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December 27, 2010

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

FROM: Thomas A. Barnes, Deputy Director
 Examinations, Supervision, and Consumer Protection

SUBJECT: Community Reinvestment Act: Joint Final Rulemaking
 Neighborhood Stabilization Program

The Office of Thrift Supervision (OTS), Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board (FRB), and Office of Comptroller of the Currency (OCC) (collectively, the “Agencies”) have issued an amendment to the definition of “community development” used in the Community Reinvestment Act (CRA) regulations. The revised definition allows for favorable consideration for loans, investments, and services by banks and thrifts that directly support, enable or facilitate eligible projects or activities in Department of Housing and Urban Development (HUD)-approved designated target areas, consistent with the Neighborhood Stabilization Program (NSP).¹ The expanded definition of “community development” is intended to help leverage NSP funds in areas experiencing high foreclosure or vacancy rates and the associated adverse impacts of property deterioration and neighborhood blight. These problems are projected to continue for several years and beyond and have affected middle-income census tracts as well as low- and moderate-income census tracts.²

¹ The Neighborhood Stabilization Program was established by the Housing and Economic Recovery Act of 2008, as amended, and the American Recovery and Reinvestment Act of 2009. The program is structured as NSP-1, which awarded funds by formula to each of the 50 states and the Commonwealth of Puerto Rico, and NSP-2, which provided funds through a competitive process to state and local governments and nonprofit organizations, as well as to nonprofit consortia that submitted proposals in partnership with for-profit entities. The Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) provided \$1 billion in additional NSP funding to be allocated through a HUD-established funding formula, which will consider using the same criteria on foreclosure rates, subprime mortgages, and home mortgage defaults and delinquencies. Each grantee must establish procedures for the development of affordable rental housing for properties assisted with the funds allocated under the Dodd-Frank Act.

² The final rule also clarifies that positive CRA consideration is already available under existing CRA regulations and interagency guidance for certain types of neighborhood stabilization activities. Examples include foreclosure prevention programs that are part of a loan program(s) designed to provide sustainable relief to homeowners facing foreclosure on their primary residences or if they help to revitalize or stabilize low- or moderate-income geographies. The Agencies have recently commenced a regulatory review of the CRA rules, and will consider whether recommendations received under the NSP proposed rulemaking warrant further changes to the definition of “community development.”

Under this final rulemaking, the Agencies will give favorable CRA consideration to activities that benefit low-, moderate-, and middle-income individuals and areas in the designated target areas, in accordance with NSP requirements. If a census tract is designated as NSP-eligible,³ loans, investments, and services in that area that help to support NSP-eligible programs will receive favorable CRA consideration under the revised definition of “community development.” Examples of activities that will receive positive CRA consideration include: donating other real estate owned (OREO) properties to nonprofit housing organizations in eligible low-, moderate-, and middle-income geographies; financing the purchase and rehabilitation of foreclosed, vacant, or abandoned properties; and providing loans, investments, and services that support the redevelopment of demolished or vacant properties in these geographies, consistent with eligible use of NSP funds.

The NSP requires that funds be used to benefit families and individuals whose incomes do not exceed 120 percent of the area median income, which corresponds to middle-income levels. In addition, not less than 25 percent of the funds used must benefit families and individuals whose incomes are at or below 50 percent of area median income.

The revised regulations provide positive consideration for eligible activities undertaken by a financial institution within and outside of its assessment area(s) as long as the institution has already addressed the community development needs of its assessment area(s). Since many foreclosed properties owned by a bank or thrift institution may be located in areas outside of the institution’s assessment area(s), the rule permits an institution to receive CRA favorable consideration for NSP-eligible activities that occur outside of the institution’s assessment area(s).⁴

The final rule provides CRA consideration for a two-year period after the last date by which NSP funds are required to be spent by grantees.⁵ There is no expiration or “sunset” date for NSP funding; Congress may appropriate additional funding for the program. Consequently, the CRA rulemaking does not specify a termination date for the regulatory provisions; rather, if and when a date certain is established, the Agencies will provide advance notice to institutions in the *Federal Register* about termination of the rule.

³ The designated target areas reflect “areas of greatest need” in which NSP grantees would address the adverse impacts of escalating foreclosure levels.

⁴ There is precedent for expanding the CRA focus on assessment area(s) in certain temporary and exigent circumstances. In 2006, for example, the Agencies issued a policy statement that provided favorable CRA consideration to an institution for engaging in activities that helped revitalize or stabilize areas affected by Hurricanes Katrina and Rita, even if those areas were located outside of an institution’s assessment area(s), provided that the institution had adequately met the CRA-related needs in its assessment area(s).

⁵ Under NSP-1, grantees must expend NSP funds within four years of the date on which the grant is awarded. Under NSP-2, grantees must fully expend grant funds within three years of the date of the award; under the Dodd-Frank Act, grantees are required to expend funds within three years of the date of the award.

The joint final rule is effective 30 days following the date of its publication in the *Federal Register*.

For further information, please contact Stephanie Caputo at (202) 906-6549 or Stephanie.Caputo@ots.treas.gov. The *Federal Register* notice announcing the final rulemaking is attached.

Link: <http://edocket.access.gpo.gov/2010/2010-3111.htm>

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