N A A H L

NATIONAL ASSOCIATION OF AFFORDABLE HOUSING LENDERS

Celebrating 30 years of Successful Community Investment

September 7, 2007

Office of the Comptroller of the Currency
250 E Street, SW, Mail Stop 1-5
Washington, DC 20219
regs.comments@occ.treas.gov
Docket ID OCC-2007-0012

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

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Regs.comments@federalreserve.gov
Docket No. OP-1290

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Regs.comments@ots.treas.gov
ID OTS-2007-0030

RE: Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment; Notice: OCC-2007; OP-1290; RIN 3064-AC97; and OTS-2007-0030.

Dear Sirs and Madams:

The National Association of Affordable Housing Lenders appreciates the opportunity to comment once again on the framework for implementing the Community Reinvestment Act (CRA). As 200 organizations in the vanguard of banks and blue chip – non-profits that are lending and investing in low and moderate income areas, our practitioners' experience with past success and remaining challenges forms the basis for NAAHL comments. We commend the Office of Thrift Supervision for its recent revisions to its CRA regulations so that they are, once again, "substantially the same as…the other 3 agencies." As we celebrate the 30th anniversary of CRA this year, it is very helpful to have all of the regulators on the same page.

At the agencies' recent conference on minority-owned institutions, agency staff encouraged interested parties to comment on the proposed questions and answers (Q & A's), and also address any additional concerns. **Enclosed are recommendations NAAHL submitted previously about the importance of offering banks the option to be evaluated under a community development (CD) test, and the need to eliminate artificial distinctions between CD investments and loans. Such distinctions discourage banks from making CD loans for affordable rental housing.**

Several of the proposed Q & A's are very useful clarifications that will facilitate banks' ability to respond to their communities' credit needs. We much appreciate the interagency effort to clarify the application of rules, facilitate compliance, and in doing so encourage rather than restrict the flow of private capital. We strongly support the focus on assessment areas, and the effort not to dictate how an institution can demonstrate that an investment in a national or regional fund meets the geographic requirements of the CRA regulation.

<u>THE CHALLENGES</u>

NAAHL's primary concern with the proposed Q & A's is the potential for unintended, adverse consequences for bringing private capital through pooled funds to underserved areas and people with acute needs. If implemented, the proposed policy would undermine national, regional and even statewide community development funds, hurt underserved communities, make homeless and supportive housing and other challenging activities harder to finance, and drive away banks unable to make very large investments.

<u>Unfortunately, the proposals on examiner discretion and alternative fund documentation are already chilling investments in pooled funds.</u> This reaction is no doubt exacerbated by some examiners' recent: 1) challenges to favorable consideration for investments in pooled funds, reflecting an inconsistent methodology in evaluating a bank's investment in national and regional funds, leading to uncertainty as to how these investments will be counted; and 2) discounting significant investments in even statewide and regional, as well as national, community development funds.

NAAHL believes that multi-investor, multi-geography funds play a critical role in providing affordable housing to low- and moderate-income ("LMI") families across the United States. For more than 30 years, banks have pooled their money in multi-bank consortia in order to meet the mortgage credit needs of their LMI communities. These pools afford banks real economies of scale, and the opportunity to invest in experts in originating, underwriting and servicing loans on homes affordable to LMI, as well as the benefits of geographic and product diversification. Since the Tax Reform Act of 1986 which created the low-income housing tax credit program, $75 billion in private capital has been invested in LIHTCs, of which multi-investor, multi-geography funds account, conservatively, for 70%-80%. Multi-investor, multi-geography funds help smaller localities and underserved areas attract investment dollars.

Our mutual goal is to ensure that all geographic areas receive the loans and investments they need. Because of the unique nature of funds and the critical role they play, the CRA regulation should do everything possible to encourage these investments. In so doing, <u>care should be taken to ensure: first, that CRA credit for investments in the funds is fairly distributed among investors; and second, that</u>

investors are able to receive CRA credit for the full amount of their investment.

National, multi-state, multi-investor funds for loans and tax credit investments have been able to address acute needs like supportive housing for homeless, and veterans, by pooling their development costs with those of mixed income housing developments. Regional and statewide funds are, for the first time, bringing affordable, privately owned housing that families are proud to call home to places like Alabama, Hawaii, and we hope soon to Louisiana.

So we were surprised that the proposed Q&A on geographic documentation appears to be a real departure from, and at odds with, the excellent approach of prior guidance, which recognized the importance of funding broader programs that benefit from diversification of projects and geographies, and economies of scale: "The institution's assessment area(s) need not receive an immediate or direct benefit form the institution's specific participation in the broader organization or activity, provided that the purpose, mandate or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s)."

That Q&A specifically recognizes that community development organizations and programs are efficient and effective ways for institutions to promote community development; that these organizations and programs often operate on a statewide or multistate basis; and therefore, an institution's activity is considered a community development loan or investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area.

We believe strongly in the principle that a bank should receive full CRA credit for all dollars invested in national community development funds, regardless of the location of the fund's projects, provided that the fund has at least one project in the bank's assessment area(s) or broader statewide or regional area that includes the bank's assessment area(s).

Because of the unique circumstances inherent in equity investments in multi-investor, multi-geography, community development funds, and to encourage investment in these funds, a more flexible rule for garnering CRA credit than that applicable to a bank's direct investments is not only appropriate, but necessary. Section ___.23 of the CRA Regulation provides that a bank receives CRA credit for fund investments that benefit (i) its assessment area or (ii) a broader statewide or regional area that includes the bank's assessment area. The missing piece is fund investments that fall outside (i) or (ii).

RECOMMENDATIONS

As a result, NAAHL recommends strongly that a bank should continue to receive full CRA credit for the entire dollar amount of its investment in national, as well as statewide and regional funds that make community development loans or investments, generally as defined under the CRA rules, regardless of the location of the fund's projects, provided that some of the fund's projects are located in the bank's assessment area(s) or broader statewide or regional area that includes the bank's assessment area(s).

As embedded in your regulations, "community development" means affordable housing (including multifamily housing) for low- or moderate-income (LMI) individuals; community services targeted to LMI individuals; activities that promote economic development by financing small businesses and farms; activities that revitalize or stabilize LMI areas, designated disaster areas, or distressed or underserved middle-income nonmetropolitan areas. A "community development loan" excludes loans considered under CRA as a home mortgage, small business, small farm, or consumer loan, except for multifamily loans. For this purpose, the additional requirement that a community development loan must benefit the bank's assessment area or its broader statewide or regional area would not apply.

OTHER ISSUES

On the issue of mixed-income housing, we strongly recommend that banks and thrifts should be encouraged to support the affordable housing policies and plans of local governments by receiving full credit for their investment in such developments. Depository institutions don't make public policy regarding the allocation priorities for LIHTCs and/or the desired mix of income levels in housing, like state and local governments do. We also support the proposal to add clarifications: 1) giving examples of qualified investments; and 2) of investments where there is a presumption that it promotes economic development.

Over the past few years, NAAHL has increasingly been concerned with how the guidance and regulations are being applied, by different regulators and in different regions. We know that informed, experienced examiners are critical to encouraging more innovation in community investment, so we would appreciate the opportunity to work with all 4 agencies on examiner training on CD activities.

We look forward to working with you to ensure simpler, more flexible policies to sustain the effective use of markets and market institutions in community investment.

Sincerely,

Judith Kennedy

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