

Weights on CRA Exams

Qualified Mortgages: Loans that meet the definition of qualified mortgages in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 should be considered more favorably than other home loans on CRA exams. Since Congress judges that qualified mortgages are safer and sounder than other home loans and CRA requires safe and sound lending, the regulatory agencies would be implementing statutory requirements of both Dodd-Frank and CRA by treating loans in this manner.

Definition of Qualified Mortgage: A qualified mortgage in Dodd-Frank is defined as a mortgage that does not contain negative amortization or balloon payments. Income verification is required and the ability to repay is based on a fully amortizing schedule and payments for taxes and insurance. For adjustable rate loans, the ability to repay is based on the maximum rate during first five years of the loan. Moreover the loan will not exceed a debt-to-income ratio established by regulation and will provide enough income after debt payments to afford basic necessities. The term of the loan is 30 years and total points and fees of the loan will not exceed 3 percent of loan amount.

Originations Count More than Purchases: Loan originations should be weighed more heavily than loan purchases. Only original purchases of mortgages or mortgage-backed securities (MBS) would be considered as part of the lending test. Only original purchases of small business loans would be considered part of the lending test.

Community Development Test: The community development test should be weighed more heavily than the current investment test.

Underserved Communities on CRA Exams

Underserved Communities on CRA Exams – The American Community Investment Reform Act (HR 6334) requires CRA exams to assess an institution's record in meeting the needs of "other traditionally underserved neighborhoods" in addition to low- and moderate-income communities. This requirement would ensure that rural areas, economically distressed communities, and underserved communities of color would be considered on CRA exams. The CRA statute is broad enough that passage of HR 6334 is not necessary for this approach to be considered in revised regulations. The agencies already have applied CRA to underserved and distressed rural middle-income areas, for example.

Impact on CRA exam for violations of FHA/ECOA – Should be rigorous and also flexible enough so that a CRA evaluation allows for failure in one or a few AAs or overall, depending on breadth, depth and duration of violations. Even if violations occur in one or a few AAs, if these violations continue for some time or are identified but not corrected, the CRA exam could fail the bank (This resembles the "three strikes and you're out" approach).

Affiliates

Mandatory inclusion of affiliates – Banking activities undertaken by affiliates must automatically be on CRA exams. In other words, if the affiliate is offering a product that a bank or its subsidiary can offer, the affiliate's activity should be considered on the CRA exam. Mandatory inclusion of affiliates ensures that the total capacity of the institution and its affiliates is considered when assessing if the institution is adequately meeting the needs of the community and to avoid a regulatory arbitrage through which activity can avoid scrutiny merely because of the corporate entity in which it takes place.

Exams on a holding company level – Currently, CRA exams are conducted for each institution in a holding company in isolation. Mandatory inclusion of affiliates entails considering whether

CRA exams should be conducted on a holding company level with appropriate weights assigned to each institution, depending on their level of activity. Another alternative is summing the activities of each institution in each assessment area when conducting an exam on a holding company level.

Examiner training

Community groups must be involved in training examiners. This provides examiners with insights into perspectives of community groups regarding community needs and experiences in engaging banks in responding to those needs.

Improve community contacts. Community groups around the country report that they are rarely contacted when CRA exams being conducted.

Transparent means for commenting on exams and merger applications. It is difficult for community groups to figure out to whom in the agencies to send comments. For example, comments are to be sent to Deputy Comptrollers in the case of the Office of the Comptroller of the Currency. The Federal Reserve Board has an electronic form via http://www.federalreserve.gov/feedback.cfm for sending CRA comments that is hard to find and does not leave enough space for writing a substantive comment. The process for commenting would be vastly improved if the agencies published publicly available lists of officials and examiners at each agency to whom to send comments along with the current announcements of quarterly CRA exams and merger applications.

Consistent analysis, examination tables, and performance measures – Currently, exams exhibit significant inconsistencies across and within agencies. CRA ratings and enforcement are diminished especially when similarly situated institutions receive different examinations. Performance measures need to be as consistent as possible. For example, CRA exams have contained ratios of qualified investments to assets or Tier I capital. One of these ratios should be chosen and ranges should be developed that correspond to gradations of performance. Another example is that one of the agencies uses market share comparisons on the lending test while the others typically compare percentages of loans to low- and moderate-income borrowers made by the bank being examined to all lenders, as a group. Both measures have value; either both or one should be consistently used.

Consistent treatment for loans, investments, services – Despite the development of detailed interagency Questions and Answers, different examiners treat activities such as letters of credit differently. Sometimes the activity does not receive any favorable CRA consideration or the extent of favorable consideration varies.

Training for examiners regarding affordable and sustainable loans, services, and investments – Careful qualitative judgments need to be made as to how affordable and sustainable various loans, investments, and services are. Appropriate weight should then be assigned to various loans, investments, and services depending on their affordability and sustainability. Examiners are uneven in their abilities to make these judgments.

Contact Information for Participating Organizations

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Enterprise

May 17, 2013

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

Re: Interagency Questions and Answers Regarding the Community Reinvestment Act

To Whom It May Concern:

On behalf of Enterprise Community Partners, I appreciate the opportunity to comment on the recent revisions to the Interagency Questions and Answers (Q&A).

Enterprise works with partners nationwide to build opportunity. We create and advocate for affordable homes in thriving communities linked to jobs, good schools, health care and transportation. We lend funds, finance development, and manage and build affordable housing, while shaping new strategies, solutions and policy. Over more than 30 years, Enterprise has created 300,000 homes, invested more than $13.9 billion and touched millions of lives. Enterprise is a family of companies comprised of Enterprise Community Partners, the parent company, and its related organizations: Enterprise Community Investment, Enterprise Community Asset Management, Enterprise Community Loan Fund, Enterprise Homes and Bellwether Enterprise Real Estate Capital. Together we have developed robust partnerships with local organizations and stakeholders on the ground, as well as with financial institutions and investors.

We greatly appreciate the thoroughness with which the regulating agencies reviewed the testimony and comments submitted by the industry in 2010. We understand that deliberating on these revisions has been an arduous process, and that these revisions are among the first of multiple steps to fully respond. Overall, we support the revisions and additions to the existing Q&As, and have submitted additional comments and clarifying questions for the agencies' consideration.

Section -12(h)-6 and -12(h)-7

The revised Q&A displays the regulating agencies' commitment to encouraging financial institution investments beyond the prescriptive assessment area boundaries. We are glad to endorse thoughtfully constructed language that will broaden a financial institution's geographic scope, rather than remaining in the confines of a limited, static assessment area. Demonstrating that community development activities are not "being conducted in lieu of, or to the detriment of, activities in the assessment areas," is less burdensome and less ambiguous than proving that an institution has "adequately addressed" the assessment area's needs. However, we recommend that the language be clarified further, as the Q&A still leaves room for different interpretation from different regulators or examiners.

Further, we consider assessment areas to be one of the most critical priorities for reform, and we strongly recommend that the agencies take this opportunity to more substantially reform these practices. The banking industry has changed dramatically since the Community Reinvestment Act became law in 1977. Under the current system, banks have a strong incentive to lend and invest primarily in the assessment areas that receive a full-scope CRA exam, and much less of an incentive to do business elsewhere. This results in hyper-competition in some markets and creates community development financing "deserts" in other areas. The growth and prevalence of online and nationwide banking requires a different approach, beyond a focus on where a bank may take deposits.

The agencies should consider different types of assessment area determinations for different types of institutions. For example, true community banks that operate within one state should have community development responsibilities where they have branches. Larger institutions with branches in multiple states or nationwide should still have community development responsibilities where they have a physical presence, but should also receive CRA consideration for lending and investments nationwide.

Section - 23(a)-2

We applaud the measures the agencies have taken to simplify the process for institutions to receive CRA consideration for investments in nationwide funds with the primary purpose of community development. Further, we appreciate the agencies' stated commitment to including investments in nationwide funds on CRA exams, as these funds are critical tools to reach rural and other underserved areas. Investments in nationwide funds which support community development can result in more dollars committed more rapidly, subsequently allowing for faster recycling of funds to support even more projects and households. Nationwide funds have a greater capacity to leverage more dollars, creating scale and resulting in more community development projects, initiatives, and other benefits to low-income communities.

Enterprise has extensive expertise in nationwide funds, and we have received first-hand accounts from our partners and investors of the frustrations related to meeting CRA goals. For example, as a result of concentrated banking activity and a desire to invest in strong, safe products, some markets have far more demand for Low-Income Housing Tax Credits than there are tax credits available. In places like New York and San Francisco, for example, not enough credits are awarded to deals in these geographic markets to meet the demand and banks regularly struggle to meet their dollar investment goal.

We would propose an alternative option to address this issue. If an investor invests in a fund which in turn invests in a project in their assessment area, that bank's entire investment in the fund should count toward the institution's investment goal for the market, regardless of whether the deals in the fund that are in their assessment area were of a size that matched their investment. For example, if a bank has an investment goal of $30 million for Chicago and $15 million goal for Baltimore, the bank could make a $25 million investment in a fund that had a $7 million deal in Chicago and a $9 million deal in Baltimore. The bank could then count $10 million to the Chicago goal and $15 million toward Baltimore, or any other combination that totaled $25 million.

There would be numerous benefits to a structure like this, including removing the drastic pricing differences between high-demand and lower-demand markets and a much better balancing of demand in major markets. Further, this policy would eliminate the complex puzzle of matching investors' market goals and needs precisely with deals available in specific markets. Finally, we believe it would encourage investments in housing in areas with the greatest needs, regardless of whether the CRA-needs are high or low in those markets.

We understand that there are many additional considerations if the agencies adopted a structure like this, and we would appreciate an opportunity to discuss the issue further.

Section - 12(g)- 2 and Section - 12(i)-3

We strongly support the agencies' efforts to identify alternative methods of determining whether recipients of an investment are low- or moderate-income, and believe that allowing these proxies will reduce the administrative burden without weakening the mission of CRA. We agree that communities and individuals utilizing Medicaid or the free- and reduced-lunch program are logical, appropriate proxies that remain consistent with the goals of CRA.

We also recommend allowing CRA credit for activities that support individuals living in federally-supported housing developments, including public housing, Low-Income Housing Tax Credit housing, Section 202, Section 811, USDA 514/516 or 515 housing, or receiving federal housing vouchers. At an institution level, the agencies should consider offering CRA credit for investments in mission-driven financial intermediaries, including but not limited to CDFIs that are certified by the U.S. Treasury. In addition, these actions should not be limited to the services test, but the agencies should consider using these proxies on the lending and investment tests, as well.

In Section 12(i)-3, we approve the explicit inclusion of service on the board of directors of an organization that promotes credit availability or affordable housing as an example of a technical assistance activity. We appreciate the reinforcement of the need to demonstrate on-going, substantive involvement in order to receive credit. However, allowing bank staff to provide assistance on issues beyond exclusively financial matters may enhance the benefits to community organizations. Added flexibility to assist on finance, human resources, information technology, or other issues would enable the bank to better meet the needs of an organization.

Redesignated Section 21(f)-1

We strongly support the inclusion of certified CDFIs among the list of eligible institutions for CRA credit for investments and loans in any location, in addition to minority- and women-owned banks and low-income credit unions. This action is unquestionably consistent with the goals and requirements of CRA, as certified CDFIs are mission-driven to serve low- and moderate-income communities, foster responsible community development and respond to the needs of individuals and families.

New Proposed Q&A: Section -12(t)-9

The new proposed Q&A clearly reflects the agencies' interest in encouraging additional lending and investments in organizations with community development missions, and we welcome the addition of language that gives CRA credit to banks for making these types of commitments. However, we are concerned that the implementation of this Q&A, as written, may reduce CRA-driven bank investments in CDFIs and believe additional analysis and fine-tuning is necessary.

The structure and business models of many CDFIs, like Enterprise, makes parsing out certain investments and portions of investments for CRA credit for a particular institution extremely difficult. Before funds are committed or deployed into projects, they are often temporarily pooled with other resources and invested in reliable instruments, including–but not limited to–Treasury securities. In accordance with our mission, however, the entirety of these investments are ultimately used for low- and moderate-income community development, and therefore a financial institution should receive full CRA credit for these investments.

We recommend the following modified language (additions in bold italics), as drafted by the Opportunity Finance Network:

> A9. Examiners will give quantitative consideration for the dollar amount of funds that benefit an organization or activity that has a primary purpose of community development. If an institution invests in (or lends to) an organization that, in turn, invests those funds in instruments that do not have their primary purpose as community development, such as Treasury securities, and ***the agreement between the institution and the recipient requires that the recipient*** uses only the income, or a portion of the income, from those investments to support the organization's community development purposes, the Agencies will consider only

the amount of the investment income used to benefit the organization or activity that has a community development purpose for CRA purposes.

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.

Additional Comments

While the revisions offer several positive changes to CRA, we continue to be concerned about the significant need for comprehensive reform to reflect the substantial changes in the banking industry. We want to take this comment opportunity to recommend that the agencies take additional steps in the coming months to improve and strengthen CRA to make it even more responsive and beneficial for communities and institutions. We believe in the need for a community development test and providing CRA credit for green and sustainable development practices under this test. We believe that banks should receive greater CRA credit for longer term commitments to encourage lengthier terms on investments and loans to allow CDFIs to match the needs of their borrowers without taking undue interest rate and liquidity risk. We explore many of these ideas in depth in the attached testimony and joint comments submitted in 2010 and 2011. We believe these recommendations will further increase responsible lending, investing, and services to low- and moderate-income communities.

We look forward to working with you to make CRA as efficient and practical as possible, and welcome any questions or requests for additional information. Thank you again for your support and commitment to CRA.

Sincerely,

Terri Ludwig
President & CEO, Enterprise Community Partners