Appleseed

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

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

OCC: Docket ID OCC-2013-00003
FRB: Docket No. OP-1456

Dear Sir or Madam:

Appleseed appreciates the opportunity to comment on the Office of the Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation's (collectively, the "Agencies") notice and request for comment regarding proposed changes to their Interagency Questions and Answers Regarding Community Reinvestment ("Q&As"). Appleseed is a nonprofit network of 17 public interest justice centers in the United States and Mexico dedicated to building a society in which opportunities are genuine, access to the law is universal and equal, and government advances the public interest. Our financial access and asset building program is devoted to promoting fairness, transparency, multiple options, financial education, and safe and secure banking and asset building options for low-income persons, including a particular focus on immigrant communities. Several of the Appleseed Centers work to promote similar goals, have participated in BankOn programs, and combat practices that seem designed to trap people in a cycle of debt, such as payday loans and auto title loans. Both Appleseed and several Appleseed Centers are searching for ways to promote

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small-dollar loans that do not trap people in debt. Appleseed[1] supports revisions to Community Reinvestment Act ("CRA") guidance that will help promote greater access to credit and financial services by communities in need, in ways that are effective and efficient.

Opportunities to Increase the Value of the CRA

While the CRA has been credited for helping to increase access to credit in low- and moderate-income ("LMI") communities,[2] more needs to be done to address the many lower-income communities that remain unbanked or under-banked.[3] These communities include, among others, immigrant communities and rural farmers and farmworkers residing away from the commercial centers with the greatest density of brick-and-mortar bank branches.[4] As has been noted, the CRA, its implementing regulations, and its interpretive guidance have not always kept pace with changes in the economic landscape and financial industry.[5] We encourage the Agencies to incentivize creativity and diversity in community reinvestment by promulgating guidance and examination criteria that reward institutions for reaching out to unbanked and under-banked communities, for trying new programs that might differ from standard, accepted approaches, and for good faith efforts that might not result in immediate success.

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[1] These comments are submitted on behalf of The Appleseed Foundation and the following Appleseed Centers: Alabama Appleseed Center for Law & Justice, Chicago Appleseed Fund for Justice, Georgia Appleseed Center for Law and Justice, Kansas Appleseed Center for Law and Justice, South Carolina Appleseed Center for Legal Justice, and Texas Appleseed.

[2] *See*, *e.g.*, Ellen Seidman. A More Modern CRA for Consumers. Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act, p. 105. Eds. Prabal Chakrabarti, David Erickson, Ren S. Essene, Ian Galloway, and John Olson (February 2009) (Low- and moderate-income communities and consumers "have seen billions, perhaps trillions of dollars of credit and investment flow to them as a result of the [CRA], other collateral laws such as the Home Mortgage Disclosure Act (HMDA), various antidiscrimination statutes, and Fannie Mae and Freddie Mac obligations.")

[3] *See*, *e.g.*, Susan Burhouse, Yazmin Osaki, 2011 FDIC National Survey of Unbanked and Underbanked Households. (Sept. 2012), at p. 55 (28% of adults in households with incomes between $15,000 and $30,000 are unbanked, and 21% are under-banked).

[4] *See*, *e.g.*, Seidman, at p. 107 ("The number of Americans who were born abroad climbed from approximately 14 million in 1980 (6.2 percent of the population) to 33.5 million in 2003 (11.7 percent of the population), creating demand for a new financial service: remittances."); Mark Pinsky, President and CEO, Opportunity Finance Network. The Future of the Community Reinvestment Act. Before the Interagency Public Hearing, Chicago, Illinois (Aug. 12, 2010), at p. 2 ("Some rural areas without the brick-and-mortar presence of large financial institutions are effectively 'credit deserts.'"); *see also* Burhouse, at p. 55 (17.1% of adults living outside metropolitan areas are unbaked, and 15.4% are under-banked).

[5] Thomas J. Curry, Comptroller of the Currency, Office of the Comptroller of the Currency, Before the National Community Reinvestment Coalition (Mar. 20, 2013) (discussing changes in the banking industry since the CRA was adapted and since the last major rewrite of CRA regulations in 1995, and the ongoing need to revise CRA regulations and interagency guidance to ensure the CRA's continued relevance).

Based on our experience advocating on behalf of underserved communities, we respectfully offer the following recommendations:

- Provide greater clarity regarding the kinds of community development activities that will receive CRA consideration, when such activities are performed outside institutions' assessment areas;

- Provide more credit for institutions that offer safe, affordable products and services that compete with high-cost payday loans, and provide more incentives for CRA-regulated institutions to enter geographies where there is a high penetration of high cost lenders;[6]

- Provide greater credit for institutions that open branches in lower income neighborhoods;

- Recognize services offered to low-income immigrants and their children through nonprofit organizations and schools where there is significant participation in English as a Second Language programs as proxies for services offered to LMI individuals;

- Provide credit to institutions that provide clearing and processing services to companies or institutions that 1) provide fair and low-cost remittance services below market average prices to underserved communities, 2include services that can serve as an entry point or bridge to additional financial services for these underserved communities, and 3) serve companies or institutions that have had difficulty securing clearing and processing services;

- Provide a framework for greater competition to achieve overall "Outstanding" CRA ratings;

- Create a clearinghouse for sharing information regarding CRA-related innovations; and

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[6] *See*, *e.g.*, Roberto Quercia, Janneke Ratcliffe, and Michael A. Stegman. The Community Reinvestment Act: Outstanding, and Needs to Improve. Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act, p. 54. Eds. Prabal Chakrabarti, David Erickson, Ren S. Essene, Ian Galloway, and John Olson (February 2009) ("The last several years have witnessed an explosive growth in the nonbank or fringe financial services industry: payday lenders, check cashers, rent-to-own furniture stores, etc. There are now more check cashers and payday lending outlets than there are McDonald's restaurants, Burger Kings, Target stores, JC Penney's locations, Sears, and Walmarts combined."); Letter from Dorothy Herrera Settlage, Senior Attorney, Consumer Unit, Legal Aid Foundation of Los Angeles, to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System (Aug. 31, 2010) at p. 2 ("Our low income communities have long been inundated with payday lenders and check cashing services, etc. . . . These practices have come about in part due to a vacuum left by depositary institutions.").

- Create a group within the Federal Financial Institutions Examination Council that is specifically charged with regularly and actively identifying CRA-related improvements to the examination process in order to reflect ongoing developments in the industry and economic landscape.

We provide our comments primarily in the context of the specific Q&As that are the subject of the Agencies' pending request for comment. Many of our comments, however, address revisions that may be helpful in other Q&As and CRA regulations. We hope these additional comments will be useful to the Agencies as they continue with their effort to improve CRA guidance and regulations.

Comments Regarding Specific Q&As

<u>Q&As § __.12(h)-6 and § __.12(h)-7: Community Development Activities Outside an Institution's Assessment Area(s) in the Broader Statewide or Regional Area That Includes the Institution's Assessment Area(s); Q&A § __.23(a)-2: Investments in Nationwide Funds</u>

Response to Proposed Revisions

As the Agencies noted, many commentators have connected the reluctance of financial institutions to engage in community development activities outside their assessment areas with the uncertainty regarding whether such activities will qualify for CRA consideration. We respectfully submit that the proposed changes to Q&As § __.12(h)-6 and §__.12(h)-7 may not adequately resolve such uncertainty. In particular, the proposed language stating that non-assessment area activity "may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s)" is unclear. We urge the Agencies to consider revising the last paragraph of Q&A__.12(h)-6 as follows:

> In addition, a retail institution will receive consideration for certain other community development activities. These 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), unless examiners conclude that an institution has neglected like needs for such activities in its assessment area(s). Such community development activities must be performed in a safe and sound manner consistent with the institution's capacity to oversee those activities, and will be evaluated within an institution's performance context. Note especially activities that may hold significant long-term potential to benefit the service area.

Other Observations and Comments

In contrast to when the CRA was first adopted, much credit activity now takes place beyond bank branches.[7] Since the CRA was adopted, there has been a relative decline in bank presence in lower-income communities.[8] As a result, there are communities outside CRA assessment areas that could be better served by extending the reach of the CRA to those communities.[9] We urge the Agencies to consider the benefit that expanding the definition of assessment areas may have on making available more affordable and safer financial products in communities that are currently underserved by CRA-regulated institutions.

In particular, we urge the Agencies to consider proposals that community organizations and others have advanced to expand assessment areas to include geographies where financial institutions engage in significant lending, even if they do not have branches in those geographies.[10] Such proposals reflect the reality that financial institutions now offer credit through many channels other than physical branches.[11] The proposals also implicitly acknowledge that a primary motivation behind the CRA—the problem of institutions taking deposits from communities without extending credit to those same communities—is not as relevant now that financial institutions rely significantly on securities markets, and not exclusively on local customer deposits, to fund lending.[12]

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[7] Pinsky at p. 2 ("Banking no longer centers around place and savings. Banking today centers around consumer demographics, delivery channels, and product innovations . . . The current use of deposit-based assessment areas concentrates CRA obligations in some areas, and leaves other markets underserved.")

[8] Quercia et al. at p. 53. ("The decline and relative under-representation of bank branches in low-income and minority neighborhoods is well documented.").

[9] For example, many observers have noted that loans extended by banks outside their CRA assessment areas were more likely to be higher priced than loans originated within their CRA assessment areas. *See id.* (citing Sandra L. Thompson. The Community Reinvestment Act: Thirty Years of Accomplishments, But Challenges Remain. Before the Financial Services Committee, U.S. House of Representatives (Feb. 13, 2008).

[10] *See*, *e.g.*, Elisabeth Risch. Equal Housing Opportunity Council. Individual Presentation by Elisabeth Risch. Before CRA Interagency Public Hearing, Chicago, Ill. (Aug. 12, 2010) ("The Assessment Areas of institutions on CRA exams must be expanded to include the geographies where the bank is doing a significant amount of lending. The current regulation of basing assessment areas on branch locations is not sufficient in addressing how the institution is fully meeting the credit needs of the community."); Pinksy at 2-3 ("A more appropriate and useful definition of financial institution markets, for purposes of the CRA and otherwise, is everywhere each financial institution offers and/or provides products and services and everyone it serves . . . If Capital One held a dominant market share for revolving credit-card products in Southeast Washington, DC, for example, it might carry a commensurate responsibility to provide revolving credit across the demographic and economic spectrum of that market."); Herrera at 4.

[11] Pinsky at 2-3.

[12] *See*, *e.g.*, Robert Avery, Marsha J. Courchane, Peter M. Zorn. The CRA Within a Changing Financial Landscape. Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act, p. 31. Eds. Prabal Chakrabarti, David Erickson, Ren S. Essene, Ian Galloway, and John Olson (February 2009) ("[B]ecause of secondary market funding, financial institutions now have more alternatives for obtaining

Short of redefining assessment areas, the Agencies should consider taking the following steps to further encourage financial institutions to reach outside existing assessment areas:

- Provide CRA consideration for expanding into markets with high penetration by payday and auto title lenders, including both rural and urban communities, and providing competing, lower-cost products;[13] Note: Consider expanding this concept to include not just products or direct services by the financial institution, but products or direct services that are provided through credit unions or nonprofits;

- Provide CRA consideration for expanding credit opportunities in areas having limited access to low-cost consumer credit and credit building opportunities;

- Provide CRA consideration for opening alternative or streamlined branches with specific product and service portfolios tailored to meet the needs of lower-income communities, including underserved nonmetropolitan low-income geographies;[14]

- Reduce the negative impact of branch closings in CRA examinations, when institutions can establish that the closing branch was not operating profitably, to reduce the disincentive to open branches for fear of facing unnecessarily high barriers to exiting those geographies;[15,16]

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capital and have been able, in many instances, to obtain their funding at lower cost than through deposit growth.").

[13] Appleseed urges the Agencies to encourage creativity beyond the advance deposit products currently offered by depository institutions. Such products do not necessarily offer significant advantages over payday loans. *See*, *e.g.*, Payday Lending in America Report 2: How Borrowers Choose and Repay Payday Loans (February 2013) (hereinafter "Pew 2013 Report"), at p. 12 (borrowers of bank deposit advance loans are in debt for a similar length of time as payday loan borrowers, and pay an estimated APR of 261%, versus 391% for payday loan borrowers). As the Agencies have noted, such products also raise consumer protection concerns. *See*, *e.g.*, 78 F. R. 25268 (FDIC Proposed Guidance on Deposit Advance Products), 78. F.R. 25353 (OCC Proposed Guidance on Deposit Advance Products).

[14] Lisa Glover, Senior Vice President, Directory of Community Affairs, U.S. Bank, on Behalf of the Consumer Bankers Association, CRA Public Hearing, Los Angeles, CA (Aug. 17, 2010), at p. 10 ("It is not always cost effective to provide full-service branches in the bank's assessment areas, and not every community needs a full-service branch . . . CRA could be more effective in encouraging banks to reach under-banked LMI communities by fully recognizing alternatives to full service branches."). Alternative branches could include, for example, mobile branches that can travel to reach dispersed populations in rural settings.

[15] Lawrence J. White. The Community Reinvestment Act: Good Goals, Flawed Concept. Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act, p. 31. Eds. Prabal Chakrabarti, David Erickson, Ren S. Essene, Ian Galloway, and John Olson (February 2009) ("Ironically, the lending obligations of the CRA (and the extra burden of exiting an area if the operations there turn out to be unprofitable) may well discourage the establishment of branches in LMI areas in the first place. Barriers to exit are barriers to entry.").

- On a positive note, provide CRA consideration if a bank streamlines the branch to better meet local needs or otherwise invests in the community to ensure that people continue to have access to reasonably priced financial services.

Promoting alternatives to payday lenders and auto title lenders is a primary concern to Appleseed. A recent series of research reports by The Pew Charitable Trusts highlights the harm that payday loans inflict on LMI communities by trapping consumers in a cycle of high-interest indebtedness.[17] While these loans are marketed as short-term loans to cover unexpected expenses, most borrowers use these loans to cover ordinary living expenses at an average annualized interest rate for these loans of 391%.[18] Only 14% of borrowers find paying off a payday loan to be within their monthly budget—the majority are required to renew or re-borrow loans for months before they can afford to pay them off. [19] The Pew reports show that conventional payday lenders rely on repeat usage in order to be profitable. [20] The Agencies should use CRA guidance to encourage financial institutions to provide a low-cost alternative to these lenders.

Q&A § __.12(g)(2)-1: Community Services Targeted to Low- or Moderate-Income Individuals

Response to Proposed Revisions
Appleseed agrees with the two new proposed proxies for services targeted to LMI individuals - (i) services provided to students and families from a school where a majority of students qualify for or reduced-price meals, and (ii) services targeted to individuals who receive or are eligible to receive Medicaid–as these effectively identify LMI individuals.

The Agencies should consider two additional proxies:

- Community services offered by nonprofit organizations that serve low-income immigrants and their children or immigrants shown to be under-banked or unbanked, and
- Community services provided to students or their families from a school at which there is significant participation in English as a Second Language ("ESL") programs.[21]

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[16] While these activities may not necessarily satisfy the current regulatory definition of community development, we believe such activities could help revitalize and stabilize LMI geographies and help lower-income populations move up the economic ladder.
[17] *See, e.g.*, The Pew Charitable Trusts. Payday Lending in America: Who Borrows, Where They Borrow and Why (July 2012) (hereinafter "Pew 2012 Report"); Pew 2013 Report.
[18] Pew 2012 Report, at pp. 6, 13.
[19] Pew 2013 Report, at pp. 13-14.
[20] *Id*. at 19.
[21] Although these proposed proxies may have less correlation with LMI individuals than existing proxies, adding these proxies to Q&A §__12(g)(2)-1 will encourage institutions to provide community

The Migration Policy Institute's summary of the U.S. Census Bureau's 2010 American Community Survey indicates that a significant portion of immigrants were in or near poverty: 18.8 percent were in poverty, 13 percent were between 100 and 149 percent of the poverty level, and an additional 11.7 percent were between 150 and 199 percent of the poverty level.[22] Immigrants and their children (including U.S.-born children under age 18 were also found to be more likely to live in poverty or near-poverty than non-immigrants.[23] Community services provided to nonprofit organizations that serve immigrants and their children are therefore likely to serve LMI individuals. Because recent immigrants and their children are also less likely to speak English, community services provided to students and families from schools with significant participation in ESL programs are also likely to serve LMI individuals.

Appleseed notes that although immigrants may start out poorer than non-immigrants, immigrants are hard-working and entrepreneurial,[24] and will greatly benefit from additional financial services as they climb the economic latter.

Q&A § __.12(i)-3: Examples of Community Development Services

Response to Proposed Revisions

Appleseed supports the Agencies' efforts to clarify that service on a board of directors of a community development organization will receive consideration as a community development service.

Other Observations and Comments

Appleseed is pleased that the provision of international remittance services that also increase access to other financial services for low and moderate income persons is included as an example of community development services that will receive CRA consideration. Many recent immigrants depend on international remittance service providers to transfer money to their family members in other countries.

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development services to underserved LMI individuals that may not necessarily be captured by the existing proxies.

[22] *See* Migration Policy Institute, MPI Data Hub: The United States - Income & Poverty, Tables 1 & 2, *available at* http://www.migrationinformation.org/datahub/state4.cfm?ID=US.

[23] *Id*. at Table 2 (finding a 23.2 percent poverty rate for immigrant families with children under 18, compared to a 16.6 percent poverty rate for non-immigrant families with children under 18). Table 2 also indicates that 43.5 percent of all immigrants were below 200 percent of the poverty level compared to 33 percent of non-immigrants. *Id*.

[24] David Dyssegaard Kallick, Immigrant Small Business Owners: A Significant and Growing Part of the Economy (A Report from the Fiscal Policy Institute's Immigration Research Initiative) (June 2012), p. 1 ("The immigrant share of small business owners, at 18 percent, is higher than the immigrant share of the overall population (13 percent) and the immigrant share of the labor force (16 percent).").

Appleseed encourages the Agencies to consider adding, as another example of community development services, efforts by banks to facilitate the provision of remittance services by third party providers—such as by making their clearing and payment networks available to those providers or by permitting remittance service providers to maintain or open a remittance account – under certain conditions. (CRA credit would only be available to institutions that provided such services to new market participants, or where the institutions could demonstrate that providing these services resulted in a reduced price below market average for remittance services to consumers or afford account and credit building opportunities). Network exclusivity has been found to be a significant barrier to entry to operating in the remittance industry by trade groups and economists. For example, the World Council of Credit Unions and the Credit Union National Association have indicated that, "the market is still dominated by a small number of money transmitter organizations . . . that enforce exclusive and competition-limiting contract arrangements" with their agents in the recipient countries.[25] Another obstacle to operating in the remittance industry is "maintaining or opening accounts with U.S. banks."[26] A bank account has been described as "the only way for remittance firms to access payment and settlement systems and to maintain transaction accounts."[27]

Appleseed acknowledges that banks may be reluctant to open accounts for remittance service providers due to regulatory concerns, but if such activities were treated as community development services under the CRA banks may be encouraged to provide accounts for remittance service providers with positive consumer outcomes and appropriate attention to regulatory concerns.

<u>Q&A § __.22(b)-4: Community Development Lending in the Lending Test Applicable to Large Institutions</u>

Response to Proposed Revisions

Community development activities, including community development lending, have been undervalued in CRA examinations. The Agencies have proposed to address this issue, in part, by clarifying that an institution's record of making community development loans may have a negative effect on the lending test. We agree that permitting an institution's record of making community development loans to have a negative effect on the lending test may encourage greater emphasis on community development lending by examiners and institutions alike.

On the other hand Appleseed recommends against permitting weak performance in community development lending to be offset by strong performance in retail lending, because doing so is likely to further undermine the value placed on community development lending. Researchers

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[25] Remittance: Regulation and Disclosure in a New Economic Environment: Hearing Before the Subcomm. on Fin. Insts. and Consumer Credit, 111th Cong. 39, 72 (2009).

[26] Ole E. Andreassen, *Remittance Service Providers in the United States: How Remittance Firms Operate and How They Perceive Their Business Environment*, (World Bank Fin. Sector Discussion Series June 2006), *available at* http://ssrn.com/abstract=958810, at 9.

[27] *Id*. at 9.

have found, for example, that of the 65 largest institutions with an overall "Outstanding" rating, 46.2% had community development lending activity in the bottom half of their asset-size group.[28] Researchers have also found that more than a quarter of the smallest banks receiving an overall "Outstanding" rating made no community development loans at all.[29] These data indicate that community lending activity already has too little impact on overall CRA performance, and permitting weak performance in community development lending to be offset by strong performance in retail lending would reduce that impact further.

Additional Means of Increasing Emphasis on Community Development Lending
In addition to the new Q&A proposed by the Agencies, the Agencies should consider making the following changes to CRA guidance and regulations to increase the impact of community development lending in CRA examinations:

- Increase the weight placed on community development lending as part of the lending test, by reducing the emphasis on retail lending;

- Add a community development lending component to the lending test for small banks, which carefully accounts for the capabilities of such institutions, so as to not make this addition unduly burdensome or counterproductive;

- Create a single community development test for large institutions that combines the community development components that are currently spread across the lending, investment, and services tests, in order to provide more emphasis on community development activities generally in the CRA.[30]

Other Observations & Comments
There are additional types of loans that may not qualify as "community development loans" under the current CRA regulations but that are nonetheless important to lower-income communities and that are currently not adequately provided. These loans include:

- Small dollar loans that specifically compete with loans extended by payday and auto title lenders, on more affordable terms.

- Loans targeted at the needs of immigrant communities, including loans to assist with visa, residency, and citizenship applications.

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[28] Robert B. Avrey, Glen B. Canner, Shannon C. Mok, Dan S. Sokolov. Community Banks and Rural Development: Research Relating to Proposals to Revise Regulations that Implement the Community Reinvestment Act. Federal Reserve Bulletin, Spring 2005, pp. 215-16.
[29] *Id.*
[30] *See*, *e.g.*, Letter from Lela Wingard Hughes, Senior Vice President, JPMorgan Chase Bank, N.A. to Office of the Comptroller of the Currency, et al. (Aug. 31, 2010), at pp. 7-8 (proposing to consolidate community development activities under one testing category in order to more effectively recognize such activities).

The Agencies should consider explicitly enumerating these types of loans as satisfying the definition of community development loans under the CRA regulations and as warranting favorable consideration under Q&A §__.22(a)-1 (types of lending activities responsive to the needs of an institution's assessment area). The Agencies should also consider providing CRA consideration for investment vehicles in secondary markets that ultimately help reduce the cost of the above kinds of loans to consumers.

Q&A §__.12(t)-9: Qualified Investments

Response to Proposed Revisions

As discussed above, community development has been undervalued in CRA examinations and has resulted in weaker performance in this area, including by institutions that have received overall "Outstanding" ratings. Appleseed believes that proposed Q&A §__.12(t)-9 could discourage investments in or loans to organizations with a community development purpose and further undermine the importance of community development by focusing solely on a quantitative evaluation of such investments or loans. Appleseed recommends that the Agencies make clear that such investments will also receive a qualitative assessment.

If a financial institution lends funds to an organization and that organization opts to invest the funds rather than use them more directly for community development purposes, the Agencies propose to consider for CRA purposes only the amount of investment income used to benefit the organization or activity that has a community development purpose. But such a quantitative limitation may undervalue the importance of such community development investments. This is because such a limitation may not fully recognize the benefits actually received by the community development organizations (and the communities they serve) as a result of such investments.

For example, an organization with access to funds at a corporate level may be able to use those funds to leverage additional private investments that are needed for sustainability and growth. An established and sustainable organization is likely to have a better understanding of the needs of the community it serves and can better meet those needs. In other words, the investment ultimately helps the organization achieve its community development purposes, in a way that is not reflected simply by the amount of the net investment by a single institution in the organization. Proposed Q&A §__.12(t)-9, however, appears to preclude consideration of this indirect benefit.

The Agencies should consider revising proposed Q&A §__.12(t)-9 to clarify that the qualitative assessments provided for by Q&A §__.23(e)-1 and Q&A §__.23(e)-2 will also apply to both the portion of the investment income directly used for community development purposes and to the investment as a whole. This will reduce the likelihood that financial institutions avoid certain community development investments because they will only get consideration for the portion of the organization's investment income devoted to the organization's activities.

Additional Suggestions for Increasing the Effectiveness of the CRA

As the Agencies proceed with their revisions to CRA guidance and regulations, Appleseed asks that the Agencies consider the following additional proposals, which may help improve the overall effectiveness of the CRA:

Promoting More Competition for Higher Overall Ratings
We encourage the Agencies to promote a "race to the top" with respect to CRA by creating additional incentives for financial institutions to achieve an outstanding CRA rating. In 2009, for example, 98 percent of insured depository institutions were rated "Satisfactory" or better on their CRA exams, but only 7 percent were rated "Outstanding."[31]

Given the compression in the ratings, additional incentives may be needed to encourage banks to move beyond a "Satisfactory" rating.[32] For example, financial institutions with the highest CRA ratings should be publicly acknowledged. To do this, the Agencies could:

- Create a highly publicized award for those institutions with an "Outstanding" rating;

- Create a uniform emblem or seal that could be used by institutions to market their "Outstanding" CRA rating.[33]

Positive public acknowledgements by the Agencies would create an enhanced signal to consumers about financial institutions that are doing well, and it will also create additional incentives for examiners to ensure that only institutions that provide the fairest treatment to consumers receive ratings that will be publicly promoted. Additionally, greater publicity for high performance may encourage greater awareness and curiosity among consumers regarding CRA ratings, prompting more competition for consumers that use CRA ratings in selecting their banks.

Commentators have also suggested that banks with outstanding CRA ratings may be afforded financial incentives, such as reduced insurance premiums, or regulatory benefits, such as expedited processes for regulatory applications.[34] Appleseed supports these types of incentives in order to promote a race to the top.[35]

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[31] Federal Reserve Bank of Cleveland, A Proposal: Using the CRA to Fight Vacancy and Abandonment, *available at* http://www.clevelandfed.org/forefront/2010/04/ff_20100401_3.cfm.
[32] CRA ratings are currently considered by regulators only when institutions apply for certain regulatory approvals such as mergers, acquisitions and establishing or relocating branches. A "Satisfactory" rating will not impede an institution from obtaining any of those approvals, and we are not suggesting that a higher requirement be imposed for obtaining approvals.
[33] Glover, at p. 13.
[34] *See*, *e.g.*, Letter from Warren McLean, Vice President of Development, Community Reinvestment Fund, USA to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve (August 31, 2010). ("Ratings and incentives play a critical role in how banks choose to meet their CRA obligations.") Alan L.

Increasing Transparency and Quality of Disclosures

Appleseed encourages the Agencies to focus on improving transparency in CRA disclosures so that stakeholders such as community-based organizations and consumers (in addition to the financial institutions themselves) are able to meaningfully evaluate an institution's CRA performance. Appleseed proposes that the Agencies (1) require additional reporting of assessment area and county-level development lending and investment data and (2) provide greater clarity in public evaluations regarding the bases for an institution's CRA rating and performance assessment.

Financial institutions have commented that having more detailed data on community lending and investments would provide them with "meaningful insight into market opportunities for community development financing."[36] More detailed data would allow financial institutions to focus their community development lending and investing on the needs of a particular geography. Commentators have also noted that better community development lending and investment data would have the additional benefit of promoting the assessment of how effective the CRA is in stimulating more community development financing in geographies such as rural areas and inner city and inner suburban areas.[37]

With respect to public evaluations, providing greater clarity regarding the bases for an institution's CRA rating and performance assessments will be helpful to both community stakeholders and to peer institutions. Community stakeholders, for example, are interested in knowing whether their comments were helpful in identifying improvement opportunities for financial institutions. Peer institutions review public evaluations to gauge, among other things, the kinds of activities that examiners give considerable weight to in their examinations. The institutions that are being rated themselves often seek more guidance regarding ways to improve their CRA rating, noting that in some instances the feedback provided is generic. Communities as a whole will benefit if financial institutions are provided with specific information regarding the activities that will help them achieve the highest ratings.

Jennings, Executive Director of the Community Action Committee of the Lehigh Valley, Inc., at the Regulatory Hearings on the Community Reinvestment Act, Los Angeles, California (August 17, 2010); Mark Willis. It's the Rating, Stupid: A Banker's Perspective on the CRA. Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act, pp. 69; Glover, at p. 13.

[35] *See*, *e.g.*, Ellen Seidman. A More Modern CRA for Consumers. Revisiting the CRA: Perspectives on the Future of the Community Reinvestment Act, p. 111 ("Incentives should be established that are external to the CRA, potentially including reduced insurance premiums for outstanding performance.").

[36] *See*, *e.g.*, Hughes, at p. 25 ("'[T]he detailed data pertaining to the amount, location, and purpose of community development lending and investing is currently provided to examiners but is not aggregated for the industry at the assessment area level which would provide meaningful insight into market opportunity.").

[37] *See*, *e.g.*, John Taylor, President and CEO, Community Reinvestment Coalition, at the Community Reinvestment Act Hearings at the FDIC's William Seidman Center (July 19, 2010).

Providing Additional Credit for Community Service and Other CRA-Activities Engaged in Partnership with Non-Bank Organizations

The Agencies should consider increasing the weight assigned to CRA-related activities and services provided in partnership with credit unions and non-bank organizations, where such partnerships reflect innovative ways of closing financial services gaps. In many communities, non-bank local organizations provide community service activities or help provide micro-lending for small business and individuals. Collaboration between financial institutions and these organizations is likely to result in synergies that will benefit LMI communities.

Creating a Clearinghouse for Sharing Information Regarding CRA-Related Innovations

Appleseed proposes that the Agencies create a "clearinghouse" for sharing information regarding banking activities that have received CRA consideration as innovative community development services or as innovative lending activities. Such a clearinghouse could encourage greater creativity among banks that aspire to reach and serve new markets. Researchers have commented that various factors deter CRA innovation by banks, including, among others, the banks' tendency to rely on mainstream business units rather than specialized units to meet CRA obligations.[38]

Appleseed also urges the Agencies to consider ways in which innovation may be incentivized by crediting institutions for efforts to reach consumers in need, even when those efforts are ultimately unsuccessful. While care must be taken to ensure that programs are sound and sustainable, it is also worthwhile to recognize bold, but unsuccessful initial attempts to solve problems may eventually lead to better and more effective solutions. For example, a bank may work with a community organization to help LMI individuals prepare their tax returns and set up bank accounts for direct deposit of tax refunds (in order to avoid the high cost of refund anticipation loans or tax preparation services). As part of this effort, the bank makes its branch space available to the community organization to assist LMI individuals, but the effort attracts only a few customers in its first year. The institution would receive CRA consideration for attempting to innovate and help reach consumers in need (and may receive more and greater consideration if it is able to use lessons from its initial effort to set up a more successful and sustainable effort in later years).[39] Additionally, such efforts themselves could be included in the clearinghouse described above, as another way that could help prompt further innovation.

Creating a Group within the FFIEC to Tasked With Identifying and Implementing Improvements in Examinations to Reflect Changes in the Industry and Economic Landscape

In light of the rapid pace of changes in the financial industry and economic landscape, it may be useful to establish a committee or group within the Federal Financial Institutions Examination Council specifically tasked with regularly evaluating improvements that could be made to the CRA examination process within the existing regulatory framework. Such a group could focus

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[38] *See, e.g.*, Willis, pp. 64-65.

[39] The Agencies will need to take care to ensure that CRA credit is not given for "innovations" that are ultimately destructive to consumers, such as products that trap consumers in cycles of debt or that do not help LMI individuals avoid high-cost services from non-CRA regulated institutions.

on, for example, changes to training and examination procedures that could be made to prompt greater innovation, or help encourage banks to serve communities in need. Such a group would be charged with holding regular, informal meetings with key stakeholders, and would have the ability to implement changes with greater agility than the ordinary regulatory process.

Conclusion

Thank you again for considering our views on these issues. If you have any questions, please do not hesitate to contact Appleseed at the addresses below.

Sincerely,

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