SUBJECT: Community Reinvestment Act

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Local Initiatives Support Corporation (LISC) appreciates the opportunity to comment on Interagency Questions and Answers Regarding Community Reinvestment: Notice (January 6, 2009). In particular, we wish to address issues regarding consideration of a bank's participation in nationwide and regional community development activities and funds.

This issue is of urgent importance, especially in light of the adverse effect of the financial markets on investments based on Low Income Housing Tax Credits (LIHTCs), although it has broader and longer term significance as well. Production and preservation of desperately needed affordable rental housing is fully dependent on LIHTC investment because it is the only large public sector program currently in place.

As the agencies are aware, broader problems in the financial services industry have caused several major LIHTC investors to withdraw from the market, reducing total investment by approximately one-half from 2007 to 2008. Prospects for 2009 are still uncertain but perhaps similar to or worse than 2008 as an increasing number of banks are at risk for not being able to utilize the tax benefits due to insufficient taxable income.

In our observation, CRA remains the primary motivation for most of the remaining LIHTC investors, primarily money-center banks. Thus, how the agencies structure the regulation is a key determinant of how much affordable rental housing will be created. We believe CRA could motivate additional investments from many regional and large local banks that until now have made few or no LIHTC investments. However, the current and proposed Q&A policies have undermined the CRA incentive for these banks because of their need and desire and to invest through nationwide and regional multi-investor funds. These funds provide important opportunities for banks that are not able to invest directly in LIHTC projects, cannot invest an amount large enough to form a

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proprietary (single-investor) fund, and recognize the additional safety and soundness that multi-investor funds can offer through risk diversification, specialized expertise, additional reserves, and sophisticated asset management systems.

We are grateful that the January 6, 2009 Notice removes two of the obstacles to encouraging such investments.

- First, it clarifies and greatly improves the proposed Q&A § __.23(a)-2 regarding investments in a national or regional fund. In particular, we appreciate that the policy is intended to apply to nationwide and multiregional funds, that banks will receive consideration for such investments if the fund's purpose, mandate, or function includes serving a regional area that includes one or more of its assessment area(s), and the greater flexibility in documentation.

- Second, it withdraws proposed revisions to Q&A §__.23(e)-2, which would have disallowed consideration of legally binding commitments recorded by a bank according to GAAP. This change would have disrupted long-standing practice and policy.

However, the revised Q&As do not address current policies that remain serious obstacles to encouraging bank participation in multi-investor regional funds for such funds. We urge the agencies to modify these Q&As consistent with the CRA regulations, Q&A policies supportive of participation in such funds[1], and interagency Interpretive Letter IL-800 (September 11, 1997). We believe that the modifications we recommend would greatly facilitate bank participation in LIHTCs and other community development activities through statewide, regional, and nationwide funds.

- A bank may receive credit for LIHTC community development activities (including LIHTC investments) outside an assessment area (AA) but within the region only if it is adequately addressing community development needs within its AAs. For a large bank with dozens or hundreds of AAs, it is unreasonable to disqualify a regional investment because the bank may not have made sufficient investments in every major AA. For example, a bank reported that its regulator would not allow CRA recognition for an investment in the redevelopment of public housing in New Orleans because the bank had not made enough investments in another AA with few LIHTC investment opportunities and relatively plentiful capital. We urge CRA recognition of a bank's investment (or community development loan or service) through a fund that serves a region that includes the bank's AA unless the bank has received a rating below satisfactory on its latest CRA exam with respect to either: (1) the relevant test (i.e., the investment, lending or services test) for the bank overall; or (2) overall CRA performance with respect to the specific AA to which it wishes to assign recognition for the activity. These conditions are intended to prevent a bank from using regional investments to overcome a poor record of serving an AA or meeting a particular test.

[1] See Q&A §__.12(h)-6 and Q&A §__.23(a)-1.

- Examiners may discount investments in funds that benefit a large regional area on the basis that the benefit to a bank's AA may be diffused and therefore unresponsive to the AA needs. [Interagency Q&A §__.12(h)-7. This policy effectively undermines CRA as an incentive for investing in regional funds. First, a bank is likely to receive diminished recognition for regional investments, regardless of the value of investment in addressing community needs, so the CRA motivation is diminished. Second, since the bank cannot tell how great the discount will be when it invests, it cannot reliably factor CRA into its investment decision. Under the current policy, an examiner may deeply discount recognition a year or two after the investment decision was made. Banks have reported such discounting of participation in nationwide, regional, statewide, and even metropolitan area funds. We urge that qualified regional investments receive full recognition without discount.

- In order to be workable, eligible regions must be large enough to accommodate multiple bank participants and to diversify risks, as well as to be administratively efficient. Interagency Interpretative Letter 800 (1997) appeared to acknowledge a quadrant of the nation as an eligible region for this purpose, a workable standard that facilitated broad bank participation. However, the current interagency Q&A §__.12(h)-7 does not specifically permit quadrants, instead allowing a less specific "multi-state" region and citing the mid-Atlantic states as an example. Many banks have found this guidance so vague that they will not invest in larger regional funds. We urge that the agencies explicitly clarify that an eligible region may be as large as a quadrant of the country.

We appreciate the agencies commitment to CRA as a motivation for safe and sound community development activities, especially in a time of economic and financial distress not seen since CRA was enacted over 30 years ago. We believe that the changes we recommend would help to stimulate activities, including LIHTC investments, that will create jobs, stabilize communities, and help low-income families in this time of crisis.

§II.12(h)–6: *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A6. No. The regulations recognize that community development organizations and programs are efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multistate basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area(s) need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided that the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area(s). In addition, a retail institution that has received on its most recent CRA examination a satisfactory or better rating with respect to both (1) the assessment area(s) with which a regional community development activity is to be associated, and (2) the applicable lending, investment or services test for the institution overall~~, considering its performance context, has adequately addressed the community development needs of its assessment area(s)~~ will receive full consideration without discount for certain other community development activities. These community development activities must benefit geographies or individuals located somewhere within a broader statewide or regional area that includes the institution's assessment area(s). Examiners will consider these activities even if they will not benefit the institution's assessment area(s).

§II.12(h)–7: *What is meant by the term ''regional area''?*

A7. A ''regional area'' may be as large as a multistate area or a quadrant of the country. For example, the ''mid-Atlantic states'' or "the northeastern quadrant of the U.S." may comprise a regional area. Community development loans and services and qualified investments ~~to~~ benefiting statewide or regional organizations or activities that have a bona fide purpose, mandate, or function that includes serving the geographies or individuals within the institution's assessment area(s) will be considered as addressing assessment area needs. ~~When examiners evaluate community development loans and services and qualified investments that benefit a regional area that includes the institution's assessment area(s), they will consider the institution's performance context as well as the size of the regional area and the actual or potential benefit to the institution's assessment area(s). With larger regional areas, benefit to the institution's assessment area(s) may be diffused and, thus, less responsive to assessment area needs.~~ In addition, as long as an institution has ~~adequately addressed the community development needs of its assessment area(s)~~ received on its most recent CRA examination a satisfactory or better rating with respect to both (1) the assessment area(s) with which a regional community development activity is to be associated, and (2) the applicable lending, investment or services test for the institution overall, then it will also receive full consideration without discount for community development activities that benefit geographies or individuals located somewhere within the broader statewide or regional area that includes the institution’s assessment area(s), even if those activities do not benefit its assessment area(s).