



Puerto Rico Housing and Human Development Trust Fund

April 8, 2020

VIA ELECTRONIC MAIL(Comments@fdic.gov)

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

Attention: Community Investment Act Regulations-Comments

RE: Community Reinvestment Act: Joint Notice of
Proposed Rulemaking
RIN 3064-AF22

Dear Mr. Feldman:

The Puerto Rico Housing and Human Development Trust Fund (“**FIDEVI**” by its Spanish acronym) hereby respectfully submits to the Federal Deposit Insurance Corporation (“**FDIC**”) this letter with its comments in connection with the Joint Notice of Proposed Rulemaking that requests comments on certain revisions to the Community Reinvestment Act Regulations (12 CFR Part 345) proposed by the FDIC and the Office of the Comptroller of the Currency (collectively, the “**Agencies**”) (the “**Proposed Rules**”) published on January 9, 2020 (the “**Joint Notice**”). Specifically, FIDEVI’s comments relate to the quantitative consideration which has been given to a certain type of community development investment in accordance with §12 (t)-9 of the Interagency Questions and Answers Regarding Community Reinvestment (the “**(t)-9 Q&A**”) and FIDEVI’s request that such treatment be modified under the Proposed Rules, as discussed herein.

Our comments are based on the Agencies’ invitation for comments on the proposal related to establishing clear criteria for the types of activities, as well as expanding these activities, that would qualify for CRA credit and determining the dollar value of qualifying activities, including, among others, other criteria for determining which activities would qualify for CRA credit that the Agencies should consider. More specifically, as discussed below:

(A) Clarifying and expanding what qualifies for CRA. The expanded qualifying activities criteria, mainly in those community development investments, that focuses on economically disadvantaged individuals and areas in banks’ communities.

For example, “a CD activity that provides financing for or supports: Affordable housing that **partially or primarily** benefits LMI or families or middle-income individuals or families in high-cost areas”; and

“A capital investment, loan participation, or other venture undertaken by a bank in cooperation with a minority depository institution, women’s depository institution, CDFI..... that helps to meet the credit needs of the institutions’ or credit unions’ local communities, including through activities that indirectly help to meet community credit needs by promoting the institution’s or credit union’s sustainability.”

(B) Expanding Where CRA Activity counts. “Provides essential infrastructure that benefits or serves LMI individuals or areas of identified need. Adding a criterion for essential infrastructure, such as roads, mass transit, or water supply and distribution, that benefits or serves LMI individuals, LMI census tracts...”; and

“In addition to these expansions, the affordable housing criterion would include activities that finance or support owner-occupied housing purchased, refinanced, or improved by LMI individuals or families”.

For ready reference, the (t)(9)- Q&A provides that 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 the 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 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 community development purpose for CRA purposes. This interpretation has totally disincentivized banks in continuing to invest in FIDEVI.

As will be discussed herein below, since the (t)(9)- Q&A was made effective, FIDEVI has suffered a severe financial downturn and has placed it in a situation where it has been unable to serve the purposes for what it was created.

We believe that a brief background regarding FIDEVI and the community development purposes for which it was created is in order before our specific comments on the Proposed Rules are provided.

1. Organization and Purposes of FIDEVI.

FIDEVI was constituted as a charitable trust (similar to a consortium) pursuant to Deed No. 135 dated on May 5, 2004 before Notary Joseorlando Mercado Gely (the "Deed of Trust"). The Deed of Trust specifically states that FIDEVI is the product of a collaborative alliance between Puerto Rico's banking industry and the homeless population advocacy community with the commitment of the

Government of Puerto Rico. As such, the Board of Trustees of FIDEVI is composed of a member appointed by the Governor of the Commonwealth of Puerto Rico, the President of the Puerto Rico Bankers Association, the President of the Puerto Rico Mortgage Bankers Association, a member representing the private sector and three members representing the homeless advocacy community.

According to the Deed of Trust, the purpose for which FIDEVI was created is to devote its corpus and income to the promotion and support for the development, rehabilitation and preservation of **adequate, affordable and accessible housing for people of limited, scarce or no economic resources in the Commonwealth of Puerto Rico.**

FIDEVI commenced operating in December 2008, after going through a period of administrative organization. In accordance with such mandate, FIDEVI has established its mission and vision as follows:

“Mission Statement. The mission of the Puerto Rico Housing & Human Development Trust is to combine the public and private efforts in the constitution of a permanent and irrevocable fund. This fund will devote its efforts to promote and support the development of adequate, affordable and accessible housing for individuals of scarce or no resources, such as homeless people, mental patients, single mothers and elderly people. In executing this mission, the Trust shall not be restricted in use to people of any race, faith, color, or creed and will be administered on a non-discriminatory basis.”

“Vision. Attain an effective impact through advocacy and facilitating the conditions in order that those persons with scarce or no resources in Puerto Rico might have adequate, affordable and accessible housing to meet their basic needs.”

The above might be attained through the generation and channeling of funds, knowledge exchange and the establishment of relationships with related organizations (nongovernmental organizations – NGO’s) for projects that provide affordable housing for homeless, vulnerable, poor or distressed individuals and families in Puerto Rico. Examples are: Permanent Housing, Transitional Housing, Assisted Living, Supportive Housing, Shelter and Single Occupancy Housing.

Following the purposes for which it was created, for the period of the years 2010-2015 (after the first years of organization), FIDEVI was able to assist forty-one (41) not for profit organizations through grants that amounted to \$3,635,408 in the aggregate. Since 2013, there have been no new income producing investments in FIDEVI decreasing significantly the availability of funds for assistance-due to the disincentivization of investments from the banks, having repercussions in the number of grants and amounts thereof, to only 3 additional grants to organizations (in 2019) for a total of \$110,083. (See Exhibit C)

2. FIDEVI's Funding Model.

FIDEVI's organizers had a clear understanding that the best funding model for the Trust would be a continuous source income mechanism ("Income Transactions"). At the time FIDEVI was created, at least one similar non-profit organization existed in Puerto Rico that had been extremely successful in achieving its funding goal by establishing an Income Transaction model.

Furthermore, in order to attract investors who would be willing to invest in FIDEVI, the government provided to these investors certain tax benefits through legislation allowing certain Income Transactions which have made possible the funding for FIDEVI's operations. In addition, since its inception, the organizers had intended these transactions to be CRA qualified so as to ensure that commercial banks would become target investors, which, if the rules regarding these investments are clarified by the Agencies, they still are. This would ensure FIDEVI with a continuous and stable source of income with which to achieve its community related goals.

The mechanism used for a typical Income Transaction of FIDEVI may be summarized as follows:

1. FIDEVI issues its Notes (the "Notes") to be sold to the investor (the "Investor").
2. FIDEVI receives proceeds from the sale of the Notes.
3. FIDEVI uses the proceeds from the sale of the Notes to invest in securities that will serve as the underlying collateral of the Notes ("Collateral"). In the case of CRA related transactions, the securities used as Collateral may directly or indirectly be CRA qualified.¹
4. FIDEVI receives interest and principal prepayments from amounts invested.
5. FIDEVI remits payments to the Investor. The interest rate on the Collateral is higher than the interest rate on the Notes issued by FIDEVI thereby permitting a sustained generation of income for the period of these investments.

As a result of this mechanism, FIDEVI receives a monthly, quarterly or semiannual fixed income during the term of the transaction based on the interest frequency of the Collateral.

FIDEVI's original funding model involved three (3) categories of investors:

- Individuals and corporations with certain philanthropic requirements.
- Puerto Rico based mutual funds which in order to comply with PR Treasury Department requirements must invest a portion of their portfolio in Puerto Rico qualified investments which FIDEVI fully qualifies.
- Lenders or other investors willing to invest in FIDEVI's debt.

After the perfect economic storm that has lasted for more than a decade hit Puerto Rico, the first group of investors totally disappeared from the market as early as 2012.

¹ For example, with respect to certain transactions, FIDEVI has used FNMA certificates as collateral and other municipal infrastructure bonds. The underlying mortgage products used with respect to such certificates (FNMAs), present an across the board industry peculiarity; most of these transactions involved lower value properties and LMI households. As for the municipal bonds, these are example of transactions that count as to where to expand CRA activity and helps provide essential infrastructure that benefits or serves LMI individuals as well as areas of need, as opportunity zones.

The second group, Puerto Rico based mutual funds which have been participating in FIDEVI Income Transactions as an industry, is circumscribed to Puerto Rico in terms of firms and customers. This is a finite group with three (2) or four (3) players and a customer growth dependent on supportive economic growth trends, something which has not materialized to date in Puerto Rico.

This has left FIDEVI with the possibility of only reaching out to the third type of investors (sharply evident since 2013 and stronger at this particular time). In order to sustain a volume of activity after payment of minimal operating costs, FIDEVI had to resort to lending institutions willing to invest in FIDEVI notes (the “CRA Income Transactions”). Access to funds generated through lenders’ investment activity in FIDEVI became an absolute necessity and, for the reasons mentioned below, will continue to be a necessity in the foreseeable future. Unfortunately, and despite FIDEVI’s comments to the Agency by letter dated May 13, 2013, the Q & A were revised effective on November 20, 2013, to include the (t) 9- Q & A, that has severely limited FIDEVI’s access to investments from lending institutions inasmuch as their inability to use the complete amount of the CRA Income Transaction in FIDEVI for compliance with their CRA investment requirements. This has totally disincentivized their interest of investment in FIDEVI Income Transactions and this type of community development investments.

To illustrate why the CRA Income Transactions are still crucial for FIDEVI’s survival, following is certain relevant data related to FIDEVI’s transactions since it commenced operations.

During 2009, FIDEVI conducted eight (8) non-CRA Income Transactions involving PR Funds with different institutions. (See Exhibit A). Since then, no other transaction has materialized primarily due to Puerto Rico’s dire economic environment during the past decade. It is critical to accept the fact that it will be years before this pool of investors strengthens enough to generate additional transactions and income.

Consequently, as mentioned before, due to the current adverse economic conditions prevailing on the island, there are no alternative sources of funding for FIDEVI, other than the CRA related Income Transactions with the financial institutions, (See Exhibit B).

FIDEVI found in these CRA Income Transactions a consistent and stable funding source which has allowed the organization to do short to medium term planning for achieving its mission. With no new transactions since 2013 due to the disincentivization, FIDEVI’s sustainability has been severely affected, and more importantly, has affected the mission of the organization decreasing substantially the amount of grants to the organization, and by consequence the amount of LMI individuals assisted, to almost none as of today. (See Exhibit C).

Few organizations in the island have had the capacity and mission to assist the homeless and housing needs of vulnerable populations like FIDEVI. The different events that have occurred during the past four (4) years have steeped the required assistance to these vulnerable populations. During 2017 the island was hit by two very strong hurricanes (Irma and Maria), the receipt of

federal assistance from the Community Development Block Grants for Disaster Relief (CDBG-DR) funds has been significantly delayed until this time, the island had earthquakes at the beginning of 2020 and last, but not least, the island has been affected by the COVID – 19 pandemic as many other countries in the world. All these events aggravate the availability of funds to assist these organizations which has caused more economic deterioration and has worsened housing conditions for the population that FIDEVI serves.

Because of the financial structure chosen for FIDEVI by its founders, and because of its nonprofit nature, FIDEVI would not qualify for a regular loan or credit by a financial institution. Due to the economic conditions prevailing on the island and the limitation of available funds for all organizations with different missions, FIDEVI's only viable alternative is the funding mechanism described hereinabove.

As mentioned before, having FIDEVI's Income Transactions being CRA qualified in their entirety is crucial for attracting the financial institutions to invest in FIDEVI.

FIDEVI respectfully requests that the effect of the (t)-9 Q&A, detrimental to community development organizations such as FIDEVI that depend on Income Transaction mechanisms for its funding needs, be revised and reinterpreted. The Agencies have an opportunity now to correct this situation by clarifying in the Proposed Rules that the interpretation in (t)9- Q & A should not apply to an organization such as FIDEVI that has demonstrated a strong commitment to the communities it serves and that is an essential vehicle to the accomplishment of the reconstruction efforts related to the devastations caused to the residents of Puerto Rico by all these events previously described. These income transactions should be included in the transactions list and should be clarified as CRA qualified investments in the Proposed Rules.

Financial institutions in Puerto Rico have demonstrated an appetite for investments in organizations such as FIDEVI due to their CRA responsibilities coupled with the fact that there are limited investment opportunities to satisfy the CRA investment requirements on the island. However, it is crucial for them that the total amount of the investment be credited for CRA compliance purposes. Undoubtedly, in connection with CRA Income Transactions, the investing financial institution's capital is at risk for the total value of the investment, even if the Agencies perceive that only the income received by FIDEVI from the transaction is actually invested in community development activities. If it were not for the total amount invested by the financial institution in FIDEVI, it would not be allowed to receive the income used by FIDEVI for its funding needs. This is the nature of the funding mechanism chosen by FIDEVI's founders.

3. Conclusion.

We hereby urge the Agencies to consider the devastating effect that the (t)9- Q&A has had upon the operations and mission accomplishment of FIDEVI and its commitment with the organizations that serve the homeless population in Puerto Rico. For this reason, the CRA Income Transactions must be included in the revised list of qualified CRA community development investments, as described, and total dollar value credit should be given to each such transaction. Doing so will encourage banks to provide more CRA qualified investments and at the same time, will accomplish the purpose of the Proposed Rules to better achieve the law's

underlying statutory purpose of banks serving their communities. It also will accomplish the purpose of expanding where CRA activities counts because the CRA Income Transactions also provide direct or indirect investments in infrastructure and other housing products like FNMA's among others. In addition, such investments will help meet the credit needs of an unbanked community, particularly those individuals who otherwise would not have a home without the support of FIDEVI.

As described in the Federal Register, the Proposed Rule is designed to achieve the following positive outcomes desired by many stakeholders:

- Reduce activity uncertainty by providing clear standards and an illustrative list of qualifying activities. We submit that, as discussed above, the uncertainty created by the (t)9- Q&A was the immediate cause of the decrease of absence of a funding source for FIDEVI.
- Encourage long term commitment to community reinvestment
- Reduce displacement by refocusing on LMI individuals and activities
- Preserve community voices- represented as in FIDEV's Board of Trustees
- Reduce inconsistent application of the rule

We believe that including the CRA Income Transactions in the approved transactions list and giving credit to the entire dollar value of the transaction would achieve all these positive outcomes.

FIDEVI appreciates the FDIC's consideration of these comments. Should any question arise in connection with these comments, please do not hesitate to contact the undersigned 1607 Ave. Ponce de Leon, Cobian's Plaza Bldg. Suite 106, San Juan, Puerto Rico 00909 and by phone 787-294-1288.

Sincerely,



Annette Montoto
Executive Director



Puerto Rico Housing and Human Development Trust Fund

EXHIBIT A

NON – CRA TRANSACTIONS

<u>Date</u>	<u>Entity</u>	<u>Amount</u>	<u>Collateral</u>	<u>Net Interest Income</u>
1. 9-9-09	[REDACTED]	\$210,000,000	\$75,000,000 \$25,000,000 \$35,000,000 \$75,000,000	.20 bp
2. 10-30-09	[REDACTED]	\$94,019,903	\$40,000,000 \$54,019,903	.20 bp (40,000,000) .25 bp (54,019,903)
3. 11-12-09	[REDACTED]	\$63,560,000	\$30,500,000 \$25,060,000 \$8,000,000	.25 bp
4. 11-19-09	[REDACTED]	\$29,500,000	\$20,000,000 \$9,500,000	.29 bp
5. 12-3-09	[REDACTED]	\$14,000,000	\$4,000,000 \$10,000,000	.29 bp
6. 12-10-09	[REDACTED]	\$4,200,000	\$4,200,000	.29 bp
7. 12-17-09	[REDACTED]	\$16,900,000	\$14,500,000 \$2,400,000	.29 bp
8. 12-22-09	[REDACTED]	\$42,250,000	\$17,000,000 \$9,000,000 \$19,250,000	.29 bp

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EXHIBIT B

CRA NOTES TRANSACTIONS

<u>Date</u>	<u>Entities</u>	<u>FIDEVI Notes</u>	<u>Collateral</u>	<u>FIDEVI Income</u>	<u>Net Interest Income</u>
1. 12-16-10	[REDACTED]	\$7,500,001	4% FNMA Cert.	\$49,218.75	.20 bp
		\$5,000,000	4% FNMA Cert.	\$32,812.50	
2. 3-1-11		\$15,000,000	4% GDB Notes	\$95,999.90 on a monthly basis until prepaid 3-2012	.40 bp
3. 4-19-11		\$6,000,000	3.5% FNMA Cert.	\$59,729.87 pre-paid	.40 bp
4. 9-9-12		\$15,000,000	3.448% GDB Notes	\$53,666.67 received semi annually <u>\$120,000</u> expected to be received \$173,666.67	.40 bp
5. 12-31-12		\$8,295,000	6.25% Goldman Sach Notes	\$124,342.05 prepaid	.30 bp
		\$56,735,000			
			Received	\$415,769.74	
			Expected	<u>\$120,000</u>	
				\$535,769.74	

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EXHIBIT C

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Securities Receivables	\$ 465,409,920	\$ 479,198,058	\$ 370,444,817	\$ 318,454,844	\$ 217,132,790	\$ 86,330,089	\$ 78,841,879	\$ 76,111,188	\$ 57,119,929	\$ 56,422,281	\$ 36,079,171
Total Awards		\$ 585,000	\$ 424,069	\$ 452,757	\$ 532,646	\$ 1,000,000	\$ 640,936	\$ -	\$ -	\$ -	\$ 110,083
Total Projects		6	5	5	7	10	8				3
Average Award		\$ 97,500	\$ 84,814	\$ 90,551	\$ 76,092	\$ 100,000	\$ 80,117	\$ -	\$ -	\$ -	\$ 36,694
Number of units impacted		127	90	95	75	85	68	0	0	0	136
Number of individuals impacted		250	307	136	117	287	164	0	0	0	140