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Robert E. Feldman, Executive Secretary
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Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
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By e-mail: regs.comments@federalreserve.gov

Re: Community Reinvestment Act: Interagency Questions and Answers Regarding Community Reinvestment

OCC: Docket ID OCC–2014–0021
FRB: Docket No. OP-1497

Dear Sir or Madam:

JPMorgan Chase Bank, N.A. and its bank affiliates (collectively, "Chase") appreciate the opportunity to comment upon the Proposed Revisions to the Community Reinvestment Act Interagency Questions and Answers Regarding Community Reinvestment (the "Proposal") of the above-named agencies (the "Agencies").

Chase has a strong commitment to the communities in which it does business and brings a wealth of experience to helping meet the credit needs of low- and moderate-income borrowers and neighborhoods in its local communities by providing community development loans, investments and services across its banking markets.

Chase supports the Agencies' effort to periodically update the Community Reinvestment Act Questions and Answers (the "Q&As") to provide additional guidance and clarification in areas where questions or inconsistent practices are known to be present. We further believe that opportunities exist to make changes to the CRA Q&As to assure that the spirit and intent of the statute continues to be met in an environment that has changed greatly over time as technological, environmental and other advancements have affected all communities, including those of low-and moderate-income.

As requested in the Proposal, Chase is providing comments on specific topics and questions in the Proposal.

Proposed Revisions to Existing Q&As

I. Access to Banking Services

Chase supports the proposed revision to expand the CRA guidance to reflect a more balanced approach, recognize the role of technology in meeting banking needs and give greater CRA consideration to alternative delivery mechanisms that meet those needs.

A. Availability and Effectiveness of Retail Banking Services

The Agencies are proposing to revise section __ .24(d)(3)-1 to clarify how examiners should evaluate and consider alternative delivery systems for delivering retail banking services within an institution's assessment area. The proposal is intended to provide additional clarification on the extent to which alternative delivery systems will be considered in a CRA exam.

As the Agencies indicate, "given the extent of technological innovation in the delivery of banking services, alternative delivery systems can create opportunities for institutions to better reach and serve low- and moderate-income geographies and individuals." We agree with the observation of the Agencies that the emphasis on full-service branches has continued to be present in CRA exams, despite technological advances that include, but are not limited to, online banking, mobile banking, remote deposit capture and 24-hour banking kiosks. Chase believes the proposed change supports and clarifies the intent of the Agencies to "encourage the use of all types of delivery systems to help meet the needs of low- and moderate-income geographies and individuals". This change is also consistent with evidence that low-and moderate-income consumers are following the broader trend toward adopting online and mobile technology.

As indicated in the Federal Reserve Board Study from March 27, 2013 entitled "Consumers and Mobile Financial Services", among the 90% of under-banked consumers with mobile phones, 49% had used online/mobile banking in the twelve months preceding November 2012, up from 29% since December 2011. Additionally the study noted that mobile phones may also allow for the extension of financial services to an additional 10% of the population that is unbanked, as 59% of this group has a mobile phone, half of which are smartphones. An FDIC Study from April 2014 entitled "Assessing the Economic Inclusion Potential of Mobile Financial Services" further found that 26% of the underbanked use online banking as their main method to access their account, and the underbanked are more likely to use mobile banking (9%) than the fully banked (5%).

Recognizing these changes in consumer behavior within the CRA guidance is fully consistent with the spirit and intent of the CRA statute to promote the role of financial institutions to meet the convenience and needs of local communities by encouraging consideration of all means of providing access to retail banking services.

B. Alternative Systems for Delivering Retail Banking Services

Q&A Section __.24(d)(3)-1 is being modified to provide further guidance regarding how examiners will evaluate the availability and effectiveness of alternative delivery systems, include examples of alternative delivery systems, and note that examples are not intended to limit consideration of future technological advances. The proposal clarifies that the focus of the evaluation will be to review the extent to which the alternative delivery systems are available and effective in providing financial services to low- and moderate-income geographies and individuals.

The proposed language makes clear that consideration will be given to any information provided to examiners demonstrating that an institution's alternative delivery systems are available to, and used by, low- and moderate-income individuals, such as data on customer usage or transactions. The proposal also includes a list of factors that examiners may consider including:

- ease of access, whether physical or virtual
- cost to consumers, as compared with other delivery systems
- range of services delivered
- ease of use
- rate of adoption
- reliability of the system

In response to a specific question asked in the Request for Comment, Chase suggests the evaluation of the cost to consumers, in comparison to other delivery systems, is best evaluated within the specific context of each financial institution. The provision of retail banking services at a reduced cost is not a requirement of the regulation and it is important the Q&As be clear in that regard.

We believe the list of factors otherwise provides sufficient flexibility and is generally appropriate. To ensure consistent treatment in exams, we also suggest it would be helpful for the final revision to clearly specify that the above list includes possible factors examiners may consider but is not intended to be exhaustive or to receive greater consideration than other information an institution may elect to provide. In addition, when evaluating the effectiveness of alternative systems, we recommend examiners utilize the population benchmark that is currently stipulated in the regulation for use in the evaluation of retail bank branches. Evaluating all elements of the retail banking services test against a common benchmark will promote consistent treatment of all delivery systems across exams; i.e. comparing the distribution of branches or addresses of customers utilizing the alternate delivery method, to the distribution of population within an assessment area.

II. Innovative or Flexible Lending Practices

Chase believes the inclusion of innovative or flexible lending practice examples can potentially be interpreted as encouraging practices that may be neither safe, sound nor sustainable.

As stated in the request for comment, one of the five performance factors used by examiners in the Lending Test for large financial institutions is an assessment of the institution's use of "innovative or flexible lending practices" in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies. While the guidance clearly states that such qualitative considerations are not required, but may be used to enhance CRA performance, an expectation has generally existed that an institution provide examiners with evidence of such practices.

The current CRA Q&As contain two examples of innovative or flexible lending practices pertaining to a:

1) community development loan program that incorporates a technical assistance initiative, and
2) small business lending program in a low- or moderate-income area that incorporates an initiative to contract with the small business borrowers.

The Agencies are proposing to expand the list of examples of innovative or flexible lending practices to include two new examples described as those in connection with:

1) a small dollar loan program, outreach initiatives or financial counseling targeted to LMI individuals or communities, and

2) mortgage or consumer lending programs targeted to LMI geographies or individuals that include underwriting standards that use alternative credit histories in a manner that benefits LMI individuals.

It is unclear if the proposed examples will result in more programs that would be deemed innovative or flexible in this regard, however, the examples in the CRA guidance may lead to the interpretation by some banks, community organizations and examiners as a regulatory expectation that a financial institution engage in the illustrated practices for the benefit of the CRA rating.

To enhance its usefulness, we believe it is critically important for the CRA Q&A guidance to also reflect the importance of safe, sound and sustainable lending practices as contained in the regulation, part .21(d) which states, in part, "Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, <u>only if consistent with safe and sound operations</u>". Absent the inclusion of specific language that underscores the importance of balancing flexibility with safe and sound business practices, there continues to be a possibility for other interpretations or a singular emphasis that would not have positive long-term benefit to low- or moderate-income geographies or individuals nor to financial institutions.

III. Community Development

A. Economic Development

Chase supports the efforts of the Agencies to clarify the definition of economic development and proposes the purpose test component of the definition be removed to ensure that all small business and small farm loans, investments or services meeting the size test as stated in the CRA regulation receive CRA consideration as economic development.

The CRA definition of economic development involves both a size test and a purpose test. A loan, investment or service meets the size test if it finances or otherwise supports an entity that meets the size eligibility standards of the Small Business Administration's Development Company ("SBDC") or Small Business Investment Company ("SBIC") programs, or has gross annual revenues of $ million or less. To meet the purpose test, the activity must promote economic development by supporting permanent job creation, retention or improvement for individuals who are "<u>currently</u>" low-or moderate-income, businesses in low-or moderate-income geographies, or businesses located in areas targeted by a government agency for redevelopment. There is a further presumption that any loan to, or investment in, an SBIC, SBDC, Rural Business Investment Company, New Markets Venture Capital Company, or a New Markets Tax Credit-eligible community development entity meets the purpose test.

The existing Q&A language is more restrictive than the regulation, which requires only that activities meet the size test to meet the definition of economic development. The purpose test in the Q&A also has, in part, had the effect of limiting CRA consideration to activities that produce low-wage jobs, which is inconsistent with the spirit of the CRA. The additional criterion has served to distort the reflection of the totality of a financial institution's efforts in support of economic development.

We strongly urge the Agencies to delete the purpose test from the CRA Q&A to better reflect an understanding of the important role small businesses play in the economic growth and strength of local communities and remove the added requirement that institutions must limit activities and document the wages paid or jobs created or retained by the associated businesses. The importance of small businesses as vital economic engines for our economy is well documented. As reported in the "SBA Frequently Asked Questions", March 2014, small businesses make up:

- 99.7 percent of U.S. employer firms
- 63.0 percent of net new private-sector jobs
- 48.5 percent of private-sector employment

All activities that meet the size test as defined in the CRA regulation should receive CRA consideration as economic development. The absence of this approach has fueled an erroneous impression among some CRA stakeholders that bank CRA programs do not support economic development activities.

The proposal seeks input in regard to the nature of the information examiners should review when determining the performance context of an institution seeking CRA consideration for its economic development activities. The existing Q&A explains that an institution may provide examiners with any information it deems relevant, including information on economic, demographic, institution- and community-specific opportunities in its assessment area(s). We believe this provision provides sufficient guidance and changes that are overly prescriptive would be counter productive to an institution's efforts to balance innovativeness and responsiveness with its unique business strategy.

Additionally, the proposal requests input on particular measurements of impact that examiners should consider when evaluating the quality of jobs created, retained, or improved. We strongly believe that the determination of CRA consideration for economic development activities should not include any assessment of the quality of the jobs provided by the business as such consideration is outside the scope of the CRA. Further, if the purpose test is removed, such consideration would not be necessary.

B. Community Development Loans

Chase is in favor of the proposed change to include additional examples of community development in the Q&A and clarify that CRA consideration may also be given to loans related to renewable energy or energy-efficient technologies that also have a community development component ("green" activities), including in cases where the financial benefit to low- or moderate-income individuals from reduced cost of operations is indirect.

The inclusion of a specific example that clarifies that green activities can receive CRA consideration will help ensure consistent treatment of green activity, which can contribute to the overall health of all communities, including low- and moderate-income areas.

C. Revitalize or Stabilize Underserved Nonmetropolitan Middle-Income Geographies

The bank believes the proposed addition to the Q&A examples of activities that help to meet essential community needs and may receive CRA consideration, to include new or rehabilitated communication infrastructure, will be helpful but that additional specificity is warranted.

The inclusion of a specific example pertaining to the financing of broadband internet service that benefits, in part, low- or moderate-income residents will be a helpful addition to a list of examples that includes the financing of hospitals, schools, industrial parks and other types of activities. The inclusion will help promote consistent treatment across examiners. It is also complementary to the proposed change to provide consideration for the delivery of financial services via alternative delivery mechanisms that include online and mobile delivery as well as supporting economic development in rural areas.

Existing examiner practice when evaluating activities that benefit consumers of all income levels is to permit CRA consideration only if the institution can evidence that greater than 50% of those served are of low-or moderate-income; alternatively, examiners may allow CRA consideration for a percentage of the institution's financing that equates to the percentage of those served who are of low- or moderate-income. It would not be feasible for institutions to be expected to be able to determine what proportion of financing for broadband infrastructure benefits low-or moderate-income people or communities nor to expect that such financing primarily benefits specific income categories. We propose that when the financing of an infrastructure project benefits consumers of all income levels, examiners utilize the institution's performance context and any other information the institution may provide to develop an effective proxy for determining the proportion of the financing that should receive CRA consideration.

Further, we believe it is important to clarify whether the proposed example regarding the ability to receive CRA consideration for broadband infrastructure retains the existing requirement that the activity must be approved by the governing board of an Enterprise Community or Empowerment Zone and is consistent with the board's strategic plan or have similar official designation as consistent with a federal, state, local, or tribal government plan for the revitalization or stabilization. As currently written, the requirement to evidence a plan is not clear.

Proposed New Q&As

I. Community Development Services

A. Evaluating Retail Banking and Community Development Services, and
B. Quantitative and Qualitative Measures of Community Development Services

We do not believe the proposal pertaining to the evaluation of Retail Banking and Community Development Services achieves its stated intent to reduce uncertainty regarding the performance criteria, encourage additional CD Services by "affirming the importance" of this component of the Service Test, and sufficiently explain the importance of the qualitative factors related to community development services.

The proposed Q&A attempts to emphasize that community development services are evaluated on two criteria that differ from the criteria used to evaluate retail banking services and that are comprised of the:

(i) extent to which the institution provides community development services, and
(ii) innovativeness and responsiveness of its community development services.

The proposal attempts to clarify that the evaluation of community development services is not limited to a single quantitative factor, such as the number of hours a bank employee spends on a specific community development service. However, the proposal does not sufficiently clarify how examiners evaluate community development services under the large institution service test. The lack of transparency regarding how much impact the community development services have on the service test outcomes combined with the perception of uneven consideration of such services by examiners will continue to contribute to the ongoing uncertainty relative to the performance criteria.

An institution's provision of community development services will often align with the business strategy of the institution and its assessment of community needs. We suggest ongoing examiner guidance and training that encourages examiners to consider any information provided by the institution that demonstrates community development services are responsive to those needs is the best option for reducing the uncertainty this proposal seeks to address.

II. Responsiveness and Innovativeness

A. Responsiveness
B. Innovativeness

The Agencies have introduced two new Q&As to provide general guidance on how examiners evaluate responsiveness and innovativeness, two of the qualitative aspects of an institution's activities that are included in the regulation, with a focus on:

- how examiners consider whether a financial institution has been responsive to credit and community development needs, and
- the circumstances in which a lending, investment or service activity would be considered innovative.

The stated intention of these new Q&As is to highlight the importance of being responsive to credit and community credit needs, encourage institutions to think strategically about how to best meet the needs of their communities based on their performance context and clarify that innovative activities are not required for an institution to achieve a "satisfactory" or "outstanding" CRA rating.

We feel the proposed Q&As meet the stated intention but could be enhanced with a reiteration of the language contained in the regulation part .21(d) that states "This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit." This addition would facilitate further consistency in examiner expectations relative to the extent an institution should be responsive or innovative in meeting community needs.

Chase is pleased to have had the opportunity to submit these comments. We would be happy to discuss them further with you.

Sincerely,

Lela Wingard Hughes