



Puerto Rico Housing and Human Development Trust Fund

August 5, 2022

VIA ELECTRONIC MAIL (comments@fdic.gov)

Mr. James P. Sheesley
Assistant Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Attention: **Comments RIN 3064-AF81**

Dear Mr. Sheesley,

The Puerto Rico Housing and Human Development Trust Fund (“**FIDEVI**” by its Spanish acronym) hereby respectfully submits to the Federal Deposit Insurance Corporation (“**FDIC**”) this letter with its comments in connection with the Joint Notice of Proposed Rulemaking that requests comments on certain revisions to the Community Reinvestment Act Regulations (12 CFR Part 345) proposed by the FDIC (the “**Proposed Rules**”) published on June 3, 2022 (the “**Notice**”). Specifically, FIDEVI’s comments relate to the quantitative consideration which has been given to a certain type of community development investment in accordance with §12 (t)-9 of the Interagency Questions and Answers Regarding Community Reinvestment (the “**(t)- 9 Q&A**”) and FIDEVI’s request that such treatment be modified under the Proposed Rules, as discussed herein.

Our comments are based on the Agency’s invitation for comments on the proposal related to feedback on approaches to increase the upfront certainty about what activities qualify for CRA credit, including a process for banks and other stakeholders to obtain pre-approval that a particular activity qualifies for consideration and publication of illustrative lists of qualifying activities, as well as, the dollar value of these qualifying activities.

More specifically, as discussed below. “**Request for Feedback**”:

Question 1 – *Should the agencies consider partial consideration for any other community development activities (for example, financing broadband infrastructure, health care facilities, or other essential infrastructure and community facilities), or should partial consideration be limited to only affordable housing? Answer: YES. Issuances (investments) made by nonprofit organizations, such as a housing trust that supports and promotes affordable housing development through nonprofit developers and which mission and vision are providing affordable housing for the low- income population, should be given entire consideration for any transaction independently of the purpose of its collateral (which could be affordable housing activities or any other community development activity). These referred types of*

transactions support directly the mission and vision and sustainability of organizations such as FIDEVI. If the primary purpose of the organization that issues a CRA qualifiable transaction is affordable housing, consideration for qualification should be given to the entire amount of the transaction.

Question 10 – *What changes, if any, should the agencies consider to ensure that the proposed affordable housing definition is clearly and appropriately inclusive of activities that support affordable housing for low- or moderate- income individuals, including activities that involve complex or novel solutions such as community land trusts, shared equity models, and manufactured housing?* **Answer:** Any transaction issued by an organization that supports and promotes affordable housing development for the low- and very low- income populations should be given credit in its entirety independently of the type of transaction, including activities which may involve complex or novel solutions as part of the transaction. Any transaction originated by a trust or nonprofit organization that has as the mission and primary purpose of supporting affordable housing development should be fully accredited and CRA qualifiable including those that have community development activities with Treasury Department – certified CDFI's which should receive automatic CRA community development consideration.

Question 32 – *What procedures should the agencies develop for accepting submissions and establishing a timeline for review?* **Answer:** A consultation and confirmation process for determining, in a timely manner, if an activity qualifies as a community development activity in order to provide greater certainty should be developed to be implemented with the banks being evaluated. Banks evaluated under CRA may request confirmation of activities that may have been presented to them by other stakeholders (for example, FIDEVI). In addition, a list of qualifying activities should be developed and provided considering more flexibility in engaging in new and innovative activity. These lists could clearly state the type of activities for transactions that would be credited for CRA purposes and could allow these transactions to be pre structured between the banks and the organizations. These would dissipate any doubts that could emerge from interpretations of the (t)(9) Q&A.

The joint notice of proposed rulemaking (FDIC-OCC CRA notice of proposed rulemaking- on May 20, 2020) proposed similar issues. The OCC issued its final rule and it provides an illustrative list and pre-approval for this type of transactions. A very similar process could be applied by the FDIC. These clarifications, together will full credit for the entire transaction, could definitely bring back the opportunity of new bond issuances for organizations like FIDEVI.

For ready reference, the (t)(9)- Q&A provides that 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 the institution invests in (or lends to) an organization that, in turn, invests those funds in instruments that do not have as their primary purpose community development, such as Treasury securities, and 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 community development purpose for CRA purposes. This interpretation has totally disincentivized banks in continuing to invest in FIDEVI.

As will be discussed herein below, since the (t)(9)- Q&A was made effective, FIDEVI has suffered a severe financial downturn and has placed it in a situation where it has been unable to serve the purposes for what it was created.

We believe that a brief background regarding FIDEVI and the community development purposes for which it was created is in order before our specific comments on the Proposed Rule are provided.

1. Organization and Purposes of FIDEVI.

FIDEVI was constituted as a charitable trust (similar to a consortium) pursuant to Deed No. 135 dated on May 5, 2004 before Notary Joseorlando Mercado Gely (the "Deed of Trust"). The Deed of Trust specifically states that FIDEVI is the product of a collaborative alliance between Puerto Rico's banking industry and the homeless population advocacy community with the commitment of the Government of Puerto Rico. As such, the Board of Trustees of FIDEVI is composed of a member appointed by the Governor of the Commonwealth of Puerto Rico, the President of the Puerto Rico Bankers Association, the President of the Puerto Rico Mortgage Bankers Association, a member representing the private sector and three members representing the homeless advocacy community.

According to the Deed of Trust, the purpose for which FIDEVI was created is to devote its corpus and income to the promotion and support for the development, rehabilitation and preservation of **adequate, affordable and accessible housing for people of limited, scarce or no economic resources in the Commonwealth of Puerto Rico.**

FIDEVI commenced operations in December 2008, after going through a period of administrative organization. In accordance with such mandate, FIDEVI has established its mission and vision as follows:

“Mission Statement. The mission of the Puerto Rico Housing & Human Development Trust is to combine the public and private efforts in the constitution of a permanent and irrevocable fund. **This fund will devote its efforts to promote and support the development of adequate, affordable and accessible housing for individuals of scarce or no resources, such as homeless people, mental patients, single mothers and elderly people.** In executing this mission, the Trust shall not be restricted in use to people of any race, faith, color, or creed and will be administered on a non-discriminatory basis.”

“Vision. Attain an effective impact through advocacy and facilitating the conditions in order that those persons with scarce or no resources in Puerto Rico might have adequate, affordable and accessible housing to meet their basic needs.”

The above might be attained through the generation and channeling of funds, knowledge exchange and the establishment of relationships with related organizations (nongovernmental organizations – NGO’s) for projects that provide affordable housing for homeless, vulnerable, poor or distressed individuals and families in Puerto Rico. Examples are: Permanent Housing,

Transitional Housing, Assisted Living, Supportive Housing, Shelter and Single Occupancy Housing.

Following the purposes for which it was created, FIDEVI has provided predevelopment and development grant funding of \$3.8 million to support \$46 million in total project costs for 36 affordable housing developments with a track record of 99% project completion. These grants were made mostly until 2016 when bond issuances started to become due and revenues significantly decreased. Only 4 of these projects, for a total of \$150,000 in grants were awarded from 2017 until present.

FIDEVI has issued more than \$500 million in affordable housing bonds, most of them issued for banks and previously CRA qualified until the (t)(9)- Q&A was made effective. FIDEVI is Puerto Rico's only housing trust and is uniquely positioned to leverage its relationships, expertise, and bonding authority to advance low-income housing. FIDEVI's most recent developments include a 501c3 affiliate, Affordable Housing Fund for Puerto Rico, Inc. This affiliate is an emerging CDFI created for, among other financial services, the capitalization and management of a loan fund that works in tandem with existing grantmaking from FIDEVI to continue supporting the organizations that provide affordable housing for low income and very low income special needs populations.

2. FIDEVI's Funding Model.

FIDEVI's organizers had a clear understanding that the best funding model for the Trust would be a continuous source income mechanism ("Income Transactions"). At the time FIDEVI was created, at least one similar non-profit organization existed in Puerto Rico that had been extremely successful in achieving its funding goal by establishing an Income Transaction model.

Furthermore, in order to attract investors who would be willing to invest in FIDEVI, the government provided to these investors certain tax benefits through legislation allowing certain Income Transactions which have made possible the funding for FIDEVI's operations. In addition, since its inception, the organizers had intended these transactions to be CRA qualified so as to ensure that commercial banks would become target investors, which, if the rules regarding these investments are clarified by the Agencies, they still are. This would bring back the recurrent revenue stream and ensure FIDEVI with a continuous and stable source of income with which to achieve its community related goals.

The mechanism used for a typical Income Transaction of FIDEVI may be summarized as follows:

1. FIDEVI issues its Notes (the "Notes") to be sold to the investor (the "Investor").
2. FIDEVI receives proceeds from the sale of the Notes.
3. FIDEVI uses the proceeds from the sale of the Notes to invest in securities that will serve as the underlying collateral of the Notes ("Collateral"). In the case of

CRA related transactions, the securities used as Collateral may directly or indirectly be CRA qualified.¹

4. FIDEVI receives interest and principal prepayments from amounts invested.
5. FIDEVI remits payments to the Investor. The interest rate on the Collateral is higher than the interest rate on the Notes issued by FIDEVI thereby permitting a sustained generation of income for the period of these investments.

As a result of this mechanism, FIDEVI receives a monthly, quarterly or semiannual fixed income during the term of the transaction based on the interest frequency of the Collateral.

FIDEVI's original funding model involved three (3) categories of investors:

- Individuals and corporations with certain philanthropic requirements.
- Puerto Rico based mutual funds which in order to comply with PR Treasury Department requirements must invest a portion of their portfolio in Puerto Rico qualified investments which FIDEVI fully qualifies.
- Lenders or other investors willing to invest in FIDEVI's debt.

After the perfect economic storm that has lasted for more than a decade hit Puerto Rico, the first group of investors totally disappeared from the market as early as 2012.

The second group, Puerto Rico based mutual funds which have been participating in FIDEVI Income Transactions as an industry, is circumscribed to Puerto Rico in terms of firms and customers. This is a finite group with three (2) or four (3) players and a customer growth dependent on supportive economic growth trends, something which has not materialized to date in Puerto Rico.

This has left FIDEVI with the possibility of only reaching out to the third type of investors (sharply evident since 2013 and stronger at this particular time). In order to sustain a volume of activity after payment of minimal operating costs, FIDEVI had to resort to lending institutions willing to invest in FIDEVI notes (the "CRA Income Transactions"). Access to funds generated through lenders' investment activity in FIDEVI became an absolute necessity and, for the reasons mentioned below, will continue to be a necessity in the foreseeable future. Unfortunately, and despite FIDEVI's comments to the Agency by letter dated May 13, 2013, the Q & A were revised effective on November 20, 2013, to include the (t) 9- Q & A, that has severely limited FIDEVI's access to investments from lending institutions inasmuch as their inability to use the complete amount of the CRA Income Transaction in FIDEVI for compliance with their CRA investment requirements. This has totally disincentivized their interest of investment in FIDEVI Income Transactions and this type of community development investments.

¹ For example, with respect to certain transactions, FIDEVI has used FNMA certificates as collateral and other municipal infrastructure bonds. The underlying mortgage products used with respect to such certificates (FNMAs), present an across the board industry peculiarity; most of these transactions involved lower value properties and LMI households. As for the municipal bonds, these are example of transactions that count as to where to expand CRA activity and helps provide essential infrastructure that benefits or serves LMI individuals as well as areas of need, as opportunity zones.

To illustrate why the CRA Income Transactions are still crucial for FIDEVI's survival, following is certain relevant data related to FIDEVI's transactions since it commenced operations.

During 2009, FIDEVI conducted eight (8) non-CRA Income Transactions involving PR Funds with different institutions. (See Exhibit A). Since then, no other transaction has materialized primarily due to Puerto Rico's dire economic environment during the past decade. It is critical to accept the fact that it will be years before this pool of investors strengthens enough to generate additional transactions and income.

Consequently, as mentioned before, due to the current adverse economic conditions prevailing on the island, there are no alternative sources of funding for FIDEVI, other than the CRA related Income Transactions with the financial institutions, (See Exhibit B).

FIDEVI found in these CRA Income Transactions a consistent and stable funding source which has allowed the organization to do short to medium term planning for achieving its mission. With no new transactions since 2013 due to the disincentivizing, FIDEVI's sustainability has been severely affected, and more importantly, has affected the mission of the organization decreasing substantially the amount of grants to the organization, and by consequence the amount of LMI individuals assisted, to almost none as of today.

Few organizations in the island have had the capacity and mission to assist the homeless and housing needs of vulnerable populations like FIDEVI. The different events that have occurred during the past four (4) years have steeped the required assistance to these vulnerable populations. During 2017 the island was hit by two very strong hurricanes (Irma and Maria), the receipt of federal assistance from the Community Development Block Grants for Disaster Relief (CDBG-DR) funds has been significantly delayed until this time, the island had earthquakes at the beginning of 2020 and last, but not least, the island has been affected by the COVID – 19 pandemic as many other countries in the world. All these events aggravate the availability of funds to assist these organizations which has caused more economic deterioration and has worsened housing conditions for the population that FIDEVI serves.

As mentioned before, having FIDEVI's Income Transactions being CRA qualified in their entirety is crucial for attracting the financial institutions to invest in FIDEVI. Current market conditions with higher interest rates may provide additional incentives for new transactions if transaction is qualified entirely.

FIDEVI respectfully requests that the effect of the (t)-9 Q&A, detrimental to community development organizations such as FIDEVI that depend on Income Transaction mechanisms for its funding needs, be revised and reinterpreted. The Agencies have an opportunity now to correct this situation by clarifying in the Proposed Rule that the interpretation in (t)9- Q & A should not apply to an organization such as FIDEVI that has demonstrated a strong commitment to the communities it serves and that is an essential vehicle to the accomplishment of the reconstruction efforts related to the devastations caused to the residents of Puerto Rico by all these events previously described. **These income transactions should be included in the transactions list, if**

implemented, and should be clarified as CRA qualified investments in the Proposed Rule and included in the pre-approval process.

Financial institutions in Puerto Rico have demonstrated an appetite for investments in organizations such as FIDEVI due to their CRA responsibilities coupled with the fact that there are limited investment opportunities to satisfy the CRA investment requirements on the island. However, it is crucial for them that the total amount of the investment be credited for CRA compliance purposes. Undoubtedly, in connection with CRA Income Transactions, the investing financial institution's capital is at risk for the total value of the investment, even if the Agencies perceive that only the income received by FIDEVI from the transaction is actually invested in community development activities. If it were not for the total amount invested by the financial institution in FIDEVI, it would not be allowed to receive the income used by FIDEVI for its funding needs. This is the nature of the funding mechanism chosen by FIDEVI's founders.

3. Conclusion.

We hereby urge the Agency to consider the devastating effect that the (t)9- Q&A has had upon the operations and mission accomplishment of FIDEVI and its commitment with the organizations that serve the homeless population in Puerto Rico. For this reason, **primary purpose for Affordable Housing** Income Transactions should be included in the revised list of qualified CRA community development investments, if developed and as described, and total dollar value credit should be given to each such transaction and a pre-approval process could give certainty to the local banks. Doing so will encourage banks to provide more CRA qualified investments and at the same time, will accomplish the purpose of the Proposed Rule to better achieve the law's underlying statutory purpose of banks serving their communities. It also will accomplish the purpose of expanding where CRA activities counts because the CRA Income Transactions also provide direct or indirect investments in infrastructure and other housing products like FNMA's among others. In addition, such investments will help meet the credit needs of an unbanked community, particularly those individuals who otherwise would not have a home without the support of FIDEVI.

As described in the Federal Register, the Proposed Rule is designed to achieve the following positive outcomes desired by many stakeholders:

- Update CRA regulations to strengthen the achievement of the core purpose of the statute;
- Adapt to changes in the banking industry, including the expanded role of mobile and online banking;
- Provide greater clarity and consistency in the application of the regulations;
- Tailor performance standards to account for differences in bank size and business models and local conditions;
- Tailor data collection and reporting requirements and use existing data whenever possible;
- Promote transparency and public engagement;
- Confirm that CRA and fair lending responsibilities are mutually reinforcing; and

- Create consistent regulatory approach that applies to banks regulated by all three agencies.

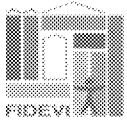
We believe that including the CRA Income Transactions -like the ones mentioned- in the approved transactions list, as well as a pre-approval process, and giving credit to the entire dollar value of the transaction would achieve many of these positive outcomes.

FIDEVI appreciates the FDIC's consideration of these comments. Should any question arise in connection with these comments, please do not hesitate to contact the undersigned 1607 Ave. Ponce de Leon, Cobian's Plaza Bldg. Suite UM-04, San Juan, Puerto Rico 00909 and by phone 787-294-1288.

Sincerely,



Annette Montoto
Executive Director



Puerto Rico Housing and Human Development Trust Fund

EXHIBIT A NON – CRA TRANSACTIONS

<u>Date</u>	<u>Entity</u>	<u>Amount</u>	<u>Collateral</u>	<u>Net Interest Income</u>

Puerto Rico Housing and Human Development Trust Fund

EXHIBIT B

CRA NOTES TRANSACTIONS

<u>Date</u>	<u>Entities</u>	<u>FIDEVI Notes</u>	<u>Collateral</u>	<u>FIDEVI Income</u>	<u>Net Interest Income</u>
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