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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

May 30, 2006

Mr. John Gamboa  
Mr. Robert Gnaizda  
The Greenlining Institute  
1918 University Avenue, 2<sup>nd</sup> Floor  
Berkeley, CA 94704

Dear John and Bob:

Thank you for the opportunity to speak at the Greenlining Institute's 13<sup>th</sup> Annual Minority Economic Development and Homeownership Conference and for setting up the breakfast with bankers and other corporate attendees. I appreciated hearing first-hand the perspectives from Greenlining members and their partner banks.

I would like to follow-up on Bob's recent conversation with Barry Wides about Community Reinvestment Act (CRA) consideration for supplier diversity programs. The July 12, 2001 Interagency CRA Questions and Answers responds to the question. As you know, these Questions and Answers are made available to the general public through publication in the *Federal Register*. The OCC also distributed the guidance to national banks, directly, through OCC Banking Bulletin 2001-39.

Under Q/A1 \_\_.22(b)(5) (enclosed), one of the examples indicates that a bank may implement a small business lending program in which the bank also contracts with the small business borrowers. Such contracts, of course, could be entered into with minority-owned small business borrowers. Although this contracting arrangement would not itself be a CRA activity, the Interagency Questions and Answers explains how it, nevertheless, may be considered favorably in the bank's CRA evaluation as an enhancement that augments the effectiveness of the bank's small business loan program.

I understand that Greenlining is preparing a report that will summarize "best practices" in bank supplier diversity programs. We look forward to receiving a copy of the report and learning more about those initiatives.

Sincerely,

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John C. Dugan  
Comptroller of the Currency

Enclosure

*proportion of an institution's lending in its assessment area(s)?*

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

§ \_\_\_\_ .22(b)(2) & (3)-4: *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?*

A4. Consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small institutions being evaluated under the small institution performance standards. Loans to low- and moderate-income persons and small businesses and farms outside of an institution's assessment area(s), however, will not compensate for poor lending performance within the institution's assessment area(s).

§ \_\_\_\_ .22(b)(2) & (3)-5: *Under the lending test, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?*

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, i.e., by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes or multifamily housing located in an area for which the local, state, tribal, or Federal government or a community-based development organization has

developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the middle- or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

§ \_\_\_\_ .22(b)(4); *Community Development Lending*

§ \_\_\_\_ .22(b)(4)-1: *When evaluating an institution's record of community development lending, may an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?*

A1. Yes. When evaluating the institution's record of community development lending under § \_\_\_\_ .22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two \$10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40 percent of its units for low-income residents and the other project allocates 65 percent of its units for low-income residents. An institution would report both loans as \$10 million community development loans under the § \_\_\_\_ .42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, an examiner should also take into account that the 65 percent project provides more affordable housing for more people per dollar expended.

Under § \_\_\_\_ .22(b)(4), the extent of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the

activity, not simply to the dollar amount expended on a particular transaction. By applying all lending test performance criteria, a community development loan of a lower dollar amount could meet the credit needs of the institution's community to a greater extent than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

§ \_\_\_\_ .22(b)(5) *Innovative or Flexible Lending Practices*

§ \_\_\_\_ .22(b)(5)-1: *What is the range of practices that examiners may consider in evaluating the innovativeness or flexibility of an institution's lending?*

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. In connection with the evaluation of an institution's lending, examiners also may give consideration to related innovations when they augment the success and effectiveness of the institution's lending under its community development loan programs or, more generally, its lending under its loan programs that address the credit needs of low- and moderate-income geographies or individuals. For example:

- In connection with a community development loan program, a bank may establish a technical assistance program under which the bank, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be favorably considered as an innovation that augments the success and effectiveness of the related community development loan program.

- In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, a bank may implement a program under which, in addition to providing financing, the bank also contracts with the small business borrowers. Such a contracting arrangement would not, standing alone, qualify for CRA consideration. However, it may be favorably considered as an innovation that augments the loan program's success and effectiveness, and improves the program's ability to

serve community development purposes by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.

§ \_\_\_\_ .22(c) *Affiliate Lending*

§ \_\_\_\_ .22(c)(1) *In General*

§ \_\_\_\_ .22(c)(1)-1: *If an institution elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?*

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer loans (motor vehicle loans, credit card loans, home equity loans, other secured loans, and other unsecured loans).

§ \_\_\_\_ .22(c)(2) *Constraints on Affiliate Lending*

§ \_\_\_\_ .22(c)(2)(i) *No Affiliate May Claim a Loan Origination or Loan Purchase if Another Institution Claims the Same Loan Origination or Purchase*

§ \_\_\_\_ .22(c)(2)(i)-1: *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes.

§ \_\_\_\_ .22(c)(2)(ii) *If an Institution Elects To Have Its Supervisory Agency Consider Loans Within a Particular Lending Category Made by One or More of the Institution's Affiliates in a Particular Assessment Area, the Institution Shall Elect To Have the Agency Consider All Loans Within That Lending Category in That Particular Assessment Area Made by All of the Institution's Affiliates*

§ \_\_\_\_ .22(c)(2)(ii)-1: *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits "cherry-picking" affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has one or more affiliates, such as a mortgage bank

that makes loans in the institution's assessment area. If the institution elects to include the mortgage bank's home mortgage loans, it must include all of mortgage bank's home mortgage loans made in its assessment area. The institution cannot elect to include only those low- and moderate-income home mortgage loans made by the mortgage bank affiliate and not home mortgage loans to middle- and upper-income individuals or areas.

§ \_\_\_\_ .22(c)(2)(ii)-2: *How is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?*

A2. Strict application of this constraint against "cherry-picking" to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

§ \_\_\_\_ .22(d) *Lending by a Consortium or a Third Party*

§ \_\_\_\_ .22(d)-1: *Will equity and equity-type investments in a third party receive consideration under the lending test?*

A1. If an institution has made an equity or equity-type investment in a third party, community development loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt

securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a community development corporation ("CDC") that primarily lends in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC. § \_\_\_\_ .23(b)-1 provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests.

§ \_\_\_\_ .22(d)-2: *How will examiners evaluate loans made by consortia or third parties under the lending test?*

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will only be considered if they qualify as community development loans and will only be considered under the community development criterion of the lending test. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under all the lending test criteria appropriate to them depending on the type of loan.

§ \_\_\_\_ .22(d)-3: *In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR \_\_\_\_ .22(d), may the third party also receive consideration for these loans?*

A3. Yes, as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR \_\_\_\_ .22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata