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November 10, 2014

Stuart Feldstein, Director
Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th Street Southwest
Washington, DC 20219

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

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

Re: Docket ID OCC-2014-0021
Interagency Questions & Answers Regarding CRA

Dear Gentlemen:

CohnReznick LLP is the tenth largest CPA firm in the United States and has one of the nation's largest professional services practice serving companies and organizations engaged in affordable housing and community development. In the affordable housing arena, we are the leading provider of audit and advisory services to syndicators, developers, lenders, and count ourselves fortunate to provide advice on low-income housing tax credit (LIHTC) investments to many of the country's national, regional and community banks.

This letter is intended to convey this firm's comments with respect to the Interagency Questions and Answers Concerning the Community Reinvestment Act ("CRA") issued by the Comptroller of the Currency, The Federal Reserve System and the Federal Deposit Insurance Corporation (the "Agencies"), which appeared in the Federal Register on September 10, 2014. Our comments are limited to the Proposed Question and Answer intended to clarify what the Agencies mean by the term "responsive". Our comments are focused on the use of that term in the context of the Investment Test and the circumstances under which an institution may receive positive consideration for a community development investment made outside the institution's assessment area but within a broader statewide or regional area which includes such assessment area.

In connection with our work in LIHTC investments, we have developed a working knowledge of and a special appreciation for, the Community Reinvestment Act. A remarkable synergy has developed between the CRA, the U.S. banking sector and the low-income housing tax credit program in recent years. Indeed, we estimate that roughly 85% of the roughly $10 billion invested in housing credit developments in 2013 was attributable to banks motivated to meet their CRA objectives.
As you may be aware, in 2013 CohnReznick undertook a study of the impact of the CRA on the housing credit program and issued a report titled *The Community Reinvestment Act and its Impact on Housing Tax Credit Pricing*. That report documents the dramatically positive impact which the CRA's Investment Test has had on market demand for LIHTC investments. The report also highlights the combined impact that economic recovery and bank consolidation have had on the flow of what we might term "CRA capital" into the nation's largest metropolitan areas.

Notwithstanding the many beneficial impacts which the CRA has on the housing tax credit program, it has also had the unintended consequence of creating two sub-markets for housing tax credit projects depending on whether they are located in a "CRA hot" or "CRA not" area of the country. As you know, Investment Test objectives are established based, among other things, on where a bank takes deposits and the volume of deposits the institution controls in those areas. Low-income housing tax credits, by contrast, are allocated by state housing agencies based on their annual assessment of the state's most critical housing needs. Since affordable housing is needed in virtually every community in the country, housing credit projects are developed in areas that may not be served by the large national banks that provide most of the capital for such projects. As a result, the areas in which deposits are concentrated and the areas in which housing credit projects are developed are often not in alignment.

One consequence of the mismatch between the markets where bank deposits are concentrated and the areas in which affordable housing is developed, is that housing credit projects located in our largest metropolitan centers command much higher "tax credit pricing" than is the case for projects located in exurban or rural areas. By "tax credit pricing" we refer to the amount of capital that an investor will invest to acquire the equity interest in a project with a fixed allocation of housing credits. Thus for example, a housing tax credit project with a $10 million credit allocation developed in San Francisco might command as much as $11.8 million of equity from one of the many major commercial banks doing business in the Bay Area. By contrast, a housing credit project located in a third tier city or rural area with an identical $10 million allocation of housing credits might command just $8.5 million of equity from local community banks or non-bank investors. Both properties will generate $10 million of federal tax credits for their investors but the non-metro area project will end up with $3.3 million less in capital.

Affordable housing developments are, as you might imagine, very difficult to finance. Housing credit projects have limited cash flow because rents are set at well-below market levels in order for them to be affordable to low-income tenants. In addition, many of the federal and state government programs designed to fill equity gaps have been eliminated or cut back in recent years. As a result it can be much more difficult to finance affordable housing in areas where housing credits are heavily discounted.

We commend the Agencies for recognizing this issue and for their issuance of regulations in November of 2013 clarifying when a bank can receive positive consideration for an investment in a broader statewide or regional area that includes, but does not directly impact, its assessment area(s). As a practical matter, banks will always have a strong preference for making housing credit investments within their assessment areas - the markets they know best. However, the housing credit program is subject to a volume cap, and that cap serves to limit the number of new housing credit properties we can build in a typical year to approximately 1,200 – a small number for a country with 388 metropolitan statistical areas ("MSA") and 541 micropolitan statistical areas.

The fact that so few housing credit projects can be developed means that in any given MSA in any given year, there may only be one or two housing credit projects available for investment. If the area in question is served by numerous Top 20 banks – all of them seeking to secure Outstanding CRA ratings – there are two likely outcomes: 1/most of those banks will not be able to find a housing credit investment in that market in that year and 2/ the bank or banks that successfully compete for the equity interest will have been required to pay premium pricing and accept a below-market rate of return.

We have discussed the proposed Q&A concerning responsiveness with a number of our banking clients against the backdrop of the Q&A dealing with the "broader statewide or regional area" issue published in November of 2013[1] (the "2013 Guidance"). The bankers with whom we have spoken have advised us that the requirement in the 2013 guidance to first demonstrate that their bank is being "responsive to the community development needs of their assessment area" is too vague to cause a change in their investment guidelines. The concern expressed is that the combination of a three year examination cycle and the absence of a clear definition of the term "responsive" means that there is no way for them to have assurance that after the bank makes such an investment, their examiner will decide to accord it positive consideration. Since banks have no incentive to take that type of risk, the 2013 Guidance has largely been ignored thus far. Given the significant effort made by the Agencies to provide a measure of flexibility on this issue, it would be a disappointing outcome should this continue to be the case.

The proposed Q&A reminds us that in evaluating whether an institution is being responsive to the community development needs of its assessment area, examiners are required to evaluate the bank's performance context. We believe that in areas where there are no available housing credit investments or where the projected yield from an available investment is substantially below market, the performance context of the banks operating in that market should reflect that fact. It is our suggestion

[1] 78 FR 69671 (Nov. 20, 2013)

that a bank which has a track record[2] for being responsive to the community development needs of its assessment area, but which has no prudent LIHTC investment opportunity available to it, should have the option of investing in a housing credit project located within a broader statewide or regional area which includes but does not directly impact its assessment area, and automatically receive positive consideration for that investment.

We believe that providing banks with assurance that LIHTC investments made outside their assessment areas will be accorded Investment Test consideration is consistent with the new guidance:
1/ The proposed Q&A provides that investments are considered particularly responsive if they benefit low-or-moderate income individuals living either in low-or-moderate income geographies or underserved nonmetropolitan geographies. Investing in low-income housing tax credit projects located outside our major metropolitan centers clearly meets that standard and 2/ in evaluating an institution's responsiveness to community development needs and its performance context, examiners are encouraged to consider information from many sources including government entities. Both the location of projects that have been awarded LIHTC allocations and the state's annual assessment of its most critical housing needs are public documents available from the state housing credit agency.

There are, presumably, other ways that the Agencies might be able to provide banks with a reasonable level of assurance on this issue. Thus, for example, a bank could provide it's regulator with a current description of the community development activities in which it is engaged, provide an assessment of its available affordable housing investment options, if any, and ask for a determination letter prior to making a LIHTC investment outside its assessment area. While community development bankers would welcome this practice, we recognize that this may not be possible given the resource limitations under which the Agencies are operating.

We appreciate the opportunity to provide commentary on this important issue and would welcome the opportunity to provide further information at your request.

Sincerely,

Fred H. Copeman

Fred H. Copeman
National Director
Tax Credit Investment Services

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[2] Any bank that has previously received a Satisfactory or better rating for its performance under the Investment Test in that assessment area and which has made or committed to at least the same volume of equity investments during the current exam cycle, should be viewed as being responsive to the area's community development needs.