

May 31, 2016

Transmitted by email

Office of the Comptroller of the Currency
400 Seventh Street, SW
Washington, DC 21219

RE: Supporting Responsible Innovation in the Federal Banking System

Dear Sir or Madam:

The undersigned national organizations – representing developers, owners, investors and lenders of affordable rental housing in urban, suburban, and rural areas – appreciate the opportunity to comment on the OCC’s white paper on *Supporting Responsible Innovation in the Federal Banking System*. Banks are a critically important source of financing for affordable rental housing.

We support the OCC’s recognition that ensuring fair access to financial services includes financing affordable rental housing. We are further encouraged to read that: “The OCC may also issue guidance on its expectations related to products and services designed to address the needs of low- to moderate-income individuals and communities and may encourage innovative approaches to financial inclusion by promoting awareness of other activities that could qualify for Community Reinvestment Act [(CRA)]consideration.” (page 8)

Our members variously seek and provide financing for affordable housing. We frequently hear that CRA would far more effectively encourage financing for affordable housing, including through innovative financial products and delivery systems, if the OCC and its colleague banking agencies provide greater clarity, certainty, and consistency with regard to how affordable housing activities will receive CRA consideration. Indeed, changes in the affordable housing and banking industries make improved guidance increasingly urgent. We note that the following recommendations would not require changes to the CRA regulation or to the underlying statute.

Further Clarification of 2013 Guidance

The federal banking agencies finalized Q&A guidance on community development (CD) in 2013 and updated large bank examination procedures in 2014. This guidance is helpful, but further clarification is needed.

- Definition of broader statewide and regional areas. In general, a bank receives CRA consideration for CD activity within a bank’s assessment area (AA) or a “broader statewide or regional area that includes an AA” (BSRA). However, a bank needs certainty when a financing decision is made that the agency will recognize a location as within a BSRA. The agencies should:

- Clarify that a BSRA will include, *at a minimum*, any state adjacent to a state where a bank's AA is located.
 - Publish a list of broadly recognized regions as safe-harbor BSRAs (e.g., the Great Lakes States, New England and the Southeast).
 - Promptly respond to banks seeking advance approval of a proposed BSRA.
- Measuring "responsiveness" to CD needs and opportunities. A bank will receive consideration for a BSRA activity that is unlikely to benefit the AA but only if the examiner finds that the bank has been "responsive" to CD needs and opportunities in its AAs. The risk that an examiner might disregard an affordable housing loan or investment within a BSRA but outside an AA activity for consideration because a bank was not responsive to one or a few AAs is sufficient to discourage such financing. Federal regulators should clarify that, for this purpose, a bank's "responsiveness" is determined based on its combined CD activity in all AAs within each state, rather than for each AA separately.
 - CD activity in smaller metro areas and rural communities should receive full consideration, even though these areas generally receive only a limited-scope review.
 - CD activities outside AAs should receive the same consideration as similar activities within AAs.

Specialized Banks: Location of CD Activity

In recent years, wholesale, limited-purpose and Internet banks have grown as nonbank financial firms have obtained bank charters and Internet banking has emerged. Of the 40 largest U.S. banks, 13 are specialized banks with combined domestic assets of \$1.5 trillion. These banks have great potential to provide more financing for affordable housing.

Unlike a traditional retail bank, a specialized bank generally has no or very few deposit-taking offices and the great majority of its deposit holders are located outside its AA. For purposes of CRA, a specialized bank is usually assigned a single AA where its headquarters is located. This location is not reflective of its banking activity or capacity. Many specialized banks pursue only limited CD activities beyond their AAs because they will receive CRA recognition for such activities only after meeting an "AA responsiveness" metric that is unknowable in real time and may substantially exceed the bank's local presence.

To address these anomalies, the OCC and its colleague agencies should clarify that:

- A specialized bank's essential nonlocal focus and limited local presence should inform the performance context for evaluating CRA activities within its AA.
- A specialized bank that has less than 10 percent of its deposits from depositors located within its AA should receive full consideration for CD activities outside its AA up to 90 percent of its total CD activity. A specialized bank that has 10-20 percent of its deposits from depositors located within its AA should receive full consideration for CD activities outside its AA up to 80 percent of its total CD activity.

Primary CD Purpose

Under Q&A guidance, the full amount of a loan or investment will receive CRA consideration even if less than “a majority of the dollars or beneficiaries of the activity are identifiable” to affordable housing or another CD purpose, provided that: (1) the express, bona fide intent is primarily CD; (2) the activity is specifically structured to achieve the CD purpose; and (3) the activity accomplishes or is reasonably certain to accomplish the CD purpose. However, this policy has proven too complicated to implement clearly and consistently.

For example, some CRA examiners have discounted consideration for loans or investments for a Low Income Housing Tax Credit (LIHTC) property if less than half of the units are affordable. Similar treatment can arise for mixed-income housing developed under state and local policies. OCC and its colleague agencies should clarify that any loan or investment made in conjunction with a federal, state or local government’s affordable housing or other CD policy will meet the primary purpose test and thereby receive full consideration, provided that at least 20 percent of the beneficiaries will be low- or moderate-income (LMI) people. The 20 percent standard is consistent with such federal affordable housing policies as LIHTC, tax-exempt multifamily bonds, and the HOME Investment Partnerships program.

Credit Enhancements

Letters of credit, loan guarantees, and other credit enhancements get less consideration under CRA than a loan, even though they can be just as important and expose a bank to the same credit risk. The federal regulators should provide equivalent consideration to loans and credit enhancements.

Naturally Affordable Rental Housing

About 80 percent of the 26.3 million rental units affordable to LMI households have no restriction on tenant incomes. Yet, the current CRA policy guidance offers little or no encouragement of bank financing for much of this “naturally affordable” rental housing stock, especially outside LMI communities. Unless renter incomes can be verified, the federal regulator must determine that LMI households are likely to benefit, based on demographic, economic and market data analysis. The current policy is unworkable because banks do not collect tenant income data (and cannot do so for properties not yet occupied) but they need to know when making a financing decision whether an activity will receive CRA consideration. Complex data analyses are also impractically burdensome and subject to interpretation. Because examiners are less likely to consider rental housing outside LMI areas, the policy is particularly unsupportive of fair housing efforts to offer housing affordable to LMI renters in middle- and upper-income “high opportunity” areas, an objective integral to HUD’s new Affirmatively Furthering Fair Housing policy.

The Federal Housing Finance Agency, in setting affordable rental housing goals for Fannie Mae and Freddie Mac, determines affordability based solely on rents, not actual renter incomes. This approach is widely regarded as reasonable and workable. Consistent with underlying CRA policies that target LMI people as well as places, federal regulators should clarify that:

- In an LMI area, rental housing will get full CRA consideration if a majority of the units in the property has affordable rents and pro-rata consideration if a minority of the units has affordable rents. Housing with affordable rents in LMI areas also contributes to neighborhood stability and revitalization.
- Elsewhere, rental housing will get full CRA consideration if at least 80 percent of the units have affordable rents, reflecting HUD data that LMI renters actually occupy 72 percent of the units affordable to them; and pro-rata consideration multiplied by 2/3 if less than 80 percent of the units have affordable rents.

Rewarding Outstanding Performance

Historically, the primary regulatory effect of a bank's CRA rating has been its impact on the approval of an application, especially for charter mergers, acquisitions or conversions. However, this significance wanes in periods when charter mergers and acquisitions are infrequent, as has been the case for several years. To encourage banks to strive for an Outstanding rating, OCC and its colleague agencies should provide expedited processing of applications from banks with Outstanding CRA ratings. Expedited processing itself would not in any way presume or imply favorable disposition of an application or provide a safe harbor protection against community objections. Nevertheless, the prospect of expedited decisions on a bank's application would encourage financing for affordable housing.

Thank you for your consideration. Please contact Buzz Roberts (broberts@naahl.org) for more information.

Council for Rural and Affordable Housing
Institute of Real Estate Management
Leading Age
National Affordable Housing Management Association
National Apartment Association
National Association of Affordable Housing Lenders
National Association of REALTORS
National Leased Housing Association
National Multifamily Housing Council

cc: Martin Gruenberg, Chair, Federal Deposit Insurance Corporation
Janet Yellen, Chair, Federal Reserve Board of Governors