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June 7, 2006

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: No. 2006-17

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

Dear Sir or Madam:

The Independent Community Bankers of America (ICBA)¹ appreciates the opportunity to comment on the Office of Thrift Supervision's (OTS) proposed questions-and-answers to help banks comply with recent changes to the Community Reinvestment Act rules. The proposal, designed to coordinate OTS guidance with guidelines issued earlier this year by the FDIC, the Federal Reserve and the Office of the Comptroller of the Currency, primarily would assist bankers and examiners in applying the definition of "community development."

Overview of ICBA Comments

ICBA commends the OTS for taking steps to coordinate its guidelines with those of the other banking agencies. Differing interpretations for similar or identical rules adds to regulatory burden. Coordination among the agencies helps alleviate this potential confusion and thereby helps ease regulatory burden.

¹ The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 265,000 Americans, ICBA members hold more than \$876 billion in assets \$692 billion in deposits, and more than \$589 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

Generally, ICBA finds the proposed guidance helpful and encourages the OTS to continue to develop guidance to help bankers and examiners with CRA compliance. However, ICBA also is concerned that the guidelines may over-emphasize activities that can be documented as benefiting low- and moderate-income individuals. ICBA agrees it is appropriate to encourage activities that benefit low- and moderate-income individuals, but difficulty obtaining data to substantiate the income of beneficiaries of a particular activity was one problem that caused the agencies to revise the CRA rules. In many nonmetropolitan areas, low- and moderate-income census tracts are not segregated as they are in large metropolitan areas, and identifying low- and moderate-income individuals may not be easily accomplished. Even though the revisions to the rule were designed to rectify this problem, the guidance seems to backtrack and reintroduce the problem. Community banks may conduct activities that benefit an entire community but may not have sufficient data to demonstrate particular benefit to low- and moderate-income individuals. ICBA is concerned that the guidelines will divert resources from activities that would benefit local communities if it is impossible or burdensome to demonstrate a benefit to low- and moderate-income individuals, even though the benefit may be there. ICBA recommends that the guidance provide that an activity that benefits an entire community will be granted credit under CRA.

ICBA finds find the proposed guidance on activities considered to be community development services and qualified investments are helpful and recommends the agencies continually update the lists. Finally, ICBA urges the agencies to publish a list of designated disaster areas for ease of reference.

Background

In 2005, the FDIC, OCC and Federal Reserve expanded the definition of community development to include activities that benefit designated disaster areas and help revitalize and stabilize distressed or underserved middle-income rural communities. In March 2006, the agencies issued additional guidance to help bankers and examiners apply the new definition. Recently, the OTS adopted a parallel definition of “community development” and now proposes to supplement existing guidelines with eight new questions-and answers to specifically address the expanded definition of “community development” and two additional questions on services and investments.

Definition of “Community Development”

List of Disaster Areas

Under the CRA revisions, activities that benefit a federally designated disaster area would qualify for CRA credit.² At this time, the agencies do not plan to publish a list of designated disaster areas. However, ICBA urges OTS and the other agencies to reconsider. Publishing a list would eliminate confusion

² Counties designated to receive only debris removal funds or emergency protective measure funds under Federal Emergency Management Agency (FEMA) rules would be excluded.

on which areas have been designated and provide useful information for examiners and bankers.

Under the proposal, once an area is designated as a disaster area, OTS would consider disaster recovery-related activities for 36 months following the designation as eligible for CRA credit. This timeframe follows that adopted by the other regulators. ICBA believes the 36 month time-frame is appropriate, especially since OTS reserves the authority to extend the 36-month period when warranted. For example, OTS points out it is likely to extend the period for recovery along the areas of the Gulf Coast impacted by last year's hurricanes, a step ICBA fully supports.

The guidance also would explain that not all activities that benefit a disaster area would be considered equally. Instead, extra weight would be given for activities that benefit low- or moderate-income individuals. ICBA disagrees. While CRA is intended to ensure that credit is provided to all segments of a bank's assessment area, including low- and moderate-income individuals, natural disasters do not make distinctions based on income levels, and recovery for the entire community is critical. ICBA believes that this is one instance where the tendency to focus on benefits for low- and moderate-income areas and individuals is not appropriate and might be detrimental to the overall recovery of a community affected by natural disaster. Instead, the focus should be whether an activity benefits the community at large.

Finally, when granting CRA credit for activities that benefit a designated disaster area, examiners would consider the particular needs and circumstances of the area. ICBA agrees this is appropriate.

Distressed or Underserved Middle-Income Non-metropolitan areas

The new CRA rules outline the criteria used to identify areas as distressed or underserved middle-income non-metropolitan areas. A community will be designated as "distressed" on the basis of poverty rates, unemployment and population loss while a community will be designated as "underserved" when it might have difficulty meeting essential community needs due to population size, density and disbursement. A community can be both distressed *and* underserved. A list of designated areas, to be updated annually, was recently published on the FFIEC website, www.ffiec.gov.

The OTS, similar to the other agencies, proposes to allow activities to qualify for CRA credit for up to twelve months after an area ceases to be designated as distressed or underserved. ICBA believes this 12-month lag time is probably appropriate for distressed or underserved areas, especially since the affected areas will be published on the FFIEC website. However, it is worth noting that even though an area might no longer be considered distressed or underserved because improvement efforts were successful, the critical analysis will be whether the improvement can be sustained.

As with disaster areas, ICBA is concerned about the emphasis on low- and moderate-income factors since it reintroduces problems the revisions were designed to correct. Even though it may be appropriate to encourage efforts that benefit low- and moderate-income individuals, it can be difficult to identify those individuals within nonmetropolitan communities where census tracts are not as neatly segregated by income as they are in urban areas. Moreover, for many bank products and services, such as deposit products, community banks do not collect data on individual income levels and therefore do not have the data to support whether activities benefit low- and moderate-income individuals. ICBA urges the agencies to be more flexible with this guidance to avoid undermining the revisions to the rules. Where an activity benefits the broader community, it should be granted credit under CRA.

Community Development Services

Following existing guidance implemented by the other banking agencies, the OTS guidance would outline the following examples as activities that would qualify as a “community development service:”

- providing financial services to low- and moderate-income individuals through branches located in low- and moderate-income areas
- providing technical assistance on financial matters to nonprofit, tribal or government organizations serving low- and moderate-income individuals or areas
- providing technical assistance on financial matters to small businesses or community development organizations, including those that apply for loans or grants under the Federal Home Loan Banks’ Affordable Housing Program
- lending employees to provide financial services for affordable housing organizations
- providing credit counseling or home-buyer counseling to promote community development and affordable housing
- establishing school savings programs or teaching financial education for low- and moderate-income individuals
- providing electronic benefits transfer and other services to improve access to financial services for low- and moderate-income individuals
- providing international remittance services that benefit low- and moderate-income individuals
- providing other services that improve low- and moderate-income individuals access to financial services

ICBA finds these examples helpful since they provide a general overview of the types of activities examiners should consider acceptable. ICBA recommends the OTS work with the other agencies to keep this list updated, publishing additional activities on the FFIEC website for ease of reference. Not only is regularly updated guidance useful for bankers and examiners, it can also provide a collateral benefit by providing examples of creative solutions used in one community that can be replicated in other communities.

Qualified Investments

Under the guidance, when examiners consider whether a particular investment is qualified for CRA purposes, activities in existence during the prior examination which are still outstanding would be specifically eligible. One of the problems identified by community groups under current CRA requirements is that banks feel compelled to discontinue certain projects because examiners no longer deem an activity worthwhile because it is no longer innovative or new, when ongoing support is vital for the community. Therefore, ICBA agrees this revision is entirely appropriate, since continuing support and involvement in an activity continues to benefit the community.

Similar to the guidelines for qualified services, the proposed guidance would expand the list of examples of qualified investments. The guidelines would parallel those of the other banking agencies. This list would offer the following examples of entities qualified for investments under CRA:

- Financial intermediaries, including community development financial institutions and community loan funds, that primarily lend or facilitate lending in low- or moderate-income areas or to low- and moderate-income individuals
- Organizations engaged in affordable housing activities
- Organizations that promote economic development by financing small businesses or small farms
- Facilities that promote community development in low- and moderate-income areas, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers
- Projects eligible for low-income housing tax credits
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development
- Not-for-profit organizations serving low- and moderate-income housing or other community development needs, such as credit counseling, home-ownership and financial education
- Organizations that support activities essential to low- and moderate-income areas, such as day care operations and job training programs

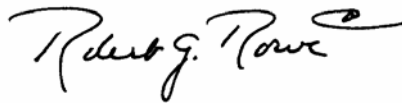
As with the examples provided for community development services, ICBA finds these examples helpful. At this time, although we do not have recommendations for additions, we urge the OTS to work with the other banking agencies to update the list as appropriate. As noted above, updates published on the FFIEC website serve as a reference for examiners and bankers and encourage banks to undertake creative solutions that have been successfully applied in other areas of the country.

Small Bank Examination

Under the revisions, a small bank may elect to have an affiliate's activities considered for CRA purposes. If a small bank makes this election, the guidance would require the bank to maintain "sufficient information" to allow examiners to evaluate the activities and to ensure that the activities are not claimed by another institution. ICBA agrees with this approach.

Thank you for the opportunity to comment. If you have any questions or would like additional information, please contact the undersigned by phone at 202-695-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,

A handwritten signature in black ink that reads "Robert G. Rowe" with a stylized flourish at the end.

Robert G. Rowe, III
Regulatory Counsel