ASSOCIATION FOR NEIGHBORHOOD AND HOUSING DEVELOPMENT, INC.

November 10, 2014
Commissioner Thomas J. Curry
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th Street SW
Washington, DC 20219

Chairwoman Janet Yellen
c/o Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551

Chairman Martin J. Gruenberg
c/o Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

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

OCC Docket ID: OCC-2014-0021
Federal Reserve Docket No. OP-1497

Dear Commissioner Curry, Chairwoman Yellen, and Chairman Gruenberg:

I am writing on behalf of the Association for Neighborhood and Housing Development (ANHD), a not-for-profit coalition comprised of 98 neighborhood-based affordable housing organizations and CDCs with a 30-year track record of engaging in bank reinvestment advocacy on behalf of New York City's low- and moderate-income (LMI) communities. We appreciate this opportunity to comment on the FFIEC's proposed changes to the Community Reinvestment Act (CRA) Q&A's.

In this letter, we offer some feedback on the CRA overall, and the specific changes proposed to the CRA Q&A's relating to Economic Development; Community Development Lending; Access to Banking; Community Development Services; and Responsiveness and Innovativeness. Our comments are summarized here and explored in more detail in this letter.

- **Economic Development:** We applaud the regulators for examining this category to ensure it has more of an impact by incentivizing quality jobs, and not perpetuating low-wage jobs. We appreciate this and think the language could be even stronger in order to focus on and give credit for activities that create, retain and improve quality jobs. Rather than focus so much on a range of specific activities, regulators should focus more on how the activity meets local needs. Based on a robust performance context that includes data analysis and conversations with a variety of local contacts, including community organizations, economic development organizations, and workforce development practitioners, banks and regulators can gain a good understanding of the types of jobs local communities need and reward activities that truly meet those needs. Activities that generate low-wage jobs and jobs with little opportunity for economic mobility, or that lead to displacement of LMI people should not get CRA credit.

At the same time, due to the very specific nature of the economic development category, the new Q&A will only cover a segment of the CRA-eligible activities related to jobs and workforce development. When looking at job creation and retention, all CRA activities related to jobs and workforce development should be evaluated for their impact on <u>quality jobs</u> that will benefit LMI people in general, and especially people with multiple barriers to employment.

- **Access to Banking:** We appreciate the positive aspects of this Q&A in that it modernizes the CRA evaluations to incorporate new ways people bank and assesses the costs and effectiveness of these new methods. However, we have three major concerns: (1) it fails to take into account the cost of <u>all banking systems</u>. For example, a bank might look good if the cost of alternative banking is found to be comparable to its branch products, even if both are too expensive or otherwise difficult for LMI people to access. Regulators should evaluate the use of and effectiveness of a bank's branch products, and then compare alternative delivery systems to see how they augment, supplement, and improve upon LMI consumers' access to banking. (2) It places too much emphasis on alternative deliveries when branches are still the primary method of banking for LMI populations, immigrants, and the elderly. We still have large areas of the country with few or no bank branches at all. This is the case in large areas of the Bronx and Brooklyn, which also have the highest rates of unbanked and under-banked people in New York City. (3) It must be made clear that financial institutions will not receive CRA credit for the LMI individuals and geographies outside the financial institutions' assessment areas that are reached through mobile or online technology. So long as assessment areas are regional, examiners must restrict their assessments to a financial institution's performance and services in those areas.

- **Responsiveness & Innovativeness:** We appreciate the additional language to emphasize the importance of activities being responsive, and possibly innovative. Fundamentally, this should be emphasized throughout the CRA and should encourage the regulators to strengthen the performance context, such that it truly reflects the local needs. When evaluating any CRA activity, regulators should evaluate its impact and how that responds to local needs. It's not enough to offer a product, make a loan, make an investment – those activities must have a positive demonstrable impact on the communities they are meant to serve. This will also help identify practices and activities that were harmful, and thus not responsive. These should have a negative impact on a CRA exam. In order to get a Satisfactory, a bank must demonstrate that its basic services and community development activities are equitably and effectively serving LMI people and underserved populations, which would demonstrate responsiveness. Only then should regulators evaluate how innovative their products are, which if done effectively, could move a bank to Outstanding. At the same time, if through the exam process, community contacts, public comments, or other studies, regulators learn that a bank is engaging in practices that are decidedly **unresponsive, or worse harmful**, that should have a negative impact on the rating. This would be consistent with regulations that now allow community development lending to have a positive, neutral, or negative impact on the lending test.

- **Innovative or flexible lending practices*:*** We are encouraged by the inclusion of using alternative credit histories as a practice that warrants CRA credit. Many existing underwriting practices effectively exclude a large number of creditworthy LMI borrowers. Financial institutions would have a greater incentive to integrate alternative credit histories into their business with this added clarity. Small dollar loan programs, too, offer a promising alternative to higher-cost loans offered by institutions like payday lenders. And with the financial literacy and savings components, these programs offer real opportunities to help build sustainable wealth and financial knowledge. It must be clear to examiners, however, that these small dollar loan programs should only be awarded credit if they are safe and sound alternatives to high-cost and predatory products.

Detailed Feedback on Q&A's

Access To Banking

Availability and effectiveness of systems for delivering retail banking services

We appreciate the attention to effectiveness of systems for delivering retail banking services, but we are concerned that this might take emphasis away from branches and branch products.

Thus, we strongly oppose the Agencies' proposal to delete the language stating "performance standards place primary emphasis on full service branches." We also oppose the proposal to delete the statement that provides that alternative delivery systems are considered, "only to the extent" that they are effective alternatives in providing services to low and moderate-income geographies and individuals.

Multiple studies demonstrate the importance of branches and customer service in low-income areas and with immigrant populations, both of which have higher rates of unbanked people. Branches are important points of access for banking as well as access to other consumer products to build wealth and assets, such as small business loans, home loans, and credit-building products. For immigrant populations or others without traditional identifications, a branch is the only way to open an account at all. Branches will often take foreign ID's, Tax ID numbers (ITIN) and more recently municipal identifications, whereas online accounts typically require a social security number. The recent *Banking in Color* survey of immigrant populations across the country found that proximity to a branch and the number of branches and ATMs were the most important factors in choosing a bank[1]. Customer service was also among the top priorities. The FDIC itself found that a third of all households use bank tellers as their primary method of account access, and 17.5% used bank tellers as their only method of account access. They also found that the percentages of households that rely primarily on bank tellers were much higher among the elderly, less educated, and very low-income[2].

However, we do recognize that banks can reach customers in a variety of different manners, including ATM's, online banking, mobile banking. We appreciate that this Q&A includes "use of" and not simply that the bank offers a product. Agencies should separately evaluate the products offered and how they are delivered, looking at the effectiveness of each. This would allow for the evaluation of the cost of banking and barriers to banking through traditional and alternative means.

Bank products in general, and especially branch products, should be evaluated as to how effectively they are meeting the needs of LMI populations, including immigrants, elderly, limited English proficiency, as well as those who do and do not use and have ready use of computer and mobile technology. Multiple studies in the past 5-10 years of unbanked and under-banked populations cites the cost of banking as a major barrier to economic inclusion, including the FDIC's most recent unbanked study[3]. If banks are not meeting the needs of their customers through their branching and branch products, they should not be given credit for alternative delivery methods. Banks should be evaluated on their branching patterns and products offered through both traditional and alternative means, but with a higher emphasis on branch products.

- Cost to consumers for basic bank accounts, including requirements to waive fees. A bank account that requires a high minimum balance or direct deposit to waive the fee could be unattainable for many low-wage workers.

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[1] http://www.nclr.org/images/uploads/publications/bankingincolor_web.pdf

[2] https://fdic.gov/householdsurvey/2013execsumm.pdf

[3] Ibid, ibid, http://unhp.org/pdf/BankingInTheBronx.pdf,
http://www.nyc.gov/html/ofe/downloads/pdf/IFSStudy_english.pdf,

- Other fees, such as overdrafts, insufficient funds, and penalties.
- Cost and ways to open accounts: minimum amount to open account; including identification accepted in person and online;
- Effectiveness: number of accounts opened and closed by LMI people and in LMI geographies. This would help understand who the banks are targeting and who is opening the accounts, as well as who is closing them which might indicate that the product in fact did not meet the needs of LMI populations.

The FDIC's Safe Account and California Reinvestment Coalition's SafeMoney offer two models banks could adopt. The evaluation should always be based on performance context and community needs.

The factors listed for consideration in the 2nd Q&A on this topic are a good list. Regulators can also evaluate how easily certain populations can open accounts online versus in person. Online accounts often require a social security number, whereas banks can demonstrate more flexibility in person by accepting foreign identification and municipal ID's. They should look at how well banks are serving seniors, people without regular access to mobile or internet banking, limited English speakers, and people with disabilities. Regulators should also look at how banks treat people in the ChexSystem or similar databases, which is another common barrier to banking. Too many people are listed in there by error or due to harmful practices by banks. Banks should have a system to evaluate each customer and give them every option to reenter the banking mainstream.

We can be sure that banks have a wide range of data on all of their customers. When evaluating the effectiveness of alternative delivery methods, including online and mobile banking, regulators can evaluate who is using these products, by income level and by geography, to see if the products are used more/less in LMI geographies and with LMI customers, and if it has an impact on the fees generated. As Woodstock Institute showed in its 2009 report, *Benchmarking Branch Outcomes*, banks regularly maintain and use data and quantitative information on demographics of their customers and usage of their products and services[4]. They can also take proactive steps to ask new customers if they were previously unbanked or under-banked. A May 2013 presentation by Chase to the FDIC shows how they are capturing demographic information on new Chase Liquid customers, where they found that just about half of customers new to the bank who chose Chase Liquid were un-banked, under-banked and never banked[5].

Finally, There is a need to account for changes in banking technology and how customers engage with financial institutions. As a result of online and mobile technology, financial institutions can reach consumers in new ways, yet access to bank branches must continue to be given primary emphasis in determining a bank's CRA service test rating. Additionally, it must be made clear that financial institutions will not receive CRA credit even for the LMI individuals and geographies outside the financial institutions' established assessment areas that are reached through mobile or online technology. So long as assessment areas are regional, examiners must restrict their assessments to a financial institution's performance and services in those areas. Ultimately, regulators should rethink how assessment areas are drawn to reflect where a bank <u>takes</u> deposits and does considerable business, such as small business, credit card, or home lending.

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[4] http://www.woodstockinst.org/sites/default/files/attachments/benchmarkingbranchoutcomes_may2009_smithdudabush_0.pdf

[5] https://www.fdic.gov/about/comein/2013/2013-05-16_presentation_wilk.pdf

Innovative or flexible lending practices

We strongly support the inclusion of responsible small dollar loans. While small-dollar lending programs are already eligible for CRA consideration under the CRA's lending test, the Agencies propose that those products also offering credit counseling and financial education may also receive consideration under the service test. Small-dollar loan programs originated by banks offer a promising alternative to higher-cost loans offered by institutions like payday lenders. And with the financial literacy and savings components, these loan programs offer real opportunities to help build sustainable wealth and financial knowledge. It must be clear to examiners, however, that these small dollar loan programs should only be considered if they are safe and sound alternatives to high-cost and/or predatory products.

We strongly support the Agencies' consideration of alternative credit scoring models. An estimated 50 million people are denied access to credit simply because they do not have the credit history necessary to be scored by the most common models.[6] A disproportionate number of these individuals are people of color and immigrants.[7] It is critical that these communities be active participants in the economy moving forward.

Not having a credit score may limit job opportunities, rental housing options, the ability to own a car, and will certainly be a hurdle to homeownership. It also limits a borrower's ability to access short-term credit and may push individuals into high-cost financial services. The consequences of not having a credit score can result in an otherwise financially responsible and creditworthy consumer being pushed into a cycle of debt. Having a credit score is essential for any consumer to start building wealth. Nevertheless, consumers who are scored using alternative models may still be at risk. Examiners must be instructed to flag any predatory practices that result from these models, including pairing alternative credit score-consumers with egregiously high-priced products be it the result of interest rates or fees.

NEW Q&A's re: Community Development Services

We ask the regulators to distinguish between retail services and community development services by determining if the latter increases local capacity for financial services.

While retail services should meet the financial service needs of local communities, community development services should elevate the capacity those in the community to access and use more complex financing. Good retail services should facilitate the purchasing of goods and services, provide the ability to smooth cash flow and keep money safe until it is needed for a purchase. Community development services should help significantly raise credit scores, help people save meaningful amounts of money, and develop creative ways to finance important assets such as citizenship or a microbusiness.

Ultimately, the test of effectiveness should be the impact of those services in local communities. To assess this, it will be critical to understand the community's needs prior to the development of the services and to measure the degree of change caused by the services provided. Banks can document needs and measure impact in a variety of ways including partnering with research institutions to conduct needs assessments surveys and collecting data from partners working with the community.

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[6] http://www.bankrate.com/brm/news/debt/debtcreditguide/new-scoring1.asp
[7] Id.

Innovative or Responsive

Responsiveness is perhaps the most important aspect of the CRA – making sure banks are responding to the needs of local communities through their retail services, core lending, and community development activities. While every bank may not be innovative, every bank should be responsive in their core products and loans, and in community development activities.

A bank should not be given a passing grade if their products are not responsive to their entire community, which must intentionally include LMI people and geographies. And, if a bank is engaging in practices that are harmful – even ones that are not being submitted for CRA credit – they should have a negative impact on the overall rating.

Innovativeness goes beyond responsiveness. The Q&A is clear that it is encouraged, but not required. We would argue that if a bank is not able to be innovative, then they should not get innovativeness credit for bringing another institution's innovative product to their assessment area, unless they are doing so in a way that could not have been, or was not, done otherwise – regardless, it could be considered highly responsive if it meets a need. We also agree that a product may no longer be innovative after having been used, but would still be flexible or responsive, and should be encouraged to continue and expanded if it is still needed. Above all else, responsive, responsible lending is the most important factor. Banks can be boring if they are meeting the needs of their local communities.

However the questions are worded, the emphasis must be on the outcomes of the activity and demonstrate how well the activity is meeting a documented need, as evidenced by both quantitative and qualitative data, and its effectiveness for the target populations. Simply creating a product that responds to the documented needs is not sufficient if the product is not effective, or doesn't have the desired outcome.

We appreciate regulators taking into account any public comments submitted prior to the bank's exam, but many people and organizations are not familiar with the process and do not know to do that. Regulators could be more proactive in assessing the responsiveness of a bank's products through more targeted outreach, such as roundtables and dialogues with local organizations that pertain to the products offered. If there are particular loans, investments, or products the bank has cited, regulators could reach out to community organizations to get feedback as a part of the exam process.

Also, as mentioned in other areas of our comments, municipalities like NYC now have responsible banking ordinances. In NYC, this will include a detailed needs assessment every two years to document credit and community needs and how banks are responding. The process also includes an annual report on the banks that are or want to be eligible to hold City deposits as to how well they are meeting those needs. Other community organizations or municipalities may have similar structures that we encourage regulators to use as they assess how responsive banks are to local needs.

With regards to evaluating responsiveness, a better way may be to standardize the information collected for the performance context such that the examiners are looking at the credit needs of the assessment areas at both a broad very local level and comparing how the bank's activities meet those needs across all categories. Then, the data could be supplemented by more targeted evaluation to understand how well particular products or activities are meeting those needs.

- Evaluate concrete outcomes – how well the product is <u>effectively</u> meeting the needs outlined in the performance context

- Refer to the performance context and documentation to evaluate if the product is qualitatively meeting community needs.
- Solicit feedback through conversations, dialogues, roundtables to understand how well banks are responding to community needs, or conversely where they may be harming communities. For example, a loan for a rent-regulated building in a low-income neighborhood may technically be meeting the needs of the community, but if that loan was made speculatively based on unrealistic projections and leads to the harassment and displacement of tenants, then it could cause more harm than good. Similarly with a small dollar loan program – done responsibly it can build credit and help create wealth, but done poorly it can strip people of wealth – but on paper, both are responding to a need for a small dollar loan program.

Economic Development

Economic development is one of the least understood and least utilized categories of the CRA, mainly because of the very specific nature of the category. In fact, activities that foster job creation and retention can fall under multiple categories within the CRA. The economic development category is very specific to financing small businesses that lead to job creation, retention, or improvement. The proposed Q&A takes a step forward in more encouraging more intentional efforts to create quality jobs, and could go even further within this Q&A and by extending the same standards to any CRA activity that is designed to create, retain or improve jobs.

With regards to jobs and economic development, we encourage regulators to look at the impact of all community development activities that are connected to jobs and workforce development, whether through small or large businesses. Development done well can create job opportunities for underserved populations, but when not done well, it can leads to displacement and lost opportunities. Likewise, direct access to technical assistance and capital for small businesses can have varying impact, depending upon how the products and programs are structured. The performance context is the best place to analyze all available data and hold extensive conversations with locally-based organizations and municipalities to understand the types of jobs and workforce development opportunities that are needed, and to evaluate how well banks are or are not supporting projects that meet those needs. Likewise, if activities lead to displacement, dead-end jobs with no opportunities for economic mobility, or loss of job opportunities for local residents and underserved populations, they should reflect poorly on an institution.

Regulators should look at the types of jobs being created and the opportunities presented to LMI people and neighborhoods. This includes wages, benefits, training opportunities, and partnerships with nonprofit organizations. Also, banks should be encouraged to invest in nonprofit developers that renovate and create space for small businesses in industries known to pay better wages and provide opportunities for underserved populations. Just as Community Development Corporations (CDCs) and other nonprofit developers have been critical to the construction and rehabilitation of affordable housing that will remain affordable for the long-term, so too are such organizations to creating and preserving jobs for similar populations.

Responses to specific agency questions:

1. **Does the proposed revised guidance clarify what economic development activities are considered under CRA?**

The Q&A takes a step forward, but is not clear enough as to what will be considered. We also believe that development of space for small businesses is a critical need and should be considered to meet the size test, even if the end business isn't yet known or being financed through the bank's investment.

Ultimately what is missing is a clear connection between needs and outcomes. Rather than listing examples of activities, the Q&A should outline them as categories of needs that banks can respond to, such that regulators will examine each economic development activity's outcomes to determine its responsiveness to meeting local economic development needs, including but not limited to:

- Access to credit, grants, and technical assistance for small businesses and entities that serve small businesses;
- Types of jobs needed with regards to wages, benefits, and targeted populations
- Types of workforce development activities needed for businesses, current employees, and/or people seeking employment
- Types of and affordability of space needed for small businesses to open, operate, develop and grow

In general, we believe that all activities should be evaluated on their merits and not get automatic CRA credit under the purpose test. SBIC's in particular should be removed. The SBA itself acknowledges that just 30% of the businesses financed through the SBIC program were in low-to-moderate income areas or were minority- or women-owned businesses. However, if the agencies are going to have this list, then CDFI's are an appropriate addition. As we understand this, any loan, investment or grant to a CDFI that, according to its mission, finances small businesses will get credit as an economic development activity, regardless of whether the money the bank invested finances the small businesses. CDFIs play a crucial role in developing small businesses through access to capital and technical assistance. Some report having ready access to capital to lend out, but have a harder time attracting grant dollars for operating support, but both are certainly needed. This would provide a straightforward, impactful way for banks to support meaningful economic development.

Affordable, appropriate space is a definite need in NYC, and likely across the country. Nonprofits that are mission-driven to attract businesses owned by LMI people or that employ LMI people by keeping rents affordable and incorporating or facilitating local hiring and training strategies, such as the Brooklyn Navy Yard and Greenpoint Manufacturing and Design Center, should be eligible under the economic development test. Neither entity directly lends to small businesses, but each regularly survey the businesses in their sites to assess the size of businesses onsite, the types of jobs created and retained, as well as information on the workforce itself. The Brooklyn Navy Yard also has a workforce development and recruitment center onsite that targets LMI workers. While not 100% of the businesses meet the criteria, they could document the percentage that do and the number of jobs created and retained.

For grants to programs or entities that do not meet the size test, it would be helpful to evaluate and benchmark activities that directly benefit and improve jobs for LMI business owners and to move LMI people into good paying jobs, such that we can capture the activities that are supporting economic development by creating quality jobs. The CRA should be used to leverage large and small dollars to create and support quality jobs. Here as well, outcomes are critical to ensure that workforce development programs are leading to job attainment and improvement, or small business technical assistance is having a measurable impact on businesses and their employees.

What seems cause of much confusion is the size test, particularly for activities that are not directly financing small businesses or the list of entities that meet the purpose test. It is clear that loans to or investments in qualified CDFI's, SBIC's, RBIC's will be counted as economic development loans because their end borrowers meet the size test. However, for other recipients, including NMTC entities, it is less clear. While NMTC deals incorporate requirements on the types of jobs provided, and are almost certain to get CRA credit, if the end user is not a small business, it will not get economic development credit. On the other hand, if an activity supports workforce development activities that train or place workers in jobs, but the borrower is not a small business or an entity that finances small businesses, it too will not fall into the economic development category.

Likewise, while some government initiatives may include a financing component, more often than not, the connection is much more indirect. For example, NYC's small business solutions centers offer training and capacity building for small businesses and refer them to financing opportunities, but they do not provide financing. NYC's Workforce 1 centers also have a set of targeted workforce development programs that have shown to help create and improve jobs for LMI people, but will not meet the size and purpose test if they do not finance a small business and the workers are hired by a government agency[8].

Finally, it is understood that any loan, investment or service – done with a for-profit, nonprofit, or government entity – that increases access to affordable housing and community services for LMI people will get credit under the CRA. For the purpose of <u>economic development</u>, the statement regarding government entities should be limited to job creation and support of small businesses, and remove the provisions for affordable housing and community services. They should <u>of course</u> remain emphasized in the other CRA regulations and Q&A's. At the same time, if that investment or service will finance space and technical assistance targeted at LMI businesses or strategies to employ LMI workers, that should meet both the size and purpose test, even if the end user is not yet known. While the latter might fall under neighborhood revitalization, if it falls in an area that is not in or near an LMI geography, the case may be harder to make.

We recommend that the Q&A be written something like this, understanding that the regulation specifically references small businesses and likely cannot be changed. We urge regulators to adopt similar standards for other activities related to jobs and workforce development.

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Proposed Wording of § __.12(g)(3)-1

§ __.12(g)(3)-1: *"Community development" includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet the size eligibility standards considered to be community development?*

A1. No. The concept of "community development" under 12 CFR __.12(g)(3) involves both a "***size***" test and a "***purpose***" test that clarify what economic development activities are considered under CRA. An institution's loan, investment, or service meets the "size" test if it finances, either directly, or through an intermediary, businesses or farms that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. <u>It may also meet the "size" test if it finances the construction, rehabilitation, or maintenance of space designed for businesses or farms that meet the size test above.</u>

[8] http://www.nyc.gov/html/ceo/downloads/pdf/workforce_programs_evaluation_report.pdf

To meet the “purpose test,” the institution's loan, investment, or service must promote economic development. Activities are considered to **promote economic development** if they support:

- **Permanent job creation, retention, and/or improvement** to the benefit of currently or formerly low- or moderate-income people, including in low- or moderate-income geographies; **or** In areas targeted for redevelopment by Federal, state, local, or tribal governments;
- **Federal, state, local, or tribal economic development initiatives** that include provisions for creating or improving access to quality jobs for low- or moderate income persons and development of small businesses that employ currently or formerly low- or moderate income persons

Regulators understand that economic conditions vary greatly throughout the country, and as such, economic development strategies too will vary. The purpose of this category of the CRA is for financial institutions to be meaningful partners in these varied strategies. Regulators will examine each economic development activity’s outcomes to determine its responsiveness to meeting local economic development needs, including but not limited to:

- Access to credit, grants, and technical assistance for small businesses and entities that serve small businesses;
- Types of jobs needed with regards to wages, benefits, and targeted populations
- Types of workforce development activities needed for businesses, current employees, and/or people seeking employment
- Types of and affordability of space needed for small businesses to operate, develop and grow

To determine whether a financial institution’s economic development activity is effectively creating, preserving, or retaining quality jobs for low- and moderate-income people and neighborhoods, examiners may consider a variety of factors, including but not limited to:

- Needs assessments prepared by governments, community organizations, and financial institutions
- Demographic and labor data: population and unemployment rates along various populations: neighborhood level, education levels, race, income, immigration status, languages spoken, as well as opportunities for targeted workforce development: Public Housing residents, disconnected youth, immigrants, people with disabilities, unemployed, etc
- Business demographics: industries rising/diminishing; sectors that provide opportunities for quality jobs for people with limited education and skills; land use constraints and opportunities
- Community contacts including, but not limited to, CDFI’s, economic development organizations, workforce development providers, trade associations, for-profit and nonprofit developers, and other community organizations and contacts

Based on these criteria, regulators will evaluate how well the outcomes matched the documented need with regards to the number of jobs created, retained, or improved and to whom they went and the number of small businesses created or retained and who they benefited.

The agencies will presume that any loan to or investment in a SBDC, ~~SBIC~~, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit-eligible Community Development Entity, or <u>Community Development Financial Institution that finances small businesses</u> or small farms promotes economic development. (See also <u>Q&As § __.12(g)(3)-2</u>, § __.42(b)(2)-2, § __.12(h)-2, and § __.12(h)-3 for more information about which loans may be considered community development loans.)

2. **What information should examiners use to demonstrate that an activity meets the size and purpose tests described in the proposed revised guidance?**

Ways to demonstrate the size test:

- Actual size of business as defined by SBA or revenues
- Mission statement of the intermediary to show who their primary lending is done to – if the organization serves and lends to small businesses that are owned by LMI people, or hire LMI workers, then it should meet the size test
- If financing is done with the purpose of creating or renovating space that is designed to meet the needs of small businesses that will create, retain, or improve jobs for LMI people, it should meet the size test, even if the end users are not known or not yet receiving financing. This could be done by documenting that a new or renovated space has measurable goals to fill the space with businesses that meet the size and purpose test

Ways to demonstrate the purpose test:

First and foremost, banks must demonstrate that they are meeting local needs with regards to

- Access to credit, grants, and technical assistance for small businesses and entities that serve small businesses;
- Types of jobs needed with regards to wages, benefits, and targeted populations
- Types of workforce development activities needed for businesses, current employees, and/or people seeking employment
- Types of and affordability of space needed for small businesses to operate, develop and grow

Regulators can then evaluate how well banks are meeting those needs. This can be done by a number of strategies that may include one or more of the following:

- Surveys of borrowers before loan is made and yearly to follow-up: Wages paid, benefits, hiring/training strategies, wages of workers before they were hired, or before job was improved
- Formal commitment by the borrower to job targets and strategies to achieve them
- Contract with a service provider to provide workforce development or local outreach/hiring
- Absent a survey, banks could document the types of jobs impacted, together with market data regarding: average salaries, typical benefits, opportunities for economic mobility
- In the case of space for businesses, particularly when the businesses are not yet known, the developer could commit to specific goals to attract and support specific businesses and strategies that would meet the size and purpose test.
- The mission of the organization in relation to the demonstrated needs, such as nonprofit or government entities that manage loan pools targeted towards small businesses or a nonprofit developer of new or renovated space that is mission-driven to support small businesses and targeted hiring/workforce development.

3. **Does the proposed revised guidance help to clarify what is meant by job creation for low- or moderate-income individuals?**

We appreciate that the agencies removed the word “currently” in order to emphasize that the CRA was not meant to promulgate low-wage jobs. However, as mentioned above, the purpose is to meet local needs. Perhaps a better way to word it would be to say <u>job creation, retention, and/or improvement to the benefit of currently or formerly low- or moderate-income individuals</u>. This would allow for the activity to respond to local needs as identified in the needs assessment / performance context, with regards to wages.

These should be quality jobs that respond to the local needs. Rather than look simply at the income of the person employed or the location of the businesses, regulators must look at the overall environments to see how the activity is meeting local needs. By evaluating economic indicators, local studies and surveys, and consulting with local municipalities and community organizations, banks and regulators can determine what the area's needs are with regards to types of jobs, training needs, wages, work schedules, benefits, and other aspects of the job. In high cost areas like New York City, Chicago, and San Francisco, the primary emphasis should be on jobs that pay well above the minimum wage and that provide employment opportunities for the diverse residents, including unemployed, underemployed, and people with less formal education and limited English skills. However, we recognize that certain jobs may pay less, but provide benefits that will lead to better paying jobs and should be recognized – again, the activity must match local needs as identified by the local community. We also know that certain sectors, like manufacturing, tend to pay better wages, hire locally, and employ people with less formal education. Sectors like these should be encouraged to grow. In lower-cost areas of the country, the local need may indeed be for jobs of any wage along with the business and services they provide.

Ultimately, the CRA should encourage the creation or improvement of jobs with a demonstrated benefit to low- and moderate income people who would otherwise have little or no access to quality jobs.

4. **Are the proposed examples demonstrating that an activity promotes economic development for CRA purposes appropriate? Are there other examples the Agencies should include that would demonstrate that an activity promotes economic development for CRA purposes?**

We recommend that the Q&A emphasize the underlying goal of this category, which is to finance small businesses that create, retain, and improve quality jobs. The examples cited and a few others could be listed in the Q&A that lists examples of community development activities, or in a separate Q&A with more examples of economic development activities.

Examples might include:

- A loan to or investment in a nonprofit developer or city agency to build or renovate space for small businesses with the purpose of creating jobs for formerly LMI people, or improving the business environment for businesses run by or that employ formerly LMI people.
- A loan to or investment in a small business that partners with a workforce development center to hire LMI people and train them to move up in the company.
- Contract with a service provider to provide workforce development or local outreach/hiring
- A contribution to a loan pool that was created by a nonprofit or government entity to finance space for small businesses – and possibly the businesses themselves – in sectors that will provide economic opportunities for underserved populations.

5. **What information should examiners review when determining the performance context of an institution seeking CRA consideration for its economic development activities?**
   AND
6. **What information is available that could be used to evaluate the local business environment and economic development needs in a low- or moderate-income geography or among low- or moderate-income individuals within the institution's assessment area(s)?**

Examiners should use all resources possible to understand the performance context, including credit needs and opportunities to respond:

- Credit needs and challenges to getting credit: use the Federal Reserve Board's credit surveys; consulting with experts in the field, especially CDFI's and community organizations that work directly with small businesses; community organizations that serve small businesses. Needs should take into account access to financing and the cost of financing.

- As municipalities adopt responsible banking ordinances, regulators may have access to other needs assessments done in specific areas. New York City will be holding public hearings and gathering data to conduct a citywide, neighborhood-based, needs assessment every two years.
- Demographics: population and unemployment rates along various populations: neighborhood level, education levels, race, income, immigration status, languages spoken, as well as opportunities for targeted workforce development: Public Housing residents, disconnected youth, immigrants, people with disabilities, unemployed, etc
- Business demographics: industries rising/diminishing; sectors that provide opportunities for quality jobs for people with limited education and skills; land use constraints and opportunities
- Labor reports from the Department of labor, chambers of commerce, and other local entities
- Competition among banks and among businesses
- Conversations with nonprofits – CDFI's, housing developers, industrial developers to assess the credit / financing needs of nonprofit organizations that serve small businesses, including the type of investments they need and the costs they can bear.

7. Are there particular measurements of impact that examiners should consider when evaluating the quality of jobs created, retained, or improved?

ANHD has long recommended that regulators look more closely at the quality of the business environment and the jobs created, preserved or improved to gauge their impact:

- Wages: Building upon the recommendations above, CRA should promote quality jobs that pay well, or provide a path to better income opportunities in the future, either by increased income, or skills and responsibilities that open the door to better opportunities (such as transitional employment)
- Benefits for employees and their families (healthcare, sick days, vacation, retirement benefits, etc)
- Strategies to reach out to, train, hire/retain LMI people who face barriers to employment including, but not limited to immigrants, people of color, long-term unemployed, criminal background, and single parents.
- How many jobs are retained, not just created (success rate)
- Was the rent affordable to promote job creation or retention to LMI people and geographies

We applaud the intentional process and deliberation on the part of the regulators to update the CRA Q&A's and we very much appreciate this opportunity to submit these comments. Please do not hesitate to contact us if you have any questions or comments. Benjamin Dulchin, Benjamin.d@anhd.or, 212-747-1117 x17

Sincerely,

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