

New Interagency Questions and Answers on the Community Reinvestment Act —November 2013
Update for Opportunity Finance Network Members

A key document that guides implementation of the Community Reinvestment Act (CRA) is the “Interagency Questions and Answers” issued jointly by the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency. The “Q&A” helps banks, examiners, and partners understand how financial institutions will receive CRA credit for their activities. In March 2013, the Agencies jointly proposed revisions to the Q&A as a first step in their review of CRA provisions. Opportunity Finance Network provided [comment](#) on those revisions and supported its Members and partners in commenting.

OFN supported the intent behind most of the proposed changes but expressed concern about unintended consequences of some of the wording of the proposals. In November 2013, the Agencies issued revised Q&As that, in general, reflect and respond to OFN’s concerns. The final Q&A, analysis of comments, and explanation of changes is available at <https://federalregister.gov/a/2013-27738>.

OFN has additional reform recommendations for the CRA: chiefly overall modernization of assessment areas and expansion of CRA beyond banks to other financial services institutions that were not addressed by the Q&A. Those issues require more sweeping regulatory or legislative action that are outside the reach of this document.

Items that Were Priorities for OFN

OFN’s comment letter made recommendations on three specific aspects of the proposal:

- A new Q&A that was intended to ensure that CRA-qualified investments were directed to community development purposes, but as worded might have precluded banks from receiving full credit for their investments in CDFIs
- Providing for treatment of CDFIs equivalent to that of minority and women-owned institutions
- Clarifying that investments in national and regional funds not substitute for activity in the bank’s assessment area

Qualified Investments

The March proposal included a new Q&A on qualified investments. In proposing the new language, the Agencies noted that they “became aware of situations in which a financial institution invest in, or lends, to, an organization and then the organization invests in an instrument, such as a Treasury security, which does not have a community development purpose. In these cases, the organization uses only the income (or a portion thereof) from the investment to support its community development purpose.” To avoid such situations, the



Agencies proposed providing CRA consideration for only the portion of investments used for community development but not invested or used for other purposes.

OFN had concerns that, as worded in the proposal, the Q&A could have precluded full consideration for investments in CDFIs that the CDFI does not immediately use for community development purposes: for example, to support loan loss reserves, to manage liquidity, or otherwise manage its balance sheet. We proposed language that would have considered the agreement between the bank and the CDFI (or other organization) in determining the investment's use for community development, rather than the actual deployment of funds to specific purposes.

In this final version, the Agencies revised the Q&A but did not specifically use OFN's proposed language. Though the agencies did not specifically adopt the language OFN suggested, their revision does adequately address OFN's concern. The new language states that:

"Examiners will, however, provide consideration for such instruments when the organization invests solely as a means of securing capital for leveraging purposes, securing additional financing, or in order to generate a return with minimal risk until funds can be deployed toward the originally intended community development activity. The organization must express a bona fide intent to deploy the funds from investments and loans in a manner that primarily serves a community development purpose in order for the institution to receive consideration under the applicable test."

Minority and Women-Owned Institutions

The existing Q&A provides for favorable CRA consideration when investing in minority- and women-owned financial institutions and low-income credit unions (MWLI), even if those institutions are outside the investing bank's assessment area. OFN proposed, as it has in past comments on the Q&A, that investments in CDFIs receive the same consideration. The Agencies again declined to adopt this recommendation, citing statutory provisions that call for this treatment for MWLI but that do no mention CDFIs.

Investments in National and Regional Funds

As a strategy to increase investment in rural and other underserved areas, the agencies proposed that banks receive CRA consideration for investments in national and regional funds, including CDFIs. The original proposal included language that those activities "may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment area(s)." OFN agreed that such activities should be in addition to, not instead of, activity in a bank's assessment area but suggested that the proposed language could create confusion and uncertainty. The new language removes the phrase "in lieu of" and reads:

"Examiners will consider these activities even if they will not benefit the institution's assessment area(s), as long as the institution has been responsive to community development needs and opportunities in its assessment area(s)."



Other Issues

The Agencies made other small and clarifying changes to the Q&A that are important to OFN and its Members but were not highlighted in OFN's comments:

- *Additional proxies for "low-income:"* Credit under the test for services to low-income individuals will use additional criteria for qualified services: eligibility for school lunch, eligibility to receive Medicaid, and recipients of services with income definitions equivalent to or stricter than those in the CRA statute as qualifications for "low-income."
- *Additional examples of financial institution expertise:* Banks whose employees serve on the Boards of Directors of a community development organization receive credit under the "Services" test. The revised Q&A also adds that banks will receive consideration for "Providing services reflecting financial institution employees' areas of expertise at the institution, such as human resources, information technology, and legal services."
- *Elimination of requirements for earmarking and "side letters:"* The proposed regulations allow for, but do not require, specific documentation that particular projects or investments are related to specific investors. The new Q&A has removed language referring to these documents as examples of the benefit to assessment areas in investments in nationwide funds.

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