NCSHA

May 17, 2013

Office of the Comptroller of the Currency
Legislative and Regulatory Activities Division
Mail Stop 9W-11
400 7th Street, SW
Washington, DC 20219

VIA EMAIL to: regs.comments@occ.treas.gov

RE: Docket ID OCC-2013-0003 Community Reinvestment Act:
Interagency Questions and Answers Regarding Community Reinvestment

To Whom It May Concern:

The National Council of State Housing Agencies (NCSHA) appreciates this opportunity to comment on the revisions to the Community Reinvestment Act (CRA) Interagency Questions and Answers proposed by the OCC, Federal Reserve Board, and FDIC. We appreciate your willingness to consider changing the Questions and Answers to better serve the goals of the CRA.

NCSHA is a nonprofit, nonpartisan organization created by the nation's state Housing Finance Agencies (HFAs) more than 30 years ago to coordinate their federal advocacy efforts for affordable housing. Our member HFAs represent the 50 states, the District of Columbia, New York City, Puerto Rico, and the U.S. Virgin Islands. They administer the Low Income Housing Tax Credit (Housing Credit) and tax-exempt private activity Housing Bond programs, including single family Mortgage Revenue Bonds (MRBs), which together contribute more significantly to HFA efforts to create housing, community, and economic opportunity than any other federal housing resource.

NCSHA strongly supports the CRA's goal of encouraging private financial institutions to help meet the affordable housing needs of lower income communities. We support CRA reform that increases investor interest in purchasing Housing Bonds and Credits and enhances rural and smaller markets' access to CRA-motivated investment while not negatively impacting investment in other such areas. Our specific comments are set forth below.

Community Development Activities Outside an Institution's Assessment Area

NCSHA agrees that current Q & As §§_.12(h)-(6) and (7) need further clarification to ensure that financial institutions have greater certainty that their investments will qualify for CRA credit, thereby encouraging them to maximize their investments in community development activities. We urge the federal agencies to recognize explicitly investments in the Housing Credit and Housing Bond programs as qualified investments under the CRA.

Restricting CRA credit only to investments made in certain sub-state jurisdictions greatly reduces the ability of Housing Bond and Housing Credit development proposals in other areas to attract capital. The current equity market is dominated by CRA-motivated investors; these financial institutions often will bypass proposals in jurisdictions that will not yield CRA credit. The current policy creates a disincentive to investment in many areas that are primarily rural or disadvantaged communities, which certainly was not Congress' intent.

The affordable housing activity the Housing Credit and Housing Bonds generate simply would not happen without these programs. In turn, a strong investor base—including primarily CRA-motivated investors—is key to these programs' success. Rents affordable to the lower income families Housing Credit and Housing Bond-financed developments serve just cannot support the cost of developing and operating rental housing without some form of subsidy. Other federal subsidies, like HOME Investment Partnerships funding, which is often used with Housing Credit and Housing Bond financing to drive rents even lower, are generally insufficient to finance rental housing production on their own.

Similarly, on the ownership side, it would be very difficult to replace the results MRBs achieve. Especially today with overly tight credit and underwriting standards, MRBs represent the best hope for credit-worthy families with modest incomes and limited capacity to amass large down payments to access homeownership.

Under current CRA regulations, however, financial institutions are uncertain of receiving credit for their investments in these programs. For example, lending institutions are not assured of getting full CRA credit for purchasing HFA tax-exempt bonds unless they determine that tax-exempt bond program beneficiaries have incomes that qualify for CRA credit. This is an overly burdensome requirement that is unnecessary given that HFAs comply with and usually exceed the tax-exempt bond program's statutory income targeting requirements.

In addition, financial institutions serving limited assessment areas may not be confident they will get full credit for investments in bonds issued to cover financing activity in an entire state.

While income targeting and geographic considerations are valid and important, some allowances must be made for granting full CRA credit for Housing Bonds and Credit investments. In developing new standards, we recommend that federal regulators consider defining CRA assessment areas more flexibly, especially for Housing Credit investments, to recognize that Housing Credit investments in locations near current assessment area boundaries, throughout a financial institution's state, and possibly in adjacent states or broader areas contribute to a financial institution's compliance with the goals of the CRA. Great care, however, must be taken to avoid an approach that could allow CRA-motivated investors to ignore the needs of smaller markets.

Revising CRA regulations in this way would help address the current disparity in investment interest and Credit pricing in urban versus rural states and would facilitate investment in affordable housing and community development opportunities in areas, states, or regions with limited or no banking operations.

Community Services Targeted to Low- or Moderate-Income Individuals

NCSHA recommends adding income eligibility for the Housing Credit and Housing Bond programs, in addition to eligibility for Medicaid and free and reduced price school lunches, as commonly used proxies for low- and moderate-incomes. The Housing Credit and Housing Bond programs are by design intended to benefit individuals with low- and moderate-incomes. Income eligibility limits are clearly defined and compliance with these and other program rules is strictly overseen by the IRS and state HFAs.

The Housing Credit program requires that 20 percent of the homes in a particular development be rented to families earning 50 percent or less of the area median income (AMI) or 40 percent be rented to families earning 60 percent or less of AMI. In practice, Housing Credit developments assist households with incomes much lower than the upper limits of the program. Recent research from NYU found in examining 2009 and 2010 Housing Credit data that approximately 60 percent of tenants living in Housing Credit rental homes had income of 40 percent of AMI or less and that 40 percent of these tenants had incomes of 30 percent of AMI or less.

The federal MRB income limit for families of one or two persons is the greater of the statewide or area median income and for larger families, the greater of 115 percent of the statewide or area median income. In 2011, for example, HFAs provided MRB mortgages to families with an average income of $38,967, just 77 percent of the national median income of $50,502.

Both programs have clearly defined income eligibility criteria and are designed to create affordable housing and economic development opportunities. Using the Housing Bond and Housing Credit income criteria as proxies would reduce the burden on financial institutions to obtain actual income, and thus, would promote participation in these programs.

Use of the Phrases, "In Lieu Of" and "To the Detriment Of"

The proposal allows an institution to receive credit for investments made outside its assessment areas if the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment areas. The test used to determine whether such activities will receive CRA credit, however, requires that the activities conducted outside of a particular assessment area are not being conducted "in lieu of, or to the detriment of, activities in the institution's assessment areas."

This language is confusing, as the funding of any development or activity outside an institution's immediate assessment area could be construed to be "in lieu of or to the detriment of" activities inside an assessment area. The result of the proposed language seems likely to discourage institutions from investing in areas or activities outside their immediate assessment areas, the exact opposite of the result intended in the proposal. We recommend removing the "in lieu of or to the detriment of" language and including language that reaffirms that an institution's activity will be eligible for CRA credit if it supports an organization or activity that covers a statewide or regional area that is larger than, but includes, the institution's assessment areas.

Thank you for considering these comments. HFAs are investors' natural partners in fulfilling their CRA obligations and the programs HFAs administer provide benefits equivalent to many CRA-eligible activities. We hope you will pursue changes to the Interagency Questions and Answers that strengthen these partnerships and eschew any actions that might weaken them.

Sincerely,

Garth Rieman
Director, Housing Advocacy and Strategic Initiatives