NATIONAL ASSOCIATION OF HOME BUILDERS

REGULATORY & HOUSING POLICY

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Office of the Comptroller of the Currency
OCC Docket ID: OCC-2007-0012

Board of Governors of the Federal Reserve System
FRB Docket ID: OP-1290

Federal Deposit Insurance Corporation
FDIC Docket ID: RIN 3064-AC97

Office of Thrift Supervision
OTS Docket ID: OTS-2007-0030

Re: Community Reinvestment Act; Interagency Questions and Answers

To Whom It May Concern:

On behalf of the 235,000 members of the National Association of Home Builders (NAHB), I am writing to offer comments on the guidance provided by the revised Interagency Questions and Answers (Q&A) regarding the Community Reinvestment Act (CRA). The CRA was established in 1977 as a means of ensuring that deposit-taking financial institutions offer equal access to lending, investment and services. NAHB supports efforts to ensure that CRA credit is provided for residential mortgages, housing production and community development lending, as well as encouraging financial institutions to address housing finance needs in rural and underserved areas.

The Interagency Questions and Answers address frequently asked questions about community reinvestment to assist financial institutions and the public, and thus represent an important document for determining the incentives for and the relative attractiveness of various investments by banks and financial institutions for CRA purposes.

Among the nine new questions in the revised Q&A is Question .23(a)-2 on page 37944 of the Notice, as published in the Federal Register. The question reads as follows:

> Section ___.23(a)-2: *In order to receive consideration, should an institution be able to demonstrate that an investment in a national or regional fund with a primary purpose of community development meets the geographic requirements of the CRA regulation by benefiting one or more of the institution's assessment area(s) or a broader statewide or regional area that include the institution's assessment area(s)?*

The answer to this question indicates that the regulatory agencies will employ flexibility in requiring the institution to demonstrate that the investment satisfies the geographic requirements. For example,

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the proposed answer provides the example of a national fund that provides foreclosure relief to low- and moderate-income homeowners, provided that the manager of that fund provides written documentation that it will use best efforts to ensure such investments benefit individuals within the investing institution's assessment area.

Furthermore, for situations for which an investment fund does not earmark its projects and investments to particular investors (and their relevant assessment areas), the Q&A introduces a newly documented pro-rata mechanism for allocating the shares of each project for determining whether the investor meets the assessment area test.

While we applaud the flexibility offered by the agencies in this respect, NAHB believes that this particular discussion may bias investment away from the production of affordable housing. The nation's most important production program for affordable housing is the Internal Revenue Code Section 42 Low-Income Housing Tax Credit (LIHTC). The program provides a critical incentive for the production of affordable rental apartments by supplying a dollar-for-dollar reduction in tax liability to investors in exchange for equity financing. Units supported by the LIHTC are restricted to households with income below 60 percent of area median income. The LIHTC program is administered by state housing finance agencies. These agencies allocate tax credits through a qualified allocation plan that outlines the state's housing priorities and the process by which developers apply for and are allocated credits.

Since the program was established by Congress in 1986, the system by which credits and investment capital are pooled together for the purpose of the production and maintenance of affordable housing has evolved with considerable complexity. While the tax credits generate equity for the project, this equity is typically not sufficient to finance the cost of construction and operation without the use of debt financing. Therefore, the equity generated by the credits must be leveraged to obtain debt financing in the form of a first mortgage and one or more soft second mortgages (i.e. loans with low or no interest payments and for which no principal is owed for at least 15 years).

As a means of attracting additional investment into the project, most LIHTC developers allocate the tax credits to members of a partnership or a limited liability corporation established for the purpose of developing affordable housing. In the stylized case, the development partnership owns the tax credit project and consists of a general partner (the developer) and a set of limited partners. The limited partners provide additional investment and typically arrange themselves as a separate partnership, for which a syndicator acts as a general partner and the corporate and individual investors act as limited partners. The syndicator acts as an intermediary or broker of the tax credits to the investors in the project. In total, this complex arrangement provides a vehicle for the tax benefits to be traded for investment in rent-controlled affordable housing. Given the organizational complexity of such arrangements, LIHTC funds tend to be large in scale and regional or national in scope.

Financial institutions subject to CRA regulations play a critical role in this process as both lenders and investors. Ensuring that these institutions receive appropriate CRA credit for these activities is, therefore, an important policy tool for promoting investment in the Section 42 program.

NAHB believes that the pro-rata mechanism as described does not properly reward such institutions for participating in the LIHTC program. Because of the complexity and regional financing role of LIHTC partnerships, the broader statewide or regional assessment area is appropriate for LIHTC investments for CRA purposes. We believe this approach is consistent with the statute and agency regulations.

Unfortunately, the Q&A directs readers to the pro-rata method, which would penalize investments in affordable housing. For example, suppose several Manhattan banks contract to become limited partners in a LIHTC development partnership. Most LIHTC building demand in New York City is outside of Manhattan. Should these investments not fully receive CRA credit despite investing in an otherwise qualified community development project for the benefit of low-income residents within the same metropolitan area? Under the pro-rata method, the banks would only receive CRA credit for those LIHTC projects within Manhattan or some other geographically limited bank-assigned assessment areas.

NAHB requests that CRA institutions be allowed to use the regional (i.e. state/contiguous state) assessment areas for such national congressionally sanctioned tax programs as the LIHTC and the New Markets Tax Credit. In this regard, a financial institution that invests in a state-specific CRA fund (e.g. a New York LIHTC fund) should receive 100% CRA credit for such an investment, provided that the state fund demonstrates that its investments are otherwise CRA qualified and located within the state. This approach would be consistent with the intent and practice of the CRA, in particular the concept and use of a "broader statewide or regional area," and reflect the complex nature of the entities that have evolved to participate in the tax credit programs. It would also ensure that institutions subject to CRA continue to participate in the nation's leading affordable housing program.

Thank you for considering this recommendation to the Interagency Q&A. NAHB believes that adoption of this recommendation will protect the priority of affordable housing production within the CRA framework. If you have any questions concerning these comments, please contact Robert Dietz, NAHB's Tax Issues Director (202-266-8285).

Sincerely,

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