



NAHB
NATIONAL ASSOCIATION
OF HOME BUILDERS

HOUSING FINANCE AND LAND DEVELOPMENT

DAVID L. LEDFORD

Senior Vice President
Housing Finance and Land Development

March 6, 2009

Office of the Comptroller of the Currency
250 E Street, S.W.
Mail Stop 1-5
Washington, D.C. 20219

Re: Community Reinvestment Act; Interagency Questions and Answers Regarding
Community Reinvestment
Office of Comptroller of the Currency (OCC)
Notice and Request for Comments
Docket ID OCC-2008-0027

Dear Sir or Madam:

On behalf of the more than 200,000 members of the National Association of Home Builders (NAHB), please accept the following in response to the above-referenced Notice and Request for Comments.

NAHB is responding to the request for comments on *Proposed Revised Q&A: Primary Purpose of Community Development, Section __.12(h)-8: What is meant by the term "primary purpose" as that term is used to define what constitutes a community development loan, a qualified investment, or a community development service?*

The CRA was established in 1977 as a means of ensuring that deposit-taking institutions offer equal access to lending, investment and services. NAHB supports efforts to ensure that CRA credit is provided for residential and multifamily mortgages, housing production and community development lending. Broadening the ability of financial institutions to receive CRA credit for eligible activities is highly desirable because of the benefits conveyed to communities in general and especially to low- and moderate-income persons.

The proposed revised Q&A would allow an institution to receive pro rata Community Reinvestment Act (CRA) consideration for the portion of an activity such as mixed-income housing, if it helps to provide affordable housing to low- or moderate-income individuals. The proposed revised Q&A gives as an example a \$10 million loan to finance a mixed-income housing development in which ten percent of the units will be set aside as affordable housing for low- and moderate-income individuals and ten percent of the funds will be used for the cost of

constructing those units. Under the proposed revised Q&A, the institution may elect to treat one million dollars of the loan as a community development loan.

NAHB strongly supports the proposed revised Q&A Section __.12(h)-8 and encourages its adoption as final. The current general “all or nothing” CRA consideration policy for community development loans, qualified investments, and community development services is a disincentive to institutions to consider lending activities for mixed-income housing, depriving communities of much-needed affordable housing. According to the Notice, the agencies have generally indicated that if an activity has a primary purpose of community development, determined by one of two methods set forth by the agencies, the entire investment, loan or service would be considered in an institution’s CRA evaluation. However if an activity does not have a primary purpose of community development applying those standards, then it would not be considered as a qualified investment, community development loan, or community development service. The revised proposed Q&A would be an important and timely change.

In response to specific questions in the Notice regarding this proposed revised change, NAHB offers the following:

- *Will the proposed revision, allowing pro rata CRA consideration for low- and moderate-income housing set-asides, spur the construction and rehabilitation of housing for low- and moderate-income persons? Why or why not?*

Yes, NAHB believes that allowing pro rata CRA consideration for low- and moderate-income housing set-asides would help spur construction and rehabilitation of housing for low- and moderate-income persons. Allowing pro rata CRA credit for mixed-income housing will help communities implement strategies for deconcentration of poverty. Encouraging mixed-income housing in more affluent areas, as well as in areas of low- and moderate-income, helps break up pockets of poverty and offers more housing opportunities in non-poverty areas to persons with limited incomes. Additionally, mixed-income housing is less likely to generate community opposition, which developers of affordable housing face on a regular basis and which is a major impediment to affordable housing development.

Mixed-income housing could play a significant role in preserving affordable housing in areas that are undergoing transition. Major redevelopment activities in transitional neighborhoods can result in the loss of housing affordable to low- and moderate-income persons. Providing mixed-income housing in new or substantially rehabilitated developments allows existing residents to stay in their neighborhoods, thereby reducing displacement while providing higher quality housing.

Mixed-income housing also may make the difference between a financially feasible development and one that cannot proceed. Most affordable housing developments require multiple layers of financing, including subsidies from local, state or federal government. The scarcity of these subsidy resources means that developers cannot provide as many affordable units as they might otherwise. The income generated from market-rate units can help provide cross-subsidies from a non-governmental source for the affordable units.

- *Should the special pro rata consideration be restricted only to instances where a governmental entity requires a set aside of a certain number or percentage of affordable housing for low- and moderate-income housing (as opposed to voluntary designation of low- and moderate-income units by a developer)?*

No, the special pro rata consideration should not be restricted to instances where a governmental entity requires a set aside of affordable housing. While mandatory inclusionary zoning ordinances have been instituted in some communities, there are also many jurisdictions that rely on voluntary affordable housing set asides from developers to help meet their housing needs and goals. In addition, there are zoning ordinances that allow additional density or other benefits in exchange for affordable housing set asides, at the option of the developer. Because of the value of providing affordable housing to a community, the CRA consideration should not be tied to whether the housing being provided is mandatory or voluntary.

- *How should the amount of the pro rata share be determined for reporting purposes – should institutions be required to report the actual funds attributable to the targeted units or should they report a proportional share, based on the percentage of set-aside units?*

NAHB urges the agencies to carefully consider how the pro rata share of CRA credit should be reported. Some flexibility may be required, depending on the nature of the development. The agencies should consider the following factors:

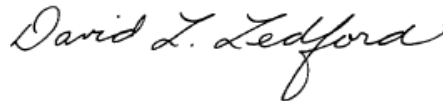
- The type of development may determine whether the costs of constructing the market rate unit are the same as the affordable unit. For example, some inclusionary zoning ordinances put a construction cost limit and/or price limit on the affordable single family units but do not impose such restrictions on multifamily rental units because the affordable unit designs are the same as the market-rate units. If, however, developers are permitted to install fewer unit amenities in the affordable units or they are permitted to design smaller units, the costs would be lower than the market rate units.
 - A proportional share of costs related to infrastructure, common areas and site amenities should be attributed to the affordable units, not just the construction cost of the units alone.
 - The burden on the developer and lender to differentiate construction costs between market and affordable units should be minimized.
- *Should the pro rata treatment apply only to affordable housing or should institutions also be able to receive pro rata treatment for loans or investments with other community development purposes?*

NAHB again suggests that broadening the ability of financial institutions to receive CRA credit for eligible activities is highly desirable because of the benefits conveyed to communities

and low- and moderate-income persons. Section __.12(h)8, A8, says that “a loan, investment or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low-or moderate-income areas, designated disaster areas, or underserved or distressed nonmetropolitan middle-income areas, providing affordable housing for, or community services targeted to, low-or moderate-income persons, or promoting economic development by financing small businesses and farms.” Non-housing community development activities provide support for affordable housing development and for the residents who live in these properties by increasing job opportunities and access to services. These activities should be eligible to receive pro rata CRA credit in the same manner being proposed for affordable housing development.

NAHB thanks the agencies for the opportunity to provide comments on the Interagency Questions and Answers. We urge the agencies to adopt as final proposed revised Q&A Section __.12(h)-8.

Sincerely,

A handwritten signature in cursive script that reads "David L. Ledford". The signature is written in dark ink and is positioned centrally below the word "Sincerely,".

David L. Ledford
Senior Vice President
Housing Finance and Land Development