



August 30, 2007

Office of the Comptroller of the Currency
Docket ID OCC-2007-0012

Federal Reserve System
Docket No. OP-1290

Federal Deposit Insurance Corporation
RIN 3064-AC97

Office of Thrift Supervision
Docket ID OTS-2007-0030

RE: Proposed CRA Q&As

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC), the nation's economic justice trade association of 600 community organizations, believes strongly that vigorous implementation of the Community Reinvestment Act (CRA) is critical towards ensuring that banks and thrifts respond continually and affirmatively to community needs. Some of your proposed Q&As will motivate banks to respond to continuing and new needs. For example, the questions clarifying that banks will receive favorable CRA consideration for foreclosure prevention activities will assist in alleviating the foreclosure crisis our nation currently confronts. Also, the proposed Q&A stressing the importance of branch building and maintenance by mid-size banks will help maintain access to affordable banking services in low- and-moderate-income neighborhoods inundated by abusive payday lending and high-cost fringe services.

The proposed Q&As, however, miss important opportunities to further strengthen CRA. One glaring omission is refinements to assessment areas. The current procedures for defining assessment areas works for banks with traditional branch networks but is inadequate for capturing the lending activity of banks that mostly use brokers and other non-branch networks. This unresolved issue will not go away and continues to undermine CRA's rigor for non-traditional banks. Moreover, some of the questions address purchasing activities but do not go far enough to prevent double-counting and other tricks that inflate CRA ratings but do not legitimately address credit needs.

Our detailed responses follow:

Assessment Areas

While your proposed Q&As did not deal with assessment area issues, you indicate that comments are appreciated on general issues. A significant number of banks make

considerable numbers of loans through brokers, loan offices, and other non-branch mechanisms. Assessment areas, meanwhile, are usually confined to geographical areas in which banks have branches and deposit-taking ATMs. The current assessment area procedures therefore capture a small minority of the lending activity of non-traditional banks and thrifts that predominantly lend through non-branch networks.

The federal agencies have adopted some initial procedures to assess the lending activities of these non-traditional banks, but these procedures remain incomplete. Examiners with the Office of Thrift Supervision, for example, will scrutinize lending outside of assessment areas and then offer comments whether the lending performance outside of the assessment areas was consistent with performance inside the assessment areas. But no consequences follow if the lending performance outside the assessment areas is worse in terms of reaching low- and moderate-income borrowers and communities than the lending performance inside the assessment areas. NCRC's preference would be to assign ratings to the performance outside the assessment areas. At the very least, the examiners can indicate in writing their expectations for improved performance if the performance outside the assessment areas is subpar. An examination that only presents findings of consistent or inconsistent performance outside the assessment areas is not sufficient to motivate banks in addressing any gaps in their performance. Such examinations do not enforce CRA's mandate of ensuring that banks are meeting community needs.

Moreover, the exams must cover the great majority of a bank's loans. Although some current exams consider lending activity outside the assessment areas, the exams do not usually consider the majority of the bank's loans. Again, such exams are not enforcing CRA's mandate of banks meeting community needs.

In our fair lending investigations, NCRC has found that banks with assessment areas covering a narrow segment of their lending activity are likely to have discriminatory policies such as no lending to row homes. These banks most likely calculate that they can get away with such policies since their CRA exams cover a small fraction of their lending activities. The regulatory agencies must address assessment areas issues more aggressively in order to end these practices.

Foreclosure Prevention Activities

NCRC greatly appreciates the proposed Q&As that provide CRA points for foreclosure prevention activities. As the agencies themselves recognize, the nation teeters on the edge of a foreclosure crisis, caused in considerable part by predatory lending. Thus, the tremendous resources of the banking industry must be marshaled to provide foreclosure relief. The proposed Q&A .23(a)-2 on investing in foreclosure prevention funds and how to allocate those funds to banks and their assessment areas is very helpful in this regard. In addition, the proposed Q&A .12(i)-3 that explicitly lists foreclosure prevention counseling as an example of community development services will assist in motivating banks to provide this important service. Also, NCRC appreciates the proposed revision

to Q&A .22(a)-1 that would provide favorable CRA consideration for loan programs that provide relief to low- and moderate-income homeowners facing foreclosure.

Another important aspect of the Q&As regarding foreclosure prevention activities is that the banks involved in these activities witness first hand examples of predatory loans leading to foreclosure. They then gain additional insights regarding the types of lending practices and products to avoid. NCRC has operated a national-level Consumer Rescue Fund (CRF) for several years. One of the important impacts of this fund is that the financial institutions we work with gain a more complete understanding of the practices to avoid.

Investments in Minority- or Women-Owned Institutions

The proposed Q&A .12(g)-4 states that examiners will favorably consider bank investments in minority- and women-owned financial institutions and low-income credit unions even if these institutions are located outside of the bank's assessment area. NCRC agrees that the investments in these institutions are to be encouraged. However, we also believe that banks must ensure that they are serving needs in their assessment areas. It would be counterproductive if a bank decides not to try to find investment opportunities in its assessment area and instead passes its investment test or community development test by investing in a low-income credit union or a minority- or women-owned institution outside of its assessment area. NCRC therefore encourages the agencies to modify their proposed Q&A to state that investments in these institutions will receive positive CRA consideration only if the bank or thrift has met needs in its assessment area first. NCRC's proposed modification would also attain more consistency with other parts of the Q&A whereas your proposal would create unnecessary inconsistencies in how investments are treated.

Community Development Services and Branches

NCRC strongly supports an emphasis on building and maintaining branches as a community development service for low- and moderate-income communities as the proposed revision to Q&A .12(i)-3 would do. This would apply to intermediate small banks' community development test since the large banks' branching patterns are examined under their service test. As the agencies implement this Q&A, we urge the agencies to increase the rigor of the community development test for intermediate small banks with assets between \$250 million to \$1 billion (adjusted annually for inflation). We have noticed a number of CRA exams for intermediate small banks that barely mention branch distributions and openings/closings; needless to say, these exams also do not carefully examine the distribution of branches by income level of census tract. With the tremendous growth of abusive payday lending and other high-cost fringe services, it is imperative that CRA exams rigorously examine the extent to which banks are providing alternatives to high-cost services by placing branches in low- and moderate-income neighborhoods.

Financing of RBIC, CDEs, and SBA 504 Program

NCRC supports the agencies proposal (.12(g)(3)-1 and .12(h)-1) that investments and loans to Rural Business Investment Companies (RBICs) and New Markets Tax Credit-eligible Community Development Entities receive CRA credit. In addition, NCRC supports the proposal that a loan in excess of \$1 million in connection with the SBA 504 program be considered a community development loan for CRA purposes. Yet, NCRC also expects CRA examiners to award more points for this type of financing when there are more direct benefits for low- and moderate-income borrowers and communities. The text in Q&A .12(g)(3)-1 has a paragraph suggesting that examiners will provide more CRA points for community development financing that provides more direct benefits to low- and moderate-income individuals and communities. NCRC suggests that the benefits for low- and moderate-income individuals and communities be emphasized in the preamble and Q&As if these proposals are finalized.

Purchased loan participations

Proposed Q&A .22(a)(2)-6 would offer CRA consideration for loan participations as well as purchases. NCRC has heard countless anecdotes from lenders that churning of purchased loans occurs as a means of inflating CRA exam ratings. In other words, one bank will purchase a large amount of loans made to low- and moderate-income borrowers just before their CRA exam and then will sell these loans to another bank which is about to have a CRA exam. Churning of purchased loans does not serve any purpose in meeting credit needs, but instead serves the purpose of inflating CRA exams. If the agencies wish to give the banks credit for loan participations as well as purchases, they need to add to their proposed Q&As a few sentences that indicate very clearly that banks will be penalized if there is evidence of churning.

Moreover, NCRC urges the regulatory agencies to consider loan purchases separately from loan originations on CRA exams. NCRC has consistently maintained that banks should receive more points on the lending test for originations as opposed to purchases since loan originations are usually the more difficult activity and is most directly responsive to local borrowers' credit needs. During the last round of regulatory changes to CRA, the agencies had proposed that purchases be listed separately from originations in CRA exam tables. This was a step in the direction of analyzing purchases separately from originations. We urge the agencies to separately analyze purchases and originations and to offer more CRA points for originations.

Only if the agencies adopt NCRC's proposals for separately analyzing purchases from originations would it be appropriate for the agencies to provide CRA points for loan participations. Moreover, the language describing the proposed Q&A states that banks would receive the same consideration for loan participations as for purchases of the whole loan amount. In other words, if a bank's loan participation was less than the amount of the loan at origination, the bank would still receive the same consideration as if it purchased the entire loan. NCRC opposes this procedure since it is a prescription for



inflating CRA ratings and is inconsistent with the treatment proposed regarding purchases of community development loans (see below).

Purchases of Loans by Affiliates

NCRC opposes the proposed addition to Q&A .22(c)(2)(i) that allows a bank to count a loan as purchased if the bank purchases a loan originated by its affiliate. This smacks as double-counting loans and purchases, which will contribute to CRA grade inflation. The bank holding company has not meaningfully leveraged two loans for low- and moderate-income communities in this example. Instead, one bank of the holding company originated one loan and an affiliate then purchased the loan. The holding company is essentially holding the loan in portfolio. It is almost like giving a bank two points for making one loan if the bank holds the loan in portfolio. This is a strange scoring system that does not accurately reflect a bank's effort at responding to credit needs.

The situation would be different if a bank purchased a loan made by a non-affiliated institution. In this case, if no churning is involved (as discussed above), the bank may have helped increase credit in low- and moderate-income neighborhoods. The bank may have purchased a loan made by a smaller community bank that does not have good access to the secondary market. CRA examiners need to make more discerning judgments about whether purchases are really increasing lending to low- and moderate-income communities. A purchase from a small bank that faces pricing disadvantages or other barriers to the secondary market does more to serve credit needs than a purchase from another large bank that has regular access to the secondary market.

This proposed revision is a step away from a thoughtful analysis of purchasing activity by automatically giving credit for loan purchases by affiliates within a holding company. Instead of proposing this revision, we urge the agencies to propose a Q&A that says that purchasing of loans will be examined carefully to see if the purchasing activity meaningfully increased access to credit to low- and moderate-income communities, for example, by purchasing loans from smaller institutions without regular access to the secondary markets.

Intermediate Small Banks – Treatment of Home and Small Business Loans

Proposed Q&A .12(h)-3 clarifies the treatment of home and small business loans in cases when intermediate small banks do not publicly report these loans. The agencies are correct in their proposed Q&A 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 be inflated.

Small Business Loans Secured by Residences

Proposed Q&A .22(a)(2)-7 strikes an appropriate balance concerning when to avoid double-counting of loans in the home and small business lending parts of the lending test. When a significant number of loans are made for the purpose of small business financing, but are secured by a lien on a residence, they should be counted on the small business lending part of the exam as the agencies proposed.

Community Development Loan Participations and Participations in Small Business Loans

Proposed Q&A .42(b)(2)-4 is correct in that it instructs lending institutions to report only the amount of their purchase of community development loans in cases involving loan participations. If they report the larger loan origination amount, the total amount of their purchases is inflated and could contribute to an inflated CRA rating. This would not accurately reflect an institution's responsiveness to credit needs. Also, the agencies are proposing an appropriate reporting procedure (in proposed Q&A .42(b)(2)-5) regarding renewals and refinances of community development loans to be consistent with the procedures for small business loans. Ultimately, however, NCRC recommends that the reporting be made more consistent with HMDA data in which refinances are reported separately from the other loan types.

Inconsistently, the agencies are proposing that a bank reports the amount of a small business loan at origination although the bank's participation in a purchase may be smaller than the loan origination amount (see proposed .42(a)(2)). It would be more accurate for a bank to report the amount of its loan participation for the reasons the agencies cite for community development loan participations. (If a loan at origination was over \$1 million and thus did not classify as a small business loan, the bank would not report a participation of whatever amount, as a purchase of a small business loan).

NCRC asks for clarification of the small business loan and purchase reporting. The agencies seem to be proposing that a bank reports the dollar amount of loan origination as a purchase, but that the examiners will evaluate purchases and participations using the dollar amount of the purchases and participations. Is it the case that the publicly available data on loan purchases includes the amounts at origination (which can be higher than purchases), but that the examiners are adjusting the data when the amount purchased is less than the origination. NCRC believes that the data collection and examination procedures should be the same; that is, that the amount actually purchased is the amount reported in the publicly available small business data and the amount for the CRA exam.

“Lag Periods” and Intermediate Small Institutions

The agencies are correct in their proposed Q&A .26(a)(2)-1 stating that there will be no lag period between being a small bank and an intermediate small bank. The intermediate small bank exam has been streamlined and does not require any additional data reporting.



Thus a small bank does not need extra time to prepare for an intermediate small bank exam.

OTS Request for Comments

In response to the OTS request for comments, NCRC urges the agency to continue its process of conforming its regulations and Q&As such as the Q&As regarding intermediate small institutions with those of the other agencies. NCRC appreciates OTS' efforts so far and encourages the agency to complete the process of conforming its regulation and oversight to that of the other agencies.

Conclusion

NCRC appreciates that a number of the proposed Q&As enhance banks' attention to important community needs and address the issues of double-counting. At the same time, NCRC has suggested modifications to some of the proposed Q&As and also urges the agencies to address long-standing issues regarding loan purchases and assessment areas.

NCRC thanks you for the opportunity to comment on this important matter. If you have any questions, please contact me or Josh Silver, Vice President of Research and Policy, on (202) 628-8866.

Sincerely,

A handwritten signature in black ink, appearing to read "John Taylor". The signature is written in a cursive style with a large initial "J" and "T".

John Taylor
President and CEO