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Legislative and Regulatory Activities Division
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

To Whom it May Concern,

The Community Development Trust (CDT) is the country's only national CDFI and private real estate investment trust which provides capital for the preservation of affordable housing. Working with local and national partners, CDT makes long term equity investments in support of the preservation of affordable housing. CDT also originates and provides a secondary market for long-term mortgages which support the development and preservation of affordable housing. After more than fourteen years of operations, CDT has invested more than $850 million in debt and equity capital to properties in 42 states -- helping to create and preserve more than 32,500 units of affordable housing.

We strongly support the Community Development (CD) focus in the proposed revisions to the "Interagency Questions and Answers Regarding Community Reinvestment," to increase the flow of private capital to underserved areas, and help restore the important role of CD activities in the overall Community Reinvestment Act (CRA) framework.

Comments Specific to the Interagency Q&A Document

CDT is generally supportive of the modifications that have been proposed by the regulators. Most notably, CDT applauds efforts by the regulators to: (i) clarify when investments in national funds can qualify for CRA credit; (ii) clarify that community development lending performance is always a factor that is considered in an institution's lending test rating. We would encourage the regulators to move quickly to implement these proposed changes, while giving consideration to the comments provided below.

I. Investments in Nationwide Funds [Current Q&A Section ____.23(a)-2].

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?

CDT agrees with much of the language included in the revised Q&A, including the acknowledgement that nationwide funds "are important sources of investments for low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs."; and that "Nationwide funds may be suitable investment opportunities, particularly for large financial institutions with a nationwide business focus, including wholesale or limited purpose institutions."

However, the requirement that such activities "may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment areas" may frustrate these efforts, since it is not clear how the examiners will interpret this language. Banks need to be provided with a "bright line" test so that an institution can be certain that it is satisfying these requirements. Without such a test, institutions will default to making investments that can be traced to projects in their defined assessment areas, which adds significant burdens to the banks and to the national funds in which they invest. In comments to the regulators on similar matters, others have suggested and CDT concurs that one such bright line test could be whether the institution received a "satisfactory" rating in a prior CRA review of its assessment area(s). If so, then it should get recognition for the full amount of its investment dollars in national funds, regardless of where those funds are invested.

In the case of wholesale or limited purpose institutions, internet banks and other institutions without local deposit bases, the regulators should consider moving away from the concept of local assessment areas altogether, and give appropriate recognition for investments in national funds.

When might nationwide funds be appropriate investments for regional or smaller institutions?

Nationwide funds provide distinct advantages to investors, including from a safety and soundness perspective. By nature of their large footprints, they can identity and underwrite a much larger pool of potential investment opportunities, thereby increasing the likelihood of identifying successful investment opportunities and deploying capital more quickly. They also have exposure to a wide range of community development interventions in a variety of markets, allowing them to develop new innovations. Finally, the large footprint of nationwide funds protects investors against risks associated with over-concentration of investments in smaller markets.

CDT encourages the regulators to consider ways to facilitate investments in nationwide funds from regional or smaller institutions, to the extent such institutions have demonstrated that they are working toward satisfying the needs in their local markets.

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?

Earmarking is burdensome because, but its very nature, it requires an institution to artificially segment and assign portions of loan funds to certain investors. This can lead to additional accounting and documentation expenses. But even worse, it can lead to over-concentration of investments in certain geographies, which: (i) unnaturally distorts the pricing of investments in these markets (e.g., it is well documented that pricing for low-income housing tax credits is much more competitive in markets with high concentration of CRA assessment areas); and (ii) affects the geographic balance of an investment portfolio, which can increase the risk of default.

If the proposed revised Q&A is adopted, how should investments in nationwide funds be considered in an investing institution's CRA evaluation? Should there be a special category for investments in nationwide funds? How would such a category affect the amounts of an institution's investments at the assessment area and/or statewide level?

Banks that do not operate significantly through traditional bricks and mortar branch networks are becoming much more commonplace. These include internet banks, investment banks, credit card banks, wholesale banks and US outposts of some foreign banks. These types of institutions are assigned assessment areas based on where they are physically located, which often has no correlation whatsoever to where their customers are located. Since these are not truly local banks, they should be assessed primarily on a nationwide basis, and be given recognition for the full amount of investments in national 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?

CDT believes that the concept of earmarking is inconsistent with the very nature of a national fund. Ideally, institutions with a truly national footprint (such as those with branches and operations in each of

the four quadrants identified by the OCC) that invest in truly national organizations or funds (where the operations or investments are similarly occurring in all four quadrants) should be given full credit for these investments, provided that the institution has previously received a “satisfactory” rating in its assessment areas. This would ensure a continued commitment from institutions to making direct investments in local areas while simultaneously furthering the regulators’ desire to facilitate investments in national funds.

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) Current Q&As § __.12(h)-6 and § __.12(h)-7

Do the revised Q&As clearly convey the Agencies’ intent that community development activities in the broader statewide or regional area that includes an institution’s assessment area(s) will receive consideration?

The revised Q&As clearly re-establish the longstanding, very valuable approach of the Agencies’ ensuring that depository institutions receive full CRA credit for their investments in statewide and regional funds. The Agencies explicitly recognize that “at some point the institution’s assessment area[s] may receive some benefit.”

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?

While CDT considers the “clarification of consideration” a very positive and necessary development, we caution that insured depository institutions will still require a “brighter line” to feel comfortable increasing their CD activities on a statewide or regional basis. If there is any question about banks receiving full credit, disincentives persist. We recommend the Agencies utilize an institution’s most recent CRA rating, “Satisfactory” or above, as the bright line for consideration in its next exam of CD activities in the broader statewide or regional area where it has at least one assessment area.

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)?

Yes, the proposed revision does raise the same uncertainty as the current guidance.

The assertion that CD activities may not be conducted “in lieu of, or to the detriment of” is not more precise than “adequately addressed”, and could in practice produce even more inconsistent examination outcomes. This lack of precision could, in the extreme, allow an examiner charged with

evaluating an "institution's performance context, including the community development needs and opportunities in its assessment area[s]" to view any unmet need in the assessment area as disqualification of any activities outside because they may be considered to have been made "in lieu of". The Agencies should explicitly acknowledge that "meeting every need" is neither a practical standard nor a goal of the CRA and its implementing regulation which holds banks to the expectation of "helping" to meet the credit needs of their communities. Rather than adopting the proposed revision, a tighter and more precise standard, as previously noted, would utilize an institution's most recent CRA rating, "Satisfactory" or above, as the bright line for consideration of community development activities in the broader statewide or regional geography where it has an assessment area. As discussed more fully in Item II below, "Investments in Nationwide Funds," this standard is provided by the Agencies when they conduct CRA exams and produce a rating which addresses whether the credit needs of an institution's assessment area(s) have been met.

Proposed New Q&A § __.12(t)-9

CDT agrees with the comments provided by the Opportunity Finance Network (OFN) of which we are a member and encourages the regulators to consider OFN's suggested text changes, highlighted below, when finalizing this Q and A:

A9. 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 an 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 ***the agreement between the institution and the recipient requires that the recipient*** *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 a community development purpose for CRA purposes.* ***If the agreement between the institution and the recipient requires that the investment be used for community development purposes, then the Agencies will give consideration for the full amount of the investment even if the recipient, in turn, invests the funds and earns income from that investment.***

Thank you for the opportunity to address these important questions.

Sincerely,

Merilyn Rovira
Senior Vice President