N A A H L

NATIONAL ASSOCIATION OF AFFORDABLE HOUSING LENDERS

Community Reinvestment Act:
Interagency Questions and Answers Regarding Community Investment

November 10, 2014

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–2014–0021
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–1497
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,

The National Association of Affordable Housing Lenders (NAAHL) represents lenders and investors who are committed to increasing the supply of private capital in low- and moderate-income (LMI) communities and underserved areas. Our membership includes community development practitioners from major banks, blue-chip, nonprofit lenders, consortia, CDFIs, and others in the vanguard of affordable housing and community economic development.

This proposal is an important step forward in updating the Community Reinvestment Act (CRA). We urge the Agencies to move forward quickly in adopting these revisions.

Achieving the promise of the revised Questions and Answers (Q&As) will require greater clarity and transparency for both examiners and industry. It is critical that the Agencies follow through on the commitment to improve examiner training and consistency at all three agencies. We also ask the Agencies to consider ways that you can emphasize CRA specialization as a professional career path.

Summary

We strongly support the Interagency process to update CRA guidance. We believe that the Agencies' proposals are an important step in the right direction. By acknowledging the unique strengths of each institution in the context of its business model and its capacity to help meet the unique needs of its communities, the updating reaffirms the importance of assessing the performance context in which an institution does business. This course correction is critical to sustaining CRA.

Our responses to the questions you pose and related comments are as follows.

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Access to Banking Services

The proposal is an important step forward in striking the appropriate balance between consideration of traditional delivery systems and alternatives that have evolved for providing increased access, ease, and convenience for all consumers, including serving LMI geographies and persons.

The proposed revisions recognize that important technological advances provide new opportunities to provide service and access to communities, including underserved areas and persons. Some banks are moving more quickly into the digital space than others, but the key question is how a bank is using its infrastructure to help meet the credit needs of its communities. For example, at some institutions, three-fourths of customer transactions no longer involve a branch. Conversely, we recognize that in LMI communities, and or among LMI populations, this percentage may vary due to what has historically been known as the "digital divide," a lack of access to technology due to economic and social inequalities.

Therefore, it would be helpful for the revision to emphasize <u>examples</u> of alternative branch prototypes, payment systems, and security protocols as just that: examples, not rules meant to constrain the flexibility a bank needs to meet its customers' needs or the weight accorded alternative systems.

A recent article in the *Washington Post* highlights:

> "'The whole philosophy around technology has changed dramatically in the last 10 years,' said Susan G. Riel, chief operating officer for Eagle Bank. 'At one time, banks controlled what technology people used, whether it was ATMs or credit cards. In today's world, the customers are the ones telling us what they want.'
>
> Increasingly, what customers want is easy access from their phones."

As the examiners consider the availability and effectiveness of a large institution's retail delivery system, including alternative delivery systems for LMI individuals and areas, clarity about the factors considered is extremely important. More clarity about the degree to which consideration will be weighted would help banks to plan and expand services.

In addition to the proposed revisions, a focus on LMI access is critical. But quizzing current and potential customers about their income is alienating. Evaluating the entire customer base using alternative delivery channels by census tract should offer evidence of LMI benefit. All channels should be treated equally, within some reasonable range given that not all LMI customers live in LMI census tracts.

Innovative or Flexible Lending Practices

We appreciate the new questions designed to clarify responsiveness and innovativeness. Once again, it is critical that the language is flexible enough to accommodate changes in the bank's practices as they evolve to meet its communities' unique needs with the bank's own business model. It is also critical that bank partnerships with mission-based entities receive equal consideration to the work done directly by bank staff.

Our bank and mission-based lenders report that examiners have discounted greatly the consideration a bank receives for its partnership investment with a nonbank provider. Third party lenders and intermediaries are often on the cutting edge of lending innovations in underserved areas. Specialized mission-based lenders develop sophisticated origination, underwriting and servicing practices to meet local needs for community needs. Microenterprise and affordable rental property loans are important to communities whether a bank or its mission-based partner does the lending. Bank investors should receive full credit for their partners' lending practices.

While the preamble makes clear that not every lending practice must be "innovative" to receive favorable consideration, the actual Q&A is less clear. It would be helpful to repeat the preamble language.

<u>Community Development: What activities are considered to "revitalize or stabilize" an underserved nonmetropolitan middle-income geography and how are those activities evaluated</u>?

The proposed reference to "a mixed-income housing development that includes affordable housing for low- and moderate-income families" is important. Increasingly, states and urban, suburban and rural areas have strong preferences and some mandates for mixed-income housing. But while the proposed language is clear that mixed-income projects receive favorable consideration as meeting "essential community needs," it is silent about the extent of that credit.

Existing exam policy has provided favorable consideration for all of the units in a LIHTC-assisted property if 50.1% of them are reserved for LMI households. But in a state like Massachusetts, where the state prioritizes affordable rental properties that are 25% low-income and 75% others, a bank lender at best receives pro rata credit for the low-income units and at worst receives no credit at all. The proposal should clarify that <u>all</u> of the units in <u>qualified mixed-income</u> developments (i.e., where at least 20% of the units are at 50% of AMI or 25% are at 80% of AMI) should receive favorable and full consideration.

And in an era that HUD acknowledges is experiencing an alarming "net loss of affordable rental housing," the Agencies should consider increased CD lending as an appropriate offset to expected CD investment levels.

Sincerely,

Judy Kennedy

Judith A. Kennedy, President and CEO

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