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LISC

September 10, 2007

Docket ID OCC-2007-0012
Office of the Comptroller of the Currency
250 E Street, SW
Mail Stop 1-5
Washington, DC 20219

Jennifer J. Johnson, Secretary
Attention: Docket No. OP-1290
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Robert E. Feldman, Executive Secretary
Attention: Comments RIN number 3064-AC97
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Regulation Comments
Attention: ID OTS-2007-0030
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

To Whom It May Concern:

Local Initiatives Support Corporation (LISC) and Enterprise appreciate the opportunity to comment on the interagency proposed Questions and Answers (Q&As) regarding the Community Reinvestment Act (CRA). Specifically, we are deeply concerned that requiring banks to show how an investment in a national or regional community development fund meets the geographic requirements of the CRA regulations would hurt the many rural areas, smaller cities and entire states that are underserved by large, sophisticated banks, and impede important activities perceived as risky, such as housing for the homeless and other vulnerable populations. More broadly, it would interfere with efficient capital mobility, one of the most important benefits of the U.S. financial markets.

Enterprise and LISC are the nation's two largest nonprofit providers of capital for low-income community development. We have provided a combined total of $16 billion since 1980, and currently invest $2 billion annually, mostly in the form of equity investments based on Low-Income Housing Tax Credits (Housing Credits) and New Markets Tax Credits. National and regional funds with multiple bank investors comprise a majority of that investment. We typically organize these funds by attracting the investors and placing and managing equity capital in activities that revitalize low-income communities and help low-income families live independently and productively. We particularly focus on the hardest-to-serve people and places.

We would like to make four points: (1) national and regional community development funds serve important purposes; (2) the agencies' proposal will be unworkable for such funds where banks are the primary investors or lenders; (3) if implemented, the proposal would hurt underserved communities and people with special needs; and (4) the agencies should adopt a simpler, more flexible approach consistent with other CRA policies.

1. National and regional community development funds serve important purposes. Indeed, the current Q&A sec. __.12(i) & 563.e.12(h)-5 provides strong support for such funds: "The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multi-state basis."

    a. They spread risk among multiple investors or lenders and diversify risks over a broad geographical area. This is a common technique for fostering efficient investment markets and attracting new investors to support community development activities. It is critical that low-income communities and families be able to benefit from these established business practices.

    b. They bring capital to communities underserved by major, sophisticated banks. For example, fewer than 20 corporations – mostly large, sophisticated banks – provide the preponderance of investments based on Housing Credits. This investment market is highly efficient and competitive, resulting in very low after-tax investment yields slightly above 5%, very low foreclosure rates of 0.02% annually, and maximizing the capital actually available for housing. Moreover, these funds have been able to reach communities, including rural areas, smaller cities, and even some states that these banks do not specifically target.

    c. They facilitate financing of activities perceived to be of higher risk, such as supportive housing for the homeless and other vulnerable populations. About 25% of our combined Housing Credit investments are used for this supportive housing, with great success.

d. They are cost-efficient. Pooling a critical mass of capital allows spreading transaction costs over a large volume of activity. More of each investment dollar goes into communities rather than to third parties transaction costs.

2. The proposed Q&A requiring banks to show how their participation in national and regional community development funds meet geographical targeting tests is unworkable. The Q&A suggests three alternatives:

   a. A bank could claim pro-rata credit for all of the activities financed by the fund that are located in its geographic area. For example, if 20% of the fund's activity is within a bank's geographic target area, then the bank would get credit for only 20% its investment in the fund – even if the bank contributes a smaller share of the fund's capital. Only a bank whose territory closely coincides with the fund's activities would find this approach acceptable.

   b. Alternatively, a fund manger could assign credit for its various activities to each of its bank participants, provided that no fund activity is attributed to more than one bank. The problem here is that most bank investors will be interested only in certain target areas, and often the same target areas. For Housing Credits, there are fewer than 20 major corporate investors nationwide, and a national or regional fund might include five to ten of them. We are already seeing banks insist on receiving credit for specific locations, and even for specific properties. Simply put, it will be difficult or impossible for fund managers to reconcile all of these competing demands. Many banks would decline to participate unless they can be sure of getting credit for their specific priority deal and location. Meanwhile, many projects that are highly responsive to local community needs will be located where no major bank investor has a priority interest, and these projects will be much harder if not impossible to finance.

   c. The proposed Q&A also offers the example that a bank could get credit for participating in a new nationwide fund providing foreclosure relief if the fund manager uses its best efforts to meet the bank's geographic targeting requirements. While we appreciate this flexibility, it presents two problems. First, it appears to apply only to new or innovative activities, so it would be of little use for Low Income Housing Tax Credits, for example. Second, since examiners would presumably have broad discretion about how much credit a bank would receive for participating in such a fund, banks could not be certain at the point when investment decisions are made how much credit a future examiner might grant. In our extensive experience, such uncertainty clearly discourages bank participation.

3. If implemented, the proposed policy would undermine national and regional community development funds, hurt underserved communities, make homeless

and supportive housing and other challenging activities harder to finance, and drive away banks unable to make very large investments.

a. The first effect of the proposed policy would be to undermine national and regional funds that include multiple bank participants. Some banks already prefer to make Low Income Housing Tax Credit investments through proprietary funds in which they are the sole investors. This route is likely to become more popular, especially for the few major banks able to make very large financing commitments, as the only sure way to receive full CRA credit for their entire investment. As the largest banks withdraw from multi-investor funds, those funds will lose viability. Ironically, it is these multiple investor funds that offer the best opportunities for banks that cannot make very large financing commitments, and have been an excellent way for banks to gain experience in community development financing. Many such banks have taken great comfort from participating in funds in which larger, more experienced banks are also participating. Such avenues will become less available.

b. As single-investor, proprietary funds become more prominent, it will be harder to attract financing for activities in areas outside those banks' priority geographies. Many rural areas, smaller cities, and even entire states served by only one or two, if any, of the largest banks. Some financing in underserved areas may still be available, but probably on less competitive terms. For example, investments based on Housing Credits would require higher rates of return, so a fixed amount of tax credits would generally less capital for the housing, in turn creating a financing gap that public subsidies would have to fill. We have already observed that rural Housing Credit properties attract less capital because few banks target them.

c. Similarly, activities perceived as risky, such as homeless housing, would be harder to finance. Although we have been very successful in managing these investments, it is much easier to attract capital if a homeless housing project is a small part of a large fund rather than a large part of a small fund.

4. The agencies should adopt a simpler, more flexible policy consistent with CRA precedents. Specifically, a bank that invests in a national or regional community development fund should get full credit for its investment, provided that it is adequately addressing the reinvestment needs of its assessment area(s). In determining the adequacy of the bank's assessment area performance, the fund's entire activity with such area(s) should be considered.

   The agencies have already established or proposed several policies under CRA that are consistent with this approach:

a. First, the current Q&A noted earlier (sec. __.12(i) & 563.e.12(h)-5), provides that: "an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s).

   "In addition, a retail institution that, considering its performance context, has adequately addressed the community development needs of its assessment area(s) will receive consideration for certain other community development activities. These community development activities must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s). Examiners will consider these activities even if they will not benefit the institution's assessment area(s)."

b. A wholesale and limited purpose bank gets credit for community development activities nationwide, provided that it is adequately addressing the needs of its assessment area(s).

c. Banks located outside the designated disaster areas may receive positive CRA consideration for activities that revitalize or stabilize the designated disaster areas related to hurricanes Katrina and Rita, provided that the banks have otherwise adequately met the CRA-related needs of their local communities.

d. Under a newly proposed Q&A, a majority-owned bank would receive CRA credit for supporting minority- and women-owned banks and low-income credit unions even if they and their activities are not within the majority-owned bank's assessment area(s) or the broader state or region. The statutory authority for this policy makes no special provision for the location of the majority-owned bank.

To avoid conflict with other policies that generally focus on bank activities within assessment areas, we suggest that our proposal apply only to national and regional funds engaged in community development activities, and would therefore exclude home mortgage, small business and farm, and consumer lending, all of which are otherwise reported under CRA.

We believe that consistency requires that a bank receive full recognition for participation in national or regional community development funds only if it is adequately addressing the reinvestment needs of its assessment area(s). The principle is that a bank should remain responsible for addressing the needs of its assessment area(s) and that a bank meeting this responsibility should also receive full recognition for participating in national and regional funds, even if they do not directly serve the bank's assessment area(s). In establishing whether a bank is adequately addressing its assessment areas' needs, a bank participating in a national or regional fund should receive favorable consideration for the fund's entire activity within the bank's assessment area(s). Otherwise the policy will not be fully effective.

Finally, the typical bank is unlikely to participate in a national or regional community development fund unless it can be confident of receiving full credit regardless of the location of the fund's activities (assuming the bank is adequately addressing its assessment areas' needs). Many banks are now finding that examiners are denying some or all credit even for activities that benefit the bank's region or state but not its assessment area. We strongly urge the agencies to remove the following portion of the current Q&A sec. __.12(i) and 63e.12(h)-6: "When examiners evaluate community development loans and services and qualified investments that benefit regional areas that include the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus less responsive to assessment area needs." If a bank is adequately addressing the needs of its assessment area(s), the current policy is both unnecessary and counterproductive.

This concludes our comment. We would be happy to discuss the matter further with the agencies.

Sincerely,

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