LISC

Helping neighbors build communities

November 10, 2014

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11
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Washington, DC 20219
Docket ID OCC-2014-0021
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Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
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comments@fdic.gov

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
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Docket No. OP-1497
Regs.comments@federalreserve.gov

To Whom It May Concern:

The Local Initiatives Support Corporation (LISC) is pleased to provide comments on the proposed changes to the Interagency Questions and Answers Regarding Community Reinvestment ("Interagency Q&A") that were published in the Federal Register on September 10, 2014.

Background on LISC:

Established in 1979, LISC is a national non-profit CDFI that is dedicated to helping community residents transform distressed neighborhoods into healthy and sustainable communities of choice and opportunity. LISC mobilizes corporate, government and philanthropic support to provide local community development organizations with loans, grants and equity investments; policy support; and technical and management assistance.

LISC is a certified Community Development Financial Institution (CDFI) with a nationwide footprint, with local offices in 30 cities and partnerships with 60 different organizations serving rural communities throughout the country. LISC invests approximately $1 billion each year in these communities, with about half of these funds coming from banks, mostly in the form of loans and investments. Our work covers a wide range of activities, including housing, economic development, building family wealth and incomes, education, and creating healthy communities.

General Comments on the Community Reinvestment Act

In our experience, CRA remains the primary driver of private financing for our activities. Most banks tell us that CRA is a threshold consideration in the volume and location of their community development financing. LISC believes that, notwithstanding the CRA's effectiveness, there are still areas where it can be strengthened. In July of 2010, LISC testified in front of the regulators in support of significant changes in the administration of CRA exams. Most notably, LISC proposed that:

(i) a new community development test replace the current investment test on the CRA exam for large retail banks;

(ii) the regulators develop a more manageable, consistent and predictable approach to evaluating CRA assessment areas -- one that includes all communities and recognizes different local needs and opportunities;

(iii) the regulators differentiate CRA reviews based on the nature of the banks' operations, recognizing that what may be appropriate for analyzing traditional "bricks and mortar" retail banks is not necessarily applicable to internet banks, investment banks, credit card banks and other institutions without readily identifiable local deposit bases; and

(iv) CRA examiners should receive better training in community development activities.

In June of 2011, LISC and several other organizations provided a consolidated set of comments to the bank regulators that provided more detailed recommendations in furtherance of many of the items referenced in the testimony from July of 2010.

LISC would encourage the regulators to review these comments not only as they consider modifications to the Interagency Q&A document, but also with an eye towards a more comprehensive revision of the CRA regulations. Both of these documents are available on the FDIC's website:

http://www.fdic.gov/regulations/laws/federal/2010/10c18AD60.PDF.

http://www.fdic.gov/regulations/laws/federal/2010/10c109AD60.PDF

LISC also responded to the initial set of revisions to the CRA Q&A document that were finalized in November of 2013. These comments may be viewed at:

http://www.lisc.org/docs/resources/policy/Comments_CRA_Regulators.pdf

<u>Comments Specific to the Interagency Q&A Document Published on September 10, 2014</u>

LISC is generally supportive of the modifications that have been proposed by the regulators. Most notably, and as discussed further below, LISC appreciates that the regulators have proposed to:

- Clarify the criteria that will be used to examine the effectiveness of alternative delivery systems, and identify new examples of effective alternative delivery systems.

- Offer new examples of innovative or flexible lending practices focusing on small dollar lending and alternative credit histories.

- Offer new examples and clarifications around what constitutes economic development activities, including notice that investments in certain CDFIs shall be deemed to promote economic development.

- Include in the definition of community development loans those loans that support renewable energy and energy efficient equipment or projects.

- Provide additional clarity on how the Community Development Services test will be assessed.

We would encourage the regulators to move quickly to implement the proposed changes to the CRA Q&A document, while giving consideration to the specific comments provided below.

I. Access to Banking Services

<u>Alternative Systems for Delivering Retail Banking Services</u> *[Q&A Section __.24(d)(3)-1].* We believe that the six factors for evaluation that are proposed in this Q&A are sufficiently flexible for use by examiners, even as technological advances evolve. Of the six factors identified, we believe that the "cost to consumers" and the "rate of adoption" are particularly salient with respect to determining whether the alternative systems are in fact benefitting residents of low- and moderate-income communities. That is, it should not be enough for an institution to simply demonstrate that it offers alternative systems. If the alternative systems are not affordable to low- and moderate-income customers and/or are not widely utilized by this clientele, then it calls into question how adequate such systems are.

II. Innovative or Flexible Lending Practices

<u>Innovative or Flexible Lending Practices Under the Lending Test</u> *[Q&A Section ____ .22(b)(5)-1]*. We believe that the additional examples offered, which pertain to banks engaged in small dollar lending and to banks using alternative credit histories, are very useful examples of what should be deemed to constitute innovative and flexible practices. LISC oversees a nationwide network of over 70 Financial Opportunity Centers – one-stop shops where low-income persons can access financial education and counseling services in conjunction with employment counseling/job placement services and benefits counseling. Our goal is to help our clients to retain income and build wealth, which often cannot be achieved without access to affordable credit and capital. Small dollar lending is significantly less cost efficient for banks than commercial and residential loans, but it is a path for our clients with thin credit files or no credit history to build or establish a credit score.

While we applaud the use of such examples, we also think that the examples should be broadened to include activities whereby the bank may not actually be directly engaged in the lending activities. Many times, particularly in the case of small dollar lending, banks will engage with unaffiliated entities to carry out these activities. The banks may provide financial, technical or other resources to these entities so that they may engage in this activities. It should be clear that the bank can get credit for innovative or flexible lending activities for supporting such activities, even in instances where the activities are being undertaken by third-party entities, such as CDFIs. Similarly, banks should also be able to get credit for "outreach initiatives" when such outreach supports the efforts of these third party institutions.

III. Community Development

Economic Development *[Q&A Section ___.12(g)(3)]*. LISC supports the efforts of the regulators here to attempt to clarify the meaning of economic development activities, and also supports the additional activities that have been added as examples of what constitutes economic development. Workforce training and career development are critical tools for ensuring long term economic well-being.

We are particularly supportive of the proposal that would identify any loan or investment in a CDFI that finances small businesses or small farms as a loan or investment that promotes economic development. In fact, we would propose that the guidance remove the reference to small businesses or small farms, and simply recognize that any loan or investment in a U.S. Treasury certified CDFI should be deemed to promote economic development – since by definition, and as verified by the Treasury Department, CDFIs are financing entities that direct at least 60% of their activities towards low-income communities, low-income persons or other underserved populations. Alternatively, the regulations should clarify that "small businesses" can include non-profit organizations, provided they otherwise meet the definitions of small business as indicated in the Q&A.

We would also recommend that the regulators clarify that, with respect to loans or investments made into New Markets Tax Credit eligible CDEs, the loan need not be made directly to the CDE, but instead may flow through to the CDE though a "leveraged debt" investment made to a partnership entity.

Community Development Loans *[Q&A Section ___.12(h)-1]*. LISC is supportive of the proposal to include, as an example of a community development loan, loans that will finance renewable energy or energy-efficient equipment or projects that support affordable housing or community facilities, including in cases where the benefits to low- or moderate-income individuals is indirect. These types of activities, which often involve significant up-front costs that pay off over time in the form of reduced energy bills, should be permissible – provided that the bank can properly document how benefits will accrue to low- or moderate-income individuals.

IV. Community Development Services

Evaluating Retail Banking and Community Development Services *[Q&A Section ___.24(a)-1]*. While it is helpful that the regulators are proposing to add a new Q&A on this subject matter, the Q&A as currently drafted does not offer sufficient detail as to how this measure will be evaluated. As was done with *Q&A Section __.24(d)(3)-1]*, this new Q&A would benefit from a more detailed listing of the factors that regulators will take under consideration in their review.

Quantitative and Qualitative Measures of Community Development Services *[Q&A Section ___.24(e)-2]*. It is helpful that the regulators are providing clarity that, in evaluating this measure, they will take into consideration the degree to which the community development services are responsive to community needs. This Q&A would benefit from the inclusion of specific examples of how banks may demonstrate that the services are responsive to the community needs (e.g., via information collected in surveys; through consultation with non-profits or local governmental entities; etc.).

V. Responsiveness and Innovativeness

Responsiveness *[Q&A Section ___.21(a)-3]*. As stated in the Question portion of the revised Q&A, "'Responsiveness' to credit and community development needs is either a criterion or otherwise a consideration in all of the performance tests." Given its significance with respect to performance under CRA, we support efforts to try and clarify the meaning of this term.

We believe this is particularly critical in the context of revisions to Q&A Section ___.21(a)-2 that were implemented in November of 2013. This Q&A, which clarifies when banks can get credit for investing in national funds, states that the bank must first demonstrate that it has been "responsive to the community development needs of its assessment areas (emphasis added)." LISC has concerns that this Q&A may not provide sufficient comfort to banks seeking to make community development investments outside of their defined assessment areas. As we stated in our comments at the time, we believe that 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 prior comments to the regulators on this and similar matters, LISC and others have suggested 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. We continue to hold this position.

Innovativeness *[Q&A Section ___.21(a)-4]*. This proposed Q&A would benefit from the inclusion of examples of activities that regulators would consider to be innovative. Also, it is not clear from the text of the proposed Q&A that innovative activities are to be considered, but are not required.

Conclusion

CRA motivated bank investing is an integral part of community development investing. LISC could not be nearly as successful if not for its partnership with banks. We appreciate the efforts of the bank regulatory agencies in clarifying the Interagency Q&A document in a way that will hopefully facilitate more community development activities. We thank you for this opportunity to provide comments.