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Capital for Communities – Opportunities for People®

November 10, 2014

Robert de V. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

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

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W–11400 7th Street SW.
Washington, DC 20219

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

To Whom It May Concern:

On behalf of Community Reinvestment Fund, USA, (CRF), I appreciate the opportunity to share our views on proposed clarifications to the Interagency Questions and Answers (Q&A) regarding Community Reinvestment published in the *Federal Register* on September 10, 2014. CRF is a strong proponent of the Community Reinvestment Act (CRA) and has submitted numerous comment letters and testimony on a wide range of issues related to this Act. The CRA plays a critical role in ensuring that underserved communities and their residents have access to financial resources especially during these difficult economic times. We commend the Federal Bank Supervisory Agencies (Agencies) for their on-going efforts to refine and improve CRA guidance.

BACKGROUND

CRF is a national, non-profit CDFI, and one of the nation's leaders in channeling resources from the capital markets to support community development financing activities. Our mission is to improve the lives of disadvantaged people and strengthen distressed communities through innovative finance. Since 1988, CRF and its affiliates have been engaged in promoting long-term sustainable economic growth in low-income communities and on behalf of low-income people. We have delivered more than $1.5 billion in capital to small businesses, community facilities and affordable housing projects located in more than 815 communities across the country. In partnership with 200 local lending partners, we have funded nearly 2,500 loans in 46 states and the District of Columbia. Working collaboratively with these local lending partners, CRF has helped to improve the lives of more than 1.7 million people annually in schools, health clinics, YMCAs and other similar community facilities, including financing over 19,000 affordable housing units and 1,530 small businesses, and creating or retaining 71,000 living wage jobs.

CRF was founded on a vision of improving the lives of people living and working in economically distressed communities by providing access, in partnership with local community development organizations, to public and private sector resources throughout the country. The hallmark of CRF is our ability to adapt financing tools to connect underserved communities to new sources of capital. We were the first nonprofit financial intermediary to issue securities collateralized by community economic development assets. Since 1989, CRF has issued 19 series of Notes totaling $284.7 million backed by community development loans. Three of our debt offerings totaling $176 million have been rated and all of which included a senior tranche rated "AAA" by Standard & Poor's. Similarly, we have issued three multifamily affordable housing securities, including one Standard & Poor's rated issue totaling $84.9 million, backed by 45 multifamily affordable housing loans.

As a major participant in the New Market Tax Credit (NMTC) Program, we created a tax credit product to support operating businesses with long-term, flexible financing at below-market interest rates. Since 2000, CRF and its affiliate, National New Markets Tax Credit Fund, Inc., (NNMTCF) have become one of the largest NMTC Allocatees in the country, receiving tax credit allocations in 7 of the 10 funding rounds totaling $749.5 million and investing $52.5 million on behalf of other Allocatees, providing 387 NMTC loans to date.

With the contraction in bank lending to small businesses resulting from the Great Recession, CRF sought to address the tremendous need among underserved borrowers and firms located in distressed communities to access appropriate credit products. We obtained one of 14 national non-depository SBA 7(a) licenses to offer this government guaranteed loan product to borrowers unable to obtain conventional credit, typically small businesses located in low-income areas or those owned by women, minorities and/or veterans.

Most recently, in 2013 CRF was selected as one of the first Qualified Issuers (QI) in the inaugural round of the CDFI Bond Guarantee Program. We closed our first Bond Issue in early August of this year. Our long and successful track record of developing and implementing credit programs to finance small businesses, affordable housing, community facilities and other community development projects in economically challenged areas makes us uniquely suited to this transformative new program offering long-term, fixed rate funding for Community Development Financial Institutions (CDFIs).

Comments

CRF would like to offer comments and recommendations related to collaborative relationships we have established or are putting into place with several banking institutions to spur increased small business lending. We wish to replicate this relationship with other banks, both large and small, across the country. This same type of relationship is being used by many other CDFIs engaged in small business lending activities. However to date, these relationships have not been recognized for possible CRA credit by examiners due to a lack of clear and specific guidance in the Interagency Q&A. Given the overwhelming challenges small business owners face in securing loans and the potential for these relationships to address this critical need, we believe bank/CDFI collaborations should be considered eligible for credit in the context of CRA evaluations.

Bank/CDFI Small Business Referral Relationships

In 2011 CRF obtained one of the 14 non-depository SBA 7(a) licenses which we using in service of our mission by lending to borrowers located in CDFI eligible (low- or moderate-income) census tracts and/or those who are members of populations (as defined by the CDFI Fund) lacking access to capital and credit. As a mission driven lender, CRF is able to provide a more flexible 7(a) product that meets the needs of underserved borrowers and/or those located in distressed communities. Our business model is predicated on building relationships with conventional as well as community development lenders "on the ground" who can connect us to the borrowers we wish to serve.

Despite the recent growth of online marketplaces, banks are still the first place most small businesses go to obtain a loan. CRF has established "small business referral relationships" with a number of banking institutions around the country. Most notably we have implemented a formal relationship with a major financial institution to provide credit through our SBA 7(a) loan product to small businesses the bank is not able to serve with its own loan products. For example, if the bank is unable to extend a loan to a borrower due to industry concentrations, regulatory restrictions (e.g. loans to a single borrower), geographic limitations, credit concerns, or the nature of the business (e.g. a start-up) lenders may refer the borrower to CRF. Through this new relationship with CRF, the bank's loan officers are now screening loan requests they cannot fund but which may be a good fit for our 7(a) product. This referral arrangement has been formalized to ensure the bank is referring borrowers who are aligned with our credit parameters as well as our social impact criteria. Together we have implemented a well-defined set of processes and procedures that enable CRF and the Bank to document the volume of loans referred, quarterly deal flow, as well as capture and measure relevant community development impact data associated with this relationship. These processes and procedures include but are not limited to, the following activities.

- Introductory meeting for CRF and bank staff responsible for a particular market to provide an understanding of CRF's loan products, credit criteria, loan review process and clearly articulate a procedure for introducing potential borrowers to CRF in a manner that respects the bank's customer relationship as well as ensuring the privacy of the small business owner's financial information. During this meeting, we establish assumptions and initial projections for volume of loans CRF is able to support.
- Regular monthly or bi-weekly conference calls with small business lending team(s) in the target geography to discuss deal flow as well specific transactions the bank would like to refer to CRF. These calls afford CRF's lender an on-going opportunity to increase understanding among the small business lenders of the types of borrowers CRF is able assist with our loan products;
- Quarterly in-person visits by CRF staff to meet with small business lenders in the target geography to increase knowledge of the local lending market, the bank's small business lending activities, and to revise assumptions and projections for lending volume under the referral relationship.
- One-on-one calls between individual small business lending officers and CRF's lender as needed to discuss specific transactions and determine if the borrower is a good candidate for CRF's SBA 7(a) product.

- Encourage the bank loan officers to monitor and track their time spent providing technical assistance to refer small business owners based on their financial skills, knowledge of CRF's loan product, and borrower profile.

By formalizing our bank referral relationships, CRF is able to project deal flow and, over time, the number of transactions we expect to successfully fund from these referral partners. Using their financial expertise and lending experience, the bank's loan officers directly engage with CRF's lender and the small business borrower to evaluate the appropriateness of our SBA 7(a) product for a given customer's financing needs. These relationships require a skilled and knowledgeable lender to make a proper match between CRF and the small business owner. We are encouraging our bank referral partners to track and document the amount of time their lenders spend on this referral activity for CRA reporting purposes.

Many small business owners do not qualify for a bank loan. In response, some conventional lenders create community development lending programs to address the credit needs of borrowers who do not meet their credit parameters. However, not all banks are able to develop and implement such programs. As explained in the Winter 2003 issue of the OCC's *Community Developments,* "Some banks don't have the necessary tools or expertise in-house to make some kinds of small loans to businesses – e.g., micro loans to small, start-up businesses. Because CRA must be accomplished in a safe and sound manner, examiners would not expect such a bank to make loans that would be outside of its capabilities."[1] In the interest of spurring economic development and job creation, we believe banks that use their expertise to refer borrowers they cannot fund to other (third party) community development lenders based on well-established relationships (such as those we outlined above) should be eligible for CRA credit. We recommend several ways or types of CRA credit banks could receive for these relationships in greater detail below. It should be noted, legislators in the UK recently passed a law requiring banks to share data on small business borrowers they have declined with alternative lenders as a means of increasing access to credit.[2] We urge the Agencies to encourage banks in this country to do the same by allowing CRA credit for formalized referral relationships.

CRA Credit for Referral Relationships with Community Development Lenders

Referral relationship established between a bank and a community development lender, such as Community Development Financial Institution (CDFIs), should be considered for CRA credit under one or more of the following options.

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[1] Karen Tucker, "*Compliance Corner: Small Business Lending and the Community Reinvestment Act (CRA),* Community Developments, Winter 2003, pg. 2 (http://www.occ.gov/static/community-affairs/community-developments-newsletter/CD_winter03/images/compli.pdf)

[2] Peter Walker, "*Lender Urges Advisers to Consider Alternative Finance*," FT Adviser, September 1, 2014 (http://www.ftadviser.com/2014/09/01/ifa-industry/technology/lender-urges-advisers-to-consider-alternative-finance-s0TqSzFu4hAGHh6xjDqvnK/article.html)

1. Innovative or Flexible Lending Practices

Under the performance standards for large financial institutions, examiners should consider small business referral relationships between banks and community development lenders as an innovative or flexible lending practice. As noted in the Request for Comment, examiners are not limited to simply reviewing the terms of particular loan products, but may also consider "related innovations that augment the success and effectiveness of the institution's community development loan program or lending programs that address the credit needs of low- or moderate-income geographies or individuals." Although a bank loan officer who uses his/her lending expertise to refer a small business owner to a community development lender is *not* directly enhancing the effectiveness of *their* community development loan program, these referral relationships are *directly* helping to meet the credit needs of low- or moderate-income geographies or individuals. One example of innovative or flexible lending practices involves a bank that establishes a technical assistance program, either directly or through third parties, for affordable housing developers. If this bank is able to outsource the provision of technical assistance to a third party provider, shouldn't this institution also be able to outsource the provision of community development loans to an outside organization skilled in offering these types of loans? As noted in the OCC publication, there may be instances where a bank does not have the "tools or the expertise" to offer a community development loan program to meet the credit needs of a small business borrower. Having the flexibility to refer these borrowers to community development lenders with the capacity to make the types of loans well suited to their credit needs may be the best solution to addressing demand for loans from low- or moderate-income geographies or individuals.

Therefore, in response to Questions 7 & 9 in the Request for Comment, we urge the Agencies to provide additional guidance to encourage banks to engage in more innovative or flexible lending programs that are responsive to community needs. In particular, we recommend examiners consider, as innovative and flexible practices under the CRA performance standards for large institutions, small business referral relationships established between banks and community development lenders whereby loan officers utilize their financial expertise to provide technical assistance and direct borrowers they cannot fund to their community development lending partner offering appropriate small business credit products. It would also be helpful to provide an example of such a referral relationship that involves the elements described above including regular calls and/or meetings between bank loan officers and community development lending staff to ensure a thorough understanding of the community lending partner's loan products, credit criteria, and loan review processes; a clearly delineated procedure for introducing borrowers to the community development lending partner and maintain compliance with privacy laws applicable to financial information; assumptions and projections about loan volume the community lending partner is able to support; documentation by the bank as to the time its lending officers spend provide technical assistance to small business borrowers; and other processes or procedures necessary to effectively address the credit needs low- or moderate-income geographies or individuals.

2. Community Development

Economic Development

The Agencies have proposed a number of changes to clarify existing guidance on community development including what activities are deemed to promote economic development by financing businesses or farms that meet the prescribed size eligibility standards.

CRF strongly supports and applauds two specific changes to existing guidance:

(1) Removal of the word “currently” from the guidance related to community development activities that lead to “permanent job creation, retention, and/or improvement for persons who are ***currently*** low- or moderate-income, or support permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local, or tribal governments.” We agree this change addresses possible incentives for banks to support community development activities that create or retain low wage jobs rather than promoting job improvement opportunities for low- and moderate-income persons.

(2) Addition of Community Development Financial Institutions (CDFIs) that finance small businesses or small farms to the list of entities for which the Agencies will presume that any bank loan to or investment in such organizations promotes economic development.

However, in response to Question 13 in the Request for Comment, CRF urges the Agencies to expand the proposed list of activities that “promote economic development” to include the kind of robust small business referral relationships between banks and community development lenders we described above. Banks that refer small business borrowers who do not qualify for their loans to a community development partner provide these borrowers with an opportunity to access the credit they need and ultimately to create or retain jobs for low- and/or moderate-income places or people.

Although the proposed list includes activities considered to promote economic development includes the provision of “technical assistance or supportive services for small businesses or farms, such as shared space, technology, or administrative assistance,” it makes no mention of technical assistance in the form of referrals to sources of credit when a bank is unable to meet the financing needs of a small business borrower. Adding specific language referencing bank referral relationships with community development lenders along with an example of such a relationship would allow examiners to provide favorable CRA consideration for these relationships as an activity that promotes economic development regardless of the size of the institution.

3. Proposed New Questions and Answers

Evaluating Retail Banking Services and Community Development Services

CRF concurs with commenters who asserted that “community development services are not given appropriate consideration in the services test and, by extension, in the overall CRA evaluation, relative to retail banking services.” However, we would go a step further and suggest that the Interagency Q&A need to re-examine community development services in the larger context of community reinvestment. Certainly access to affordable consumer banking services such as savings and transactional accounts is vitally important. But increasing retail banking operations also serve as the first stop for a small business owner seeking a loan. Community development services, as noted in the Request for Comment, "promote credit and affordable product availability, technical assistance to community development organizations, and financial education programs for low- and moderate-income individuals." This definition or view overlooks community development services that provide access to credit for individuals who are also small business owners. These individuals naturally gravitate to the bank where they maintain their personal (or business) banking accounts when they need a loan to sustain or grow their business. Conversations regarding small business referral relationships with both large and small institutions with have confirmed that many banks organize their lending operations, broadly speaking, into two categories: businesses with revenues of less than say $5 million requesting smaller loans ($200,000 or less) are handled by the retail function and deemed to be a retail credit while firms with revenues above $5 million seeking larger loans (including loans up to $5 million – the maximum size permitted under the SBA 7(a) program) are considered Commercial & Industrial (C&I) Loans and handled by the business banking group.

We have a situation in the industry where some small business loans are managed as a retail banking product and therefore should be included in consideration of any changes made to CRA guidance affecting these products. In our view, the Agencies are defining community development services too narrowly in the context of retail banking services and should expand this definition to include activities that "promote ***access to*** credit and affordable product availability, technical assistance to community development organizations ***and small businesses,*** and financial education programs for low- and moderate-income individuals." (New language shown in bold italics) Adopting a broader approach would allow banks to receive CRA credit for community development services provided to small businesses through their branch network by retail banking staff. Examiners should be encouraged to consider small business referral relationships between banks and community development lenders, such as those we have put into place with our banking partners. As we detailed above, these referral relationships rely on a formal understanding between the bank and the community development lender about the types of small business borrowers a bank loan officer may refer, the terms of the credit products offered by the community development lender, the process by which a referral is made to ensure the privacy of the borrower's financial information, and proper documentation of bank staff time dedicated to this form of technical assistance.

We offer one additional recommendation related to community development services as currently reflected in the Interagency Q&A. Existing Q&A § ___ 12(i)—3 provides examples of community development services eligible for CRA consideration. Included among these examples is the provision of "technical assistance on financial matters to small businesses." While this example makes it clear that providing technical assistance to small business is an eligible community development service, CRF believes additional examples of technical assistance a bank might provide to small business owners would be extremely helpful. In particular, we urge the Agencies to include a small business referral relationship between a bank and a community development lender as an example of "technical assistance on financial matters to small businesses" whereby bank loan officers utilize their lending expertise to help small business owners access appropriate credit products when they do not qualify for a bank loan. A more detailed example may help banks to identify community development services they are currently offering but for which they have not received consideration or provide a "road map" for them to assist small businesses obtain access to suitable credit products.

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Conclusion

We appreciate this opportunity to share our views and recommendations on the proposed clarifications to the Interagency Questions and Answers (Q&A) regarding Community Reinvestment. CRF remains a strong and steadfast supporter of the Community Reinvestment Act. We commend the Staff of the Bank Supervisory Agencies for their on-going efforts to improve and strengthen the guidance associated with this important legislation. We stand ready to work with the Agencies to ensure the Interagency Q&A remains effective and meaningful in the context of the current banking environment. Please do not hesitate to contact me with any questions regarding comments included in this letter.

Sincerely,

Frank Altman
President and CEO