

OCC: Docket ID OCC-2013-0003

Federal Reserve: Docket No. OP-1456

FDIC: Attention: Comments on CRA Interagency Q&A

To Whom It May Concern:

Opportunity Finance Network appreciates the opportunity to comment on proposed changes to the Interagency Questions and Answers Regarding Community Reinvestment (Q&A). We are pleased to see that the Agencies have taken this first step toward addressing the issues on which it heard testimony during the extensive hearings in 2010. In general, OFN believes that the proposed revisions will enhance community reinvestment activity but recognizes that the Agencies must take additional steps to fully modernize CRA and ensure it has kept pace with the changing financial services industry. In the proposed revisions to the Q&A, the Agencies do not address the critical issue of updating assessment areas; new ways of determining a financial institution's assessment area and its activity to serve it are imperative to provide all Americans with access to capital and credit and fulfill the purpose of the Community Reinvestment Act.

This comment letter makes specific recommendations on two issues of particular concern to Community Development Financial Institutions (CDFIs). Through 2011, OFN's Network of CDFIs has originated more than \$30 billion in financing in urban, rural, and Native communities, and financed 940,000 housing units, 83,000 business and microenterprises, 9,000 community facilities, and created or retained 497,000 jobs—outcomes that have been supported by partnerships with financial institutions acting on their obligations under the CRA. Though CRA compliance is one driver, these relationships have been fruitful for both banks and CDFIs. Facilitating Qualified Investments in CDFIs is an important tool for meeting the needs of underserved markets.

Proposed New Q&A § __.12(t)-9

OFN appreciates that the Agencies strive to ensure that financial institutions receive consideration only for those portions of their investments that serve community development purposes. In the situation described in introducing proposed new Q&A __.12(t)-9, it is appropriate for the agencies to give consideration only for the amount of investment income.

However, the language of the proposed Q&A, particularly that the recipient organization "invests those funds in instruments that do not have as their primary purpose community development, such as Treasury securities, and uses only the income, or a portion of the income, from those investments to support the organization's community development purposes..." could preclude full consideration of some investments that are for community development purposes. OFN believes that the Q&A must better reflect the intent of the agreement between financial institutions and recipient organizations.

Specifically, qualified investments from financial institutions to CDFIs might not receive full consideration under this Answer because the CDFI might "invest those funds in instruments that do not have as their primary purpose community development" and still ultimately use the funds



for community development. When a bank makes a Qualified Investment in a CDFI, the CDFI uses that investment to further its own strategy of making loans and investments for community development purposes. One such agreement between OFN and a financial institution, for example, outlines “permitted Purposes” for the investment as follows: “The Borrower shall use the proceeds of the Loan solely to finance Borrower’s loans to and in participation with Member CDFIs or to manage capital and operating liquidity requirements of the Borrower.”

Approximately half the nation’s CDFIs are non-regulated community development loan funds (CDLFs). To support their prudent lending and financial services activity in the absence of federal insurance, CDLFs maintain high ratios of net assets to total assets, generally in the range of 20-30% depending on the CDLF and its particular strategy. Maintaining this net asset ratio—“managing the capital and operating liquidity requirements” as referenced in the sample agreement—means that some portion of a CDFI’s capital may be invested. As the CDLF manages its balance sheet and community development investment portfolio, it is unlikely to deploy the entire investment immediately, but will hold some or all of it for some period of time while it underwrites and otherwise manages loans that would ultimately be made with the Qualified Investment. During this period, the CDFI may invest the funds according to its responsible and prudent investment policies, while fully intending to use the funds for community development purposes; investment vehicles could reasonably include Treasury securities and other similar liquid investments.

In addition, CDFIs generally do not trace Qualified Investments from specific banks, instead using grants and loans from a variety of sources for a capital pool available for lending and investing. Some of these funds may be invested outside the CDFI, as outlined above, but the CDFI would not be able to trace which dollars from a particular financial institution were at a given time deployed in loans or were otherwise invested. This mingling of funds would make it difficult if not impossible for CDFIs, their financial institution partners, and the Agencies to determine the portions of an investment eligible for consideration under the proposed Q&A language.

Because of these common and prudent practices, under the proposed Q&A a bank likely would not receive full consideration for a Qualified Investment to a CDFI that was intended, and used, for community development purposes. OFN proposes that the agencies consider whether the agreement between the financial institution and the recipient organization stipulated whether the investment was to be used for community development purposes. If the agreement calls for the recipient to use the Qualified Investment for community development purposes, the financial institution should receive full consideration for its investment. To accommodate the common practice of banks making Qualified Investments in CDFIs and similar organizations, the Q&A for ____12(t)-9 might read (additional language in italics):

A9. Examiners will give quantitative consideration for the dollar amount of funds that benefit an organization or activity that has a primary purpose of community development. If an institution invests in (or lends to) an organization that, in turn, invests those funds in instruments that do not have as their primary purpose community development, such as Treasury securities, and ***the agreement between the***



institution and the recipient requires that the recipient uses only the income, or a portion of the income, from those investments to support the organization's community development purposes, the Agencies will consider only the amount of the investment income used to benefit the organization or activity that has a community development purpose for CRA purposes.

If the agreement between the institution and the recipient does not prohibit the CDFI's use of investment capital for community development loans, the Agencies will give consideration for the full amount of the investment, even if the recipient invests it in liquid securities.

Redesignated Q&A § __.21(f)-1

In commenting in 2007 and 2009, OFN urged the Agencies to apply the same consideration to partnerships with CDFIs that they extend to Qualified Investments in minority- and women-owned institutions and low-income credit unions, saying in 2007:

Opportunity Finance Network agrees with the Agencies in applying a "broader geographic criterion when evaluating capital investments, loan participations, and other ventures undertaken by that institution in cooperation with minority- or women-owned institutions or low-income credit unions..." if the Agencies apply the criterion to community development financial institutions (CDFIs) in addition to the other groups included. We urge the Agencies to include CDFIs since many CDFIs, especially National CDFIs, meet the credit needs of local communities on a state or regional basis. CDFIs are a recognized financial intermediary in the CRA and they are specifically highlighted in Sec. _____.12(h)-1 as an example of community development loans.

We continue to urge the Agencies to include partnership with CDFIs in this effort to help financial institutions reach the populations targeted by minority- and women-owned institutions and low-income credit unions.

By statute, CDFIs must serve the low- and moderate-income communities referred to in the CRA. Both the statutory requirements and the actual performance of Treasury certified CDFIs support the addition of CDFIs to the issue covered by the Q&A and the current proposal.

CDFI certification is a designation conferred by the Department of the Treasury's CDFI Fund. As a certified CDFI, a financial institution must demonstrate that it has a primary mission of promoting community development; that it provides financial products and development services to designated distressed or underserved target markets; and that it maintains accountability to these markets.

CDFIs frequently serve the same market interests as minority-owned financial institutions, women-owned financial institutions, and low-income credit unions. More important, they serve the markets targeted by CRA and so would help meet the CRA's purpose in the same way as



those institutions. In FY2011, OFN's data collection indicates that 68 percent of the Network's customers were low-income, 52 percent were minority and 49 percent were female.

Because of this clear overlap, CDFIs should be accorded the same treatment under the CRA as the institutions noted in the Q&A. This minor inclusion would help solidify the unique value of CDFIs in helping low- and moderate-income people and communities with their credit needs. This is, after all, the purpose of both CDFIs and the CRA.

Assessment Areas and Investment in National and Regional Funds

OFN agrees that the proposed Q&As, providing for consideration of investments made in state and regional areas and in national funds, will improve the flow of financial institution investment in areas that are currently underserved. The Agencies correctly note that consideration for such activities should be in addition to, not instead of, activity in the assessment area. To further clarify that such activity goes beyond the obligation to the assessment area. OFN suggests that rather than adding the new language "in lieu of," the Agencies simply strike the word "adequately" from the relevant Q&As. Such simplified language may better accomplish the goal of encouraging loans and investments in underserved areas while requiring institutions to continue to meet the needs of a bank's assessment area(s).

OFN's testimony in 2010 and the statement we submitted jointly with a number of other community development organizations encouraged the Agencies to modernize the definitions of investment areas. We appreciate that these Q&As have taken a modest first step in tackling this issue and encourage you to consider additional measures. OFN's testimony and the joint statement (attached) outline a number of suggestions which we urge you to review.

Conclusion

The CRA has supported countless community development organizations, strategies, and initiatives. It has proved to be a remarkably effective law because it has connected opportunity markets to opportunity capital and financial services. OFN commends the Agencies for continuing the thorough review of the rules it began in 2010. We look forward to working with you as you move forward on this critical process.

Sincerely,

Mark Pinsky
President and CEO