March 9, 2009

Office of the Comptroller of the Currency
250 E Street, SW,
Mail Stop 1-5
Washington, DC 20219
Docket ID OCC-2008-0027

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Docket No. OP-1349

Robert E. Feldman,
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429
RIN Number 3064-AC97

Regulations Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Attention: OTS-2008-0022

To Whom in May Concern:

The Consumer Bankers Association (CBA) is pleased to provide these comments on the *Interagency Questions and Answers Regarding Community Reinvestment* (Q&A). CBA is the recognized voice on retail banking issues in the nation's capital. Member institutions are the leaders in consumer financial services, including auto finance, home equity lending, card products, education loans, small business services, community development, investments, deposits and delivery.

CBA was founded in 1919 and provides leadership, education, research and federal representation on retail banking issues such as privacy, fair lending, and consumer protection legislation/regulation. CBA members include most of the nation's largest bank holding companies as well as regional and super community banks that collectively hold two-thirds of the industry's total assets.

As part of the revisions to the CRA Q&A, finalizing changes that were proposed on July 11, 2007, the four financial institution regulatory agencies (the Agencies) have proposed one new and two revised Q&As. The new Q&A would provide examples of how an institution can determine that community services it provides are targeted to low- and moderate-income (LMI) individuals. The revised Q&As would allow pro rata consideration in certain circumstances for an activity that provides affordable housing targeted to LMI individuals.

CBA supports these changes and recommends their adoption in final form.

1. The new Q&A provides four ways in which an institution could determine that community services are targeted to LMI persons, when the institution does not know the *actual* income of the individuals. We believe these are helpful examples. Since an institution very often cannot know the actual income of the individuals of those to whom the services are targeted, it is only reasonable that it should be permitted to rely on circumstantial evidence suggestive of the incomes of those involved. These examples seem to be reasonable.

This proposal is also in keeping with our general desire to see a move away from managing the minutiae to a broader measure of performance. We believe that the regulation has become overly focused on detail, to the detriment of the industry and the communities it serves. The overemphasis on the detail overrates the ability of the regulators and the financial institutions to determine community needs. Needs assessment is not a science; it is an art. Focusing on minutiae therefore significantly increases costs to the institution without commensurate benefits to the communities.

2. The proposed Q&A revision to Sec. __.12(h)-8 and Sec. __.42(b)(2)-3 would address the treatment of community development loans where the loans are related to the provision of mixed-income housing by giving pro rata credit for the LMI portion. Although in previous comments we have suggested that full consideration be given to these projects as community development loans, we believe the proposal is an improvement over the current procedure and we support its adoption.

For the most part, Agencies have interpreted the "primary purpose" test to mean the majority of the units must be reserved for low- and moderate-income individuals.[1]

[1] Currently, the Agencies have given financial institutions they regulate different signals regarding the treatment of mixed-income housing. Some are giving institutions partial credit for community development loans in these cases, and others are not. This proposal will clarify the treatment and result in consistent application across the Agencies.

Therefore, it has often been difficult, if not impossible, for institutions to receive favorable consideration for these activities in middle- and upper-income census tracts.

As we stated in our earlier comment letter, many of the financing agencies, such as Municipal Housing Departments and State Housing Finance Authorities, now favor mixed-income developments as a means of benefiting LMI individuals and LMI communities. It is not merely that municipal rules sometimes require the inclusion of a percentage of affordable units, but that these localities and financing agencies may prefer development where a minority of the project's units is designated for low- and moderate-income households. The government favors mixed-income projects and may also favor developments in middle- and upper-income geographies because it perceives that these types of projects in a variety of census tracts will build more sustainable communities than if they were all relegated to low- and moderate-income geographies. Many experts in community development also agree that mixed-income projects in a variety of census tracts are a key ingredient of community development.

The required number of affordable units may reflect a government decision based the number of affordable units that the overall project could reasonably support with available public dollars. The number of affordable units in these situations would never be a majority nor reasonably be considered the primary purpose of the development.

Unless CRA consideration is given for these projects, CRA will not keep up with the most current understanding of the best approaches to supporting and developing communities through affordable housing. Therefore, we believe this change is a step in the right direction.

Our responses to the specific questions posed by the Agencies follow:

a) Will the proposed revision, allowing pro rata CRA consideration for low- and moderate-income housing set-asides, spur the construction and rehabilitation of housing for low- and moderate-income persons? Why or why not?
We believe that the proposed revision, if it expands available funding by giving additional CRA consideration for LMI housing set-asides, may spur additional development. It is also a more accurate measure of the real work being done by financial institutions to help meet the credit needs of their communities, including LMI portions of the communities.

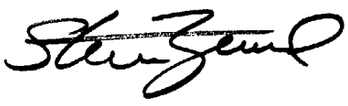
b) Should the special pro rata consideration be restricted only to instances where a governmental entity requires a set aside of a certain number or percentage of units as housing affordable for low- or moderate-income housing (as opposed to voluntary designation of low- and moderate-income units by a developer)?
We believe the same consideration should be given regardless of whether a government entity requires a set-aside, or it is designated by a developer. As noted above, experts in community development increasingly support mixed-income development as a preferable approach to benefiting LMI households; therefore CRA should encourage such activities.

c) How should the amount of the pro rata share be determined for reporting purposes--should institutions be required to report the actual funds attributable to the targeted units or should they report a proportional share, based on the percentage of set-aside units? For example, if an institution makes a $1 million loan for a development in which ten percent of the units are set aside as affordable housing for low- or moderate-income individuals, but only six percent of the loan proceeds are used to construct the units, should the institution report ten percent of the total amount of the loan ($1 million) or six percent ($600,000)? The focus on actual set-aside units would be easier to administer and would reduce the need to determine how to calculate the allocation of dollars or track the funding. Again, we wish to stress the importance of choosing the less difficult and time-consuming option for determining CRA consideration.

d) Should the pro rata treatment apply only to affordable housing or should institutions also be able to receive pro rata treatment for loans or investments with other community development purposes?
We believe that the pro rata treatment should apply to loans and investments with other community development purposes as well. By providing pro rata credit where it did not previously do so, CRA would more effectively encourage financial institution involvement in community development activities.

e) Would this change in policy lead to unjustifiable inflation of community development activities?
We support an increase in consideration of community development activities. We believe it is not only justified, but desirable. If CRA is to act as an incentive to institutions to help meet the credit needs of their communities, then it should find ways to increase the emphasis on community development activities of all kinds.

Sincerely,



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