



# Ramón Luis Nieves

Senador Distrito San Juan - Guaynabo - Aguas Buenas

## **Presidente**

*Comisión de Banca,  
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## **Vicepresidente**

*Comisión de Relaciones  
Laborales, Asuntos del  
Consumidor y Creación  
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*Comisión de  
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May 21, 2013

Mr. Robert E. Feldman  
Executive Secretary  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, NW  
Washington, DC 20429  
Attention: Comments

Re: Community Reinvestment Act: Interagency Questions and  
Answers Regarding Community Reinvestment Act

Dear Mr. Feldman:

The undersigned as, Chairman of the Senate Banking, Insurance and Telecommunications Commission of the Commonwealth of Puerto Rico (the "Commission"), hereby submits to the Federal Deposit Insurance Corporation ("FDIC") this comment letter regarding the Interagency Questions and Answers Regarding Community Reinvestment Act, proposed by the FDIC, the Federal Reserve Board and the Office of the Comptroller of the Currency (collectively, the "Agencies"). The Commission's concerns relate specifically to the new question and answer §\_\_\_. 12 (t)-9 that addresses the quantitative consideration given to a certain type of community development investment (the "Q&A").

In connection with the Q&A, the Agencies requested comments in regards to the following:

- Whether the proposed Q&A is sufficiently clear.

- Whether the proposed Q&A will encourage or discourage investments or loans in organizations with a community development mission.
- Whether the proposed Q&A provide the flexibility necessary to encourage community development activities, whether direct, indirect or through the provision of capital investments, in connection with an organization with a primary purpose of community development.

The Commission that I am honored to chair is deeply concerned with the negative effects that the proposed new Q&A would have on the development of present and future community development projects, to the detriment of the quality of life of many Puerto Ricans and the well being of our people in general.

Due to its commitment on the improvement of the quality of life in low and moderate income communities in Puerto Rico, the Commission will be evaluating several community development initiatives which could be adversely impacted by the Q&A. Most if not all of such initiatives would depend on attracting private investors, such as commercial banks investing in compliance with the CRA..

Directly and immediately impacted by the Q&A would be the following not-for-profit organizations, all of which use the mechanism described in the Q&A, for raising the funds necessary to operate and accomplish their community related purposes:

1. The Puerto Rico Housing and Human Development Trust Fund (FIDEVI by its Spanish acronym).

FIDEVI is a charitable, irrevocable and perpetual trust fund created under Deed of Trust dated May 5, 2004, among the Governor of Puerto Rico, the President of the Puerto Rico Bankers Association, the President of the Puerto Rico Mortgage Bankers Association and three (3) representatives of the homeless advocacy community.

FIDEVI is the product of a collaborative alliance between Puerto Rico's banking industry and the homeless population advocacy community with the commitment of the Government of Puerto Rico. The purpose for which FIDEVI was created is to devote its corpus and income to the promotion and support for the development, rehabilitation and preservation of adequate, affordable and accessible housing for people of limited, scarce or no economic resources in the Commonwealth of Puerto Rico. FIDEVI has been funded through the arbitrage source income mechanism structured pursuant to legislation approved by this Legislature. FIDEVI would be left with scarce or no funding for its operations if the local financial institutions are discouraged from investing in FIDEVI as a consequence of the Q&A.

## 2. Patronato de Monumentos de Viejo San Juan

In March 2011, several banks invested in a charitable offering under the laws of Puerto Rico that has as its ultimate goal to issue up to \$100 million in notes to various investors. Monies from this fund will initially be used for the restoration of an historical gothic structure in Old San Juan. Restoration of this structure will increase and expedite the rehabilitation of the area, enhance economic development, and assist in the completion of the master urban plan to revitalize the city. This restoration project will have an immediate impact on the local community by creating 100 direct and indirect jobs, many of which will be filled by low-and moderate-income people. Upon completion of the project, another 30 permanent jobs are expected to be created. Also anticipated as a consequence of this restoration project is the reintegration of the local La Perla community and its inhabitants. La Perla is a slum aside of the northern historic city wall of Old San Juan that has always been known of its high rate of illegal drug trafficking and crime. Ongoing projects within the scope of the urban master plan call for new development to include roadways, a waterfront promenade, and a light rail system.

## 3. Puerto Rico Conservation Trust ("Conservation Trust")

Conservation Trust is a charitable, irrevocable and perpetual trust fund created under Deed of Trust dated January 23, 1970 among the Governor of Puerto Rico, the Secretary of the Interior of the United States of America and the Administrator of Puerto Rico Economic Development Administration to implement a joint plan to help develop and preserve the natural resources of Puerto Rico. Conservation Trust operates as a not-for-profit institution under a designation from the United States Internal Reserve Service pursuant to

Section 501(c) (3) of the Internal Revenue Code of 1986, as amended. The principal purpose of Conservation Trust is to protect and enhance the natural resources and beauty of Puerto Rico. Conservation Trust has implemented its purpose through the acquisition, active management and development of lands possessing great ecological, aesthetic or historical value in Puerto Rico. Conservation Trust holds these properties in perpetuity for the benefit of the people of Puerto Rico.

#### 4. Sociedad de Educación y Rehabilitación de Puerto Rico (“SER”)

SER (Puerto Rico Educational and Rehabilitation Society), operate as a not-for-profit institution under a designation from the United States Internal Revenue Service pursuant to Section 501(c) (3) of the United States Internal Revenue and Section 1101.01 of the Puerto Rico Internal Revenue Code of 2011, as amended.

SER was founded in 1950, as an affiliate of the National “Easter Seals”. The first Rehabilitation Center opened in 1954.

Today, SER is currently the only Pediatric Physical Medicine and Rehabilitation Center operating on the island in an integrated and personalized manner, with clear objectives to achieve independence, productivity and efficiency of each participant treated and his or her family, including but not limited to providing medical, therapeutic, psychological, educational and support services.

Since 1978, SER’s programs and services are accredited by the Commission on Accreditation of Rehabilitation Facilities, Medicare, the Department of Health, the Department of Education and the Higher Education Council.

Pursuant to certain laws of the Commonwealth of Puerto Rico, interest paid by SER on its debt obligations is exempt from Puerto Rico tax.

#### 5. Punto Verde, Inc. P.T. (“Punto Verde”)

Punto Verde is a Puerto Rico workers-owned special corporation organized under the Puerto Rico General Corporation Law, as amended. Punto Verde oversees the construction, management and operation of a children’s park located in the Luis Muñoz Marín Park, in San Juan, Puerto Rico (the “Children’s Park”). The Children’s Park integrates both recreational and educational elements emerging from its central theme of nature, offering pleasant entertainment for children and the entire family. Special care is taken to make facilities accessible to handicapped persons, both children and adults. The Children’s Park also intends to serve as a model of a community-based profitable business venture by providing persons from the eight communities

bordering the Caño de Martín Peña an opportunity to participate in the operation of the Children's Park.

The above described organizations have been strongly supported by this Legislature through the passage of specific legislation providing them and investors thereof, with certain tax benefits that promote the structured transactions funding mechanism that has so successfully provided these organizations with a consistent and stable source of funding to achieve their respective community related purposes. The intent of such legislation has been to promote private investors to support such organizations so to make them non government dependant.

Our specific comments to the Q&A follow.

**a. Whether the proposed Q&A is sufficiently clear.**

The Q&A is sufficiently clear.

**b. Whether the proposed Q&A will encourage or discourage investments or loans in organizations with a community development mission.**

As stated before, the Commission is concerned with the negative impact of the Q&A on community development organizations in Puerto Rico.

The funding structure which is the backbone of widely recognized organizations such as the ones mentioned above, may be described as a structured transaction in which an interest rate spread is derived from the difference of the coupon payment of the underlying collateral and the coupon payment of the structured note issued by the organization. The interest rate spread sacrificed by the investor is the resulting spread that is received as interest income by the organization at the

established frequency (“Income Transactions”). Financial institutions have demonstrated an appetite for investments in such organizations principally due to the CRA qualified (qualitative and quantitative) nature of the investments. The institutions would certainly be discouraged to continue such investments since the risks associated with these transactions are only offset to the extent that the investment is CRA qualified. The Agencies should take into consideration the fact that the investing financial institution’s capital is at risk for the total value of the investment, even when the Agencies perceive that only the transaction income is actually invested in community development activities. It is only by putting to risk the total value of the investment, that the transaction income is produced. This is the nature of the funding mechanism that has so successfully raised private source income for the needs of these organizations.

**c. Whether the proposed Q&A provide the flexibility necessary to encourage community development activities, whether direct, indirect or through the provision of capital investments, in connection with an organization with a primary purpose of community development.**

As indicated before, the proposed Q&A would most certainly discourage private capital investments in community development organizations that are funded through Income Transactions.

This Commission is deeply concerned that these organizations may be left with scarce or no sources of funding. This may result in these organization’s having to discontinue providing services to the communities served. Furthermore, if the proposed Q&A is not modified to accommodate organizations such as the ones

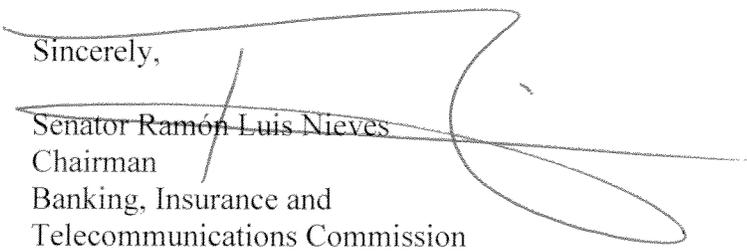
mentioned above, this Commission is deeply concerned with the future of community development organizations on the island that may be able to operate only under the Income Transaction mechanism.

The adverse economic conditions prevailing on the island complicate the situation for these organizations even more since they may not have available any alternate sources of private or even public funding. The Government of the Commonwealth of Puerto Rico is undergoing a serious fiscal crisis that will eventually affect these organizations. There is a clear expectation for continued cuts on government spending on the nonprofit sector, making it more critical for these organizations to receive funding from private entities such as financial institutions for their success.

For the reasons set forth above, the Q&A should be modified to consider the entire amount invested by financial institutions in Puerto Rico in Income Transaction facilitated by local legislation such as in the case of the community development organizations mentioned above.

We hereby urge the Agencies to consider the adverse effect that the Q&A would have on the present and future of community development organizations on the Island to the detriment of the quality of life and well being of the people of Puerto Rico, a Commonwealth of the United States.

Sincerely,



Senator Ramón Luis Nieves  
Chairman  
Banking, Insurance and  
Telecommunications Commission  
Senate of the Commonwealth of Puerto Rico