
November 10, 2014

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Office of the Comptroller of the Currency
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Docket ID: OCC-2014-0021

Robert de V. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Docket No. OP-1497

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Community Reinvestment Act (CRA); Interagency Questions and Answers Regarding Community Reinvestment

The New Markets Tax Credit (“NMTC”) Working Group has provided the following comments regarding the proposed Interagency Questions and Answers Regarding Community Reinvestment released by the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Federal Reserve), and the Federal Deposit Insurance Corporation (FDIC), collectively, the “Agencies,” on September 10, 2014.

Background on the NMTC Working Group

The members of the NMTC Working Group are participants in the NMTC industry who work together to resolve technical NMTC Program issues and create recommendations to make the NMTC Program efficient in delivering the most amount of benefit to the end users. Our group includes allocatees, nonprofit and for profit community development entities (CDEs), investors, accountants and lawyers.

The NMTC attracts capital to low income communities by providing private investors with a federal tax credit for investments made in businesses or economic development projects located in some of the most distressed communities in the nation – census tracts where the

individual poverty rate is at least 20 percent or where median family income does not exceed 80 percent of the area median.

Qualified equity investments in and loans to CDEs generally have been recognized by the Agencies under existing guidance as community and economic development activities eligible for favorable CRA consideration. The proposed CRA questions and answers guidance (the “proposed Q&A Guidance”) are designed to provide help to further clarify how economic development, community development loans, and activities designed to revitalize or stabilize an underserved nonmetropolitan middle-income geography can be eligible for favorable CRA consideration.

In general, we believe the proposed Q&A Guidance is helpful in providing further definition in these areas. However, we are concerned that it may inadvertently disqualify NMTC-related economic development and community development.

Comments on Section III A. – Q&A § .12(g) (3) – 1

In answering how community development activities promote economic development, the Agencies propose to “presume that any loan to or investment in a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit-eligible Community Development Entity (CDE), or Community Development Financial Institution (CDFI) that finances small businesses or small farms promotes economic development.”

As worded, we are concerned that a very common financing structure that many CDEs use in NMTC financing, the leveraged financing structure as described in IRS Revenue Ruling 2003-20, where loans are made to investors before investments are made to CDEs, would be disqualified from receiving favorable CRA consideration as economic or community development under this guidance.

Given how this leverage loan financing structure helps to extend the reach of NMTC subsidies for greater community and economic development impact, we believe that leverage loans should be considered as economic development activities eligible for favorable CRA consideration, and so we suggest the following edit to the proposed Q&A Guidance:

“Community development” includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet the size eligibility standards considered to be community development?

A1. [...]

The agencies presume that any investment in, loan to, **or a loan whose proceeds are used to make an investment in,** a SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, New Markets Tax Credit-eligible Community Development Entity (CDE), or Community Development

Financial Institution (CDFI) that finances small businesses or small farms promotes economic development.”

Under this section, the Agencies also pose questions to commenters to help further define economic development activities under CRA. In particular, the Agencies, pose the following question:

What information should examiners review when determining the performance context of an institution seeking CRA consideration for its economic development activities?

The NMTC Working Group notes the previous update to the CRA Q&A guidance finalized on November 20, 2013, which helped address how community development activities outside core CRA assessment areas (where most covered financial institution deposits are located) can receive favorable CRA consideration. While we believe that such updated guidance was modestly helpful, we are still concerned that the Q&A guidance is not clear enough to ensure that many worthy NMTC and other community development activities outside core assessment areas qualify, and we urge the Agencies to provide greater clarity for these activities. We believe many NMTC investments outside core CRA assessment areas are very responsive to the needs of the communities they serve, and deserve clear favorable CRA consideration.

Changes in how financial institutions operate have weakened the efficiency and effectiveness of assessment areas as a part of CRA examinations. Updating CRA guidance and regulations to address all geographic areas where CRA-regulated institutions provide banking services and giving appropriate credit for CRA activities outside of assessment areas could help correct the geographic imbalances in CRA activity. This change would capture more community development investment and lending activities provided by covered institutions providing primarily online banking services as well as large multi-state banks that serve consumers across a broader geography but may not have deposit taking branches in all of those areas.

Comments on Section III A. – Q&A § .12(h) – 1

Similarly, in further clarifying what community development loans are in the proposed Q&A guidance, we suggest the following edit to the proposed Q&A Guidance:

“What are examples of community development loans?”

A1. Examples of community development loans include, but are not limited to, loans to *or loans whose proceeds are used to make investments in:*”

Comment on Section § .12(t) – 4

While the Agencies have not specifically requested comments on §__ .12(t) – 4, we believe it is important to clarify this section in the existing Q&A guidance that leverage loan financing should receive favorable CRA consideration. We propose the following edit:

“What are examples of qualified investments?”

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits, ***loans whose proceeds are used to make investments in***, or shares in or to:”

Conclusion

The CRA has been a crucial policy motivating financial institutions to invest in community development activities, including NMTC-related activities. The NMTC Working Group appreciates the efforts of the Agencies in clarifying Interagency Q&A guidance to potentially motivate more community development activities. We thank you for this opportunity to provide comments.

Addressing technical matters such as this has been the sole purpose of the NMTC Working Group and its members are dedicated to the goal of making the NMTC program as efficient as possible. Since 2006, the NMTC Working Group has responded to requests from Treasury, the IRS, and the CDFI Fund with recommendations to improve the NMTC Program’s ability to deliver significant community impact to this nation’s low-income communities. Many of these comment letters provide suggestions to improve very specific aspects of the program that would improve the overall efficiency of the NMTC. All of these recommendations can be found in the Comment Letters page on www.nmtcworkinggroup.com.

We are excited about the positive impact that the NMTC Program is having on the nation’s low-income communities and low-income persons and the potential for future success. However, we believe that the program can become even more efficient and deliver more subsidy to the end users within low-income communities. Thank you in advance for your time and consideration.

Please do not hesitate to contact us if you have any questions regarding our comments or if we can be of further assistance.

Yours very truly,
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by 

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