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Attention: Comments
Federal Deposit Insurance Corporation
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Re: **FDIC** - RIN 3064–AC97; **FRB** - Docket No. OP–1240; **OCC** - Docket No. 05–17; Proposed Revisions to the Community Reinvestment Act Questions and Answers; 70 Federal Register 68450; November 10, 2005

Dear Sir or Madam:

The Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve Board, and the Office of the Comptroller of the Currency (the Agencies) have issued interim amendments to the Community Reinvestment Act (CRA) Questions and Answers (Q&As), a major resource for banks to comply with the CRA regulations. The proposed changes to the Q&As affect all banks over $250 million in assets and may affect smaller banks. ABA appreciates the opportunity to comment on these proposed changes. The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

The Agencies revised the Community Reinvestment Act regulations in 2005 to (1) amend the definition of "small institution" to mean an institution with total assets of less than $1 billion, without regard to any holding company assets, and to index both the small and intermediate small bank thresholds on the basis of the Consumer Price

Index; (2) add a new community development test that would be separately rated in CRA examinations for banks between $250 million and $1 billion in assets (intermediate small banks or ISBs); (3) expand the definition of "community development" to include: (a) affordable housing for individuals in underserved rural areas and designated disaster areas (in addition to low- or moderate-income (LMI) individuals) and (b) community development activities that revitalize or stabilize underserved rural areas and designated disaster areas (in addition to LMI areas); and (4) provide that evidence that an institution, or any of an institution's affiliates, the loans of which have been considered pursuant to §__.22(c), has engaged in specified discriminatory, illegal, or abusive credit practices in connection with certain loans would adversely affect the CRA rating. The proposed revisions to the CRA Q&A provide vital clarification of these significant changes, and overall ABA supports the proposed changes to the CRA Q&As. ABA does have some specific recommendations on some of the issues raised for comment by the Agencies, as set out below.

A. Q&As relating to "small bank" and the Intermediate Small Bank test

Treatment of Small Banks' Affiliates' Activities
The proposed guidance clarifies that any small bank (including an intermediate small bank--ISB) may request that activities of an affiliate in the small bank's assessment area(s) be considered in its performance evaluation. Those activities will be considered in the small bank's performance evaluation subject to the same constraints that apply to large institutions' affiliate activities, including that the activities have not also been considered in the CRA evaluation of another institution. **ABA strongly supports this clarification, as without it, a number of banks under $1 billion would not be able be examined as ISBs, since their corporate structure uses bank affiliates for their mortgage lending.**

Small Bank Asset Threshold Adjustments
The Q&A states that the asset size thresholds for "small bank" and "intermediate small bank" will be adjusted annually based on changes to the Consumer Price Index. Any changes in the asset size thresholds will be published in the Federal Register. **ABA supports this revision, since the annual indexing is required by the CRA regulations, and annual publication of the new size thresholds will make it easier for banks to know if they qualify for small bank or ISB examinations. Also, it will ensure general agreement and understanding on such reference numbers among the Agencies and bankers.**

The Intermediate Small Bank examination
First, the proposed guidance discusses what examiners will consider when they review the responsiveness of an intermediate small bank's community development activities to the community development needs of the area. The first question states:

> "*A1 (proposed):* Generally, intermediate small banks engage in a combination of community development loans, qualified investments, and community development services. A bank may not simply ignore one or more of these categories of community development, nor do the regulations prescribe a required threshold for community development loans, qualified investments, and community development services. Instead, based on the bank's assessment of community development needs in its assessment area(s), it may engage in different categories of community development activities that are responsive to those needs and consistent with the bank's capacity."

While this is consistent with the newly issued ISB Examination Procedures, ABA is concerned about the new requirement for ISBs to assess community development needs. The return to a requirement to do a "needs assessment" brings back memories of the 12 assessment factors under the original CRA regulations. That approach led to an always increasing paperwork requirement by the examiners that banks document their "needs assessment activities." The futility of amassing those mounds of paperwork was a major reason why the CRA regulations were revised in 1996.

ABA notes that other new Q&As state that examiners will apply the community development test for ISBs flexibly, so that banks can address community development needs in their assessment areas in the most responsive manner, and that examiners will consider the bank's capacity, business strategy and assessment of community needs in assessing the bank's responsiveness. In particular, the Q&As provide that " "innovativeness" and "complexity," factors examiners consider when evaluating a large bank under the lending, investment, and service tests, are not criteria in the intermediate small banks' community development test." **ABA believes that this is a significant improvement in the examination process and supports these changes. However, ABA urges the Agencies to review the ISB examination process continually to ensure that examiners are reasonable in their expectations of "needs assessment" and that this requirement does not create another paperwork nightmare.**

B. Changes in the definition of "community development."

The Q&As clarify that the revised definition of "community development" applies to all banks, not just intermediate small banks. The revised CRA regulations now provide that community development activities in underserved or distressed nonmetropolitan middle-income geographies and designated disaster areas are eligible for CRA credit. With respect to all of these geographies, their status as underserved, distressed or disaster areas may be temporary and have an end. The Q&As propose a one year "lag period" during which a bank may continue to receive consideration for activities in such an area for which the Federal or state designation has expired, but the Agencies specifically ask for comment on whether the "one-year" period is adequate. Bankers and community organizations tell us that it is not. While a geography may no longer qualify for being a disaster area or for being underserved or distressed, the conditions or factors that led to such a designation often have debilitating effects long after the official designation will have expired. This is particularly true for disaster areas, as can be seen in areas of Florida and the Gulf Coast. It is important to note that many of the most important bank services to such areas include loans with rather long maturities, the length of which is not necessarily tied to an estimate of how long the local distress may last but rather to the immediate debt service terms, the longer the loan generally the lower the immediate debt service payments. **Therefore, ABA strongly recommends that the Agencies instead use a three-year lag period at a minimum and otherwise provide for the types of bank products—including those with longer maturities—that can be of most service to distressed communities.**

The Agencies provide in the Q&As that they will list on the Federal Financial Institutions Examination Council's website all of the underserved and/or distressed nonmetropolitan middle-income geographies that will qualify for CRA community development activities, but the Agencies will not list designated disaster areas, since such a designation may be made by federal and state authorities. **While ABA understands the difficulties in tracking state designations of disaster areas (designations that the local bank should be well aware**

of), ABA recommends that the Agencies list all of the federal disaster area designations, including their designation and expiration dates, since these designations may well have been removed from the Federal Emergency Management Agency's website before the "lag" period has expired for CRA.

The Q&As also state that revitalization and stabilization activities in middle-income nonmetropolitan distressed geographies are evaluated differently than those in middle-income nonmetropolitan underserved geographies. Generally, a revitalization or stabilization activity in a distressed geography that helps to attract and retain businesses and residents or is part of a *bona fide* revitalization or stabilization plan will receive positive consideration. In an underserved geography, revitalization or stabilization activities are activities that facilitate the construction, expansion, improvement, maintenance, or operation of essential infrastructure or facilities for health services, education, public safety, public services, industrial parks, or affordable housing. ABA believes that this approach is too narrow for underserved geographies. Any community development activity that helps to attract and retain businesses and residents or is part of a *bona fide* revitalization or stabilization plan in an underserved geography is just as valuable to that geography as basic infrastructure investment. After all, attracting and retaining businesses in underserved geographies cannot help but support the creation and maintenance of basic infrastructure. **ABA recommends that the Agencies provide in the Q&As that activities that would qualify for CRA credit in a distressed geography will also qualify for CRA credit in an underserved geography.**

The Q&As also state that not all activities that benefit a disaster area would be considered equally. Extra weight would be given for activities that benefit low- or moderate-income individuals in the disaster area. ABA believes that this is fundamentally wrong. The Community Reinvestment Act is about providing credit to the entire community, not just low- and moderate-income individuals or geographies. As we see in the flooding of New Orleans, recovery for the entire community is critical, if the low- and moderate-income residents are to have jobs and services that will enable them to return to the city. ABA believes that placing an undue emphasis on low- and moderate-income residents or geographies in a disaster area is entirely inappropriate and may delay the overall recovery of a community affected by natural disaster. **ABA recommends that this Q&A be completely rewritten to reflect the real need to give equal CRA credit for any community development activity in disaster areas.**

Conclusion

ABA appreciates the opportunity to comment on the interim CRA Q&As. Overall, ABA supports the revisions as providing important guidance to our banks. ABA urges the Agencies to make the changes recommended in these comments. If there are any questions about these comments, please call or otherwise contact the undersigned.

Sincerely,

Paul Alan Smith

Paul A. Smith
Senior Counsel