Carol J. Parry
Corporate Social Responsibility Associates
10032 E. Reflecting Mountain Way
Scottsdale, AZ 85262

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Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th Street SW Washington, DC 20219
Docket ID OCC-2013-0003
Regs.comments@occ.treas.gov

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW Washington, DC 20551
Docket No. OP-1456
Regs.comments@federalreserve.gov

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street,
NW
Washington,
DC 20429
comments@fdic.gov

Dear Madams/Sirs:

I am a former community development banker who is now a consultant who has worked with many banks to enhance their CRA programs and compliance. I previously directed all of the Community Development activities of the Chase Manhattan Bank and in 1999 was nominated by President Clinton to the Board of Governors of the Federal Reserve System. I also served on the Federal Reserve Consumer Advisory Council where I chaired the Bank Regulations Committee. I hope that my many years of experience working with both banks and community organizations around Community Development issues has given me some sight into what works and what doesn't work with regard to CRA.

I applaud the Agencies focus on increasing the emphasis of CRA on community development activities. I totally agree with the Interagency Notice that "community development activities are undervalued". There is little question in my mind that community development loans and investments have a long lasting and significant impact on low and moderate income communities and on the quality of life for the residents of those communities. For many years, I have observed that too much emphasis has been placed on the quantitative aspects of the CRA compliance to the detriment of evaluating the real impact of CRA on low and moderate income communities and individuals.

I encourage you to finalize the revisions as soon as possible so that banks can continue to and increase the resources that they are committing to community development loans and investments directed at underserved communities. I have addressed my comments to those current and proposed Q and As that I believe need further attention.

Proposed Revisions to Existing Q&As

I. 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)

Will this clarification of consideration in the broader statewide or regional area that includes an institution's assessment area(s) provide an incentive for banks to increase their community development activities or expand their opportunities to engage in community development activities?

Yes, I believe that an appropriate clarification of this issue will encourage banks to expand their community development activities, especially loans and investments. However, if it is not clear to banks what "adequately addressed the community development needs" their CRA assessment areas means, then the full impact of this clarification will not be felt. In general, I recommend that any existing CRA rating of "Satisfactory" or above be used to determine if a bank has "adequately" addressed its CRA obligations in any nearby assessment areas.

Does "community development activities being conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s)" raise the same uncertainty as "adequately addressed the community development needs of its assessment area(s)"? If so, how can the Agencies better describe the concept that a financial institution cannot ignore legitimate and financially reasonable community development needs and opportunities in its assessment area(s) to engage in community development activities elsewhere in the broader statewide or regional area when those activities will not provide any benefit to its assessment area(s)?

My view is that it is very difficult, if not impossible, to ascertain if "activities are being conducted in lieu of, or to the detriment of activities in the institution's assessment areas". The ability of a bank to make community development loans and investments depends heavily on the availability of projects that require financing and the government subsidy available for these projects. It is very possible that, for example, no Low Income Housing Tax Credits (LIHTCs) have been allocated by a particular state to any developers for projects in one or more of a bank's assessment areas, but there are projects being funded in the larger regional area that the bank would like to participate in that could benefit LMI areas and residents. Therefore, a bank cannot be expected to have community development loans and/or investments in each and every assessment area and examiners need to take the need and demand for these loans or investments into account as well as the degree to competition for what may be limited opportunities to lend or invest. On the other hand, we need to avoid the situation where an examiner might view <u>any</u> unmet need in the assessment area as a key indicator that either the needs of the assessment area were not "adequately" addressed or that activities outside of the assessment were to the detriment of the assessment area. Therefore, the language proposed that Community Development activities may not be conducted "in lieu of, or to the detriment of" is not clear enough or more helpful than the existing "adequately addressed" language and could create inequities in examinations between banks.

It would be more helpful if The Agencies clarified that "meeting every need" is not the intent of this language proposed nor is it practical. As suggested above, an alterative would be to utilize a bank's most recent CRA rating, "Satisfactory" or above, as the key indicator for recognizing the bank's CRA community development activities in any broader statewide or regional area where the bank has an assessment area.

<u>II. Investments in Nationwide Funds</u>

Would the proposed revised Q&A assist institutions that deliver products on a nationwide basis to address community needs in areas where they provide products and services?

The concern appears to be if nationwide funds also serve or benefit a bank's assessment area(s be. Whether the fund is regional, statewide, multi-state, or national should not be a critical factor. If the fund serves an area larger than the assessment area(s) but that includes the bank's assessment area(s) that should be the sufficient determinant for CRA. It is possible that a nationwide fund will directly lend or invest into the bank's assessment area sometime in the future and that should be sufficient for the bank to receive favorable consideration under CRA.

I also believe that encouraging banks to address unmet Community Development needs outside of their current assessment area(s) is consistent with the CRA and should be supported by the Agencies.

Some commenters indicated that current methods of "earmarking" investments, including through the use of side letters, are burdensome. Are such methods, in fact, burdensome and, if so, in what way?

The process of "earmarking" and "side letters" is cumbersome and pits one bank investor in a fund against another, sometimes discouraging one or more banks from making legitimate CRA community development investments because the fund as already committed its investments in an assessment area to another bank. In addition, these "Side letters" can have the effect of restricting the number of investors in a fund, making it more difficult to either complete a fund or to leverage the investments of a larger number of banks. This can have an adverse impact, particularly on larger, complex deals a fund may want to invest in.

A more logical and straight forward approach is a pro-rata system of apportioning CRA credit to the various fund investors, based on each investor's percentage investment of the total fund. This recognizes that each investor has a pro-rata share of each investment and would result in a greater incentive for banks to increase their investments in nationwide funds.

Alternatively, should investments in nationwide funds be attributed to particular states or assessment areas? If so, how can that be done in a meaningful manner, particularly if there is no earmarking by the fund?

When a nationwide fund is launched and seeks investors, the fund may have general information about the deals they plan to invest in based on their investment criteria, not purely on geography. While these funds may not be able to identify all of their investment opportunities in advance, they would generally be able to tell potential investors that they may invest outside of the banks' assessment area(s), and their investments may have impacts on their assessment area(s). I believe that investors in national funds should get recognition for the full amount of the investment dollars, provided that the institution has a "Satisfactory" rating at the last examination for activities in its assessment area(s).

As noted earlier, the CRA exam results in a CRA rating that addresses whether an institution has adequately met the needs of its assessment area(s). This is the appropriate benchmark to utilize when determining if the needs of assessment areas have been "adequately met".

If nationwide fund investments are attributed to particular states or assessment areas, how can the Agencies avoid double counting the same funds in the same assessment areas in different institutions' evaluations?

Double-counting is avoided when an individual bank only gets credit for the dollar amount they invest. Therefore, there would be no double-counting among the bank investors.

<u>III. Community Services Targeted to Low- or Moderate-Income Individuals</u>

Will the use of eligibility for free and reduced-price meals and Medicaid effectively identify individuals who are low- or moderate-income? Will the use of these proxies reduce the burden on financial institutions and community organizations to obtain actual income and, thus, promote the provision of community development services?

I believe that this is the right approach. Utilizing these existing criteria will make a bank's decision-making and documentation more straight forward and less burdensome. Similar proxies should be utilized for community development loans and investments, such as free and reduced price meals as a proxy for qualifying school financing (loans, letters of credit), while using the

Medicare proxy is valuable in underwriting skilled nursing facilities.

Proposed New Questions and Answers

Qualified Investments

The proposed Q and As addresses the issue of evaluating loans or investments to organizations that, in turn, invest in instruments that do not have a community development purpose, and use only the income, or a portion of the income, from those investments to support their community development purpose. Does the proposed Q & A provide the flexibly necessary to encourage community development activities, whether direct, indirect, or through the provision of capital investments, in connection with an organization with a primary purpose of community development?

As the Chair of a CDFI Board in Arizona, I believe the proposed Q & A language is too restrictive and could harm the ability of CDFIs or other investment funds to operate in a safe and sound manner. Any well managed community development lending institution or loan fund will keep some of its capital in reserve and will never lend out 100% of the funds it has receives in the form of investments or loans from banks. Therefore, at any given time the loan fund or CDFI will need to keep some of the funds it has received from banks in "safe" investments, such as Treasuries or bank deposit accounts until they are required for loans or other operating purposes.

If banks are penalized for lending to or investing in CDFIs or loan funds that are prudent in their management of capital, it certainly will harm and possibly restrict the ability of the CDFI or loan fund to continue to serve underserved communities. In addition, the only way that this Q & A could be implemented would be if Agency examiners begin to closely examine all of the loan funds that banks invest in or lend to determine how they manage their excess or reserve capital. This could be burdensome for the CDFIs involved as they would need to provide financial information not only on the loans they make (which is routinely provided to their bank investors) but also on how they manage their excess capital.

I strongly suggest that the wording of this Q & A be changed to make it clear that excess or reserve capital that is held by a CDFI or community loan fund in anticipation of lending it out to entities or individuals in underserved communities as the need arises will not be considered to have not used their funds to support the organization's community development purposes and bank investors in theses funds will not be penalized by having only the portion of the funds they invest considered for CRA purposes. I further suggest that the Agencies make it clear that any CDFI is exempt from the this Q & A, as all Certified CDFIs already have a verified community development purpose and their capital structure, etc. is overseen by the U.S. Treasury Department's CDFI Fund.

Community Development Lending in the Lending Test Applicable to Larger Institutions

The Agencies are proposing new Q&A § __.22(b)(4)-2 to address this inconsistency among the Agencies and to address commenters' concerns that community development lending is undervalued. The proposed Q&A clarifies that an institution's record of making community development loans may have a positive, neutral, or negative impact on the institution's lending test rating. The Agencies
would consider the institution's community development lending performance in the context of the institution's business model, the needs of its community, and the availability of community Development opportunities in its assessment area(s) or the broader statewide or regional area(s) that includes the assessment area(s) (i.e., the institution's performance context). Further, strong performance in retail lending may compensate for weak performance in community development lending, and conversely, strong community development lending may compensate for weak retail lending performance.

I continue to believe that the right approach here is to create a “Community Development Test” option for banks. If a bank chooses this option, then Community Development D loans and qualified investments would constitute 50% of their rating, while the Lending and Services tests would each then represent 25% of the CRA rating.

If a bank did not select this option, then it still should be encouraged to do more community development lending and investing by the Agencies putting more emphasis and weight on this in the CRA rating system. Of course, all lending and investing should be within the boundaries of sale and sound banking. However, it is important that Qualitative factors not be undervalued. Unless this is addressed, the result could be large dollar project loans or investments to the detriment of high impact smaller projects in LMI areas. The current approach used by some of the Agencies, is to compare the dollar volume of the loans and/or investment to benchmarks, such as Tier 1 Capital. However, if impact on communities is their real goal here, than the Agencies need to reduce their emphasis on the quantitative methodology. What is key here is to encourage flexibility and putting more emphasis on high-impact activities, encouraging banks to do loans and investments of all sizes, if they can benefit LMI areas.

Another concern is the ability of examiners to evaluate the qualitative factors, such as innovativeness and complexity and leadership, if the examiners have little experience in community development. I encourage the Agencies to regulatory train CRA examiners in the real world of Community Development activities (loans, investments and services) and at the same time to simplify an overly complex system of CRA evaluations.

Thank you for this opportunity to comment on the proposed Q and As. I look forward to working with you in anyway that can improve the quality of life in LMI and underserved areas.

Sincerely,

Carol J. Parry