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To: Clients and Friends

From: David F. Dulock

Subject: Community Reinvestment Act Joint Final Rule Revises
Definition of "Community Development" (75 FR 79278)

Introduction

In the December 20, 2011 issue of the *Federal Register*, the following federal agencies - Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (FRB); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS) - published a joint final rule to revise the definition of "community development" in their respective Community Reinvestment Act (CRA) rules. These rules may be found in the Code of Federal Regulations, respectively, at 12 CFR Part 25 (OCC), Part 228 (FRB), Part 345 (FDIC), and Part 563e (OTS).

Definition Revision

The final rule revises the definition of "community development" by adding a new paragraph (g)(5), which states:

§ ___.12(g) *Community development* means:

...

(5) Loans, investments, and services that—

(i) Support, enable or facilitate projects or activities that meet the "eligible uses" criteria described in Section 2301(c) of the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110-289, 122 Stat. 2654, as amended, and are conducted in designated target areas identified in plans approved by the United States Department of Housing and Urban Development in accordance with the Neighborhood Stabilization Program (NSP);

(ii) Are provided no later than two years after the last date funds appropriated for the NSP are required to be spent by grantees; and

(iii) Benefit low-, moderate-, and middle-income individuals and geographies in the [financial institution's] assessment area(s) or areas outside the [financial institution's] assessment area(s) provided the [financial institution] has adequately addressed the community development needs of its assessment area(s). **(the generic word "financial institution" inserted in place of name of specific entity type)**

Explanation of Revision

In the preamble published with the final rule, the federal agencies provide the following explanation and reasoning for adding § ___.12(g)(5) to the definition of community development in their respective CRA rules, which (slightly redacted) are set out below:

Section 2301(c) of HERA establishes five activities that are "eligible uses" of NSP funds, which are projects or activities that use the NSP funds to: (1) establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft seconds, loan loss reserves, and shared equity loans for low- and moderate- income homebuyers; (2) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order

to sell, rent, or redevelop such homes and properties; (3) establish and operate land banks for homes and residential properties that have been foreclosed upon; (4) demolish blighted structures; and (5) redevelop demolished or vacant properties.

HUD approves NSP plans and applications (“plans”) for all NSP grantees, which must designate “areas of greatest need” for targeting NSP-eligible activities, consistent with statutory criteria. The vast majority of NSP-targeted areas are listed on a map database located on HUD’s Web site at: <http://www.hud.gov/nspmaps>.

The definition of “community development” is a key definition in the CRA rules. Financial institutions receive positive consideration in their CRA examinations for community development loans, qualified investments, and community development services that have a primary purpose of “community development.” Allowing financial institutions to receive CRA consideration for NSP-eligible activities in NSP-targeted areas creates an opportunity to leverage government-funded projects in areas targeted for assistance with complementary private financing.

Under the revised definition of “community development,” a financial institution would receive favorable CRA consideration for a donation of other real estate owned (OREO) properties to non-profit housing organizations in eligible middle-income, as well as low- and moderate-income, geographies. In addition, under the revised definition, financial institutions would receive favorable CRA consideration if they provided financing for the purchase and rehabilitation of foreclosed, abandoned, or vacant properties in targeted areas. Other examples of activities that would receive favorable CRA consideration under the revised definition are loans, investments, and services that support the redevelopment of demolished or vacant properties in such areas, consistent with eligible uses for NSP funds.

The final rule imposes no new requirements on financial institutions nor does it impose additional reporting or disclosures on financial institutions. It simply expands the categories of activities that qualify for CRA consideration as “community development.” No financial institution will be required to provide loans, investments, or services pursuant to the expanded definition.

Duration, Effective Date, and Application of Final Rule

The duration of the final rule is generally linked to the duration of the NSP (*i.e.*, no later than two years after the last date appropriated funds for the NSP program are required to be spent by the grantees). After that date, the final rule will cease to apply. In that event, the federal agencies will provide reasonable advance notice to the financial institutions in the *Federal Register* regarding termination of the final rule. This final rule is effective January 19, 2011, and applies only to financial institutions regulated by the above federal agencies that must comply with the CRA rules for community development activities.

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