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September 10, 2007

Via Email

Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th St and Constitution Ave., NW.
Washington, DC 20551.

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

Office of the Comptroller of the
Currency
250 E Street, SW., Mail Stop 1-5
Washington, DC 20219

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW.
Washington, DC 20552

Re: **FDIC** RIN No. 3064-AC97; **FRB** Docket No. OP-1290; **OCC** Docket
OCC-2007-0012; **OTS** OTS-2007-0030; Proposed Revisions to the CRA
Q&A; 72 Federal Register 37921; July 11, 2007

Ladies and Gentlemen:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the revisions to the Community Reinvestment Act (CRA) Interagency Questions and Answers proposed by the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies). We appreciate the Agencies' efforts to provide additional guidance and clarity regarding issues that have arisen since the Questions and Answers last were revised.²

The Agencies propose a number of changes and additions to the Questions and Answers. Many of the changes are technical. However, the Agencies propose to add a number of new questions and the OTS makes changes in questions about Intermediate Small Savings Associations (resulting from conforming the OTS rules with the rules of the other agencies). Finally, the Agencies propose to provide an index to the questions, since some questions apply to multiple topics.

¹ The ABA, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

² The OCC, FRB, and FDIC issued revised Questions and Answers on July 12, 2001 (66 FR 36620) which have not been updated since. The OTS last issued revised Questions and Answers on September 5, 2006 (71 FR 52375).

General Comments

ABA supports all of the proposed changes, with only minor recommendations as noted below.

Specific Comments

1. Investments in minority- and women-owned institutions without regard to investing institution's assessment area

The proposed Question and Answer would state that activities engaged in by a majority-owned financial institution with a minority- or women-owned financial institution or a low-income credit union that benefit the local communities where the minority- or women-owned financial institution or low-income credit union is located will be favorably considered in the CRA performance evaluation of the majority-owned institution. The minority- or women-owned institution or low-income credit union need not be located in, and the activities need not benefit, the assessment area(s) of the majority- owned institution or the broader statewide or regional area that includes its assessment area(s).

This Question and Answer implements authority given to the Agencies by Congress more than a decade ago. In fact, ABA requested that the Agencies issue just such an interpretation by letter dated October 14, 1999. **ABA supports the proposal.**

ABA notes that the National Community Reinvestment Coalition, by letter dated August 30, 2007, requests that the Agencies limit such majority-owned institutions' investments in minority- and women-owned institutions to being counted only if the investing institution has already adequately met the credit needs of its own community. ABA opposes this request. As ABA noted in its original letter to the Agencies, the Congress in adding this special provision to the Community Reinvestment Act did not limit its application geographically, precisely to provide the maximum encouragement for assistance for minority- and women-owned institutions, wherever the majority- or minority- or women-owned institution might be located. Such an unnecessary requirement would have a chilling effect on otherwise positive responses to the proposed change. ABA believes that such a restriction would essentially mean that minority- or women-owned institutions would rarely, if ever, benefit from this special provision added by Congress, added because the Congress believed that supporting such institutions was a very important goal. **ABA recommends that the Agencies adopt the CRA Question and Answer as proposed, and in fact joins with the National Bankers Association in urging the Agencies to codify the substance of this Question and Answer into the text of the CRA regulations.**

2. Intermediate Small Institution's (ISI) treatment of home loans and small business and small farm loans for the Community Development (CD) test

The proposed Question and Answer would permit an intermediate small institution to choose to have home loans and small farm and small business loans evaluated as community development loans, if the loans otherwise meet the regulatory definition of "community development."

Otherwise, the existing Questions and Answers would require that these loans be treated as home, business or farm loans, with no recognition of their CD value. **ABA supports the proposed change, as it allows institutions that have done an excellent job in community lending to apportion loans that also qualify as CD loans to the CD test.**

3. Examples of "other loan data" that institutions might provide for CRA consideration

This Question and Answer will consolidate all information in the Questions and Answers on additional data that institutions might supply to examiners, including data on loans over \$1 million that are not small loans or CD loans but which the institution believes have a significant community value that should be considered as part of the CRA evaluation. ABA has long urged recognition by the Agencies that the CRA is about serving the credit needs of the entire community, not just the LMI areas. Accordingly, **ABA supports this proposal but recommends that the Agencies provide additional clarification as to the weight of this other loan data.**

Our bankers tell us that loans or loan equivalent transactions reported in “other loan data,” including home mortgage loan modification, extension, and consolidation agreements (“MECAs”), lines of credit (“LOCs”), and mixed-use loans with an affordable housing component of less than 50%, are treated as the functional equivalent of loans under safety and soundness and accounting regulations, but they do not receive the same treatment under CRA as do home, small business, and small farm loans. This examiner bias against loans reported in “other loan data” needs to be eliminated by clarifying that loans considered at the option of the bank in “other loan data” deserve equal weight with other reported loans. ABA notes that the Agencies state in Question and Answer § __.22(a)(2)—3 that MECAs are the equivalent of refinancings in some states, and that therefore examiners will consider MECAs, if provided other loan data on them. While this appears to tell examiners that MECAs are to be treated the same as loan refinancings, bankers tell us that they often are not.

These bankers believe that consideration of these types of credit as “other loan data” may result in being less valued than other loans. As one example, while letters of credit are generally issued as credit enhancements rather than funding in the ordinary course of business, such credit enhancements are generally necessary in order for the deal to be done. Since the Question and Answer § __.22(a)(2)—1 states that LOCs should be considered separately from loans, this suggests that examiners should consider them as less valuable than loans when often they are just as essential.

Another example is the project with less than 50% affordable housing. Local governments set their own housing policy, and typically use specific project subsidies. As a result, these subsidies may not be targeted to projects with more than 50% affordable housing, because many local governments favor mixed-income housing over exclusively low-income housing. They have concluded that mixed-income developments provide opportunities that make affordable housing development more economically feasible, and mixed-income housing better serves the creation of economically integrated communities. Thus, affordable housing projects offered to banks often will not meet the more than 50% test. We do not believe that these loans should be treated as less valuable under CRA when they clearly are addressing the credit needs of the community and the local government.

ABA recommends that the Agencies add language to the “other loan data” Question and Answer that clarifies for examiners and bankers that these other loans are weighted equally with “the loans” reported under the CRA and HMDA regulations and that LOCs should not be considered separately from the loans.

4. Purchased loan participations

Community groups have argued that purchased loan participations are not as CRA-worthy as originated loans. The Agencies disagree, no doubt influenced by the actual wording of the Community Reinvestment Act, which refers to helping to meet the credit needs of the entire community. Since a loan participation provides the same amount of credit to the community as does the originated loan, ABA sees no justification for treating the two differently. ABA hopes that this proposed Question and Answer settles this clearly and finally. Although the question will be

part of the large bank test questions, the answer applies to *all* banks and *all* CRA exams.
Accordingly, ABA supports the proposal.

5. The treatment of small business and small farm loans subject to the “refinancing” definition under HMDA

Because refinancing a business or farm loan secured by a dwelling results in a reportable refinancing pursuant to the Home Mortgage Disclosure Act (HMDA), even though the original loan was not HMDA-reported, confusion reigns over whether loans are being misclassified for CRA purposes and whether there is any “double-counting.” The Agencies propose to state that a loan of \$1 million or less with a business purpose that is secured by a one-to-four family residence is considered a small business loan for CRA purposes only if the security interest in the residential property was taken as an abundance of caution and where the terms have not been made more favorable than they would have been in the absence of the lien. If this same loan is refinanced and the new loan is also secured by a one-to-four family residence but only through an abundance of caution, this loan will be reported not only as a refinancing under HMDA but also as a small business loan under CRA. (Small farm loans are similarly treated.)

It is not anticipated that “double-reported” loans will be so numerous as to affect the typical institution’s CRA rating. In the event that an institution reports a significant number or amount of loans as both home mortgage and small business loans, examiners will consider that overlap in evaluating the institution’s performance and generally will consider the “double-reported” loans as small business loans for CRA consideration.” The OTS answer is the same. **ABA supports the proposed Question and Answer, because it makes some sense of a troubling “classification” issue.**

6. Small institution asset size adjustment.

The Agencies will reference the FFIEC website for the current information on the “size” of small financial institutions and intermediate small financial institutions. **ABA supports the proposal as the best way to keep these thresholds updated.**

7. Responsive lending activities.

Previous Questions and Answers discuss types of lending activities that help meet the credit needs of an institution’s assessment areas and that may warrant favorable consideration as activities that are responsive to the needs of the institution’s assessment areas. The Agencies propose to revise the answer to highlight that establishing loan programs that provide relief to low- and moderate-income homeowners who are facing foreclosure is another type of lending activity that would warrant favorable consideration as being responsive to the needs of an institution’s assessment areas. **ABA knows that a number of our institutions are trying to help refinance the large number of subprime borrowers who are facing delinquency and potential default due to resetting loan interest rates. ABA supports the proposed Question and Answer.**

8. Investments in a national or regional fund.

The Agencies are proposing additional guidance in Question and Answer § __.23(a)—2, that an institution that makes a loan or investment in a national or regional community development fund should be able to demonstrate that the investment meets the geographic requirements of the CRA regulation. Community development bankers note that the established market for affordable housing investment vehicles has developed on a multi-state basis for projects in order to promote efficiency and to better mitigate geographic risk. Thus there are inherent difficulties in demonstrating that the geographic requirements of CRA are met on a community basis when these projects are often spanning regions or even most of the nation.

Without an easy way for national and/or regional funds to provide the necessary geographic connection for donors, donors subject to CRA will likely decrease their contributions. This would adversely affect national community development funds and may reduce funding of higher risk (but important) regional community development projects such as Special Needs Housing and rural developments. **ABA recommends that the Agencies allow managers of such regional or national funds to use any combination of side letters and/or *pro rata* allocations within a single syndication with the investing financial institutions so as to direct an institution's funds towards parts of the project that meet the CRA geographical requirements. The Agencies should make clear that such managers' side letters and/or *pro rata* allocations are sufficient to demonstrate the geographical focus of that part of the project funded by the financial institution.**

9. Additional Comments Outside of the Proposed Changes

Question and Answer § __.12(h) indicates that the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. It states that examiners are to consider lending and services to individuals and geographies of all income levels, and further identifies certain factors that may be considered, including a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house, when the examiner is determining whether an activity has as its primary purpose community development. However, some bankers tell ABA that actual CRA consideration of such lending to middle and upper income individuals that is part of a publicly subsidized economic or community development program is generally rare. **ABA recommends that the Agencies provide some specific examples of projects and circumstances in which loans to non-LMI individuals that would be given CRA credit, given the high cost of the particular market.**

Conclusion

ABA appreciates the opportunity to comment on these revisions to the CRA Questions and Answers. In general ABA supports all of the proposed changes, and we particularly (a) support the proposed comparable treatment of loan originations and participations and (b) the implementation of the Congressional authority for CRA credit for investments in minority- and women-owned financial institutions. ABA hopes that the Agencies will also adopt the few suggested changes that ABA recommends. If you have any questions about these comments, please call the undersigned.

Sincerely,



Paul Smith
Senior Counsel