

September 10, 2007

Federal Reserve Board
E-mail: regs.comments@federalreserve.gov
Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington DC 20551
RE: Docket No. OP-1290

Federal Deposit Insurance Corporation
E-mail: Comments@FDIC.gov
Robert E. Feldman
Executive Secretary
Attention: Comments
550 17th St. NW 20429
RE: RIN 3064-AC97

Office of the Comptroller of the Currency
E-mail: regs.comments@occ.treas.gov
250 E St. SW, Mail Stop 1-5
Washington 20219
RE: Docket ID OCC-2007-0012

Office of Thrift Supervision
E-mail: regs.comments@ots.treas.gov
Regulation Comments
Chief Counsel's Office
1700 G Street, NW
Washington, DC 20552
RE: ID OTS-2007-0030

Re: Notice & Request for Comments: Interagency Questions and Answers for Community Reinvestment.

To Whom It May Concern:

Opportunity Finance Network¹ appreciates the chance to comment on the proposed Interagency Questions and Answers (Q&A) regarding the Community Reinvestment Act (CRA). The CRA rule, effective September 1, 2005, made significant changes to the regulations, and a clear Q&A is critical to guiding banks and their partners.

Opportunity Finance Network commends the Agencies for including New Markets Tax Credit-eligible Community Development Entities and New Market Venture Capital Companies as appropriate financial intermediaries in several of the Q&As. We also strongly support that banks will receive favorable CRA consideration for foreclosure prevention activities. This will assist in the battle against this nation's foreclosure crisis. In addition, clarification on the importance of branch building and maintenance will help provide access to affordable banking services in low- and moderate-income neighborhoods that are reaching crisis levels due to abusive payday lending and other high-cost services.

Specifically, Opportunity Finance Network offers comments that indicate ways the Agencies could clarify the CRA's intent to benefit low- and moderate-income people and communities. Our comments are in the order of the specific proposed Q&As they reference.

¹ Opportunity Finance Network, the national network of more than 160 financial institutions creates growth that is good for communities, investors, individuals, and the economy. Its members include Community Development Financial Institutions (CDFIs) and other opportunity finance institutions that work just outside the margins of conventional finance to bring those markets into the economic mainstream and to help the economic mainstream flow into those markets. CDFI financing has resulted in significant numbers of new jobs, jobs preserved, quality, affordable housing units, and new commercial and community facility space in all 50 states. Over the past 30 years, the Opportunity Finance industry has provided more than \$23 billion in financing that would not otherwise have happened in markets that conventional finance would not otherwise reach.



Sec. _____.12(g)(4), Sec. _____.12(g)(3)-1, and Sec. _____.12(h)-7

Sec. _____.12(g)(4): Opportunity Finance Network agrees with the Agencies in applying a “broader geographic criterion when evaluating capital investments, loan participations, and other ventures undertaken by that institution in cooperation with minority- or women-owned institutions or low-income credit unions...” if the Agencies apply the criterion to community development financial institutions (CDFIs) in addition to the other groups included. We urge the Agencies to include CDFIs since many CDFIs, especially National CDFIs, meet the credit needs of local communities on a state or regional basis. CDFIs are a recognized financial intermediary in the CRA and they are specifically highlighted in Sec. _____.12(h)-1 as an example of community development loans.

In 2005, CDFI customers were 52 percent female, 58 percent minority, and 68 percent low income.² By statute,³ CDFIs must serve the low- and moderate-income communities referred to in the CRA. Both the statutory requirements and the actual performance⁴ of Treasury certified CDFIs support the addition of CDFIs to this Q&A.

CDFI certification is a designation conferred by the Department of the Treasury’s CDFI Fund.⁵ As a certified CDFI, a financial institution must demonstrate that it has a primary mission of promoting community development; that it provides financial products and development services to designated distressed or underserved target markets; and that it maintains accountability to these markets.

CDFIs serve the same market interests as minority-owned financial institutions, women-owned financial institutions, and low-income credit unions. CDFIs should be accorded the same treatment under the CRA as these groups. This should be a minor inclusion, but will help solidify the unique value of CDFIs in helping low- and moderate-income people and communities with their credit needs. This is, after all, the purpose of both CDFIs and the CRA.

Sec. _____.12(g)(3)-1. For the same reasons suggested in the above Q&A, we suggest that you add CDFIs to, “The agencies will presume that any loan to or investment in a **CDFI**, SBDC, SBIC, Rural Business Investment Company, New Markets Venture Capital Company, or New Markets Tax Credit-eligible Community Development Entity promotes economic development.”

Sec. _____.12(h)-7. For the same reasons suggested above, we urge the Agencies to include CDFIs in this Q&A, “Community development loans and services and qualified investments to statewide or regional organizations, **SUCH AS A NATIONAL CDFI**, which have a bona fide purpose, mandate, or function that includes serving the geographies or individuals within the institution’s assessment area(s) will be considered as addressing assessment area needs.”

² The CDFI Data Project. (2007). “Community Development Financial Institutions (CDFIs): Providing Capital, Building Communities, Creating Impact, Fiscal Year 2005.” www.opportunityfinance.net/store/product.asp?pID=81&c=34715.

³ The CDFI Fund was established by bipartisan legislation, the Reigle Community Development and Regulatory Improvement Act of 1994, P.L. 103-325. See specifically, 12 USC 4701, “to promote economic revitalization and community development through investment in and assistance to community development financial institutions.”

⁴ Supra at 1.

⁵ The CDFI Fund was established by bipartisan legislation, the Reigle Community Development and Regulatory Improvement Act of 1994, P.L. 103-325. Title I, Section 103 Definitions, (5) Community Development Financial Institution. CDFI certification is focused on measuring the institution’s target market for evidence of poverty and its community development mission. Applicants for CDFI certification must submit extensive documentation for consideration by the agency before certification is granted.



Sec. _____.12(g)(4)-2. Opportunity Finance Network is concerned that the Q&A offers CRA credit for housing projects that do not include a low- and moderate-income component. Instead of, "will give greater weight to those activities that are most responsive to community needs, including needs of low- or moderate-income individuals or neighborhoods," the regulators should use the language found in Sec. _____.12(h)-5, "may qualify...if the activities also provide housing for low- or moderate-income individuals."

Sec. _____.12(g)(4)(ii)-2. We suggest that the Agencies change this Answer to read, "The Agencies generally will consider all activities relating to disaster recovery that revitalize or stabilize a designated disaster area, but will give greater weight to those activities that are most responsive to community needs, **PARTICULARLY** those of low- or moderate-income individuals or neighborhoods." This small but significant change would keep CRA activities focused on those the law intends to benefit.

Sec. _____.12(h)-3. This Q&A clarifies the treatment of home and small business loans in cases when intermediate small banks do not publicly report these loans. Opportunity Finance Network agrees with the Agencies that these banks can claim home and small business loans as either counting under their lending test or community development test. If intermediate small banks were allowed to count these loans for both tests, double counting would occur and the CRA rating would not accurately reflect service.

Sec. _____.12(i)-3. We commend the Agencies for including individual development accounts (IDAs) with the examples of community development services. This powerful asset-building tool is often the first step in financial literacy of the unbanked and should be included in the CRA examination consideration.

Sec. _____.22(a)(2)-6. If the Agencies will consider purchasing loan participations as well as originations for the CRA examination, the examiners should separately analyze the two areas, giving greater weight to originations than purchases. Loan originations are usually more difficult and most directly responsive to borrowers' credit needs.

Sec. _____.22(a)(2)-7. Opportunity Finance Network agrees with the Agencies that a loan of \$1 million or less secured by a one-to-four family residence is considered a small business loan for CRA purposes and the risk of double counting is minimal.

Sec. _____.22(c)(1)-1. The new example provided for this question allows an institution to count loan origination and if it sells to an affiliate, the affiliate of the institution may then count the loan purchase for its CRA exam. The institution has not leveraged two loans, instead the affiliate is essentially "holding" the loan in its portfolio. This appears to give double credit for one loan since the purchasing institution is an affiliate of the originator. This does not accurately reflect an institution's ability to respond to credit needs, and we urge the Agencies to change this example so that only the loan origination may count for CRA whether the institution holds the loan or sells it to an affiliate.

Sec. _____.23(a)-2. Opportunity Finance Network urges the Agencies to add specifically **CDFI**s and apply the same procedure to investments in national or regional funds as we suggested for Sec. _____.12(g)-4 for minority- or women-owned financial institutions when it suggests using "broader geographic criterion when evaluating capital investments, loan participations, and other venture undertaken by that institution."

Sec. _____.24(d)-1. We commend the Agencies for clarifying that all institutions may participate in individual development accounts (IDAs) programs. This powerful asset-building tool is often the first step in bringing people into the financial mainstream.

Sec. _____.26(a)-2. Opportunity Finance Network agrees with the Agencies that there should be no lag



period when a small bank becomes an intermediate small bank. The small bank does not need extra time to prepare for the intermediate small bank exam since the exam does not require any additional reporting.

Sec. _____.42(a)(2)-1 and Sec. _____.42(b)(2)-4. The Agencies should revise Sec. _____.42(a)(2)-1 to be consistent with the guidance found in the new Q&A in Sec. _____.42(b)(2)-4. Sec. _____.42(a)(2)-1 states, "When collecting and reporting information on purchased small business and small farm loans, including loan participations, an institution collects and reports the amount of the loan at origination, not at the time of purchase." In contrast, Sec. _____.42(b)(2)-4 states, "The institution reports only the amount of the participation purchased as a community development loan." Opportunity Finance Network agrees with the Agencies in Sec. _____.42(b)(2)-5 that says, "Community development loan refinancing and renewals are subject to the reporting limitations that apply to refinancing and renewals for small business and small farm loans." We urge the Agencies to take this approach with all community development loans and instruct institutions to report only the amount of purchase in cases involving loan participations as it does in Sec. _____.42(b)(2)-4. It is more accurate for a bank to report the amount of its loan participation for the reasons cited for community development loans.

OTS Conforming Comments

Opportunity Finance Network is pleased that the Office of Thrift Supervision is conforming its regulations and Q&As with those of the other Agencies. We encourage the Agency to conform all its regulation and oversight to that of the other Agencies.

Additional Areas Not Addressed in the Proposed Q&A

The request for comment accompanying this Q&A invites public comment "on issues raised by the CRA and the Interagency Questions and Answers." Opportunity Finance Network has long advocated the following two improvements to the CRA, particularly since the 1999 Gramm-Leach-Bliley Act "modernized" the financial services industry without commensurate reform to community reinvestment requirements.

Expand CRA coverage to all financial service institutions that receive direct or indirect taxpayer support or subsidy. After passage of the Gramm-Leach-Bliley Act, banks became nearly indistinguishable from finance companies, insurance and securities firms, and other "parallel banks." For example, banks and thrifts with insurance company affiliates have trained insurance brokers to make loans. Securities affiliates of banks offer mutual funds with checking accounts. Mortgage finance company affiliates of banks often issue more than half of a bank's loans—especially in the subprime markets.

However, CRA covers only banks, and therefore only a fraction of a financial institution's lending. To keep CRA in step with financial reform, all financial services companies that receive direct or indirect taxpayer support or subsidy should comply with the CRA exam process.

In the paper, "The Parallel Banking System and Community Reinvestment," Opportunity Finance Network uncovered a web of taxpayer-backed subsidies essential to the entire financial services industry. For example, federal guarantees and Treasury lines of credit have acted as a safety net against some nonbank insolvencies.

Opportunity Finance Network strongly urges regulatory agencies to mandate that all lending and banking activities of non-depository affiliates be included on CRA exams, including all banks that are part of large holding companies. This change would accurately assess the CRA performance of banks that are expanding their lending activity to all parts of their company, including mortgage brokers, insurance



agents, and other non-traditional loan officers.

A bank's assessment area should be determined by how a bank defines its market. Under CRA, banks are required to provide non-discriminatory access to financial services in their market and assessed according to where they take deposits. In 1977, taking deposits was a bank's primary function. In 2007, banks no longer just accept deposits, they market investments, sell insurance, issue securities, and are rapidly expanding their more profitable lines of business. In addition, the advent and explosion of Internet and electronic banking has blurred the geographic lines by which assessment areas are typically defined.

Presently, CRA exams scrutinize a bank's performance in geographical areas where a bank has branches and deposit-taking ATMs. Defining CRA assessment areas based on deposits is at odds with the way financial institutions now operate. Moreover, it disregards the spirit of the CRA statute, which sought to expand access to credit by ensuring that banks lent to their entire markets.

Opportunity Finance Network recommends simplifying the definition of CRA assessment area according to a financial institution's customer base. For instance, if a Philadelphia bank has credit card customers in Oregon, it also has CRA obligations there. The obligations ought to be commensurate with the level of business in any market.

Thank you for the opportunity to comment. If you have questions or would like additional information on this comment letter, please do not hesitate to contact me at 215.320.4304 or mpinsky@opportunityfinance.net.

Sincerely,

Mark Pinsky
President and CEO