May 17, 2013

Legislative and Regulatory Activities Division
Office of the Comptroller of the Currency
Mail Stop 9W-11
400 7th Street SW
Washington, DC 20219
Docket ID OCC-2013-0003
Regs.comments@occ.treas.gov

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

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. OP-1456
Regs.comments@federalreserve.gov

To Whom It May Concern:

The Local Initiatives Support Corporation (LISC) is pleased to provide comments on the proposed changes to the Interagency Questions and Answers Regarding Community Reinvestment ("Interagency Q&A").

Background on LISC:

Established in 1979, LISC is a national non-profit CDFI that is dedicated to helping community residents transform distressed neighborhoods into healthy and sustainable communities of choice and opportunity. LISC mobilizes corporate, government and philanthropic support to provide

local community development organizations with loans, grants and equity investments; policy support; and technical and management assistance.

LISC has a nationwide footprint, with local offices in 31 cities and partnerships with 58 different organizations serving rural communities throughout the country. LISC invests approximately $1 billion each year in these communities, with about half of these funds coming from banks, mostly in the form of loans and investments. Our work covers a wide range of activities, including housing, economic development, building family wealth and incomes, education, and creating healthy communities.

General Comments on the Community Reinvestment Act

In our experience, CRA remains the primary driver of private financing for our activities. Most banks tell us that CRA is a threshold consideration in the volume and location of their community development financing. LISC believes that, notwithstanding the CRA's effectiveness, there are still areas where it can be strengthened. In July of 2010, LISC testified in front of the regulators in support of significant changes in the administration of CRA exams. Most notably, LISC proposed that:

1) a new community development test replace the current investment test on the CRA exam for large retail banks;

2) the regulators develop a more manageable, consistent and predictable approach to evaluating CRA assessment areas -- one that includes all communities and recognizes different local needs and opportunities;

3) the regulators differentiate CRA reviews based on the nature of the banks' operations, recognizing that what may be appropriate for analyzing traditional "bricks and mortar" retail banks is not necessarily applicable to internet banks, investment banks, credit card banks and other institutions without readily identifiable local deposit bases; and

4) CRA examiners should receive better training in community development activities.

In June of 2011, LISC and several other organizations provided a consolidated set of comments to the bank regulators that provided more detailed recommendations in furtherance of many of the items referenced in the testimony from July of 2010.

LISC would encourage the regulators to review these comments not only as they consider modifications to the Interagency Q&A document, but also with an eye towards a more comprehensive revision of the CRA regulations. Both of these documents are available on the FDIC's website:

http://www.fdic.gov/regulations/laws/federal/2010/10c18AD60.PDF.

http://www.fdic.gov/regulations/laws/federal/2010/10c109AD60.PDF

Comments Specific to the Interagency Q&A Document

LISC is generally supportive of the modifications that have been proposed by the regulators. Most notably, LISC applauds efforts by the regulators to: (i) clarify when investments in national funds can qualify for CRA credit; (ii) identify activities that will qualify for credit under the Services test; and (iii) clarify that community development lending performance is always a factor that is considered in an institution's lending test rating. We would encourage the regulators to move quickly to implement these proposed changes, while giving consideration to the comments provided below.

I. Investments in Nationwide Funds [Current Q&A Section ____.23(a)-2].

Would the proposed revised Q&A assist institutions that deliver products on a nationwide basis to address community needs in areas where they provide products and services?

LISC agrees with much of the language included in the revised Q&A, including the acknowledgement that nationwide funds "are important sources of investments for low- and moderate-income and underserved communities throughout the country and can be an efficient vehicle for institutions in making qualified investments that help meet community development needs."; and that "Nationwide funds may be suitable investment opportunities, particularly for large financial institutions with a nationwide business focus, including wholesale or limited purpose institutions."

However, the requirement that such activities "may not be conducted in lieu of, or to the detriment of, activities in the institution's assessment areas" may frustrate these efforts, since it is not clear how the examiners will interpret this language. Banks need to be provided with a "bright line" test so that an institution can be certain that it is satisfying these requirements. Without such a test, institutions will default to making investments that can be traced to projects in their defined assessment areas, which adds significant burdens to the banks and to the national funds in which they invest. In comments to the regulators on similar matters, LISC and others have suggested that one such bright line test could be whether the institution received a "satisfactory" rating in a prior CRA review of its assessment area(s). If so, then it should get recognition for the full amount of its investment dollars in national funds, regardless of where those funds are invested.

In the case of wholesale or limited purpose institutions, internet banks and other institutions without local deposit bases, the regulators should consider moving away from the concept of local assessment areas altogether, and give appropriate recognition for investments in national funds.

When might nationwide funds be appropriate investments for regional or smaller institutions?

Nationwide funds provide distinct advantages to investors, including from a safety and soundness perspective. By nature of their large footprints, they can identity and

underwrite a much larger pool of potential investment opportunities, thereby increasing the likelihood of identifying successful investment opportunities and deploying capital more quickly. They also have exposure to a wide range of community development interventions in a variety of markets, allowing them to develop new innovations. Finally, the large footprint of nationwide funds protects investors against risks associated with over-concentration of investments in a particular market.

LISC encourages the regulators to consider ways to facilitate investments in nationwide funds from regional or smaller institutions, to the extent such institutions have demonstrated that they are satisfying the needs in their local markets by having received a "satisfactory" on their previous CRA exam.

Some commenters indicated that current methods of "earmarking" investments, including through the use of side letters, are burdensome. Are such methods, in fact, burdensome and if so, in what way?

Earmarking is burdensome because, by its very nature, it requires an institution to artificially segment and assign portions of loan funds to certain investors. This can lead to additional accounting and documentation expenses. But even worse, it can lead to over-concentration of investments in certain geographies, which: (i) unnaturally distorts the pricing of investments in these markets (e.g., it is well-documented that pricing for low-income housing tax credits is much more competitive in markets with high concentration of CRA assessment areas); and (ii) affects the geographic balance of an investment portfolio, which can increase the risk of default.

If the proposed revised Q&A is adopted, how should investments in nationwide funds be considered in an investing institution's CRA evaluation? Should there be a special category for investments in nationwide funds? How would such a category affect the amounts of an institution's investments at the assessment area and/or statewide level?

Banks that do not operate significantly through traditional bricks and mortar branch networks are becoming much more commonplace. These include internet banks, investment banks, credit card banks, wholesale banks, and US outposts of some foreign banks. These types of institutions are assigned assessment areas based on where they are physically located, which often has no correlation whatsoever to where their customers are located. Since these are not truly local banks, they should be assessed primarily on a nationwide basis, and be given recognition for the full amount of their investments in national funds.

Alternatively, should investments in nationwide funds be attributed to particular states or assessment areas? If so, how can that be done in a meaningful manner, particularly if there is no earmarking by the fund?

LISC believes that the concept of earmarking is inconsistent with the very nature of a national fund. Ideally, institutions with a truly national footprint (such as those with branches and operations in each of the four quadrants identified by the OCC) that invest

in truly national organizations or funds (where the operations or investments are similarly made in all four quadrants) should be given full credit for these investments, provided that the institution has previously received a "satisfactory" rating in its assessment areas. This would ensure a continued commitment from institutions to making direct investments in local areas while simultaneously furthering the regulators' desire to facilitate investments in national funds.

II. Community Services Targeted to Low- or Moderate-Income Individuals [Current Q&A Section ____.12(g)(2)-1].

Will the use of eligibility for free and reduced-priced meals and Medicaid effectively identify individuals who are low- or moderate-income? Yes. These seem to be suitable proxies. LISC would suggest applying such proxies to the lending and investment tests, not just the services test.

Are there other commonly used proxies for low- or moderate-income that should be specifically included in the Q&A? Yes. Most if not all Federal housing programs can be used as proxies, including LIHTCs, HOME, and Section 8. Furthermore, the designation of a certified CDFI can be used as a proxy for demonstrating that a nonprofit has a "defined mission of serving low and moderate income persons."

III. Service on the Board of Directors of an Organization Engaged in Community Development Activities [Current Q&A Section ____.12(i)-3].

LISC supports the inclusion of service on the board of directors of a community development organization as an example of an activity that would receive consideration as a community development service.

IV. Qualified Investments [New Q&A Section _____.12(t)-9].

LISC does not support the addition of this Q&A, at least as currently drafted. LISC agrees with the comments provided by the Opportunity Finance Network (OFN), of which it is a member organization, and would encourage the regulators to consider OFN's suggested text changes (highlighted below in bold) when finalizing this Q&A:

> *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 requires that the investment be***

used for community development purposes, then the Agencies will give consideration for the full amount of the investment even if the recipient, in turn, invests the funds and earns income from that investment.

V. Community Development Lending in the Lending Test Applicable to Large Institutions [New Q&A Section _____.22(b)(4)-2].

LISC appreciates that the regulators are acknowledging the importance of community development lending by clarifying that this portion of the lending test may have a positive, neutral or negative impact on the lending test rating; thereby bringing the OCC's ratings in line with those of the FDIC and the Board. While this change does not go nearly as far as LISC has proposed in other comments to the regulators regarding increasing the emphasis on community development lending, it is a good first step.

Conclusion

CRA motivated bank investing is an integral part of community development investing. LISC could not be nearly as successful if not for its partnership with banks. We appreciate the efforts of the bank regulatory agencies in clarifying the Interagency Q&A document in a way that will hopefully facilitate more community development activities, including investments in national community development funds. We thank you for this opportunity to provide comments.

Sincerely,

Matt Josephs
Senior Vice President for Policy