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Federal Agencies Propose Revisions to Interagency CRA Guidance

By Alex Ruiz, Managing Editor, Novogradac & Company LLP

A group of federal bank and thrift regulatory agencies last month requested public comment on a series of new and revised interagency questions and answers pertaining to the Community Reinvestment Act (CRA). The agencies published a notice in the July 11 Federal Register proposing nine new questions and answers, as well as substantive and technical revisions to existing interagency questions and answers.

Among the proposed new questions and answers are clarifications regarding treatment of investments made in certified community development entities (CDEs) under the New Markets Tax Credit (NMTC) program. Essentially, the revisions would clarify that NMTC loans and investments are deemed to be promoting economic development.

"Today, the federal bank regulatory agencies published for public comment several new questions and answers that will be added to the Interagency Questions and Answers regarding Community Reinvestment," Comptroller of the Currency John C. Dugan said in a statement issued on July 11. "I am especially pleased to note that the proposed questions and answers address some important interpretive issues raised by the Community Reinvestment Act provision that encourages banks to partner with and make investments in minority- or women-owned institutions."

"The question and answer clarifies that investing banks will receive positive CRA consideration for such activities even if the minority- or women-owned bank is not in the investing bank's CRA assessment area or broader statewide or regional area. I see this as a real step forward in both resolving an interpretive question that's been raised and in encouraging investments and other collaborative ventures.

"This question and answer signals the importance we place on the activities described in the statute that will benefit minority- and women-owned institutions, and makes clear our examiners will give positive consideration for these activities in CRA examinations."

Background

The "Interagency Questions and Answers Regarding Community Reinvestment" were first published in 1996 under the auspices of the Federal Financial Institutions Examination Council (FFIEC). They have been revised by the agencies periodically since then to help financial institutions and the public better understand CRA regulations.

In the July 11 notice, the staffs of the Office of the Comptroller of the Currency, Treasury (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) proposed nine new questions and answers, as well as substantive and technical revisions to the existing material. The agencies say some of the proposed revisions are intended to encourage institutions to work with homeowners who are unable to make mortgage payments, highlighting that they can receive CRA consideration for foreclosure prevention programs for low- and moderate-income homeowners. The revisions are consistent with an April 2007 interagency statement on working with mortgage borrowers. In addition, the revisions propose to clarify that institutions of all sizes should receive favorable consideration for providing credit in a manner that is responsive to the needs of their communities. Such activities include, for example, offering affordable small loan programs.

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Federal Agencies Propose

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The majority of the proposed revisions clarify existing questions and answers and improve readability. Many of the proposed revisions also update existing guidance to reflect terminology changes made by the U.S. Office of Management and Budget and the U.S. Census Bureau or to reflect recent changes in the agencies' CRA regulations.

NMTC Clarification

In the proposed revisions, the agencies suggest that loans to or investments in CDEs will be presumed to promote economic development. "Loans to or investments in CDEs pursuant to the New Markets Tax Credit program generally have a primary purpose of community development, as that term is defined in the CRA regulations," the notice reads. "To the extent that a CDE lends to or invests in small businesses or farms, a loan to or investment in the CDE promotes economic development by financing small businesses or farms. Also, because the primary mission of the CDE is to service low-income communities, loans and investments made by the CDE generally would help to revitalize or stabilize low- or moderate-income geographies."

Thus, the agencies propose to revise the interagency guidance to provide that there is also a presumption that an investment in a CDE will promote economic development. The proposal also suggests that an investment in an NMTC-eligible CDE be added to the list of examples of qualified investments.

Submitting Comments

The agencies invite comment on the proposed changes to the interagency questions and answers and, more generally, on other issues raised by the CRA. Comments are due September 10, 2007. ❖

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