N A A H L

NATIONAL ASSOCIATION OF AFFORDABLE HOUSING LENDERS

March 12, 2009

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-2008-0027

Mr. Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
Comments@FDIC.gov
RIN 3064-AC97

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-1349

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Regs.comments@ots.treas.gov
ID OTS-2008-0022

Dear Sirs and Madams:

For the past three years we have shared our concerns with Federal banking regulators about how some CRA examinations, and also the current and proposed guidance, discourage banks' community development lending and investing. The January 9, 2009 Notice addresses some of the most serious disincentives in the guidance, and we much appreciate the agencies removing some of the regulatory barriers to banks' investments in multi-investor funds for affordable housing, and mixed income housing.

Yet regulatory barriers to meeting the credit needs of communities persist. Given the economic crisis facing the country, these existing Federal disincentives to banks' loans and investments benefiting low and moderate income persons only exacerbate the crisis. The new requests for comment in the Notice on two important questions suggest the agencies themselves may recognize how the existing CRA requirements limit banks' lending and investing to underserved communities.

"Comments are requested on whether the interagency questions and answers are stated clearly and effectively organized, and how the guidance might be revised to make it easier to read."

Over the years, the corpus of CRA guidance has become increasingly complex, with CRA implemented through a cornucopia of regulations, questions and answers in regulatory guidance, and private letters. This drift over the past decade, from the original law's intention to provide incentives to insured institutions to meet the credit needs of their communities, has had some unintended negative impacts.

The complexity of CRA guidance is a barrier to banks' ability to innovate with high impact lending and investing, and undermines banks' ability to factor CRA into their investment decisions. Anomalous exam outcomes that appear to depart from pre-existing policies and practices, have exacerbated this problem.

"Comments are requested on whether community development activities that respond to a local government's plan for, for example, mixed income housing, would lead to an unjustifiable inflation of community development activities."

Regulatory concerns about "an unjustifiable inflation of community development activities" are misplaced, given the enormity of community development needs. Assurance of favorable CRA consideration for mixed income housing could stimulate increased interest among banks at a time when local governments place a high priority on affordable rental housing for a mix of incomes. In fact, there is concern that the recent emphasis on quantity versus quality of community development lending and investing has contributed to the current crisis in investing equity and debt in affordable rental housing.

Improvements in the January 9, 2009 Guidance

- It withdraws proposed revisions which would have disallowed consideration of legally binding commitments recorded by a bank according to GAAP that would have disrupted long-standing practice and policy.
- It improves the proposed guidance to allow banks to receive consideration for investments in nationwide and regional funds under certain circumstances.
- While it clarifies that an institution would receive 'pro rata' consideration for the portion of an activity that helps to provide affordable housing to low or moderate income individuals, this guidance is also a contraction of policy adopted in 1999 (-.12h-8) that seems unwarranted.

Continuing Challenges Not Resolved by the Guidance

- *Full consideration of Letters of Credit*

  Reasons for giving full credit for LCs include the following: 1) the credit risk of an LC is identical to that associated with a conventional loan; 2) LC transactions are underwritten through the same methodology as conventional loans; 3) LCs require the same level of asset management and thus are monitored equally to those of conventional loans. Yet examiners are discouraging banks from providing LCs to local public agencies (LPAs) that would lower the LPAs' borrowing costs for construction and renovation of housing affordable to LMI households.
  We understand that the regulation stipulates LCs should be included in the "other lending" category, but request that the Q&A state they be weighted equally to those community development loans shown in the tables.

- *Full consideration of banks' investments in multi-investor funds outside their assessment areas*

The practice of some examiners' discounting banks' investments in funds that benefit a large regional area (on the basis that the benefit to a bank's assessment areas may be diffused and therefore 'unresponsive' to the needs of the communities in the banks' assessment areas) undermines CRA as an incentive for investing in debt and equity funds. These funds for more than 30 years have provided important financing for community development. They diversify the risk of lending and investing in affordable housing.

Because a bank is receiving diminished consideration for such activities, regardless of their value in addressing community needs, and since the bank cannot predict how great the discount will be when it decides whether to participate, the bank cannot reliably factor CRA into its financing decision. Banks are reporting deep discounting of participation in nationwide, regional, statewide, and even metropolitan area funds years after investment decisions are made.

In order to be workable, multi-investor funds must be large enough to accommodate numerous bank participants, diversify investment risks, and be administratively efficient. The current guidance does not specifically permit specific quadrants of the country, permitting instead a less specific 'multi-state' region; many banks have found this guidance so vague that they will not invest in larger regional funds. In addition, the threshold requirement that a bank must be meeting the community development needs of each of its assessment areas before it can receive recognition for regional benefit is unworkable and unnecessarily rigid to ensure that assessment area needs are adequately addressed.

Finally, the FDIC's Alliance for Economic Inclusion has highlighted bank successes in finding alternative methods of reaching underserved populations. Where banks recognize local needs to assist low and moderate income persons with alternative services like establishing/reestablishing good financial management practices and/or improving credit history, they should receive favorable consideration in the service test for their activities.

We look forward to working with you to increase the flow of private capital to underserved areas.

Sincerely,

Judy Kennedy

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